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DECIDED BY THE

SUPREME COURT

OF THE

PHILIPPINES

AUGUST 14, 2019

SUPREME COURT
MANILA
2021

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2021

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PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 5285. August 14, 2019]

JUDGE NIMFA P. SITACA, *complainant, vs.* **ATTY. DIEGO M. PALOMARES, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); PRINCIPLE OF PRESUMPTION OF AUTHORSHIP; UNDER THE PRINCIPLE OF PRESUMPTION OF AUTHORSHIP, THE POSSESSOR AND USER OF A FALSIFIED DOCUMENT IS THE AUTHOR OF THE FALSIFICATION AND WHOEVER STANDS TO BENEFIT FROM THE FALSIFICATION IS THE AUTHOR THEREOF.— Despite respondent's vigorous disclaimer of any participation in the procurement of the falsified bail bond and release order, the combination of all the circumstances on record is such as to produce the indubitable conclusion that it was respondent, no other, who conceptualized, planned, and implemented the falsified bail bond and release order for his son's temporary release. x x x Under the principle of presumption of authorship, the possessor and user of a falsified document is the author of the falsification and whoever stands to benefit from the falsification is the author thereof. Here, it was respondent himself who held the falsified court documents. He, too, utilized the same to secure his son's temporary liberty. In other words, all considerations points to him as the primary author of the falsified court

documents. In ***Spouses Villamar v. People of the Philippines***, the Court applied the presumption of authorship after finding that petitioners therein were the ones who caused the registration of the deed of sale, received the falsified document from the Assessor's Office, and essentially benefited from the spurious sale of the property in question. No one ordinary mortal, nay, a member of the bar could ignore the glaring irregularity of the circumstances under which the falsified bail bond and the release order were obtained. From beginning to end, everything on its face looked wrong, smelled fishy, and revealed a despicable design to tamper with court processes and records, with impunity.

2. ID.; ID.; VIOLATION; THE IMPOSITION OF THE EXTREME PENALTY OF DISBARMENT IS PROPER FOR A LAWYER WHO INDULGED IN DELIBERATE FALSEHOOD WHEN HE CAUSED THE FALSIFICATION OF BAIL BOND AND RELEASE ORDER AND PRESENTED THE DOCUMENTS IN COURT, ALL FOR THE PURPOSE OF SECURING HIS SON'S TEMPORARY RELEASE FROM DETENTION; CASE AT BAR.— Based on the evidence on record, respondent committed a serious breach of Rule 1.01 of Canon 1. In ***Billanes v. Atty. Latido***, the Court imposed on respondent therein the penalty of disbarment in view of respondent's act of falsifying a court decision supposedly granting his client's petition for declaration of nullity of marriage. The Court considered the act "so reprehensible", it warranted the extreme penalty of disbarment, x x x Likewise, this Court finds respondent guilty of violating Canon 10, Rule 10.01 of the CPR which provides: x x x Records show that respondent indulged in deliberate falsehood when he caused the falsification of the bail bond and release order. Not only that. He even presented these court documents in court all for the purpose of securing his son's temporary release from detention. In ***Sps. Umaguing v. Atty. De Vera***, respondent was found guilty of violating Rule 10.01, Canon 10 of the CPR by submitting a falsified affidavit before the court, *viz*: Fundamental is the rule that in his dealings with his client and with the courts, every lawyer is expected to be honest, imbued with integrity, and trustworthy. These expectations, though high and demanding, are the professional and ethical burdens of every member of the Philippine Bar, x x x The Court has invariably emphasized that membership in the bar is only bestowed upon individuals

> who are not only learned in law, but also known to possess good moral character. Thus, to preserve the nobility and honor of the legal profession, disbarment, no matter how harsh it may be, is a remedy resorted to by the Court in order to purge the law profession of unworthy members of the bar. Here, considering the gravity of respondent's infractions, the Court imposes, no less than the extreme penalty of disbarment on respondent.

APPEARANCES OF COUNSEL

Mario T. Juni for respondent.

D E C I S I O N

***PER CURIAM*:**

The Charge

By Complaint Affidavit[1] dated April 5, 2000, Hon. Nimfa P. Sitaca[***], Acting Presiding Judge of the Regional Trial Court (RTC) - Branch 35, Ozamiz City charged respondent Atty. Diego M. Palomares, Jr. before the Integrated Bar of the Philippines (IBP) with falsification/disbarment/discipline. She essentially alleged:

In September 1997, Criminal Case No. RTC-1503 entitled "*People of the Philippines v. Dunhill Palomares*", for murder, got raffled to RTC-Branch 35, Ozamiz City, of which she is the Presiding Judge. Accused Dunhill Palomares was represented by his father, herein respondent Atty. Diego M. Palomares, Jr., as counsel of record.

Thereafter, Branch Clerk of Court Atty. Roy Murallon reported to her that respondent was present in the court for the purpose of securing approval of the bail bond for his son's temporary release. The bail bond in the amount of ₱200,000.00 was

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[1] *Rollo*, p. 5.

[***] "Ma. Nimfa P. Sitaca" in some parts of the *Rollo.*

accompanied by the order of release signed by Atty. Glenn Peter Baldado, Branch Clerk of Court of the RTC-Branch 18, Cagayan de Oro City. Atty. Murallon presented to her the bail bond itself bearing the signature of Hon. Nazar Chavez, Presiding Judge of RTC-Branch 18. At that time, accused Dunhill Palomares was detained at the Cagayan de Oro City jail.

She approved the order of release and the bail bond itself after she saw the signature of Judge Chavez thereon.

Not long after, however, Atty. Murallon informed her of a letter he received from Atty. Baldado advising that the supposed bail bond was actually inexistent and the Branch 18 never processed it.

In his Comment[2] dated September 19, 2000, respondent basically countered:

When his son was allowed to post bail in the amount of ₱200,000.00, he sought help from his client Bentley House International Corporation (BHIC) through its Chief Executive Officer Jonathon Bentley Stevenz and Operations Manager Cristina Romarate for the purpose of facilitating his son's temporary release from detention. For this purpose, BHIC referred him to one William Guialani. He and Guialani talked about the matter. Then Guialani proceeded to secure the bail bond for his son's temporary release. The bail bond which Guialani was able to secure carried the signature of Judge Chavez. It was also accompanied by the release order signed by Atty. Baldado. His BHIC clients were able to get hold of these documents which they turned over to him.[3]

Atty. Murallon ought to have been in the best position to inquire whether or not the bail bond and the release order were authentic. As it was, however, Atty. Murallon never mentioned any irregularity about these documents nor inquired about their authenticity.

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[2] *Id.* at 24-28.

[3] *Id.* at 25.

He never had a hand in the production of the alleged spurious bail bond because he could easily secure one from other insurance companies, which happened to be his clients, too.[4]

In her reply, Judge Sitaca took notice of respondent's convenient imputation of liability on innocent third parties like her and Atty. Murallon.[5]

On March 19, 2003, the Court referred the case to the IBP Commission on Bar Discipline (IBP-CBD) for investigation.[6]

IBP Commissioner's Report and Recommendation

Under her Report and Recommendation dated July 24, 2003,[7] Investigating IBP Commissioner Milagros V. San Juan found respondent liable for violation of Canon 10, Rule 10.01 of the Code of Professional Responsibility[8] (CPR) and recommended his suspension from the practice of law for eighteen (18) months.

Commissioner San Juan keenly noted: (a) the circumstances by which respondent supposedly secured Guialani's services were suspect. For although claiming to be capable of securing the bail bond himself through his so called insurance company clients, why did he still opt to avail of the services of Guialani whom he did not know from Adam; (b) it was very much convenient for respondent to cast all the blame on Guialani, albeit it was he himself (respondent) who submitted and used the falsified documents for the purpose of securing temporary release of his son; (c) as a lawyer, respondent should have verified with Branch 18 the veracity of the documents.[9]

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[4] *Id.* at 26.

[5] *Id.* at 37.

[6] *Id.* at 40.

[7] *Rollo*, pp. 43-50.

[8] Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

[9] *Rollo*, pp. 43-47.

IBP Board of Governors' Resolution

By Resolution No. XVI-2003-81 dated August 30, 2003, the IBP Board of Governors resolved to adopt and approve the Report and Recommendation of IBP-CBD.[10]

The Court's Ruling (Third Division)

Under Decision dated April 14, 2004,[11] the Court noted that the prescribed procedure pertaining to the investigation of administrative complaints was not complied with here, *viz*:

"SEC. 3. Duties of the National Grievance Investigator. - The National Grievance Investigators shall investigate all complaints against members of the Integrated Bar referred to them by the IBP Board of Governors.

"x x x x x x x x x

"SEC. 5. Service or dismissal. — if the complaint appears to be meritorious, the Investigator shall direct that a copy thereof be served upon the respondent, requiring him to answer the same within fifteen (15) days from the date of service. If the complaint does not merit action, or if the answer shows to the satisfaction of the Investigator that the complaint is not meritorious, the same may be dismissed by the Board of Governors upon his recommendation. A copy of the resolution of dismissal shall be furnished the complainant and the Supreme Court which may review the case *motu proprio* or upon timely appeal of the complainant filed within 15 days from notice of the dismissal of the complaint.

"No investigation shall be interrupted or terminated by reason of the desistance, settlement, compromise, restitution, withdrawal of the charges, or failure of the complainant to prosecute the same.

"x x x x x x x x x

"SEC. 8. Investigation. — Upon joinder of issues or upon failure of the respondent to answer, the Investigator shall, with deliberate speed, proceed with the investigation of the case. He shall have the power to issue subpoenas and administer oaths. The respondent shall be given full opportunity to defend himself, to present witnesses on

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[10] *Id.* at 42.

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

his behalf and be heard by himself and counsel. However, if upon reasonable notice, the respondent fails to appear, the investigation shall proceed ex parte.

"The Investigator shall terminate the investigation within three (3) months from the date of its commencement, unless extended for good cause by the Board of Governors upon prior application.

"Willful failure to (sic) refusal to obey a subpoena or any other lawful order issued by the Investigator shall be dealt with as for indirect contempt of court. The corresponding charge shall be filed by the Investigator before the IBP Board of Governors which shall require the alleged contemnor to show cause within ten (10) days from notice. The IBP Board of Governors may thereafter conduct hearings, if necessary, in accordance with the procedure set forth in this Rule for hearings before the Investigator. Such hearing shall as far as practicable be terminated within fifteen (15) days from its commencement. Thereafter, the IBP Board of Governors shall within a like period of fifteen (15) days issue a resolution setting forth its findings and recommendations, which shall forthwith be transmitted to the Supreme Court for final action and is warranted, the imposition of penalty."

Hence, the Court resolved to remand the case to the IBP for further proceedings, *viz*:

WHEREFORE, the instant administrative case is REMANDED to the Integrated Bar of the Philippines for further proceedings; it is also directed to act on this referral with dispatch.

SO ORDERED.

The Proceedings before the IBP-CBD

After receiving back the case records, the IBP-CBD set the case for hearing on several dates. Judge Sitaca, however, did not attend a single hearing. In her Letter dated June 22, 2007, complainant manifested that she was submitting the case on the basis of the records. On the other hand, respondent moved to dismiss the case for alleged lack of evidence to support the charges against him. At any rate, as alleged proof of his innocence, he stuck to the affidavits of Stevenz and Romarate on how Guialani came into the picture.[12]

[12] IBP Record, (Vol. III), Commissioner's Report dated July 18, 2008.

The IBP-CBD denied respondent's motion to dismiss and resolved the case based on the evidence on record thus far adduced on record.

IBP Commissioner's Amended Report and Recommendation

In its Amended Report and Recommendation dated March 27, 2009,[13] Investigating Commissioner Jose dela Rama, Jr. came out with the following factual findings:

First, as counsel of record for his son Dunhill Palomares, respondent knew there were no bail proceedings in his son's murder case. Consequently, respondent cannot deny the spurious character of the bail bond in question, let alone, feign ignorance thereof since it was his son who actually benefited from it.[14]

Second, respondent failed to present copy of the "Petition for Approval of Bond" or the "Order" approving the bail bond supposedly issued by Branch 18.[15]

Third, when he sought Guialani's assistance in processing the bail bond, he himself was presumed to have furnished the required documents to Guialani otherwise the latter would not have been able to possibly secure the bail bond, much less the release order.[16]

In sum, the IBP-CBD recommended:

WHEREFORE, in view of the foregoing, it is most respectfully recommended to the Board of Governors that its earlier Resolution No. XVI-2003-81 be reiterated and that respondent ATTY. DIEGO M. PALOMARES be SUSPENDED from the practice of law for a period of eighteen (18) months.

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[13] IBP Record, (Vol. IV), Commissioner's Report dated March 27, 2009.

[14] *Id.*

[15] *Id.* at p. 9.

[16] *Id.* at p. 10.

IBP Board of Governors' Resolution

By Resolution No. XIX-2011-188 dated May 14, 2011,[17] the IBP Board of Governors resolved to adopt and approve the IBP-CBD's findings but recommended to increase respondent's suspension from the practice of law from eighteen (18) months to three (3) years.

In its Resolution dated February 11, 2014, the IBP Board of Governors denied respondent's motion for reconsideration.[18]

Ruling

Despite respondent's vigorous disclaimer of any participation in the procurement of the falsified bail bond and release order, the combination of all the circumstances on record is such as to produce the indubitable conclusion that it was respondent, no other, who conceptualized, planned, and implemented the falsified bail bond and release order for his son's temporary release. Consider:

First. He was the counsel of record for his son who was charged with murder, a non-bailable offense, docketed as Criminal Case No. RTC-1503.

Second. As such, he knew there was no petition for bail at all, much less any hearing thereon, nor an order granting or fixing the amount thereof at ₱200,000.00. But despite his knowledge of these attendant circumstances, he personally went to present to Branch Clerk of Court Atty. Murallon the supposed bail bond and release order with the end in view of securing his son's temporary liberty. More than anyone else, it was he who knew these documents were falsified and did not legally exist.

He cannot feign ignorance of these spurious documents. He may deny all he wants but being his son's counsel of record speaks volumes of his familiarity with the proceedings that

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[17] IBP Record, (Vol. IV), Notice of Resolution.

[18] IBP Record, (Vol. IV), Notice of Resolution dated February 11, 2014.

actually took place therein including those which did not take place at all. He may deny being the conceptor, inventor, implementor or brains behind the whole scheme, but he has only himself to fool.

In any event, his vehement denial only further exposes to all and sundry his wicked tendencies and unworthiness to continue being a member of the Philippine Bar.

He may have thought of putting into the picture a fall guy named "Guialani" whom he said processed the falsified court issuances. But does this person really exist? What is his expertise in processing bail bonds? What did he do to be able to come out with a falsified bail bond and release order? What is BHIC's connection to Guialani? True, in their respective affidavits, Cristina Romarate (an alleged BHIC stockholder) and BHIC CEO Jonathan Stevens stated they introduced respondent to Guialani. But these affidavits did not shed light on Guialani's true identity and actual participation in the procurement of the falsified bail bond and release order.

It was indeed convenient for respondent to point to Guialani as the procurer of the falsified court documents. It was also convenient for the BHIC officers to corroborate respondent's claim that the falsified court issuances were procured by a certain Guialani. But these statements are all self-serving. The rock bottom is this: there is no proof Guialani really exists. Besides, if indeed respondent had no hand in the procurement of the falsified court issuances, it would have been right for him to promptly file an action against Guialani. But he never did.

Third. Respondent unabashedly turned the table on the persons accusing him of falsifying the bail bond and release order. If this is not moral depravity, what is? Like seasoned criminals who resort to victim blaming, respondent conveniently pointed fingers at Judge Sitaca and her branch clerk of court when he himself clearly appears to be the mastermind of the vicious scheme.

Fourth. When a court has already obtained jurisdiction over a criminal case, such jurisdiction is retained up until the end

of the litigation.[19] Here, Branch 35, Ozamiz City had already acquired jurisdiction over the murder case. Verily, bail should have been processed and applied for with that court. Nowhere else.

Fifth. Under the principle of presumption of authorship, the possessor and user of a falsified document is the author of the falsification and whoever stands to benefit from the falsification is the author thereof.[20] Here, it was respondent himself who held the falsified court documents. He, too, utilized the same to secure his son's temporary liberty. In other words, all considerations points to him as the primary author of the falsified court documents.

In ***Spouses Villamar v. People of the Philippines***,[21] the Court applied the presumption of authorship after finding that petitioners therein were the ones who caused the registration of the deed of sale, received the falsified document from the Assessor's Office, and essentially benefited from the spurious sale of the property in question.

No one ordinary mortal, nay, a member of the bar could ignore the glaring irregularity of the circumstances under which the falsified bail bond and the release order were obtained. From beginning to end, everything on its face looked wrong, smelled fishy, and revealed a despicable design to tamper with court processes and records, with impunity.

Rule 1.01, Canon 1 of the Code of Professional Responsibility ordains:

CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.

Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

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[19] *Barrameda v. Rural Bank of Canaman, Inc.*, 650 Phil. 476, 485 (2010).

[20] *PCGG v. Jacobi*, 689 Phil. 307, 321-322 (2012).

[21] 652 Phil. 117, 123 (2010).

Based on the evidence on record, respondent committed a serious breach of Rule 1.01 of Canon 1.

In ***Billanes v. Atty. Latido***,[22] the Court imposed on respondent therein the penalty of disbarment in view of respondent's act of falsifying a court decision supposedly granting his client's petition for declaration of nullity of marriage. The Court considered the act "so reprehensible", it warranted the extreme penalty of disbarment, thus:

> Rule 1.01, Canon 1 of the CPR instructs that "as officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing." Indubitably, respondent fell short of such standard when he committed the afore-described acts of misrepresentation and deception against complainant. Such acts are not only unacceptable, disgraceful, and dishonorable to the legal profession; they further reveal basic moral flaws that make respondent unfit to practice law.
>
> In *Tan v. Diamante*, the Court found the lawyer therein administratively liable for violating Rule 1.01, Canon 1 of the CPR as it was established that he, among others, falsified a court order. In that case, the Court deemed the lawyer's acts to be "so reprehensible, and his violations of the CPR are so flagrant, exhibiting his moral unfitness and inability to discharge his duties as a member of the bar." Thus, the Court disbarred the lawyer.
>
> Similarly, in *Taday v. Apoya, Jr.*, promulgated just last July 3, 2018, the Court disbarred the erring lawyer for authoring a fake court decision regarding his client's annulment case, which was considered as a violation also of Rule 1.01, Canon 1 of the CPR. In justifying the imposition of the penalty of disbarment, the Court held that the lawyer "committed unlawful, dishonest, immoral[,] and deceitful conduct, and lessened the confidence of the public in the legal system. Instead of being an advocate of justice, he became a perpetrator of injustice. His reprehensible acts do not merit him to remain in the rolls of the legal profession. Thus, the ultimate penalty of disbarment must be imposed upon him."

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[22] *Vicente Ferrer A. Billanes v. Atty. Leo S. Latido*, A.C. No. 12066, August 28, 2018.

Accordingly, following prevailing jurisprudence, the Court likewise finds respondent guilty of violating Rule 1.01, Canon 1 of the CPR. Hence, he is disbarred from the practice of law and his name is ordered stricken off from the roll of attorneys, effective immediately.

Likewise, this Court finds respondent guilty of violating Canon 10, Rule 10.01 of the CPR which provides:

CANON 10 - A lawyer owes candor, fairness and good faith to the Court.

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

Records show that respondent indulged in deliberate falsehood when he caused the falsification of the bail bond and release order. Not only that. He even presented these court documents in court all for the purpose of securing his son's temporary release from detention.

In ***Sps. Umaguing v. Atty. De Vera***,[23] respondent was found guilty of violating Rule 10.01, Canon 10 of the CPR by submitting a falsified affidavit before the court, *viz*:

Fundamental is the rule that in his dealings with his client and with the courts, every lawyer is expected to be honest, imbued with integrity, and trustworthy. These expectations, though high and demanding, are the professional and ethical burdens of every member of the Philippine Bar, x x x

x x x x x x x x x

The Lawyer's Oath enjoins every lawyer not only to obey the laws of the land but also to refrain from doing any falsehood in or out of court or from consenting to the doing of any in court, and to conduct himself according to the best of his knowledge and discretion with all good fidelity to the courts as well as to his clients. Every lawyer is a servant of the law, and has to observe and maintain the rule of law as well as be an exemplar worthy of emulation by others. It is by no means a coincidence, therefore, that the core values of honesty,

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[23] 753 Phil. 11, 22 (2015).

integrity, and trustworthiness are emphatically reiterated by the Code of Professional Responsibility. In this light, Rule 10.01, Canon 10 of the Code of Professional Responsibility provides that "[a] lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice."

After an assiduous examination of the records, the Court finds itself in complete agreement with the IBP Investigating Commissioner, who was affirmed by the IBP Board of Governors, in holding that Atty. De Vera sanctioned the submission of a falsified affidavit, i.e., Almera's affidavit, before the court in his desire to beat the November 8, 2008 deadline for filing the election protest of Umaguing. x x x The assertion that Atty. De Vera authorized the falsification of Almera's affidavit is rendered more believable by the absence of Atty. De Vera's comment on the same. In fact, in his Motion for Reconsideration of the IBP Board of Governors' Resolution dated December 14, 2012, no specific denial was proffered by Atty. De Vera on this score. Instead, he only asserted that he was not the one who notarized the subject affidavits but another notary public, who he does not even know or has seen in his entire life, and that he had no knowledge of the falsification of the impugned documents, much less of the participation in using the same. Unfortunately for Atty. De Vera, the Court views the same to be a mere general denial which cannot overcome Elsa Almera-Almacen's positive testimony that he indeed participated in the procurement of her signature and the signing of the affidavit, all in support of the claim of falsification.

The final lining to it all — for which the IBP Board of Governors rendered its recommendation — is that Almera's affidavit was submitted to the MeTC in the election protest case. The belated retraction of the questioned affidavits, through the Answer to Counterclaim with Omnibus Motion, does not, for this Court, merit significant consideration as its submission appears to be a mere afterthought, prompted only by the discovery of the falsification. Truth be told, it is highly improbable for Atty. De Vera to have remained in the dark about the authenticity of the documents he himself submitted to the court when his professional duty requires him to represent his client with zeal and within the bounds of the law. (underscoring supplied)
x x x

x x x x x x x x x

All told, Atty. De Vera is found guilty of violating the Lawyer's Oath and Rule 10.01, Canon 10 of the Code of Professional Responsibility by submitting a falsified document before a court.

So must it be.

A final word. The Court has invariably emphasized that membership in the bar is only bestowed upon individuals who are not only learned in law, but also known to possess good moral character.[24] Thus, to preserve the nobility and honor of the legal profession, disbarment, no matter how harsh it may be, is a remedy resorted to by the Court in order to purge the law profession of unworthy members of the bar.[25] Here, considering the gravity of respondent's infractions, the Court imposes, no less than the extreme penalty of disbarment on respondent.

WHEREFORE, the Court finds respondent Diego M. Palomares, Jr. **GUILTY** of violation of Rule 1.01, Canon 1 and Rule 10.01, Canon 10 of the Code of Professional Responsibility. Accordingly, he is **DISBARRED** from the practice of law and his name is ordered **STRICKEN OFF** from the Roll of Attorneys effective immediately.

The Office of the Bar Confidant is required to attach a copy of this Decision to the records of respondent Diego M. Palomares, Jr.. Let copies of this Decision be furnished the Integrated Bar of the Philippines for their information and guidance and the Office of the Court Administrator for circulation to all the courts in the country.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, and *Zalameda, JJ.,* concur.

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[24] *Ret. Judge Alpajora v. Atty. Calayan,* A.C. No. 8208, January 10, 2018, 850 SCRA 99, 113.

[25] *Yu v. Atty. Dela Cruz,* 778 Phil. 557, 563 (2016).

EN BANC

[A.C. No. 7578. August 14, 2019]

PAQUITO PELIPEL, JR., *complainant, vs.* **ATTY. CIRILO A. AVILA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; QUANTUM OF PROOF REQUIRED; IN ADMINISTRATIVE PROCEEDINGS, THE QUANTUM OF PROOF NECESSARY FOR A FINDING OF GUILT IS SUBSTANTIAL EVIDENCE, WHICH IS THAT AMOUNT OF RELEVANT EVIDENCE THAT A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO SUPPORT A CONCLUSION.— Disciplinary proceedings are *sui generis*. They proceed independently of civil and criminal proceedings. Thus, this Court is not bound by the findings made by the courts trying respondent's criminal cases. Moreover, this Resolution does not hinge on establishing respondent's liability beyond reasonable doubt. In *Rico v. Atty. Salutan*: In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, which is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Further, the complainant has the burden of proving by substantial evidence the allegations in his complaint. The basic rule is that mere allegation is not evidence and is not equivalent to proof. Likewise, charges based on mere suspicion and speculation cannot be given credence. Besides, the evidentiary threshold of substantial evidence - as opposed to preponderance of evidence - is more in keeping with the primordial purpose of and essential considerations attending this type of cases.

2. ID.; DISCIPLINE OF LAWYERS; A LAWYER'S HOLDING OF PUBLIC OFFICE DOES NOT DEPRIVE THE SUPREME COURT OF JURISDICTION TO DISCIPLINE AND IMPOSE PENALTIES UPON HIM OR HER FOR UNETHICAL CONDUCT.— A lawyer's holding of public office does not deprive this Court of jurisdiction to discipline and impose penalties upon him or her for unethical conduct. On the contrary, holding public office amplifies a lawyer's

disciplinary liability. In *Fuji v. Atty. Dela Cruz*: Lawyers in government service should be more conscientious with their professional obligations consistent with the time-honored principle of public office being a public trust. x x x This was demonstrated in this Court's Decision in *Collantes v. Atty. Renomeron*. Confronted with the issue of "whether the respondent register of deeds, as a lawyer, may also be disciplined by this Court for his malfeasances as a public official[,]" this Court ruled, "yes, for his misconduct as a public official also constituted a violation of his oath as a lawyer."

3. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; VIOLATION; THE OCCURRENCE OF THE ENTRAPMENT OPERATION IS RELEVANT EVIDENCE THAT SUSTAINS THE CONCLUSION THAT RESPONDENT INDEED MET WITH THE COMPLAINANT TO RECEIVE THE PROTECTION MONEY THAT HE DEMANDED, WHICH RUN AFOUL HIS SOLEMN OATH AS A PUBLIC OFFICER AND AS A LAWYER.— The occurrence of the entrapment operation is relevant evidence that sustains the conclusion that respondent indeed met with the complainant at the Barrio Fiesta Restaurant to receive the protection money that he demanded from complainant. His subsequent receipt of the marked money—paid to him in the guise of protection money and confirmed by fluorescent specks and smudges on his hands—attests to how he received a bribe. There cannot be any more barefaced proof of respondent's illicit conduct than his being caught red-handed. This Court does not see any reason to distrust the conduct of the entrapment operation. Indeed, we have had several occasions when we exonerated individuals charged of wrongdoing based on faulty entrapment operations, as when acquittals arise, for instance, from buy-bust operations that do not conform to statutory standards, or when the documentary evidence clearly disprove the assertions of parties. Here, however, there is no clear indication that complainant or National Bureau of Investigation agents acted out of an inordinate purpose to pin down respondent. x x x Equally unimpressive is respondent's insinuation that complainant had previously asked for favors. This is nothing more than an uncorroborated, self-serving insinuation. Regardless of the truth of this claim, it remains that respondent met with complainant for the sole purpose of accepting bribes, and that

he did receive an amount that he understood to be protection money. The veracity of his insinuation may make for a more intricate narrative, but it does not negate his liability. x x x It is clear that respondent engaged in unlawful, dishonest, immoral, and deceitful conduct, thereby violating Rule 1.01 of the Code of Professional Responsibility. As a public officer, respondent also acted in such a disgraceful manner and brought ignominy to his being a lawyer. Thus, he violated Rule 7.03 of the Code of Professional Responsibility. His actions run afoul his solemn oath as a lawyer.

4. ID.; ID.; ID.; THE RESPONDENT'S ACTIONS ARE OF SUCH GRAVITY THAT WARRANTS THE ULTIMATE PENALTY OF DISBARMENT.— Here, respondent's actions are of such gravity that warrants the consummate penalty of disbarment. They attest to a depravity that makes a mockery of the high standards of both public service and the legal profession. The totality of what respondent did—from his initial inducements, to his intervening incessant importuning, and finally, to his being caught *in flagrante delicto*—indicates a vicious predisposition to take advantage of his position for personal gain, to dispense undue advantages, and to deny public benefits. It reveals his unfitness to enjoy the privilege of legal practice. **WHEREFORE**, respondent Atty. Cirilo A. Avila, having clearly violated the Lawyer's Oath and the Code of Professional Responsibility through his unlawful, dishonest, and deceitful conduct, is **DISBARRED**. His name is ordered **STRICKEN** from the Roll of Attorneys.

APPEARANCES OF COUNSEL

Andrei Bon C. Tagum for complainant.

R E S O L U T I O N

***PER CURIAM*:**

Lawyers serving in government must more conscientiously comply with ethical standards set for lawyers. They are not merely engaged in legal practice, but occupy offices typified by public trust. Extortion and receiving money in exchange

for undue benefits reveal a predisposition that falls far too short of the lofty standards of both public service and the legal profession.

This Court resolves a Disbarment Complaint[1] directly filed before this Court by Paquito Pelipel, Jr. (Pelipel), president of PP Bus Lines, Inc. (PP Bus Lines), charging Atty. Cirilo A. Avila (Atty. Avila), then Director of the Land Transportation Office's Law Enforcement Service, with engaging in unlawful, dishonest, immoral, and deceitful conduct, and with violating the Lawyer's Oath.[2] Specifically, Atty. Avila is charged with extortion and receiving bribes.

According to Pelipel, in June 2003, a Land Transportation Office team led by Atty. Avila impounded five (5) out-of-line buses operated by PP Bus Lines. The buses were released only upon Pelipel's payment of the prescribed fees, as well as his accession to Atty. Avila's insistence that he be paid a weekly protection money of ₱3,000.00 and a one-time amount of ₱150,000.00 "to insure immunity from arrest of [PP Bus Lines'] bus drivers and from [the] impounding of [its] buses."[3]

Pelipel paid ₱3,000.00 every week between August and September 2003. However, he had to stop paying in October 2003 because of his "worsening financial situation."[4]

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[1] *Rollo,* pp. 1-5.

[2] I, . . . do solemnly swear that I will maintain allegiance to the Republic of the Philippines; I will support its Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, or give aid nor consent to the same. I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well to the courts as to my clients; and I impose upon myself these voluntary obligations without any mental reservation or purpose of evasion. So help me God.

[3] *Rollo,* p. 2.

[4] *Id.*

Atty. Avila insisted that Pelipel pay the ₱3,000.00 weekly protection money and the ₱150,000.00 lump sum amount lest his buses be impounded.[5]

Thus, Pelipel, along with his sister Ida Pelipel, who was also a high-ranking officer at PP Bus Lines, sought assistance from the National Bureau of Investigation. The Bureau's Special Task Force Division then sought to carry out an entrapment operation.[6]

On February 26, 2004, the entrapment operation was carried out. That day, Atty. Avila was apprehended after receiving marked money during a rendezvous at Barrio Fiesta Restaurant in Ali Mall, Cubao, Quezon City. A subsequent ultraviolet light examination revealed fluorescent specks and smudges on Atty. Avila's hands, confirming that he received the marked bribe money.[7]

Following his arrest, two (2) criminal cases were filed against Atty. Avila, namely: (1) Criminal Case No. 04-125092 for direct bribery; and (2) Criminal Case No. 05-134614 for violation of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.[8] In addition to these criminal cases, Pelipel filed a Disbarment Complaint on July 24, 2007.[9]

In a September 9, 2009 Resolution,[10] this Court referred the Complaint to the Integrated Bar of the Philippines for investigation, report, and recommendation.

Before the Integrated Bar of the Philippines, Pelipel submitted copies of the informations filed against Atty. Avila, as well as copies of transcripts of stenographic notes and documentary

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[5] *Id.* at 3.

[6] *Id.*

[7] *Id.*

[8] *Id.* at 3-4.

[9] *Id.* at 1.

[10] *Id.* at 52.

evidence adduced in the course of the criminal proceedings.[11] He also submitted a copy of the Report[12] that the Special Task Force of the National Bureau of Investigation prepared following the entrapment operation against Atty. Avila. This Report explained that: (1) four (4) marked ₱500.00 bills were prepared along with several unmarked ₱500.00 bills; (2) Pelipel rendezvoused with Atty. Avila at the Barrio Fiesta Restaurant in Ali Mall; and (3) Atty. Avila was arrested after he "[had taken] the marked money."[13]

In his defense, Atty. Avila faulted Pelipel for failing to supply enough details such as: (1) the specific dates when PP Bus Lines' buses were impounded for being out of line;[14] (2) information on the temporary operator's permits and impounding receipts issued to PP Bus Lines for the five (5) instances when its buses were impounded;[15] and (3) the exact amount of protection money paid to him.[16] He also ascribed ill motive on Pelipel for supposedly attempting, but failing to secure favors from him.[17]

In a September 4, 2015 Report and Recommendation,[18] Investigating Commissioner Erwin L. Aguilera sustained Pelipel's position and concluded that Atty. Avila failed to "live up to [the] exacting standards"[19] expected of a lawyer.[20] He recommended that Atty. Avila be suspended from the practice of law for two (2) years.[21]

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[11] *Id.* at 66-68.

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

[13] *Id*. at 141.

[14] *Id.* at 32.

[15] *Id.* at 33.

[16] *Id.* at 37.

[17] *Id.* at 40-45.

[18] *Id.* at 161-169.

[19] *Id*. at 167.

[20] *Id*.

[21] *Id*. at 169.

In a February 25, 2016 Resolution,[22] the Board of Governors of the Integrated Bar of the Philippines adopted the Report and Recommendation.

For this Court's resolution is the issue of whether or not respondent Atty. Cirilo A. Avila acted in an unethical manner that would justify the imposition of disciplinary sanctions.

This Court sustains the findings made by the Integrated Bar of the Philippines. However, its recommended penalty on respondent—a two-year suspension from the practice of law—is insufficient. Consistent with how this Court ruled on previous complaints involving extortion and bribery involving lawyers serving in government, we deem it proper to disbar respondent.

I

This Court begins by laying out basic parameters for this Court's ruling on the present Complaint.

First, this Resolution is made independently of the criminal proceedings against respondent for direct bribery and for violation of the Anti-Graft and Corrupt Practices Act.

Disciplinary proceedings are *sui generis*.[23] They proceed independently of civil and criminal proceedings. Thus, this Court is not bound by the findings made by the courts trying respondent's criminal cases. Moreover, this Resolution does not hinge on establishing respondent's liability beyond reasonable doubt. In *Rico v. Atty. Salutan*:[24]

> In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, which is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Further, the complainant has the burden of proving by substantial evidence the allegations in his complaint. The basic rule is that mere allegation is not evidence and is not equivalent to proof.

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[22] *Id.* at 159-160.

[23] *In re: Almacen v. Yaptinchay*, G.R. No. L-27654, February 18, 1970, 31 SCRA 562, 600 [Per *J.* Castro, First Division].

[24] A.C. No. 9257, March 5, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63986> [Per *J.* Peralta, Second Division].

Likewise, charges based on mere suspicion and speculation cannot be given credence. Besides, the evidentiary threshold of substantial evidence - as opposed to preponderance of evidence - is more in keeping with the primordial purpose of and essential considerations attending this type of cases. As case law elucidates, disciplinary proceedings against lawyers are sui generis. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, it also involves neither a plaintiff nor a prosecutor. It may be initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. In such posture, there can thus be no occasion to speak of a complainant or a prosecutor.[25] (Citation omitted)

Second, this Resolution is written in contemplation of the extraordinary accountability of lawyers serving in government. A lawyer's holding of public office does not deprive this Court of jurisdiction to discipline and impose penalties upon him or her for unethical conduct. On the contrary, holding public office amplifies a lawyer's disciplinary liability. In *Fuji v. Atty. Dela Cruz*:[26]

Lawyers in government service should be more conscientious with their professional obligations consistent with the time-honored principle of public office being a public trust. The ethical standards under the Code of Professional Responsibility are rendered even more exacting as to government lawyers because they have the added duty to abide by the policy of the State to promote a high standard of ethics, competence, and professionalism in public service.[27]

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[25] *Id*.

[26] 807 Phil. 1 [Per *J*. Leonen, Second Division].

[27] *Id*. at 14-15 citing *Ramos v. Imbang*, 557 Phil. 507, 513 (2007) [*Per Curiam, En Banc*]; *Far Eastern Shipping Company v. Court of Appeals*,

This was demonstrated in this Court's Decision in *Collantes v. Atty. Renomeron*.[28] Confronted with the issue of "whether the respondent register of deeds, as a lawyer, may also be disciplined by this Court for his malfeasances as a public official[,]"[29] this Court ruled, "yes, for his misconduct as a public official also constituted a violation of his oath as a lawyer."[30]

II

There is substantial evidence to conclude that respondent engaged in unethical conduct.

This case is not particularly complicated. Appraising respondent's liability hinges on the straightforward determination of whether he solicited or insisted on receiving protection money, and whether he did receive such money.

The occurrence of the entrapment operation is relevant evidence that sustains the conclusion that respondent indeed met with the complainant at the Barrio Fiesta Restaurant to receive the protection money that he demanded from complainant. His subsequent receipt of the marked money—paid to him in the guise of protection money and confirmed by fluorescent specks and smudges on his hands—attests to how he received a bribe. There cannot be any more barefaced proof of respondent's illicit conduct than his being caught red-handed.

This Court does not see any reason to distrust the conduct of the entrapment operation. Indeed, we have had several occasions when we exonerated individuals charged of wrongdoing based on faulty entrapment operations, as when acquittals arise, for instance, from buy-bust operations that do not conform to statutory standards, or when the documentary

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357 Phil. 703, 723 (1998) [Per J. Regalado, *En Banc*]; and Republic Act No. 6713 (1989), Sec. 4.

[28] 277 Phil. 668 (1991) [*Per Curiam, En Banc*].

[29] *Id*. at 674.

[30] *Id*.

evidence clearly disprove the assertions of parties.[31] Here, however, there is no clear indication that complainant or National Bureau of Investigation agents acted out of an inordinate purpose to pin down respondent.

Respondent's attempt at splitting hairs fails to impress. His defense dwelt on minutiae, like the dates of the five (5) buses' prior impounding and the receipts issued following such impounding. These trivialities do not at all trump the unequivocal import of how he was caught in the act.

Equally unimpressive is respondent's insinuation that complainant had previously asked for favors. This is nothing more than an uncorroborated, self-serving insinuation. Regardless of the truth of this claim, it remains that respondent met with complainant for the sole purpose of accepting bribes, and that he did receive an amount that he understood to be protection money. The veracity of his insinuation may make for a more intricate narrative, but it does not negate his liability.

III

It is clear that respondent engaged in unlawful, dishonest, immoral, and deceitful conduct, thereby violating Rule 1.01 of the Code of Professional Responsibility.[32] As a public officer, respondent also acted in such a disgraceful manner and brought ignominy to his being a lawyer. Thus, he violated Rule 7.03[33] of the Code of Professional Responsibility. His actions run afoul his solemn oath as a lawyer.

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[31] See *Macayan, Jr. v. People*, 756 Phil. 202 (2015) [Per *J.* Leonen, Second Division].

[32] CODE OF PROFESSIONAL RESPONSIBILITY, Rule 1.01 states:

Rule 1.01 A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[33] CODE OF PROFESSIONAL RESPONSIBILITY, Rule 7.03 states:
Rule 7.03 A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

All that remains for this Court to resolve is the penalty that respondent must suffer. To address this, we look to prior similar instances when this Court penalized lawyers serving in government who were shown to have been involved in extortion or bribery, or both.

Lim v. Atty. Barcelona[34] involved very similar facts. Complainant Dan Joel V. Lim (Lim) alleged that:

> . . . on the first week of August 2000, respondent [Atty. Edilberto Barcelona] phoned him and introduced himself as a lawyer and chief of the Public Assistance Center, [National Labor Relations Commission]. Respondent informed him that his employees filed a labor complaint against him in his office and it was necessary for him to see and talk with respondent. From then on respondent would often call him. Respondent visited him in his office and told him to settle the case or else his business, Top Gun Billiards, would be shut down. Lim recalled that on August 14, 2000, at around 7:30 p.m., respondent again visited his establishment and told him to settle the case for ₱20,000.00.[35]

On Lim's request for assistance, the National Bureau of Investigation conducted an entrapment operation where respondent Atty. Edilberto Barcelona, was arrested after receiving the marked bribe money.[36] He was subsequently indicted for robbery.[37] Emphasizing that he was a lawyer serving in government, this Court disbarred[38] the respondent, explaining:

> We had held previously that if a lawyer's misconduct in the discharge of his official duties as government official is of such a character as to affect his qualification as a lawyer or to show moral delinquency, he may be disciplined as a member of the Bar on such ground. More significantly, lawyers in government service in the discharge of their official tasks have more restrictions than lawyers in private practice.

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[34] 469 Phil. 1 (2004) [*Per Curiam, En Banc*].

[35] *Id.* at 4.

[36] *Id.* at 6.

[37] *Id.* at 7.

[38] *Id.* at 14.

Want of moral integrity is to be more severely condemned in a lawyer who holds a responsible public office. Rule 1.02 of the Code of Professional Responsibility provides that a lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system. Extortion by a government lawyer, an outright violation of the law, calls for the corresponding grave sanctions. With the aforesaid rule *a high standard of integrity is demanded of a government lawyer as compared to a private practitioner because the delinquency of a government lawyer erodes the people's trust and confidence in the government.*

. . . . . .

As a lawyer, who was also a public officer, respondent miserably foiled to cope with the strict demands and high standards of the legal profession.

In *Montano v. IBP*, this Court said that only in a clear case of misconduct that seriously affects the standing and character of the lawyer may disbarment be imposed as a penalty. In the instant case, the Court is convinced that the evidence against respondent is clear and convincing. He is administratively liable for corrupt activity, deceit, and gross misconduct. As correctly held by the Board of Governors of the Integrated Bar of the Philippines, he should not only be suspended from the practice of law but disbarred.[39] (Emphasis supplied, citations omitted)

In *Collantes*, charges of extortion and "[d]irectly receiving pecuniary or material benefit for himself in connection with pending official transaction before him"[40] were levelled against respondent Atty. Vicente C. Renomeron, Register of Deeds of Tacloban City. He was disbarred after he had been shown to have told "the complainant that he would act favorably on the 163 registrable documents of [a corporation of which the complainant was counsel] if the latter would execute clarificatory affidavits and send money for a round trip plane ticket for him."[41]

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[39] *Id.* at 12-14.

[40] 277 Phil. 668, 670 (1991) [*Per Curiam, En Banc*].

[41] *Id*. at 671.

In *Atty. Catalan, Jr. v. Atty. Silvosa*,[42] respondent Atty. Joselito M. Silvosa, the assistant provincial prosecutor of Bukidnon,[43] was shown to have bribed another prosecutor, for which he was convicted by the Sandiganbayan of direct bribery.[44] Before this Court, the respondent was disbarred.[45]

Here, respondent's actions are of such gravity that warrants the consummate penalty of disbarment. They attest to a depravity that makes a mockery of the high standards of both public service and the legal profession. The totality of what respondent did—from his initial inducements, to his intervening incessant importuning, and finally, to his being caught *in flagrante delicto*—indicates a vicious predisposition to take advantage of his position for personal gain, to dispense undue advantages, and to deny public benefits. It reveals his unfitness to enjoy the privilege of legal practice.

WHEREFORE, respondent Atty. Cirilo A. Avila, having clearly violated the Lawyer's Oath and the Code of Professional Responsibility through his unlawful, dishonest, and deceitful conduct, is **DISBARRED**. His name is ordered **STRICKEN** from the Roll of Attorneys.

Let a copy of this Resolution be furnished to the Office of the Bar Confidant to be attached to respondent's personal record. Copies of this Resolution are also ordered served on the Integrated Bar of the Philippines for its proper disposition, and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, and *Zalameda, JJ.,* concur.

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[42] 691 Phil. 572 (2012) [*Per Curiam, En Banc*].

[43] *Id.* at 574.

[44] *Id.* at 573.

[45] *Id.* at 582.

SECOND DIVISION

[A.C. No. 10949. August 14, 2019]
(Formerly CBD Case No. 13-3915)

CARMELITA CANETE, *complainant, vs.* **ATTY. ARTEMIO PUTI,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); FOR USING DEROGATORY STATEMENTS AGAINST PRIVATE AND PUBLIC PROSECUTORS, A LAWYER VIOLATED THE PROVISIONS OF THE CODE OF PROFESSIONAL RESPONSIBILITY; CASE AT BAR.— To be sure, the term "*bakla*" (gay) itself is not derogatory. It is used to describe a male person who is attracted to the same sex. Thus, the term in itself is not a source of offense as it is merely descriptive. However, when "*bakla*" is used in a pejorative and deprecating manner, then it becomes derogatory. Such offensive language finds no place in the courtroom or in any other place for that matter. Atty. Puti ought to be aware that using the term "*bakla*" in a derogatory way is no longer acceptable — as it should have been in the first place. Verily, in *Sy v. Fineza*, the Court ruled that the respondent judge's act of ruling that a witness should not be given any credence because he is a "*bakla*" was most unbecoming of a judge. As against the public prosecutors, Atty. Puti made the following statement: "Bakit 2 kayong prosecutor? Malaki siguro bayad sa inyo." Such remark was clearly unprofessional, especially since Atty. Puti used to be a public prosecutor. By nonchalantly accusing the prosecutors of having been bribed or otherwise acting for a valuable consideration, Atty. Puti overstepped the bounds of courtesy, fairness, and candor which he owes to the opposing counsels. For his statements against the private and public prosecutors, Atty. Puti violated the following provisions under the Code of Professional Responsibility: CANON 8 - A lawyer shall conduct himself with courtesy, fairness, and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel. Rule 8.01 - A lawyer shall not, in his professional dealings, use language which is abusive, offensive, or otherwise improper.

2. ID.; ID.; WHILE A LAWYER, AS AN OFFICER OF THE COURT, HAS THE RIGHT TO CRITICIZE THE ACTS OF THE COURT AND JUDGES, THE SAME MUST BE MADE RESPECTFULLY AND THROUGH LEGITIMATE CHANNELS; VIOLATION IN CASE AT BAR.— While a lawyer, as an officer of the court, has the right to criticize the acts of courts and judges, the same must be made respectfully and through legitimate channels. In this case, Atty. Puti violated the following provisions in the Code of Professional Responsibility: CANON 11 -A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others. Rule 11.03 - A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts. Rule 11.04 - A lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case. As defense, Atty. Puti claimed that he was merely doing his duty to call out the judge for being biased. He maintained that he was only discharging his duties to his client by representing him with zeal. Such contention deserves scant consideration. While zeal or enthusiasm in championing a client's cause is desirable, unprofessional conduct stemming from such zeal or enthusiasm is disfavored.

3. ID.; ID.; WHILE THE LAWYER IS GUILTY OF USING INAPPROPRIATE LANGUAGE AGAINST THE OPPOSING COUNSELS AND THE JUDGE, SUCH TRANSGRESSION IS NOT OF GRIEVOUS CHARACTER AS TO MERIT HIS SUSPENSION SINCE HIS MISCONDUCT IS CONSIDERED AS SIMPLE RATHER THAN GRAVE; IMPOSABLE PENALTY.— The Court has consistently held that disbarment and suspension of an attorney are the most severe forms of disciplinary action, which should be imposed with great caution. They should be meted out only for duly proven serious administrative charges. Thus, while Atty. Puti is guilty of using inappropriate language against the opposing counsels and the judge, such transgression is not of a grievous character as to merit his suspension since his misconduct is considered as simple rather than grave. x x x As applied to this case, the Court finds it best to temper the penalty for Atty. Puti's infraction. The Court also takes into consideration that this is the first administrative case against Atty. Puti in his more than three decades in the legal profession. **WHEREFORE**, finding Atty. Artemio Puti **GUILTY** of violating Canons 8 and 11 and

> Rules 8.01, 11.03, and 11.04 of the Code of Professional Responsibility, the Court **REPRIMANDS** him with **STERN WARNING** that a repetition of the same or similar act in the future will be dealt with more severely.

D E C I S I O N

CAGUIOA,[*] ***J.*:**

Before the Court is an administrative complaint[1] (complaint) filed by Carmelita Canete (Canete) against Atty. Artemio Puti (Atty. Puti) with the Commission on Bar Discipline (CBD), Integrated Bar of the Philippines (IBP).

In her complaint, Canete claimed that her husband was a victim in a criminal case for kidnapping for ransom with double murder filed against Atty. Puti's client. Canete averred that Atty. Puti had, in numerous occasions, appeared in court while he was intoxicated and made discourteous and inappropriate remarks against the public and private prosecutors as well as the judge.[2]

Canete claimed that Atty. Puti provoked her private counsel, Atty. Arturo Tan (Atty. Tan), by calling him "*bakla*" in open court during the hearing on May 9, 2013:

ATTY. MALABANAN:

> Objection, [Y]our Honor. Before the witness is confronted with this question, may I ask counsel, Atty. Puti, if that copy ... Because that is vital and substantial and this was previously marked as our exhibit in our offer of evidence, this June 26. My point is, where did Atty. Puti get that document. That it is stated that it appears it was on June 26, 2008, appearing on [TSN][3] May 13,

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[*] Designated Acting Chairperson per Special Order No. 2688 dated July 30, 2019.

[1] CBD Case No. 13-3915.

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

[3] Transcript of Stenographic Notes.

2009, when the prosecution and this representation have the same copies, your Honor. I think it is more right and that document is wrong [or] falsified.

ATTY. TAN:

May we ask the counsel to confront the witness with a correct document. What we have is the duplicate original, your Honor. Atty. Puti is referring to a [photocopy].

ATTY. PUTI:

All of them, [Y]our Honor, please, are my enemies?

ATTY. TAN:

No, [Y]our Honor. We [are] just [putting] everything in the proper context.

ATTY. PUTI

"Ako muna, [hijo]. **Ikaw naman para kang bakla.**"[4] (Emphasis supplied)

Also, during the February 14, 2013 hearing, Atty. Puti again became disrespectful towards Atty. Tan:

ATTY. TAN:

Your Honor, we take exception to that statement.

ATTY. PUTI:

I am not yet through.

ATTY. TAN:

We take exception to that allegation.

ATTY. PUTI:

Atty. Tan, you can react after my argument. My goodness!

ATTY. TAN:

Making an allegation is an exception, [Y]our Honor.

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[4] *Id.* at 66-67.

ATTY. PUTI:

That is unethical. You behave like a lawyer.[5] (Emphasis supplied).

Likewise, Atty. Puti also made inappropriate remarks against the public prosecutor, as seen in the following exchanges during the hearing on March 14, 2013:

ATTY. TAN:

Objection, [Y]our Honor. Already answered, [Y]our Honor.

ATTY. PUTI:

No Answer! Bakit 2 kayong prosecutor? Malaki siguro bayad sa inyo.

PROS. DELOS SANTOS:

Your Honor, as lead counsel for the public and for the government, we would like the Court to please advise counsel, Atty. Puti, to refrain from making personal statements as it will heighten the tension and stress of everybody here inside the courtroom. We beg. I just heard him "Malaki siguro ang bayad sa inyo." May we put that on record. That is very unprofessional. He used to be a public prosecutor![6] (Emphasis supplied)

In addition, Canete also alleged that during the May 9, 2013 hearing, Atty. Puti uttered the words "to the handsome public prosecutor" with seething sarcasm.[7]

Lastly, Canete averred that during the May 22, 2013 hearing, Atty. Puti repeatedly bullied and threatened the judge in open court:

ATTY. PUTI:

I object.

COURT:

[Okay], proceed.

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[5] *Id*. at 12.

[6] *Id*. at 268-269.

[7] *Id*. at 125.

ATTY. PUTI:

I object. Strongly object, [Y]our Honor.

COURT:

Let him proceed.

x x x x x x x x x

ATTY. PUTI:

I would like to make of record that I have a continuous objection.

COURT:

[Okay]! You have a continuing objection but I will allow him.

ATTY. TAN:

Thank you, [Y]our Honor.

ATTY. PUTI:

That is an abuse of discretion on your part, [Y]our Honor.

COURT:

But let him proceed.

ATTY. PUTI:

[Okay]!

x x x x x x x x x

COURT:

Let him proceed. If you do not like my ruling, you can file a certiorari, if you want.

x x x x x x x x x

ATTY. PUTI:

Your Honor, this time, I am [half] objecting. Because there was no testimony from this witness. This is why I was insisting a while ago that the witness be confronted with such testimony. Otherwise, if the Court will allow the cross-examiner to ask that question, I will withdraw from appearing in this case because I would not like to participate in this kind of trial, **partial trial. This is an abuse of discretion.**

ATTY. TAN:

Well, [Y]our Honor, first, is Atty. Puti talking about the statement made by this witness during his direct testimony as witness for Mariano de Leon? We will not have that because the transcript [is] not ready. It is impossible for me to confront him with the transcript of the last hearing. It is not here with us.

ATTY. PUTI:

That is the reason why the Prosecutor is guessing, making false question. Because the question is improper as there was no testimony to that effect. If he will not be confront[ed] with such testimony and then the Court will allow that, please, I beg of this [court], **I will withdraw. I will walk out.**

x x x x x x x x x

ATTY. PUTI:

Why does the Honorable Judge [allow] the private prosecutor to make some kind of arguments when he is allowed to answer for an objection on legal ground?

Why [does] the Honorable Court [allow] him to argue? To [speak]?

COURT:

Because you are also arguing. You were the first one arguing.

ATTY. PUTI:

I do not want to stipulate but.

COURT:

You want to control the proceedings?

ATTY. PUTI:

I don't want to think the Honorable Court is bias[ed].

COURT:

For you to argue and for him not to argue?

ATTY. PUTI:

I am going to think the Honorable Court is bias[ed].[8] (Emphasis supplied)

For his part, Atty. Puti prayed for the dismissal of the complaint against him.[9] He denied ever appearing intoxicated in court.[10] He also claimed that it was Atty. Tan who provoked him when the latter made threats against him.[11] According to him, it was his duty to call out the judge for being biased and that he was only discharging his duties to his client by representing him with zeal.[12]

A mandatory conference was held and both parties were subsequently ordered to submit their position papers.

Findings of the IBP

The Investigating Commissioner of the CBD issued a Report and Recommendation[13] finding Atty. Puti liable for misconduct for violating the Lawyer's Oath and the Code of Professional Responsibility and recommending his suspension for two (2) years from the practice of law.[14] The Investigating Commissioner found that Atty. Puti failed to conduct himself with courtesy, fairness, and candor toward his professional colleagues.[15] Further, his act of imputing bias on the judge was without basis and uncalled for.[16] Furthermore, his act of appearing at hearings while intoxicated was in utter disrespect to the court.

In Resolution No. XXI-2014-785, the IBP Board of Governors adopted and approved the Report and Recommendation of the Investigating Commissioner, with modification:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification**, the Report and Recommendation

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[8] *Id*. at 211-224.

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

[10] *Id.* at 14.

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

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

[13] *Id*. at 318-325. Prepared by Commissioner Erwin A. Aguilera.

[14] *Id*. at 325.

[15] *Id*. at 323.

[16] *Id.*

of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation to be fully supported by the evidence on record and applicable laws, and for violation of the Lawyer's Oath, Canon 8, Rule 10.01, 10.03, Canon 10 and Canon 11 of the Code of Professional Responsibility, Atty. Artemio Puti is hereby **SUSPENDED from the practice of law for six (6) months**.[17]

Based on the records,[18] Atty. Puti did not file a motion for reconsideration despite receipt of the IBP Resolution.

Ruling of the Court

The Court adopts the findings of the IBP, with modifications.

Canete filed the instant complaint against Atty. Puti for: 1) appearing in the hearings while drunk; 2) provoking and insulting the prosecutors; and 3) disrespecting the court. These grounds shall be discussed in *seriatim*.

On the allegation that Atty. Puti appeared intoxicated in court on numerous occasions, Canete claimed that these were witnessed by several court personnel, his co-counsels, and opposing counsels.[19] Atty. Puti denied such claim and argued that there is no evidence on record that he appeared in court while intoxicated.[20] The Court agrees with Atty. Puti. It was not sufficiently proven that Atty. Puti ever appeared at a court hearing while he was intoxicated — despite Canete's claim that the same was witnessed by several persons. Thus, Atty. Puti cannot be held liable on this ground.

Regarding the second ground, the TSN of the hearings held at the trial court plainly show that Atty. Puti employed impertinent and discourteous language towards the opposing counsels.

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[17] *Id.* at 317. Italics omitted.

[18] *Id.* at 328.

[19] *Id.* at 2.

[20] *Id.* at 14.

To recall, Atty. Puti called Atty. Tan "*bakla*" in a condescending manner. To be sure, the term "*bakla*" (gay) itself is not derogatory. It is used to describe a male person who is attracted to the same sex. Thus, the term in itself is not a source of offense as it is merely descriptive. However, when "*bakla*" is used in a pejorative and deprecating manner, then it becomes derogatory. Such offensive language finds no place in the courtroom or in any other place for that matter. Atty. Puti ought to be aware that using the term "*bakla*" in a derogatory way is no longer acceptable — as it should have been in the first place. Verily, in *Sy v. Fineza*,[21] the Court ruled that the respondent judge's act of ruling that a witness should not be given any credence because he is a "*bakla*" was most unbecoming of a judge.[22]

As against the public prosecutors, Atty. Puti made the following statement: "*Bakit 2 kayong prosecutor? Malaki siguro bayad sa inyo.*"[23] Such remark was clearly unprofessional, especially since Atty. Puti used to be a public prosecutor.[24] By nonchalantly accusing the prosecutors of having been bribed or otherwise acting for a valuable consideration, Atty. Puti overstepped the bounds of courtesy, fairness, and candor which he owes to the opposing counsels.

For his statements against the private and public prosecutors, Atty. Puti violated the following provisions under the Code of Professional Responsibility:

CANON 8 — A lawyer shall conduct himself with courtesy, fairness, and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel.

Rule 8.01 — A lawyer shall not, in his professional dealings, use language which is abusive, offensive, or otherwise improper.

As regards the final ground, the TSN of the May 22, 2013 hearing shows that Atty. Puti made several remarks against

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[21] 459 Phil. 780 (2003).

[22] *Id.* at 791.

[23] *Rollo*, p. 268.

[24] *Id.* at 269.

the judge. Specifically, Atty. Puti stated in open court that the judge was abusing his discretion and implied that the judge was partial and biased. Moreover, Atty. Puti threatened the judge that he would withdraw from the case and walk out if his request was not granted. Again, such statements were improper.

While a lawyer, as an officer of the court, has the right to criticize the acts of courts and judges, the same must be made respectfully and through legitimate channels. In this case, Atty. Puti violated the following provisions in the Code of Professional Responsibility:

> CANON 11 —A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.
>
> Rule 11.03 — A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts.
>
> Rule 11.04 — A lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case.

As defense, Atty. Puti claimed that he was merely doing his duty to call out the judge for being biased. He maintained that he was only discharging his duties to his client by representing him with zeal. Such contention deserves scant consideration.

While zeal or enthusiasm in championing a client's cause is desirable, unprofessional conduct stemming from such zeal or enthusiasm is disfavored.[25]

On the penalty to be imposed, the Court disagrees with the IBP's recommendation that Atty. Puti be suspended from the practice of law for six (6) months. While Atty. Puti is found to have violated the Code of Professional Responsibility, suspension from the practice of law is not a commensurate penalty. The Court has consistently held that disbarment and suspension of an attorney are the most severe forms of disciplinary action, which should be imposed with great caution.

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[25] *Bacatan v. Dadula*, 794 Phil. 437, 444 (2016).

They should be meted out only for duly proven serious administrative charges.[26]

Thus, while Atty. Puti is guilty of using inappropriate language against the opposing counsels and the judge, such transgression is not of a grievous character as to merit his suspension since his misconduct is considered as simple rather than grave.

In *Saberon v. Lorong*,[27] the Court meted the penalty of fine of ₱2,000.00 for a lawyer's use of intemperate language for referring to a party's pleadings as "a series of blackmail suits." In *Bacatan v. Dadula*,[28] the Court fined a lawyer for ₱2,000.00 for making unfounded accusations of partiality, bias, and corruption against the prosecutor. More recently, in *Quilendrino v. Icasiano*,[29] a lawyer was reprimanded for violating Canon 8, Rule 8.01, Canon 11, and Rule 11.03 of the Code of Professional Responsibility.

As applied to this case, the Court finds it best to temper the penalty for Atty. Puti's infraction. The Court also takes into consideration that this is the first administrative case against Atty. Puti in his more than three decades in the legal profession.

WHEREFORE, finding Atty. Artemio Puti **GUILTY** of violating Canons 8 and 11 and Rules 8.01, 11.03, and 11.04 of the Code of Professional Responsibility, the Court **REPRIMANDS** him with **STERN WARNING** that a repetition of the same or similar act in the future will be dealt with more severely.

Let a copy of this Decision be attached to Atty. Puti's personal records in the Office of the Bar Confidant.

SO ORDERED.

Reyes, J. Jr., Lazaro-Javier, and *Zalameda, JJ.*, concur.

Carpio, S.A.J. (*Chairperson*), on official leave.

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[26] *Saberon v. Larong,* 574 Phil. 510, 520 (2008).

[27] *Id.*

[28] *Supra* note 25.

[29] A.C. No. 9332, February, 27, 2019. (Notice)

EN BANC

[A.C. No. 11351. August 14, 2019]

PHILIPPINE INVESTMENT ONE (SPV-AMC), INC., represented by CARLOS GAUDENCIO M. MAÑALAC, *complainant, vs.* **ATTY. AURELIO JESUS V. LOMEDA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); A LAWYER'S OATH ENJOINS EVERY LAWYER NOT ONLY TO OBEY THE LAWS OF THE LAND BUT ALSO TO REFRAIN FROM DOING FALSEHOOD IN AND OUT OF COURT.— Time and again, this Court has ruled that any misconduct or wrongdoing of a lawyer, indicating unfitness for the profession justifies disciplinary action because good character is an essential and continuing qualification for the practice of law. The CPR is emphatic in its provisions with regard to the high moral standards required in the legal profession. x x x Further, the lawyer's oath enjoins every lawyer not only to obey the laws of the land but also to refrain from doing any falsehood in or out of court.

2. ID.; ID.; A MEMBER OF THE BAR MAY BE DISBARRED OR SUSPENDED FROM THE PRACTICE OF LAW FOR WILLFUL DISOBEDIENCE OF ANY LAWFUL ORDER OF A SUPERIOR COURT, AMONG OTHER GROUNDS.— Despite several notices, respondent never bothered to comply with the IBP's order for him to participate in the proceedings of this administrative case. By his repeated dismissive conduct, the respondent exhibited an unpardonable lack of respect for the authority of the Court. The Court cannot turn a blind eye on this matter because it reflected respondent's undisguised contempt of the proceedings of the IBP, a body that the Court has invested with the authority to investigate this administrative case against him. It cannot be overemphasized that more than anyone who has dealings with the court and its duly constituted authorities like the IBP, a lawyer has the bounden duty to comply with his/her lawful orders. Section 27, Rule 138 of the Rules

of Court, provides that a member of the bar may be disbarred or suspended from practice of law for willful disobedience of any lawful order of a superior court, among other grounds. Undoubtedly, these established factual circumstances warrant this Court's exercise of its disciplinary authority. This Court cannot overstress the duty of the members of the Bar to, at all times, uphold the integrity and dignity of the legal profession. The ethics of the legal profession rightly enjoin lawyers to act with the highest standards of truthfulness and nobility in the course of their practice of law. If the lawyer falls short of this standard, the Court will not hesitate to discipline the lawyer by imposing an appropriate penalty based on the exercise of sound judicial discretion. Clearly, in this case, respondent failed to uphold such ethical standard in his practice of law.

3. ID.; ID.; ANY RESORT TO FALSEHOOD OR DECEPTION EVINCES AN UNWORTHINESS TO CONTINUE ENJOYING THE PRIVILEGE TO PRACTICE LAW AND HIGHLIGHTS THE UNFITNESS TO REMAIN A MEMBER OF THE LAW PROFESSION; CASE AT BAR.— The circumstances in the instant administrative case against respondent as a lawyer, coupled with those in the administrative matter against him as a Judge and as a witness in court certainly reveal his character and manifest his propensity to commit falsehood without moral appreciation for, and regard to the consequences of his lies and frauds. To this Court's mind, there is no necessity for members of the bar to be repeatedly reminded that as instruments in the administration of justice, as vanguards of our legal system, and as members of this noble profession whose task is to always seek the truth, we are expected to maintain a high standard of honesty, integrity, and fair dealing. In fact, before being admitted to the practice of law, we took an oath "to obey the laws as well as the legal orders of the duly constituted authorities" and to "do no falsehood." Of all classes and professions, the lawyer is most sacredly bound to uphold the laws. For a lawyer to override the laws by committing falsity, is unfaithful to his office and sets a detrimental example to the society. Thus, any resort to falsehood or deception evinces an unworthiness to continue enjoying the privilege to practice law and highlights the unfitness to remain a member of the law profession. Therefore, rather than merely suspending respondent from the practice of law, this Court finds it proper to impose

the ultimate administrative penalty of disbarment upon respondent considering the gravity of his infraction, the injury caused to entities such as herein complainant and Big "N", his disrespect and disregard to the lawful orders of this Court, and the fact that he committed the similar conduct of falsehood in his private practice as he had done when he was still in the service of the Judiciary, wherein he was severely sanctioned therefor.

APPEARANCES OF COUNSEL

Solis Lacambra & Associates Law Office for complainant.

D E C I S I O N

***PER CURIAM*:**

For our resolution is an Affidavit-Complaint[1] filed before the Integrated Bar of the Philippines, Commission on Bar Discipline (IBP-CBD) by Philippine Investment One (complainant) through its General Manager, Carlos Gaudencio M. Manalac, against Atty. Aurelio Jesus V. Lomeda (respondent) for violating Section 27, Rule 138 of the Rules of Court and Rule 1.01, Canon 1 of the Code of Professional Responsibility (CPR).

Factual Antecedents

This administrative case is rooted from a purported accommodation mortgage among Big "N" Corporation (Big "N") as accommodation mortgagor, Lantaka Distributors Corporation (Lantaka) as accommodated party, and United Coconut Planters Bank (UCPB) as mortgagee.[2] This mortgage came about by virtue of the transaction documents submitted by respondent to UCPB, which include a purported Memorandum of Agreement[3] between Lantaka and Big "N", the owner's copy

[1] *Rollo*, pp. 2-7.

[2] *Id*. at 622-623.

[3] *Id*. at 41-44.

of the title[4] over the townhouses owned by Big "N" and a notarized Secretary's Certificate[5] issued by respondent which reads as follows:

I, **AURELIO JV LOMEDA**, in my capacity as Corporate Secretary of Big N Corporation, a private corporation organized and existing under the laws of the Philippines, x x x, hereby CERTIFY that:

During the meeting of the stockholders of the Corporation held on July 28, 2006 at which a quorum was present, the following Resolutions were approved and adopted, to wit:

"RESOLVED, as it is hereby resolved, that the Corporation's real property and all improvements existing thereon and covered by Transfer Certificate of Title No. 124230 of the Registry of Deeds for Quezon City be made the subject of a real estate mortgage under prevailing bank rates;"

"RESOLVED FURTHER, to authorize, as it hereby authorizes, **EDGAR ARGOSINO NANES**, to sign, for and on behalf of the Corporation, any and all deeds of mortgage and other relevant documents in connection with the real estate mortgage;" and

"RESOLVED FINALLY, that any and all transactions entered into by Edgar Argosino Nanes for and on behalf of the Corporation in connection with the real estate mortgage be acknowledged, as they are hereby acknowledged, as transactions of the Corporation."

The foregoing Resolutions have not been repealed or amended in any manner as of the date hereof and may be relied upon for any and all legal intents and purposes.[6]

x x x x x x x x x

Thus, secured by the said mortgage, UCPB extended a credit line worth ₱10,000,000.00 to Lantaka. Said real estate mortgage was annotated on the title of the mortgaged properties.[7]

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[4] *Id*. at 355-356.

[5] *Id.* at 413.

[6] *Id*.

[7] *Id*. at 356.

After some time, UCPB assigned to complainant all its rights over Lantaka's credit line, which was purportedly secured by Big "N"'s mortgage.[8]

In an unexpected turn of events, however, Big "N" filed a civil case for Declaration of Nullity of Memorandum of Agreement, Secretary's Certificate, Real Estate Mortgage, and Cancellation of Encumbrance on TCT No. 124230; Declaration of Nullity of Sale; Delivery of the Owner's Copy of TCT No. 124230; and Damages against Lantaka, a certain Ric Raymund F. Palanca (Palanca) of Lantaka, UCPB, and herein complainant and respondent, among others.[9]

Succinctly, in the said civil case, Big "N" alleged that it was not privy to any agreement as regards accommodating Lantaka for UCPB to extend a credit line to the latter. Big "N" also alleged that the Secretary's Certificate which was the basis of the accommodation mortgage was null and void as the person who executed the same, herein respondent, "is not, was not, and has never been" the corporate secretary of Big "N". According to Big "N," the company never knew who respondent was. Hence, he could not have bound Big "N" to any contract. Neither was there any truth as to the content of the said Secretary's Certificate as Big "N" emphatically denied having passed any resolution as stated therein.[10]

On March 21, 2012, the Regional Trial Court (RTC) of Quezon City, Branch 88, issued a Judgment Based on Compromise[11] in the said civil case, wherein it approved the Compromise Agreement[12] between Big "N" and herein respondent. In the said Compromise Agreement, respondent admitted that he is not, was not, and has never been a corporate secretary of Big "N," and that he has no authority to issue a Secretary's Certificate

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[8] *Id.* at 623.

[9] *Id*. at 368-380.

[10] *Id.* at 372-374.

[11] *Id.* at 525-527.

[12] *Id*. at 521-524.

on behalf of Big "N." Respondent also explained therein that said document was prepared by and was part of Palanca's ploy; that he was also a victim thereof as he was merely used as a tool to perpetrate the said ploy. Satisfied with the explanation, Big "N" agreed to drop the case against respondent as agreed upon in the Compromise Agreement.

Respondent's admission of his actions in the Compromise Agreement prompted herein complainant to file this administrative case. Complainant argues that respondent's admission that the statements in the Secretary's Certificate that he executed were not true, which were material to the damage and prejudice caused to complainant, makes him liable criminally and administratively. It is constitutive of a criminal act, *i.e.*, falsification and/or estafa. It also constitutes as malpractice in violation of his oath as a lawyer.[13]

Mandatory conferences were set by the IBP-CBD and the parties were directed to submit their respective briefs with regard to the complaint. Notably, respondent never responded and participated in the proceedings despite adequate and repeated notices.[14]

Findings and Recommendation of the IBP

In its Report and Recommendation[15] dated February 17, 2015, the IBP-CBD found respondent to have engaged in an unlawful, dishonest, immoral or deceitful conduct in knowingly executing a falsified Secretary's Certificate and having it notarized, which document became instrumental in facilitating an obligation amounting to ₱10,000,000.00. The IBP-CBD also considered respondent's unjustified refusal to participate in the proceedings, the gravity of the wrongful act done, and the damage caused by his actions in recommending the penalty of one year suspension from the practice of law.

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

[14] *Id.* at 624-625.

[15] *Id.* at 621-626.

In its Resolution No. XXI-2015-386,[16] the IBP Board of Governors (IBP Board) adopted and approved the IBP-CBD's Report and Recommendation with modification to the penalty, *viz*.:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, ***with modification****, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", considering Respondent's violation of Canon 1, Rule 1.01 of the Code of Professional Responsibility in relation to Section 27, Rule 138 of the Rules of Court. Thus, Respondent Atty. Aurelio Jesus V. Lomeda is hereby* ***SUSPENDED from the practice of law for three (3) years****.*

No motion for reconsideration or petition for review was thereafter filed.

The Ruling of the Court

The IBP's findings are well-taken but we find it proper to modify its recommendation as to the penalty.

Time and again, this Court has ruled that any misconduct or wrongdoing of a lawyer, indicating unfitness for the profession justifies disciplinary action because good character is an essential and continuing qualification for the practice of law.[17]

The CPR is emphatic in its provisions with regard to the high moral standards required in the legal profession. The following provisions of the CPR are relevant, *viz*.:

CANON 1 - A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

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[16] *Id.* at 619-620.

[17] *Sosa v. Atty. Mendoza*, 756 Phil. 490, 496 (2015).

Further, the lawyer's oath enjoins every lawyer not only to obey the laws of the land but also to refrain from doing any falsehood in or out of court.[18]

In this case, respondent patently transgressed the lawyer's oath and the CPR by knowingly misrepresenting himself as the corporate secretary of Big "N", executing a Secretary's Certificate containing false statements, and knowingly allowing himself to be used in perpetrating fraud to the prejudice of Big "N", which likewise resulted to the prejudice of herein complainant. These acts were admitted by respondent, which admission was recognized by the trial court in its Judgment Based on Compromise[19] in the civil case filed by Big "N." Notably, respondent never questioned said Judgment Based on Compromise.

We find the excuse given by respondent for his action, *i.e.*, it was Palanca who prepared the document, and that he was merely a victim and used as a tool in Palanca's ploy and scheme, disturbing and unacceptable. The stubborn fact remains that, for whatever reason, he knowingly executed a falsified document and made himself be used in his legal capacity to perpetrate a deceptive ploy to the prejudice of Big "N". It must be stressed that the CPR exacted from him not only a firm respect for the law and legal processes, but also the utmost degree of good faith in all his professional and even personal dealings.

Worse, not only did respondent assist and became instrumental in perpetrating an activity which was aimed at deceiving others and defying the law, he likewise displayed utter disrespect to, and disregard of the authority of the Court. Despite several notices, respondent never bothered to comply with the IBP's order for him to participate in the proceedings of this administrative case. By his repeated dismissive conduct, the respondent exhibited an unpardonable lack of respect for the authority of the Court. The Court cannot turn a blind eye on

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[18] *Valin v. Atty. Ruiz*, A.C. No. 10564, November 7, 2017, 844 SCRA 111, 120-121.

[19] *Supra* note 11.

this matter because it reflected respondent's undisguised contempt of the proceedings of the IBP, a body that the Court has invested with the authority to investigate this administrative case against him. It cannot be overemphasized that more than anyone who has dealings with the court and its duly constituted authorities like the IBP, a lawyer has the bounden duty to comply with his/her lawful orders. Section 27,[20] Rule 138 of the Rules of Court, provides that a member of the bar may be disbarred or suspended from practice of law for willful disobedience of any lawful order of a superior court, among other grounds.

Undoubtedly, these established factual circumstances warrant this Court's exercise of its disciplinary authority. This Court cannot overstress the duty of the members of the Bar to, at all times, uphold the integrity and dignity of the legal profession. The ethics of the legal profession rightly enjoin lawyers to act with the highest standards of truthfulness and nobility in the course of their practice of law. If the lawyer falls short of this standard, the Court will not hesitate to discipline the lawyer by imposing an appropriate penalty based on the exercise of sound judicial discretion.[21] Clearly, in this case, respondent failed to uphold such ethical standard in his practice of law.

What is more, respondent's culpability is further aggravated by the fact that, when he was still serving in the Judiciary as a Judge, he was severely sanctioned by the Court in A.M. No. MTJ-90-400 entitled *Moroño v. Judge Lomeda*.[22] In the said

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[20] SEC. 27. *Attorneys removed or suspended by Supreme Court on what grounds*. — A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a wilfull disobedience of any lawful order of a superior court, or for corruptly or willful appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

[21] *Gutierrez v. Atty. Maravilla-Ona*, 789 Phil. 619, 624 (2016).

[22] 316 Phil. 103, 133 (1995).

case, respondent was found guilty of: (1) gross negligence in violating or disregarding the constitutional rights of the accused in a criminal case for three counts of murder when he subscribed the purported extrajudicial confessions of the accused therein without observing the essential requirements of the Constitution and other applicable laws to ascertain the validity of such confessions of guilt, especially to such a serious charge as triple murder; and (2) having given false testimony before the Regional Trial Court of Dumaguete City when asked to testify as a prosecution witness in the said triple murder case, with regard to the observance, or non-observance for that matter, of the constitutional rights of the accused in connection with the extrajudicial confession that he subscribed.

As found by the Court in the said administrative matter, respondent categorically lied in open court when he testified on the stand that the accused in the said triple murder case affixed their thumbmark and/or signature in the subject extrajudicial confessions before him in his court, when the evidence on record clearly proved otherwise. The Court then ruled that "respondent's false testimony and his willingness to give that testimony, had serious consequences" for the accused, which respondent evidently did not consider.

Thus, the Court held that such gross negligence and false testimony constitute serious dishonesty and conduct grossly prejudicial to the best interest of the service and thereby, sanctioned him with dismissal from the Judiciary with prejudice to reinstatement or re-employment in any capacity in any branch or instrumentality of the government, including government-owned or controlled corporations, with forfeiture of all earned or accrued retirement and leave privileges and benefits to which he might be entitled.

The circumstances in the instant administrative case against respondent as a lawyer, coupled with those in the administrative matter against him as a Judge and as a witness in court certainly reveal his character and manifest his propensity to commit falsehood without moral appreciation for, and regard to the consequences of his lies and frauds.

To this Court's mind, there is no necessity for members of the bar to be repeatedly reminded that as instruments in the administration of justice, as vanguards of our legal system, and as members of this noble profession whose task is to always seek the truth, we are expected to maintain a high standard of honesty, integrity, and fair dealing.[23] In fact, before being admitted to the practice of law, we took an oath "to obey the laws as well as the legal orders of the duly constituted authorities" and to "do no falsehood." Of all classes and professions, the lawyer is most sacredly bound to uphold the laws. For a lawyer to override the laws by committing falsity, is unfaithful to his office and sets a detrimental example to the society.[24] Thus, any resort to falsehood or deception evinces an unworthiness to continue enjoying the privilege to practice law and highlights the unfitness to remain a member of the law profession.[25]

Therefore, rather than merely suspending respondent from the practice of law, this Court finds it proper to impose the ultimate administrative penalty of disbarment upon respondent considering the gravity of his infraction, the injury caused to entities such as herein complainant and Big "N", his disrespect and disregard to the lawful orders of this Court, and the fact that he committed the similar conduct of falsehood in his private practice as he had done when he was still in the service of the Judiciary, wherein he was severely sanctioned therefor.

Indeed, by his acts, respondent proved himself to be what a lawyer should not be.[26]

WHEREFORE, premises considered, respondent Atty. Aurelio Jesus V. Lomeda is hereby **DISBARRED** and his name **ORDERED STRICKEN** from the Roll of Attorneys. Let a copy of this Decision be attached to his personal records in the Office of the Bar Confidant and furnished the Integrated

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[23] *Mapalad, Sr. v. Atty. Echanez*, 810 Phil. 355, 364 (2017).

[24] *Id.*

[25] *Samonte v. Atty. Abellana*, 736 Phil. 718, 733 (2014).

[26] *Bueno v. Atty. Rañeses*, 700 Phil. 817, 827 (2012).

Bar of the Philippines and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, and *Zalameda, JJ.,* concur.

EN BANC

[A.C. No. 12008. August 14, 2019]

PALALAN CARP FARMERS MULTI-PURPOSE COOP, represented by BEVERLY DOMO, *complainant, vs.* **ATTY. ELMER A. DELA ROSA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; DISCIPLINE OF LAWYERS; DISBARMENT AND SUSPENSION OF ATTORNEYS; MISCONDUCT; MISCONDUCT IS GRAVE WHERE THE ELEMENTS OF CORRUPTION, CLEAR INTENT TO VIOLATE THE LAW OR FLAGRANT DISREGARD OF ESTABLISHED RULE ARE PRESENT, OTHERWISE, IT IS ONLY SIMPLE.— Section 27, Rule 138 of the Rules of Court governs the disbarment and suspension of attorneys, *viz*: Section 27. Disbarment and suspension of attorneys by the Supreme Court; grounds therefor. A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, x x x Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior. It is grave where the elements of corruption, clear

intent to violate the law or flagrant disregard of established rule are present. Otherwise, it is only simple.

2. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); RULE AGAINST CONFLICT OF INTEREST; THE RULE STIPULATES THAT A LAWYER CANNOT ACT OR CONTINUE TO ACT FOR A CLIENT WHEN THERE IS A CONFLICT OF INTEREST, EXCEPT AS PROVIDED IN THE RULE ITSELF, AFTER SECURING THE WRITTEN CONSENT OF ALL THE PARTIES CONCERNED AFTER FULL DISCLOSURE TO THEM OF THE FACTS.— The rule against conflict of interest is expressed in Canon 15, Rules 15.01 and 15.03 of the CPR. It means the existence of a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person, during the various stages of the professional relationship. The rule stipulates that a lawyer cannot act or continue to act for a client when there is a conflict of interest, except as provided in Rule 15.03 itself — securing the written consent of all the parties concerned after full disclosure to them of the facts. The rule against conflict of interest is founded on the bedrock of lawyer-client relationship - it is a fiduciary relationship. The lawyer, therefore, has a duty of loyalty to the client. The duty of confidentiality, the duty of candor, and the duty of commitment to the client's cause are all derivatives of the ultimate duty of loyalty. x x x Conflicts may also arise because of the lawyer's own financial interests, which could impair client representation and loyalty. This is reasonably obvious where a lawyer is asked to advise the client in respect of a matter in which the lawyer or a family member has a material direct or indirect financial interest. The conflict of interest is exacerbated when the lawyer, without full and honest disclosure to the client of the consequences of appointing him or her as an agent with the power to sell a piece of property, willfully and knowingly accepts such an appointment. When the lawyer engages in conduct consistent with his or her appointment as an agent, this new relationship may obscure the line on whether certain information was acquired in the course of the lawyer-client relationship or by reason of agency, and may jeopardize the client's right to have all information concerning the client's affairs held in strict confidence.

3. ID.; ID.; ID.; FIVE RATIONALES BEHIND PROHIBITION AGAINST CONFLICT OF INTEREST, ENUMERATED.— The prohibition against conflict of interest is founded on the principles of public policy and good taste. Further, the prohibition against conflict of interest rests on the following five (5) rationales as outlined in ***Paces Industrial Corp. v. Salandanan***, *viz*: The prohibition against conflict of interest rests on the following five (5) rationales: First, the law seeks to assure clients that their lawyers will represent them with undivided loyalty. A client is entitled to be represented by a lawyer whom the client can trust. Instilling such confidence is an objective important in itself. Second, the prohibition against conflicts of interest seeks to enhance the effectiveness of legal representation. To the extent that a conflict of interest undermines the independence of the lawyer's professional judgment or inhibits a lawyer from working with appropriate vigor in the client's behalf, the client's expectation of effective representation could be compromised. Third, a client has a legal right to have the lawyer safeguard confidential information pertaining to it. Preventing the use of confidential information against the interests of the client to benefit the lawyer's personal interest, in aid of some other client, or to foster an assumed public purpose, is facilitated through conflicts rules that reduce the opportunity for such abuse. Fourth, conflicts rules help ensure that lawyers will not exploit clients, such as by inducing a client to make a gift or grant in the lawyer's favor. Finally, some conflict-of-interest rules protect interests of the legal system in obtaining adequate presentations to tribunals. In the absence of such rules, for example, a lawyer might appear on both sides of the litigation, complicating the process of taking proof and compromise adversary argumentation.

4. ID.; ID.; ID.; VIOLATION; THE PENALTY OF DISBARMENT IS IMPOSED UPON A LAWYER WHO FOR THE SECOND TIME IN A VERY SHORT SPAN OF TIME COMMITTED ANOTHER VIOLATION AGAINST CONFLICT OF INTEREST INVOLVING SUBSTANTIAL AMOUNT OF MONEY.— It has been ruled that"[d]isbarment should never be decreed where any lesser penalty could accomplish the end desired. Undoubtedly, a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment. These penalties are imposed with great caution,

> because they are the most severe forms of disciplinary action and their consequences are beyond repair." We understand this is the rule. But the threshold here has been passed. This is the second time in a very short span of time that Respondent must answer to a situation of conflict of interest involving substantial amounts of money. He has been warned the first time; he has not made amends to undo the consequences of his indiscretions and greed this second time. He was punished with three (3) years of suspension, but to no avail, as no sooner could he complete the service of the penalty than he is again before the IBP and the Court reviewing his actuations. x x x **WHEREFORE**, the Court finds Respondent Atty. Elmer A. Dela Rosa **GUILTY** of gross misconduct in violation of the Code of Professional Responsibility. He is **DISBARRED** from the practice of law. The Office of the Bar Confidant is **DIRECTED** to strike out the name of Elmer A. Dela Rosa from the Roll of Attorneys. This Resolution is without prejudice to any pending or contemplated proceedings to be initiated against Respondent.

APPEARANCES OF COUNSEL

Manuel R. Ravanera for complainant.

D E C I S I O N

***PER CURIAM*:**

A mistake repeated more than once is a decision.[1]

"A mistake repeated more than once is a decision."[2] And there is a variation to that. "You can't make the same mistake twice. The second time you make it, it's not a mistake anymore, it's a choice. ENOUGH!"[3] A mistake is corrected at once; and not repeated. More so when the mistake has already been called out and heavily penalized.

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[1] Paulo Coelho.

[2] *Id.*

[3] A trending viral Instagram.

Respondent Atty. Elmer A. Dela Rosa has been suspended from the practice of law for three (3) years effective September 26, 2016. His infractions consisted of borrowing a substantial amount of money from his client-spouses. Not only was he unable to pay despite demand, he even denied he owed them anything.[4] Atty. Elmer A. Dela Rosa is here once again being accused of breaching his fiduciary duties on money matters affecting this time his Client-Cooperative and its farmer-beneficiaries.

Antecedents

Complainant Palalan CARP Farmers Multi-Purpose Cooperative was the registered owner of a sizeable tract of prime agricultural land (111.4 hectares) situated in Barangay Lumbia, Cagayan De Oro City. The land was covered by Transfer Certificate of Title No. T-170 (TCT No. T-170). Complainant acquired the land pursuant to a Certificate of Land Ownership Award issued by the Department of Agrarian Reform in 1992. As a Cooperative, it held legal title to the land on behalf of its members as its beneficial owners of the land.

In 1995, the Cooperative, among others, was sued by the Philippine Veterans Bank for annulment of TCT No. T-170, docketed as Civil Case No. 95-086. The case was raffled to the Regional Trial Court, Branch 41, Cagayan De Oro City.

In 1997, the Cooperative engaged Respondent and his law office to represent it in Civil Case No. 95-086.[5] Under their retainer agreement,[6] Respondent and his law office were to be paid ₱3,339.00 a month and a contingent fee of five percent (5%) of the settlement award, sale proceeds of the sale of the land, disturbance compensation, or fair market value of the land.

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[4] *Spouses Concepcion v. Atty. Dela Rosa*, 752 Phil. 485 (2015).

[5] Resolution No. 02-97 of the General Assembly of the Palalan CARP Farmers Multi-Purpose Cooperative; Letter dated August 9, 1997 signed by the Respondent and the Complainant's officers.

[6] *Id.*

Meantime, on February 12, 2000, the Cooperative executed a special power of attorney authorizing Respondent to do the following acts on its behalf:

1. negotiate for the sale of the land or issue to any interested broker further limited or conditional authority to negotiate with and/or introduce prospective buyers;

2. execute any and all documents which may be necessary to consummate the sale transaction;

3. open an account with a bank of Respondent's choice, in the name of the Cooperative with its Chairperson Paz Genilla as co-signatory; and

4. collect, accept, or demand all the sale proceeds on the land due the Cooperative and to deposit the same to its account.

Seven (7) years later, on June 12, 2007, the Cooperative revoked Respondent's special power of attorney. To this, Respondent reacted by presenting to the Cooperative a copy of General Assembly Resolution No. 1 dated March 19, 2008 showing that members of the Cooperative's new governing board had actually retained Respondent as the Cooperative's counsel and "reconfirming all previous authorities granted him by the General Assembly." General Assembly Resolution No. I and the other related General Assembly Resolutions appeared to have been adopted by the new set of officers/board members led by one Lino D. Sajol.

For its part, the old set of officers/board members led by Beverly Domo opposed Lino D. Sajol's leadership.

Back to Civil Case No. 95-086, the trial court rendered its Decision dated May 14, 2008, dismissing the case on ground of lack of jurisdiction over the subject matter of the case. Not long after, the Cooperative's 111.1484 hectare property got sold with Respondent, no less, brokering the sale. Reports had it that Respondent was already able to book a buyer as early as February of 2008. Later reports had it though that the sale

actually took place on August 7, 2009 to one Diana Biron.[7] Respondent did not reveal to the Cooperative the circumstances surrounding the sale, let alone, the buyer's identity. He invariably claimed to have been bound to keep confidential the buyer's. He did not dispute though that it was he who processed the sale and paid the farmers-beneficiaries their respective shares in the purchase price.

The Administrative Complaint

Believing that Respondent was engaging in conflict of interest, the Cooperative charged him with gross misconduct for multiple violations of the *Code of Professional Responsibility* (CPR).

On November 13, 2008, the Integrated Bar of the Philippines (IBP), Misamis Oriental Chapter, Cagayan de Oro City, referred the Complaint to the IBP - Commission on Bar Discipline (IBP-CBD). It was docketed CBD Case No. 08-2327.

On November 24, 2008, Investigating Commissioner Fernandez ordered Respondent to answer the complaint but the latter did not comply therewith. On April 17, 2009 the complaint was set for mandatory conference, during which, both the Cooperative's representative and Respondent appeared. On even date, Respondent filed his verified answer. Investigating Commissioner Fernandez set another mandatory conference on May 13, 2009. On that date though, the Cooperative's representative no longer appeared. The mandatory conference was, thus, deemed terminated as of that date. The parties were then ordered to file their respective position papers with supporting evidence as attachments. Only the Cooperative complied.

In addition to the present administrative case, the Cooperative initiated a civil action for annulment of the sale brokered by Respondent and the actions of the new governing board led by Lino D. Sajol. The case was docketed Civil Case No. 2010-299

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[7] B. Elorin, "As Lumbia Carp issue complicate, authorities appeal for mediation," MindaNews at https://www.mindanews.com/top-stories/2011/03/as-lumbia-carp-issue-complicate-authorities-appeal-for-mediation/(last accessed July 29, 2019).

and raffled to the Regional Trial Court, Branch 17, Cagayan De Oro City.

Report and Recommendation of the Investigating Commissioner

In his Report and Recommendation dated June 1, 2010, Investigating Commissioner Fernandez recommended that the Complaint be dismissed without prejudice. He opined that since the complaint arose from the seminal issue of which between the two (2) warring groups is truly the Cooperative's governing board, the resolution of the administrative case should await the outcome of Civil Case No. 2010-299 where such seminal issue is being currently litigated.

The Recommendation of the IBP - Board of Governors

By its Extended Resolution dated November 28, 2015, the IBP-Board of Governors declined the recommendation of Investigating Commissioner Fernandez, pronouncing that to be able to determine which of the two (2) warring groups truly represents the Cooperative, one need only to refer to the records of the Cooperative Development Authority pertaining to which governing Board was actually registered therein. On the merits, the Extended Resolution bore the following findings:

1. Respondent did not act with diligence and competence when he allowed Civil Case No. 95-086 (Philippine Veterans Bank v. Palalan CARP Farmers Multi-Purpose Cooperative et al.) to drag on for about ten (10) years until May 14, 2008 when the trial court finally dismissed the case on ground of lack of jurisdiction over the subject-matter of the case. On this score, Respondent violated Subsection 20(g), Rule 138, *Rules of Court* and Rule 1.03,[8] Canon 12[9] and Rule 12.04[10] of the CPR.

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[8] Rule 1.03 -A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

[9] CANON 12- A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.

[10] Rule 12.04 - A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

2. Respondent violated Rule 15.03[11] of the CPR which prohibits a lawyer from engaging in conflict of interest. Respondent engaged in conflict of interest when he demanded that the sale of the land be done only through his intervention.

3. Respondent breached his sworn duty to protect his client's interest when he refused to divulge to the latter the identity of the buyer of the land in violation of Canons 15[12] and 17[13] and Rule 16.01[14] of the CPR.

4. Respondent verbally abused the farmer-beneficiaries, in violation of Rule 8.01[15] of the CPR.

5. Respondent improperly compelled the Cooperative to sell the land at an extremely low price of ₱30.00 per square meter in violation of Canon 15, Rules 15.01[16] and 15.03 and Canon 17 of the CPR.

The IBP-Board of Governors concluded that Respondent preferred to protect his own personal pecuniary interest over the interest of his client and its members. For Respondent's multiple infractions, the IBP-Board of Governors recommended the extreme penalty of Disbarment.[17]

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[11] Rule 15.03 - A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

[12] CANON 15 - A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENTS.

[13] CANON 17 - A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

[14] Rule 16.01 - A lawyer shall account for all money or property collected or received for or from the client.

[15] Rule 8.01 - A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

[16] Rule 15.01 - A lawyer in conferring with a prospective client, shall as certain as soon as practicable whether the matter would involve a conflict with another client or his own interest, and if so, shall forth within form the prospective client.

[17] *Rollo*, p. 433.

In his motion for reconsideration,[18] Respondent asserted that the sale of the land to the undisclosed buyer bore the board's authorization through Lino D. Sajol's group.

The Cooperative's then Chairperson, Fernando Bermoy opposed the motion for reconsideration. He maintained that the bona fide Chairpersons and authorized representatives of the Cooperative from 2007 to 2010 were actually Beverly Domo and Perfecto Saliga, Jr., respectively, He clarified that Lino Sajol's group did not have any authority to bind the Cooperative at any time between 2007 and 2010. He also revealed that it was a certain Diana G. Biron who actually purchased the lot.[19] Notably, Respondent did not dispute the identification of Diana G. Biron as the buyer of the land. By Resolution dated May 27, 2017, the IBP-Board of Governors denied Respondent's motion for reconsideration.

Issues

1. Did Respondent violate Section 27, Rule 138 of the Rules of Court and Rules 1.03, 8.01, 12.04, 15.03, 16.01 and Canons 12, 15, and 17 of the CPR?
2. In the affirmative, what appropriate penalty should be imposed on Respondent?

Ruling

Respondent violated several provisions of the CPR in relation to Section 27, Rule 138 of the Rules of Court

Section 27, Rule 138 of the Rules of Court governs the disbarment and suspension of attorneys, *viz*:

> Section 27. Disbarment and suspension of attorneys by the Supreme Court; grounds therefor.– A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction for a crime involving

[18] *Id.* at 434-448.

[19] *Id.* at 536-542.

moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers constitute malpractice.

Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior.[20] It is grave where the elements of corruption, clear intent to violate the law or flagrant disregard of established rule are present. Otherwise, it is only simple.[21]

What lies at the core of Respondent's multiple serious infractions has been his motivation to willfully, voluntarily, and knowingly engage in conflict of interest to serve his own personal pecuniary interest at all cost.

The rule against conflict of interest is expressed in Canon 15, Rules 15.01 and 15.03 of the CPR. It means the existence of a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person, during the various stages of the professional relationship.[22] The rule stipulates that a lawyer cannot act or continue to act for a client when there is a conflict of interest, except as provided in Rule 15.03 itself — securing the written consent of all the parties concerned after full disclosure to them of the facts.

The rule against conflict of interest is founded on the bedrock of lawyer-client relationship — it is a fiduciary relationship. The lawyer, therefore, has a duty of loyalty to the client. The duty of confidentiality, the duty of candor, and the duty of commitment

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[20] *Vertudes v. Buenaflor*, 514 Phil. 399, 423 (2005).

[21] *Imperial v. GSIS*, 674 Phil. 286, 296 (2011).

[22] *Palacios v. Amora, Jr.*, A.C. No. 11504, August 1, 2017, 833 SCRA 481, 500, citing *Quiambao v. Bamba*, 505 Phil. 126 (2005).

to the client's cause are all derivatives of the ultimate duty of loyalty.

For example, a conflict may arise when the lawyer has information from one client that is relevant to another client's or a prospective client's matter. The lawyer owes a duty to one client not to reveal the information but owes a duty to the other client or prospective client to disclose the information. Because the lawyer cannot fulfill both duties at the same time he or she is confronted with conflict of interest.

Conflicts may also arise because of the lawyer's own financial interests, which could impair client representation and loyalty. This is reasonably obvious where a lawyer is asked to advise the client in respect of a matter in which the lawyer or a family member has a material direct or indirect financial interest. The conflict of interest is exacerbated when the lawyer, without full and honest disclosure to the client of the consequences of appointing him or her as an agent with the power to sell a piece of property, willfully and knowingly accepts such an appointment. When the lawyer engages in conduct consistent with his or her appointment as an agent, this new relationship may obscure the line on whether certain information was acquired in the course of the lawyer-client relationship or by reason of agency, and may jeopardize the client's right to have all information concerning the client's affairs held in strict confidence.

The relationship may in some circumstances permit exploitation of the client by the lawyer as he or she still is, after all the lawyer from whom the client seeks advice and guidance.

The IBP - Board of Governors here correctly found that at its most basic element, Respondent's conflict of interest hinges on the fact that while he may want a quick sale to be able to earn at once, Complainant would want a sale that brings the most profit.

But this is not all.

Respondent was obviously taking instructions from the unidentified buyer when he did not reveal the latter's identity

to his client which itself authorized him to forge the sale. Too, while he may not be fully responsible in delaying Civil Case No. 95-086, he did not actively pursue its quick end even though it was the most appropriate thing, he as a lawyer, should have done. As it was, Respondent appeared to have had a different agendum in which expediting the case was not the most profitable for him because the land then was still statutorily barred from being sold, conveyed, or alienated.

Respondent insisted and demanded that he alone negotiate for and effect the sale of the land. But when the time to sell came, he did not reveal to his client and its farmers-beneficiaries the details of the sale itself, let alone, the buyer's identity. Respondent even sowed fear in the minds of the farmers-beneficiaries who expressed reservations on the fairness of the terms of the sale especially with respect to the extremely low price of ₱30.00 per square meter. Respondent told them that in reality they had a very slim chance of winning the case filed by Philippine Veterans Bank. Hence, if they do not accept the sale now they would end up with nothing at all. With the ultimate objective of closing the sale and even after he got spurned by the sitting members of the Board at that time, Respondent just took it upon himself to side with the opposition group which wanted to establish and assert themselves as the new leaders of the Cooperative. Hence, his determination of which between the two (2) opposing groups may properly give instructions about the sale was patently tainted by his own private interest to earn from the sale of the land. He knew he could only ensure his private interest if he was able to simultaneously continue not only as the Cooperative's lawyer but as the Cooperative's agent authorized to sell the land and to actually consummate it. He may have also forgotten he was the lawyer of the Cooperative which has a personality distinct from its members. As it was, instead of staying neutral for the sake of maintaining order within the organization of the Cooperative, Respondent chose to side with Lino D. Sajol just so he could complete the sale of its only asset. ***Hornilla v. Salunat***[23] explains when a lawyer engages in conflict of interest:

[23] 453 Phil. 108, 111-112 (2003).

There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client." This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. Also, there is conflict of interests if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection. Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double dealing in the performance thereof.

The prohibition against conflict of interest is founded on the principles of public policy and good taste.[24] Further, the prohibition against conflict of interest rests on the following five (5) rationales as outlined in ***Paces Industrial Corp. v. Salandanan***,[25] *viz*:

The prohibition against conflict of interest rests on the following five (5) rationales:

First, the law seeks to assure clients that their lawyers will represent them with undivided loyalty. A client is entitled to be represented by a lawyer whom the client can trust. Instilling such confidence is an objective important in itself.

Second, the prohibition against conflicts of interest seeks to enhance the effectiveness of legal representation. To the extent that a conflict of interest undermines the independence of the lawyer's professional judgment or inhibits a lawyer from working with appropriate vigor in the client's behalf, the client's expectation of effective representation could be compromised.

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[24] *Orola, et al. v. Atty. Ramos*, 717 Phil. 536, 544 (2013).

[25] A.C. No. 1346, July 25, 2017, 832 SCRA 1, 7-8.

Third, a client has a legal right to have the lawyer safeguard confidential information pertaining to it. Preventing the use of confidential information against the interests of the client to benefit the lawyer's personal interest, in aid of some other client, or to foster an assumed public purpose, is facilitated through conflicts rules that reduce the opportunity for such abuse.

Fourth, conflicts rules help ensure that lawyers will not exploit clients, such as by inducing a client to make a gift or grant in the lawyer's favor.

Finally, some conflict-of-interest rules protect interests of the legal system in obtaining adequate presentations to tribunals. In the absence of such rules, for example, a lawyer might appear on both sides of the litigation, complicating the process of taking proof and compromise adversary argumentation.

Respondent had proven himself disloyal to his client — exploitative, untrustworthy, and a double-dealer. The client's land had been sold. The client did not know who the buyer was. Respondent acted to protect the buyer's interest, and in all likelihood, his as well. The client did not know and still does not know how much was actually paid for the land. Money flowed from an account set-up by Respondent himself and although under the Cooperative's name, Respondent alone had access to it. The cash proceeds of the sale have not been accounted for to this date.

A lawyer is prohibited from acting or continuing to act for a client where there is a conflict of interest, except when there is a written consent of all concerned after a full disclosure of the facts. Here, there was no consent to speak of at all. Instead of halting his legal representation of the Cooperative to avoid conflict of interest, he stubbornly continued to engage therein *i.e*. his seeming obsession to sell the land in question. He even managed to secure alleged General Assembly Resolutions to validate his objective of selling the land.

The rule against conflict of interest requires a lawyer to decline a retainer from a prospective client or withdraw from a client's ongoing matter. This, Respondent did not do, obviously for monetary considerations arising from the sale of the land. A

lawyer should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest. Respondent did not have the circumspection as his professional judgment has been obscured by the singular objective of selling the land to his undisclosed buyer.

Indeed, Respondent had acted with corrupt intent to flagrantly disregard established ethical rules, and his conduct amounts to grave misconduct.

Disbarment is the appropriate penalty for Respondent's repeated professional infractions

This is the second time Respondent is being accused of breaching his fiduciary duties all because of money. In ***Spouses Concepcion v. Dela Rosa***,[26] he borrowed money from his clients-spouses. On demand by his clients-spouses, he just altogether did not pay his creditors. He even denied being indebted to them. For this infraction, he was ordered suspended from the practice of law for three (3) years effective September 26, 2016. No sooner had he started serving the penalty when the infractions here came to light. They are not just a reincarnation of the same breach of the rule against conflict of interest but one which dwarfs the first in terms of the number of persons affected, the amounts involved, and the audacity and temerity of its commission.

It has been ruled that "[d]isbarment should never be decreed where any lesser penalty could accomplish the end desired. Undoubtedly, a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment. These penalties are imposed with great caution, because they are the most severe forms of disciplinary action and their consequences are beyond repair."[27]

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[26] 752 Phil. 485 (2015).

[27] *Francia v. Abdon*, 739 Phil. 299, 312 (2014).

We understand this is the rule. But the threshold here has been passed. This is the second time in a very short span of time that Respondent must answer to a situation of conflict of interest involving substantial amounts of money. He has been warned the first time; he has not made amends to undo the consequences of his indiscretions and greed this second time. He was punished with three (3) years of suspension, but to no avail, as no sooner could he complete the service of the penalty than he is again before the IBP and the Court reviewing his actuations.

In ***Pacana v. Pascual-Lopez***,[28] the disbarred lawyer collected money and properties from the client and failed to account for them as she was also representing clients with interests adverse to the former.[29] The situation here is similar to ***Pacana***. Respondent was involved conflict of interest and guilty of failure to account for the funds owing their clients.

WHEREFORE, the Court finds Respondent Atty. Elmer A. Dela Rosa **GUILTY** of gross misconduct in violation of the Code of Professional Responsibility. He is **DISBARRED** from the practice of law. The Office of the Bar Confidant is

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[28] 611 Phil. 399 (2009).

[29] As the Court noted in the decision: "After due hearing, IBP Investigating Commissioner Patrick M. Velez issued a Report and Recommendation finding that a lawyer-client relationship was established between respondent and complainant despite the absence of a written contract. The Investigating Commissioner also declared that respondent violated her duty to be candid, fair and loyal to her client when she allowed herself to represent conflicting interests and failed to render a full accounting of all the cash and properties entrusted to her. Based on these grounds, the Investigating Commissioner recommended her disbarment.... Respondent must have known that her act of constantly and actively communicating with complainant, who, at that time, was beleaguered with demands from investors of Multitel, eventually led to the establishment of a lawyer-client relationship. Respondent cannot shield herself from the inevitable consequences of her actions by simply saying that the assistance she rendered to complainant was only in the form of "friendly accommodations," precisely because at the time she was giving assistance to complainant, she was already privy to the cause of the opposing parties who had been referred to her by the SEC."

DIRECTED to strike out the name of Elmer A. Dela Rosa from the Roll of Attorneys. This Resolution is without prejudice to any pending or contemplated proceedings to be initiated against Respondent.

The Office of the Bar Confidant should attach a copy of this Decision to Respondent's records in its custody. Let copies of this Decision be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator for dissemination to all courts in the country.

This Decision takes effect immediately.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, and *Zalameda, JJ.*, concur.

EN BANC

[A.M. No. 13-05-04-SC. August 14, 2019]

RE: REQUEST OF ASSOCIATE JUSTICE ROBERTO A. ABAD FOR SALARY ADJUSTMENT DUE TO LONGEVITY OF SERVICE.

SYLLABUS

1. POLITICAL LAW; REPUBLIC ACT NO. 10071 (PROSECUTION SERVICE ACT OF 2010); THE COURT CLARIFIED THAT THE RETROACTIVITY CLAUSE CONTAINED IN THE LAW COULD BE AVAILED OF NOT ONLY BY THE LAWYERS IN THE PROSECUTION

SERVICE WHO HAD RETIRED PRIOR TO THE EFFECTIVITY OF THE LAW BUT ALSO BY FORMER PROSECUTORS WHO HAD BEEN APPOINTED TO THE JUDICIARY, AND WHO WERE YET TO RETIRE FOR PURPOSES OF COMPUTING THEIR LONGEVITY PAY.— R.A. No. 9417, amending P.D. No. 1347, elevated the ranks, prerogatives, salaries, allowances, benefits and privileges of Assistant Solicitors General to make them equivalent to those of the Associate Justices of the CA, while the positions of Senior State Solicitor, State Solicitor II, and State Solicitor I were given the same ranks, prerogatives, salaries, and privileges as the Judges of the Regional Trial Courts, Metropolitan Trial Courts, and Municipal Trial Courts in Cities, respectively. Later on, the Congress enacted R.A. No. 10071 to grant judicial rank to the lawyers in the Department of Justice's National Prosecution Service in a hierarchy similar to that statutorily prescribed for their counterparts in the OSG, and gave **retroactive** effect to such grant of judicial rank and alignment of benefits of Prosecutors with members of the Judiciary. In *Re: Request of Justice Josefina Guevara-Salonga*, the Court clarified that the retroactivity clause contained in R.A. No. 10071 could be availed of not only by the lawyers in the Prosecution Service who had retired prior to the effectivity of the law but also by former Prosecutors who had been appointed to the Judiciary, and who were yet to retire for purposes of computing their longevity pay. x x x In the same ruling, we reiterated the enduring practice of including years served outside the Judiciary in positions statutorily given judicial rank in the computation of longevity pay for members of the Bench, which was most recently reaffirmed in the Court's July 26, 2016 resolution promulgated in A.M. Nos. 12-8-07-CA, 12-9-5-SC and 13-02-07-SC. The long history of aligned ranks, qualifications, and salaries among the members of the Bench, the members of the Prosecution Service, and the lawyers of the OSG is plainly evident in the various laws and jurisprudential precedents. The rationale for this treatment is not difficult to comprehend. Public officers who have served on the Bench, the Prosecution Service, and the OSG have consistently been acknowledged as integral pillars of our justice system. We fully agree with the OAS and the FMBO that Justice Abad's entire service in the OSG from his appointment as Solicitor until the end of his stint as Assistant Solicitor General could be credited in the computation of his

longevity pay through the application of P.D. No. 1347 and the various laws that accorded Solicitors the rank of Provincial Fiscals, which by virtue of the retroactivity provision in R.A. No. 10071 must be considered as a position with judicial rank and, consequently, appointment thereto must be deemed service in the Judiciary.

2. ID.; JUDICIARY; LONGEVITY PAY; THE COURT CLARIFIED THAT A POSITION ACCORDED JUDICIAL RANK BY STATUTE IS PROPERLY DEEMED JUDICIAL SERVICE FROM THE TIME THAT THE LAW GRANTING SUCH JUDICIAL RANK BECAME EFFECTIVE AND SHOULD BE CONSIDERED IN THE COMPUTATION OF THE LONGEVITY PAY; APPLICATION IN CASE AT BAR.— The Court cannot agree with the OAS and the FMBO's position that Justice Abad's service in the OSG could only be included in the computation of his longevity pay for retirement purposes. To recall, in the resolution promulgated on June 16, 2015 in A.M. Nos. 12-8-07-CA, 12-9-5-SC and 13-02-07-SC, the Court favorably ruled on Justice Salazar-Fernando's request to include her judicial service prior to her appointment to the CA in the computation of her current longevity pay despite the gap in the two periods of her judicial service. The Court later clarified through the resolution promulgated on July 26, 2016 in the same consolidated administrative matters that Justice Gacutan's service as NLRC Commissioner, a position accorded judicial rank by statute, was properly deemed judicial service from the time that the law granting NLRC Commissioners judicial rank became effective and should be considered in the computation of her longevity pay. The combined application of the Court's rulings on the situations of Justice Salazar-Fernando and Justice Gacutan leads to the conclusion that Justice Abad's entire service in the OSG (as Solicitor from January 1, 1978 to June 30, 1985 and as Assistant Solicitor General from July 1, 1985 to July 31, 1986) should be included in the computation of his longevity pay not only for his retirement but for all intents and purposes.

LEONEN, *J., dissenting opinion*:

1. POLITICAL LAW; JUDICIARY; BATAS PAMBANSA BLG. 129 (THE JUDICIARY REORGANIZATION ACT OF

1980); LONGEVITY PAY; GRANTED ON TOP OF SALARY, LONGEVITY PAY IS FIVE PERCENT (5%) OF THE JUSTICES' AND JUDGES' MONTHLY BASIC SALARY FOR EACH FIVE YEARS OF CONTINUOUS, EFFICIENT, AND MERITORIOUS SERVICE RENDERED IN THE JUDICIARY; NATURE THEREOF, EXPLAINED.— Batas Pambansa Blg. 129 granted monthly longevity pay to members of the judiciary. Initially, the benefit excluded the Chief Justice and Associate Justices of this Court, among others, but was later extended to them through Presidential Decree No. 1927. x x x Granted on top of salary, longevity pay is five percent (5%) of the justices' and judges' monthly basic salary "for each five years of ***continuous, efficient, and meritorious service rendered in the judiciary***[.]" The salary then "increases by an increment of 5% for every additional cycle of five (5) years of *continuous, efficient, and meritorious service*." It is paid while the official is in service, and becomes part of his or her monthly pension upon retirement or survivorship benefit upon death. Longevity pay is incurred in favor of a justice or judge during his or her years of actual, active service in the judiciary. Crediting service in the Office of the Solicitor General for longevity pay entails that the government pay the retiree *for work that was not rendered in the judiciary*. This blatantly contradicts the longevity pay's purpose: to compensate lengthy service "from the lowest to the highest court in the land." As this Court had previously explained: [T]he payment of longevity pay is premised on a continued, efficient, and meritorious service: *(1) in the Judiciary; and (2) of at least five years.* ***Long and continued service in the Judiciary*** is the basis and reason for the payment of longevity pay; ***it rewards the loyal and efficient service*** *of the recipient* ***in the Judiciary***. Fidelity to the letter of the law commands this reading. In no way does this modify the provision or append what was not in it — both of which are undertakings that the Constitution proscribes this Court to do.

2. ID.; ID.; ID.; ID.; THE MONTHLY ALLOWANCE GIVEN TO THE SOLICITOR GENERAL AND THE ASSISTANT SOLICITORS GENERAL WHO ARE HOLDING THE SAME RANK AND QUALIFICATIONS AS THOSE OF A COURT OF APPEALS JUSTICE AND COURT OF FIRST INSTANCE JUDGES CANNOT BE CONSTRUED TO INCLUDE LONGEVITY PAY; RATIONALE.— The majority

enumerated laws that amended the Administrative Code such that they "adjusted upward the judicial rank given to the Solicitor General, First Assistant Solicitor General, and Assistant Solicitors General." However, a perusal of the cited laws, Republic Act Nos. 945, 2068, 3465, and 3596, disproves this assertion. The first two (2) laws provide that the solicitor general shall have the rank of a department undersecretary, and the same qualifications for appointment as a court of first instance judge. The latter two (2) laws uniformly prescribe that the positions of solicitor general, first assistant solicitor general and assistant solicitor general, and solicitor shall be of the same rank and qualifications as those of a Court of Appeals associate justice, court of first instance judge, and provincial fiscals, respectively. I cannot discern in any way how these laws "adjusted upward the judicial rank." Likewise suspect is the majority's pronouncement that Presidential Decree No. 1347 granted the solicitor general and associate solicitor general "the same rank, prerogatives, and privileges as those of the *Presiding Justice*" of the Court of Appeals and a court of first instance judge, respectively. Presidential Decree No. 1347 declared that the solicitor general and assistant solicitors general "*shall receive the same monthly allowances*" as the Court of Appeals *associate justices* and courts of first instance judges. To interpret the law such that it granted them "the same rank, prerogatives, and privileges" is to unduly expand its text. In any case, the monthly allowance cannot be construed to include longevity pay, which, again, "is premised on a continued, efficient, and meritorious service: (1) in the Judiciary; *and* (2) of at least five years." It is not readily granted to all associate justices. It may never be availed by a member of the judiciary who, as in this case, falls short of the required length of service. As to Republic Act No. 9417, this Court explained in *Re: Vicente S.E. Veloso*: x x x *Had Congress really intended to grant the benefit of longevity pay to the members of the OSG, then it should have also included in the list of benefits granted under RA 9417 a provision pertaining to longevity pay. This provision is glaringly missing and thus cannot be included via this Court's decision without running afoul of the rule that prohibits judicial legislation.* Nor can this Court recognize the past service rendered by a current judge or justice in the OSG for purposes of longevity pay. A closer examination of this law shows that what Congress did was to grant benefits that were applicable to the type of

service that the OSG provides. x x x Simply put, Republic Act No. 9417 did not extend the award of longevity pay to those serving in the Office of the Solicitor General.

3. ID.; ID.; ID.; ID.; PARITY IN RANK, SALARY, OR BENEFIT, OR HAVING THE SAME "JUDICIAL RANK," DOES NOT EQUATE TO SERVICE IN THE JUDICIARY, WHICH IS THE ONE THAT LONGEVITY PAY SEEKS TO REWARD.— The majority, citing three (3) cases as examples, spoke of an "enduring practice of including years served outside the Judiciary in positions statutorily given judicial rank in the computation of longevity pay of members of the Bench." These cases deserve scrutiny. x x x Parity in rank, salary, or benefit, or having the same "judicial rank," does not equate to service in the judiciary, which is the one that longevity pay seeks to reward. x x x By legal fiction, this Court would have assumed that former Associate Justice Abad served in the judiciary from 1975 to 1986, when he had been employed in the Office of the Solicitor General. Moreover, we would have construed his time there as part of his "continuous service in the judiciary," where he served from 2009 to 2014, much later than his years in the executive positions. This reading is unconstitutional. While this Court generally adopts a liberal approach in construing retirement laws, we cannot countenance judicial legislation for the self-serving interest of our members.

R E S O L U T I O N

BERSAMIN, *C.J.*:

On May 3, 2013, then Associate Justice Roberto A. Abad of this Court requested the Chief of the Office of Administrative Services (OAS) to study whether or not he was entitled to salary adjustment due to longevity of service arising from his work in the Office of the Solicitor General (OSG) prior to joining the Court. Justice Abad had served the government in several capacities continuously from 1969 to 1986. He worked in the private sector subsequently, until he joined the Government again upon his appointment to the Court in 2009, serving until his mandatory retirement in 2014.

The positions he had held in the civil service, and the periods relevant thereto, are as follows:

September 11, 1969 to October 23, 1975	- Technical Assistant, Supreme Court
October 24, 1975 to December 31, 1977	- Solicitor, OSG
January 1, 1978 to September 17, 1978	- Solicitor II, OSG
September 18, 1978 to April 17, 1980	- Solicitor III, OSG
April 18, 1980 to December 31, 1981	- Solicitor IV, OSG
January 1, 1982 to June 30, 1985	- Solicitor V, OSG
July 1, 1985 to July 31, 1986	- Assistant Solicitor General, OSG
August 7, 2009 to May 21, 2014	- Associate Justice, Supreme Court

The provision on longevity pay granted to Members of the Judiciary under Batas Pambansa (B.P.) Blg. 129, in relation to Presidential Decree (P.D.) No. 1927, states:

> Section 42. *Longevity pay*. – A monthly longevity pay equivalent to five percent (5%) of the monthly basic pay shall be paid to the Justices and Judges of the courts herein created for each five years of continuous, efficient, and meritorious service rendered in the judiciary; *Provided*, That in no case shall the total salary of each Justice or Judge concerned, after this longevity pay is added, exceed the salary of the Justice or Judge next in rank.

In its memorandum dated May 8, 2013, the OAS opined that Justice Abad's service in the OSG could not be included in the computation of his longevity pay in order to adjust his salary in the active service because his years in the OSG were deemed service rendered outside of the Judiciary. Nonetheless, the OAS recommended that Justice Abad's OSG employment be included in the computation of his longevity pay upon retirement, or for retirement purposes only, consistently with prevailing jurisprudence and precedent. In making such recommendation, the OAS noted that Republic Act (R.A.) No. 9417[1] subsequently extended judicial ranks to various positions in the OSG; and deemed the same to be retroactively applied to Justice Abad. The dispositive portion of the memorandum stated:

> In view of the foregoing, [the] Office recommends that your Honor's service in the Office of the Solicitor General be considered as judicial

[1] This took effect on March 30, 2007.

service and to be included in the computation of your Honor's longevity pay upon [his] retirement [or] for retirement purposes only.

In his letter dated May 30, 2013, Justice Abad formally requested the Court to approve the recommendation of the OAS.

The matter was next referred to the Fiscal Management and Budget Office (FMBO) of the Court for comment.

In its July 5, 2013 comment, the FMBO concluded that Justice Abad's service in the OSG could not be considered for the purpose of entitlement to longevity pay during his incumbency, but recommended that such be considered as judicial service in computing his longevity pay for retirement purposes, and that his salary be adjusted accordingly effective upon his retirement.

Justice Abad retired upon reaching the age of 70 on May 22, 2014. His tenure as an Associate Justice of this Court was only for a period of four (4) years, eight (8) months, and sixteen (16) days, a few months short of the five years required by law to qualify for longevity pay. On September 30, 2014, the Court resolved to defer action on his request pending the resolution of A.M. No. 12-8-07-CA, which was consolidated with A.M. No. 12-9-5-SC and A.M. No. 13-02-07-SC, dealing with similar situations and involving the requests of Court of Appeals (CA) Justices Vicente S.E. Veloso, Angelita A. Gacutan, and Remedios A. Salazar-Fernando, respectively, to consider their government services rendered outside of the Judiciary in the computation of their longevity pay.

It is noted that Justices Veloso and Gacutan separately sought the crediting of their service as Commissioners of the National Labor Relations Commission (NLRC) for the purpose of computing their longevity pay; that Justice Salazar-Fernando sought her service as a Judge of the Municipal Trial Court (MTC) and as a Commissioner of the Commission on Elections (COMELEC) be considered as part of her judicial service; and that their longevity pay be adjusted accordingly.

A very closely divided Court resolved the consolidated matters in its June 16, 2015 resolution. The Court granted the request of Justice Salazar-Fernando with regard to her years of service as Presiding Judge of the MTC, but denied her request with regard to her service as COMELEC Commissioner because of breaks in the continuity of her government/judicial service. The Court denied the request of Justice Veloso due to the fact that RA No. 9347, which granted NLRC Commissioners the rank and salary equivalent to those of Associate Justices of the CA, only took effect in 2006, which was after Justice Veloso had already left the NLRC in 2004; and that given that the law did not provide for retroactivity, Justice Veloso could not claim that he had held the rank of a CA Justice during his stint at the NLRC.

Likewise, the Court initially denied Justice Gacutan's request through the June 16, 2015 resolution by observing that her service in the NLRC as Commissioner was not equivalent to service actually rendered in the Judiciary for the purpose of computing longevity pay under Section 42 of B.P. Blg. 129, which was the law in effect during her incumbency as a CA Justice. Furthermore, in the same resolution, the majority of the Members of the Court were of the view that Section 42 should be construed strictly to refer to actual service in the Judiciary. It was acknowledged in the resolution itself that this view was a departure from earlier rulings, which had allowed service in other government posts granted by law the rank-and-salary equivalent to counterparts in the Judiciary to be credited as judicial service for longevity pay purposes.

Justice Gacutan filed a motion for reconsideration.

The Court resolved the motion for reconsideration on July 26, 2016 by a vote of 10-4 in favor of granting it. In so resolving, the Court adopted the position taken by then Associate Justice (later Chief Justice) Teresita Leonardo-de Castro in her separate concurring and dissenting opinion submitted in relation to the ruling on the matter on June 16, 2015, and reversed itself by ordering that Justice Gacutan's tenure as NLRC Commissioner from August 26, 2006 (when R.A. No. 9347 took effect) until

her departure from the NLRC be included in the computation of her longevity pay. The Court opined that longevity pay under Section 42 of B.P. Blg. 129 should be treated as part of salary, and extended the benefit to certain officials in the Executive Department who were, by law, granted the same rank and benefits as members of the Judiciary.

The following discourse by Associate Justice de Castro in A.M. No. 12-8-07-CA is worth reiterating herein, *viz.*:

> As a rule, therefore, the grant of longevity pay under Section 42 of *Batas Pambansa Blg. 129* is premised on the rendition of continuous, efficient, and meritorious service in the Judiciary. That is the express language of the law.
>
> Nonetheless, there are existing laws which expressly require the qualifications for appointment, confer the rank, and grant the salaries, privileges, and benefits of members of the Judiciary on other public officers in the Executive Department, such as the following:
>
> (a) the Solicitor General and Assistant Solicitor Generals of the Office of the Solicitor General (OSG); and
>
> (b) the Chief Legal Counsel and the Assistant Chief Legal Counsel, the Chief State Prosecutor, and the members of the National Prosecution Service (NPS) in the Department of Justice.
>
> The intention of the above laws is to establish a parity in qualifications required, the rank conferred, and the salaries and benefits given to members of the Judiciary and the public officers covered by the said laws. The said laws seek to give equal treatment to the specific public officers in the executive department and the Judges and Justices who are covered by *Batas Pambansa Blg. 129*, as amended, and other relevant laws. In effect, these laws recognize that public officers who are expressly identified in the laws by the special nature of their official functions render services which are as important as the services rendered by the Judges and Justices. They acknowledge the respective roles of those public officers and of the members of the Judiciary in the promotion of justice and the proper functioning of our legal and judicial systems.
>
> x x x x x x x x x
>
> Under Section 42 of *Batas Pambansa Blg. 129,* longevity pay is an amount equivalent to 5% of the monthly basic pay given to Judges

and Justices for each five years of continuous, efficient, and meritorious service rendered in the Judiciary. It is not only an amount given as an addition to the basic monthly pay but, more importantly, **it forms part of the salary of the recipient thereof.**

In other words, longevity pay is "salary" and it should not be confused with "rank."

That is how this Court has treated the longevity pay under Section 42 of *Batas Pambansa Blg. 129* since 1986, particularly in *Re: Longevity Pay of the Associate Justices of the Sandiganbayan.* It is a treatment which reflects the Court's reading of the text of the law and its understanding of the law's legislative intent.

x x x x x x x x x

In conferring upon certain officials in the Executive the same salaries, aside from their rank, as those of their respective judicial counterparts, Congress intended to make the salaries of the former at par with the latter. The legislative records support this.

x x x x x x x x x

Thus, Congress knew, or is presumed to have known, the concept of longevity pay under Section 42 of *Batas Pambansa Blg. 129*, **as part of the total salary** of members of the Judiciary when it enacted Republic Act Nos. 9417, 9347, and 10071, which granted certain officials of the OSG, the NLRC, and the NPS, respectively, the same salary as their respective counterparts in the Judiciary. Moreover, armed with that knowledge, Congress is presumed to have intended to adopt the definition of "salary" (as constituting basic monthly salary plus longevity pay) when it enacted Republic Act Nos. 9417, 9347, and 10071, which will be in keeping with the legislative intent to equalize the salary of certain executive officials with members of the Judiciary. To do otherwise will negate the express legislative intent.

As it is part of the salary of a member of the Judiciary, it should perforce be part of the salary of the public officers granted by law with the same rank and salary as their counterparts in the Judiciary. Accordingly, the increase in the salary of Judges and Justices by virtue of the longevity pay should also result in the corresponding increase in the salary of the public officers who, under relevant laws, enjoy the same rank and salary as their judicial counterparts. Otherwise, the law's express language and its intention to grant the same rank

and salary of a member of the Judiciary to the said public officers will be defeated.[2]

It is under the foregoing premise that we now determine whether or not Justice Abad's service in the OSG should be credited as judicial service for the purpose of computing longevity pay.

Upon thorough consideration of the relevant legislative and jurisprudential antecedents, the Court finds and considers Justice Abad's request to be meritorious.

As early as 1916, the Administrative Code of the Philippines provided that the qualifications for appointment to the position of Solicitor-General be the same as those prescribed for Judges of the Courts of First Instance.[3] The amendments[4] of the Administrative Code adjusted upward the judicial rank given to the Solicitor-General, First Assistant Solicitor-General, and Assistant Solicitors-General. The amendments made beginning in 1953 also added that the Solicitors would have the same qualifications for appointment and rank as those prescribed for Provincial Fiscals.[5]

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[2] *Re: Letter of Court of Appeals Justice Vicente S.E. Veloso for Entitlement to Longevity Pay for his Services as Commission Member III of the National Labor Relations Commission*, A.M. Nos. 12-8-07-CA, 12-9-5-SC and 13-02-07-SC (Resolution), July 26, 2016, 798 SCRA 179, 186-192.

[3] **Section 1278**. Chief Officials of Bureau of Justice. — The Bureau of Justice shall have one chief, and one assistant chief, to be known respectively as the Attorney-General and the Solicitor-General. There shall also be in this Bureau such number of assistant attorneys as may from time to time be available under current appropriations and as the conditions of the service shall require.

The qualifications for appointment to the positions of chief and assistant chief of the Bureau of Justice shall be the same as those prescribed for judges of Courts of First Instance.

[4] Republic Act 945 (approved: June 20,1953), Republic Act 2068 (approved: June 13,1958), Republic Act 3465 (approved: June 16, 1962), Republic Act 3596 (approved: June 22, 1963).

[5] **Sec. 1659.** *Chief Officials of the Office of the Solicitor General.* —The office of the Solicitor General shall have one chief to be known as the Solicitor

P.D. No. 1347,[6] which took effect on January 1, 1978, extended to the Solicitor General the same rank, prerogatives, and privileges as those of the Presiding Justice of the CA, while the Assistant Solicitors General were given the same rank, prerogatives, and privileges as those granted of Judges of the Courts of First Instance. Although silent on the rank of the Solicitors, P.D. No. 1347 it did not repeal previous laws prescribing for the Solicitors the ranks and qualifications of Provincial Fiscals (now called Provincial Prosecutors).

P.D. No. 1726, effective September 26, 1980, upgraded the salaries of the legal positions in the OSG in a manner similar to those approved for the legal positions in the Ministry of Justice.[7]

General whose salary shall be the same as that of a justice of the court of appeals. He shall be assisted by one First Assistant Solicitor General who shall have the same salary as that of a judge of the court of first instance.

x x x x x x x x x

"The rank and qualifications for appointment to the position of Solicitor General shall be the same as an Associate Justice of the Court of Appeals; the rank and qualifications for appointment to the position of the First Assistant Solicitor General and the Assistant Solicitors General shall be the same as those prescribed for Judges of Courts of First Instance, and those of **Solicitors shall be the same as those prescribed for provincial fiscals.**"

[6] **Section 3.** The Solicitor General and the Assistant Solicitor General shall also receive the same monthly allowances which are received by the Associate Justices of the Court of Appeals and the Judges of Courts of First Instance, respectively, under the regular budget of the judiciary.

[7] Sections 3 and 4 of P.D. 1726 pertinently provide:

Section 3. *Ministry of Justice Positions.* The positions in the Ministry of Justice shall be upgraded in basic salary so as to reach ultimately at least the following levels, to be implemented on a gradual basis subject to the availability of funds and in conjunction with the program to similarly upgrade all judicial and legal positions in the government:

The Chief State Counsel, Chief State Prosecutor, Chief Financial Officer, Technical Staff Chief, and the heads of all bureaus/commissions/offices under this Ministry ₱55,536.00.

The Board of Pardons and Parole Executive Director, the Assistant Chief State Counsels, the Assistant Chief State Prosecutors, Regional

Afterwards, the Whereas Clauses of Executive Order (EO) No. 780, Series of 1982, further reinforced the intention to

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State Prosecutors the officers next in rank to the abovementioned heads of bureaus/commissions offices under the Ministry, and the City Fiscal of Manila and Quezon City ₱52,848.00.

The NBI Deputy Directors, CID Executive Director, Senior State Counsels, Senior State Prosecutors, Assistant Regional State Prosecutors, CLAO and NBI Regional Directors, Technical Staff Assistant Chiefs, and **the Provincial/City Fiscals of First Class A Provinces/Cities** and First Assistant Fiscals of Manila and Quezon City ₱50,292.00.

The Senior Special Assistant to the Minister of Justice, Technical Staff Special Assistants, Board of Pardons and Parole Executive Director, CLAO Supervising Citizens Attorneys and Senior Citizens Attorneys, Boards of Special Inquiry Chairmen, Chief Legal Officers in the LRC, NBI, CID, and Probation Administration, Special Assistant to the LRC Commissioner, LRC Administrative Officer IV, LRC Chief Deeds Registry Inspector, LRC Clerk of Court Division Chief, Registers of Deeds III, First and Second Brackets of State Corporate Attorneys, State Counsels II, State Prosecutors III and IV, Second Assistant City Fiscals of Manila and Quezon City, First Assistant Provincial/City Fiscals of First Class A Provinces/Cities, **Provincial/City Fiscals of First Class B/C Provinces/Cities ₱47,856.00**.

The Special Assistants to the Minister of Justice, Boards of Special Inquiry Members, Third and Fourth Brackets of State Corporate Attorneys, LRC Senior Research Attorney, LRC Assistant Chief Deeds Registry Inspector, LRC Deputy Clerk of Court, Register of Deeds II, Deputy Registers of Deeds III, Land Registration Special Assistant, CID, and NBI Assistant Chief Legal Officers, NBI and CLAO Chief Research Attorneys, District Citizens Attorneys, Bureau of Prisons Legal Officer II, State Counsels I, State Prosecutors I and II, Third Assistant City Fiscals of Manila and Quezon City, Second Assistant Provincial/City Fiscals of First Class A Provinces/Cities, First Assistant Provincial/City Fiscals of First Class B/C Provinces/Cities, **Provincial/City Fiscals of Second Class Provinces/Cities ₱43,332.00**.

The First and Second Brackets of Trial Attorneys in the OGCC, Deputy Registers of Deeds II, Registers of Deeds I, Supervising Parole Officers, Probation Administration Senior Legal Officer, Fourth Assistant City Fiscals of Manila and Quezon City, Third Assistant Provincial/City Fiscals of First Class A Provinces/Cities, Second Assistant Provincial/City Fiscals of First Class B/C Provinces/Cities, First Assistant Provincial/City Fiscals of Second Class Provinces/Cities, **Provincial/City Fiscals of Third/Fourth Class Provinces/Cities ₱41,232.00**.

align the salaries of the Solicitors and the lawyers in the OSG with those of the lawyers in the Ministry of Justice (now Department of Justice) in the light of new salary rates under P.D. No. 1726. This was because EO No. 780 expressly recognized the close relationship between the qualification requirements for Fiscals, State Prosecutors and State Counsels in the Ministry of Justice (Department of Justice) and Solicitors in the OSG.[8]

The Senior Parole Officers, Citizens Attorneys, Deputy Registers of Deeds I, Supervising Deeds Registry Inspector, Bureau of Prisons Legal Officer I, Legal Officer IV in the bureaus and offices under the Ministry of Justice, Senior Research Attorneys in the Office of the Minister and in the bureaus and offices under the Ministry of Justice, Assistant Fiscals of Manila and Quezon City, Fourth Assistant Provincial/City Fiscals of First Class A Provinces/Cities, Third Assistant Provincial/City Fiscals of First Class B/C Provinces/Cities Second Assistant Provincial/City Fiscals of Second Class Provinces/Cities, First Assistant Provincial/City Fiscals of Third/Fourth Class Provinces/Cities, **Provincial/City Fiscals of Fifth Class Provinces/Cities ₱37,344.00**

The CLAO Trial Attorneys II, CID Supervising Special Investigator, Legal Officers III in the bureaus and offices under the Ministry of Justice, Research Attorneys II in the Office of the Minister and in the bureaus and offices under the Ministry of Justice, Parole Officers, Assistant Fiscals of First Class A Provinces/Cities, Fourth Assistant Provincial/City Fiscals of First Class B/C Provinces/Cities, Third Assistant Provincial/City Fiscals of Second Class Provinces/Cities, Second Assistant Provincial/City Fiscals of Third/Fourth Class Provinces/Cities, First Assistant Provincial/City Fiscals of Fifth Class Provinces/Cities, Assistant Fiscals of First Class B/C Provinces/Cities, Prosecution Attorneys ~~₱~~32,184.00

The Legal Officers II in the bureaus and offices under the Ministry of Justice, Deeds Registry Inspectors, Research Attorneys I in the Office of the Minister and in the bureaus and offices under the Ministry of Justice, Legal Officers I in the bureaus and offices under the Ministry of Justice, CID Special Investigator, Bureau of Prisons Legal Officer I (New Bilibid Prison and Leyte Regional Prison) ~~₱~~20,580.00

Section 4. *Office of the Solicitor General.* **The salary of legal positions in the Office of the Solicitor General shall be upgraded in a manner similar to that approved for the Ministry of Justice under Sec. 3 hereof.** (Emphasis supplied.)

[8] For convenient reference, we reproduce the Whereas Clauses of Executive Order No. 780 here:

R.A. No. 9417,[9] amending P.D. No. 1347, elevated the ranks, prerogatives, salaries, allowances, benefits and privileges of Assistant Solicitors General to make them equivalent to those of the Associate Justices of the CA, while the positions of Senior State Solicitor, State Solicitor II, and State Solicitor I were given the same ranks, prerogatives, salaries, and privileges as the Judges of the Regional Trial Courts, Metropolitan Trial Courts, and Municipal Trial Courts in Cities, respectively.

Later on, the Congress enacted R.A. No. 10071 to grant judicial rank to the lawyers in the Department of Justice's National Prosecution Service in a hierarchy similar to that statutorily prescribed for their counterparts in the OSG, and gave **retroactive** effect to such grant of judicial rank and

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WHEREAS, P.D. No. 1726 provides for a new schedule of salaries for lawyers in the Ministry of Justice and its bureau and offices; and

WHEREAS, position in the Office of the Solicitor General did not come under the operation of said Decree; and

WHEREAS, there is a close relationship between the qualification requirements for Fiscals, State Prosecutors, State Counsels in the Ministry of Justice and Solicitors in the Office of the Solicitor General; and

WHEREAS, there is a need to align the salaries of Solicitors and lawyers in the Office of the Solicitor General with lawyers in the Ministry of Justice in the light of new salary rates under P.D. No. 1726;

[9] **SEC. 3.** ***Standards.*** - The Solicitor General shall have cabinet rank and the same qualifications for appointment, rank, prerogatives, salaries, allowances, benefits and privileges as the Presiding Justice of the Court of Appeals; an Assistant Solicitor General, those of an Associate Justice of the Court of Appeals.

The qualifications for appointment, rank, prerogatives, salaries, and privileges of Solicitors shall be the same as judges, specified as follows:

Senior State Solicitor	-	Regional Trial Court Judge
State Solicitor II	-	Metropolitan Trial Court Judge
State Solicitor I	-	Municipal Trial Court in Cities Judge

alignment of benefits of Prosecutors with members of the Judiciary.[10]

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[10] The relevant provisions of RA 10071 provide: SECTION 14. *Qualifications, Rank and Appointment of the Prosecutor General*. — The Prosecutor General shall have the same qualifications forappointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of the Presiding Justice of the Court of Appeals and shall be appointed by the President.

SECTION 15. *Ranks of Prosecutors*. — The Prosecutors in the National Prosecution Service shall have the following ranks:

Rank		*Position/Title*
Prosecutor V	(1)	Senior Deputy State Prosecutors;
	(2)	Regional Prosecutors; and
	(3)	**Provincial Prosecutors** or City Prosecutors of provinces or cities with at least twenty-five (25) prosecutors and City Prosecutors of cities within a metropolitan area established by law.
Prosecutor IV	(1)	Deputy State Prosecutors;
	(2)	Deputy Regional Prosecutors;
	(3)	**Provincial Prosecutors** or City Prosecutors of provinces or cities with less than twenty-five (25) prosecutors; and
	(4)	Deputy Provincial Prosecutors or Deputy City Prosecutors of provinces or cities with at least twenty-five (25) prosecutors; and Deputy City Prosecutors of cities within a metropolitan area established by law.
Prosecutor III	(1)	Senior Assistant State Prosecutors and Senior Assistant Regional Prosecutors;
	(2)	Deputy Provincial Prosecutors or Deputy City Prosecutors of provinces or cities with less than twenty-five (25) prosecutors; and
	(3)	Senior Assistant Provincial Prosecutors or Senior Assistant City Prosecutors.
Prosecutor II	(1)	Assistant State Prosecutors;
	(2)	Assistant Regional Prosecutors; and
	(3)	Assistant Provincial Prosecutors or Assistant City Prosecutors.
Prosecutor I	(1)	Associate Provincial Prosecutors or Associate City Prosecutors.
x x x		x x x x x x

In *Re: Request of Justice Josefina Guevara-Salonga*,[11] the Court clarified that the retroactivity clause contained in R.A. No. 10071 could be availed of not only by the lawyers in the Prosecution Service who had retired prior to the effectivity of the law but also by former Prosecutors who had been appointed to the Judiciary, and who were yet to retire for purposes of computing their longevity pay. We quote the relevant discussion therein, to wit:

SECTION 16. *Qualifications, Ranks and Appointments of Prosecutors and Other Prosecution Officers*. — Prosecutors with the rank of Prosecutor V shall have the same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of an Associate Justice of the Court of Appeals.

Prosecutors with the rank of Prosecutor IV shall have the same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of a Judge of the Regional Trial Court.

Prosecutors with the rank of Prosecutor III shall have the same qualifications for appointment, rank, category, privileges, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of a Judge of the Metropolitan Trial Court.

Prosecutor with the rank of Prosecutor II shall have the same qualifications for appointment, rank, category, privileges, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of a Judge of the Municipal Trial Court in cities.

Prosecutor with the rank of Prosecutor I shall have the same qualifications for appointment, rank, category, privileges, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of a Judge of the Municipal Trial Court in municipalities.

x x x x x x x x x

SECTION 24. *Retroactivity*. — The benefits mentioned in Sections 14 and 16 hereof shall be granted to all those who retired prior to the effectivity of this Act. (Emphasis supplied.)

[11] A.M. No. 11-10-7-SC, February 14, 2012, 665 SCRA 646.

> A law, as a general rule, is applicable prospectively; thus, it should apply only to those who are presently in the service, who had rendered service and who will retire in the Judiciary after the effectivity of the law. By its express provision, however, [RA 10071] made itself applicable even to those who retired prior to its effectivity; thus, they should also benefit from the upgrading mandated by the law.
>
> From this perspective, the law should clearly apply to the case of Justice Guevara-Salonga who rendered service as Assistant Provincial Fiscal of Laguna and who is yet to retire as Associate Justice of the CA. x x x[12]

In the same ruling, we reiterated the enduring practice of including years served outside the Judiciary in positions statutorily given judicial rank in the computation of longevity pay for members of the Bench,[13] which was most recently reaffirmed in the Court's July 26, 2016 resolution promulgated in A.M. Nos. 12-8-07-CA, 12-9-5-SC and 13-02-07-SC.

The long history of aligned ranks, qualifications, and salaries among the members of the Bench, the members of the Prosecution Service, and the lawyers of the OSG is plainly evident in the various laws and jurisprudential precedents. The rationale for this treatment is not difficult to comprehend. Public officers who have served on the Bench, the Prosecution Service, and the OSG have consistently been acknowledged as integral pillars of our justice system. We fully agree with the OAS and the FMBO that Justice Abad's entire service in the OSG from his appointment as Solicitor until the end of his stint as Assistant Solicitor General could be credited in the computation of his longevity pay through the application of P.D. No. 1347 and the various laws that accorded Solicitors the rank of Provincial Fiscals, which by virtue of the retroactivity provision in R.A. No. 10071 must be considered as a position with judicial rank

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[12] *Id.* at 651.

[13] For example, *Request of Judge Fernando Santiago for the Inclusion of His Services as Agrarian Counsel in the Computation of His Longevity Pay* (September 12, 1985); *In Re: Adjustment of Longevity Pay of Hon. Justice Emilio A. Gancayco* (July 25, 1991); *Re: Adjustment of Longevity Pay of former Associate Justice Buenaventura S. dela Fuente* (November 19, 1992).

and, consequently, appointment thereto must be deemed service in the Judiciary.

The Court cannot agree with the OAS and the FMBO's position that Justice Abad's service in the OSG could only be included in the computation of his longevity pay for retirement purposes. To recall, in the resolution promulgated on June 16, 2015 in A.M. Nos. 12-8-07-CA, 12-9-5-SC and 13-02-07-SC, the Court favorably ruled on Justice Salazar-Fernando's request to include her judicial service prior to her appointment to the CA in the computation of her current longevity pay despite the gap in the two periods of her judicial service. The Court later clarified through the resolution promulgated on July 26, 2016 in the same consolidated administrative matters that Justice Gacutan's service as NLRC Commissioner, a position accorded judicial rank by statute, was properly deemed judicial service from the time that the law granting NLRC Commissioners judicial rank became effective and should be considered in the computation of her longevity pay.

The combined application of the Court's rulings on the situations of Justice Salazar-Fernando and Justice Gacutan leads to the conclusion that Justice Abad's entire service in the OSG (as Solicitor from January 1, 1978 to June 30, 1985 and as Assistant Solicitor General from July 1, 1985 to July 31, 1986) should be included in the computation of his longevity pay not only for his retirement but for all intents and purposes.

WHEREFORE, the Court **GRANTS** the request of Associate Justice Roberto A. Abad contained in his letters dated May 3, 2013 and May 30, 2013; and **DIRECTS** the Office of Administrative Services and the Fiscal Management and Budget Office to include Associate Justice Roberto A. Abad's service in the Office of the Solicitor General in the computation of his longevity pay.

SO ORDERED.

Carpio, Peralta, Perlas-Bernabe, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, and *Zalameda, JJ.,* concur.

DISSENTING OPINION

LEONEN, *J.*:

I dissent. This Court must vacate its ruling that recognizes justices' and judges' services rendered outside the judiciary in computing longevity pay.

Once again, we are asked to do this on the ground that formerly held *executive* positions carry the same rank as their counterparts in the judiciary. Former Associate Justice Roberto A. Abad (former Associate Justice Abad) is before this Court requesting that his services in the Office of the Solicitor General from 1975 to 1986 be included in the computation of his longevity pay. He served as this Court's Associate Justice for four (4) years, eight (8) months, and 16 days, which, as the majority points out, "short of the five years required by the law to qualify for longevity pay."[1]

This is not a case of first impression. This Court had previously denied a similar request[2] involving the same factual milieu, albeit reversed on motion for reconsideration. I strongly recommend that we enjoin this baseless practice.

Batas Pambansa Blg. 129[3] granted monthly longevity pay to members of the judiciary. Initially, the benefit excluded the Chief Justice and Associate Justices of this Court, among others, but was later extended to them through Presidential Decree No. 1927. Section 42 of Batas Pambansa Blg. 129 states:

> SECTION 42. *Longevity Pay*. — A monthly longevity pay equivalent to 5% of the monthly basic pay shall be paid to the Justices and Judges of the courts herein created for each five years of continuous, efficient, and meritorious service rendered in the judiciary; *Provided*, That in no case shall the total salary of each Justice or Judge concerned,

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[1] Resolution, p. 2.

[2] *Re: Vicente S.E. Veloso*, 760 Phil. 62, 108 (2015) [Per *J.* Brion, *En Banc*].

[3] The Judiciary Reorganization Act of 1980 (1981).

after this longevity pay is added, exceed the salary of the Justice or Judge next in rank. (Emphasis supplied)

Granted on top of salary, longevity pay is five percent (5%) of the justices' and judges' monthly basic salary "for each five years of ***continuous, efficient, and meritorious service rendered in the judiciary***[.]"[4] The salary then "increases by an increment of 5% for every additional cycle of five (5) years of *continuous, efficient, and meritorious service*."[5] It is paid while the official is in service, and becomes part of his or her monthly pension upon retirement or survivorship benefit upon death.[6]

Longevity pay is incurred in favor of a justice or judge during his or her years of actual, active service in the judiciary. Crediting service in the Office of the Solicitor General for longevity pay entails that the government pay the retiree *for work that was not rendered in the judiciary*. This blatantly contradicts the longevity pay's purpose: to compensate lengthy service "from the lowest to the highest court in the land."[7] As this Court had previously explained:

> [T]he payment of longevity pay is premised on a continued, efficient, and meritorious service: *(1) in the Judiciary; and (2) of at least five years*. ***Long and continued service in the Judiciary*** is the basis and reason for the payment of longevity pay; ***it rewards the loyal and efficient service*** *of the recipient* ***in the Judiciary***.[8] (Emphasis supplied)

Fidelity to the letter of the law commands this reading. In no way does this modify the provision or append what was not in it — both of which are undertakings that the Constitution proscribes this Court to do.

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[4] Batas Pambansa Blg. 129 (1981), Sec. 42.

[5] *Re: Martin S. Villarama, Jr.*, Adm. Matter No. 15-11-01-SC, March 6, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63859> [Per *J*. Martires, *En Banc*].

[6] *Id*.

[7] *Id.*

[8] *Re: Vicente S.E. Veloso*, 760 Phil. 62, 108 (2015) [Per *J*. Brion, *En Banc*].

Yet, in its Resolution, the majority grants former Associate Justice Abad's request on doubtful grounds.

I

None of the cited laws sanction the practice of crediting service in the executive branch to the length of judiciary service to avail of or increase longevity pay. The laws do not extend the benefit of longevity pay to those of the same rank.

The majority enunciated that "[a]s early as 1916, the Administrative Code of the Philippines provided that the qualifications for appointment to the position of Solicitor General shall be the same as those prescribed for judges of the Courts of First Instance."[9] But having similar qualifications required for two (2) positions is plain, unambiguous, and has nothing to do with our present concern.

Similarly, the majority invoked Presidential Decree No. 1726, which "upgraded the salary of the legal positions in the OSG in a manner similar to that approved for legal positions in the Ministry of Justice[,]"[10] and Executive Order No. 780, series of 1982,[11] which dealt with the salaries of executive officials. These, however, find no application here. It is indefensible to consider that the Office of the Solicitor General or the Ministry of Justice forms part of the judiciary.

The majority enumerated laws that amended the Administrative Code such that they "adjusted upward the judicial rank given to the Solicitor General, First Assistant Solicitor General, and Assistant Solicitors Generals."[12] However, a perusal

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[9] Resolution, p. 5.

[10] *Id.* at 6.

[11] *Id.* at 7. The majority stated that the executive order "reinforced the intention to align the salaries of the Solicitors and lawyers in the OSG with the lawyers in the Ministry of Justice (now the Department of Justice) in the light of new salary rates under P.D. 1726."

[12] *Id.* at 5.

of the cited laws, Republic Act Nos. 945,[13] 2068,[14] 3465,[15] and 3596,[16] disproves this assertion.

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[13] Republic Act No. 945 (1953), Sec. 1 partly provides:

SECTION 1. Section one thousand six hundred and fifty-nine of the Revised Administrative Code, as amended, is hereby further amended to read as follows:

"Sec. 1659. *Chief Officials of Office of the Solicitor General.* — The Office of the Solicitor General shall have one chief to be known as the Solicitor General whose salary shall be twelve thousand per annum and shall have the **rank of an Undersecretary of a Department**. . . .

. . . . . .

"The **qualifications for appointment** to the position of Solicitor General, the First Assistant Solicitor General and the four Assistant Solicitors General shall be the same as those prescribed for Judges of Courts of First Instance and those of Solicitors shall be the same as those prescribed for provincial fiscals."

[14] Republic Act No. 2068 (1958), Sec. 1 partly provides:

SECTION 1. Section sixteen hundred fifty-nine of the Administrative Code, as amended by Republic Act Numbered Nine hundred forty-five, is further amended to read as follows:

"SEC. 1659. *Chief Officials of Office of the Solicitor General.* — The Office of the Solicitor General shall have one chief to be known as the Solicitor General whose salary shall be twelve thousand pesos *per annum* and shall have the **rank of an Undersecretary of a Department**. . . .

. . . . . .

"The **qualifications for appointment** to the position of Solicitor General, the First Assistant Solicitor General and the Assistant Solicitor General shall be the same as those prescribed for Judges of Courts of First Instance, and those of Solicitors shall be the same as those prescribed for provincial fiscals, except those for Solicitors mentioned in paragraphs (e) and (f) of this section which must be actual practice of law for at least three years or having occupied a position requiring a lawyer's diploma for the same period."

[15] Republic Act No. 3465 (1962), Sec. 1 partly provides:

"The **rank and qualifications for appointment** to the position of Solicitor General shall be the same as an Associate Justice of the Court of Appeals; the rank and qualifications for appointment to the position of the First Assistant Solicitor General and the Assistant Solicitors General shall be the same as those prescribed for Judges of Courts of First Instance, and those Solicitors shall be the same as those prescribed for provincial fiscals."

[16] Republic Act No. 3596 (1963), Sec. 1 partly provides:

The first two (2) laws provide that the solicitor general shall have the rank of a department undersecretary, and the same qualifications for appointment as a court of first instance judge. The latter two (2) laws uniformly prescribe that the positions of solicitor general, first assistant solicitor general and assistant solicitor general, and solicitor shall be of the same rank and qualifications as those of a Court of Appeals associate justice, court of first instance judge, and provincial fiscals, respectively. I cannot discern in any way how these laws "adjusted upward the judicial rank."

Likewise suspect is the majority's pronouncement that Presidential Decree No. 1347 granted the solicitor general and associate solicitor general "the same rank, prerogatives, and privileges as those of the *Presiding Justice*"[17] of the Court of Appeals and a court of first instance judge, respectively.

Presidential Decree No. 1347 declared that the solicitor general and assistant solicitors general "*shall receive the same monthly allowances*" as the Court of Appeals *associate justices* and courts of first instance judges. To interpret the law such that it granted them "the same rank, prerogatives, and privileges" is to unduly expand its text. In any case, the monthly allowance cannot be construed to include longevity pay, which, again, "is premised on a continued, efficient, and meritorious service:

"Sec. 1569. *Chief Officials of the Office of the Solicitor General*. — The office of the Solicitor General shall have one chief to be known as the Solicitor General whose **salary shall be the same as that of a justice of the court of appeals**. He shall be assisted by one First Assistant Solicitor General who shall have the same salary as that of a judge of the court of first instance. . . .

. . . . . .

"The **rank and qualifications for appointment** to the position of Solicitor General shall be the same as an Associate Justice of the Court of Appeals; the rank and qualifications for appointment to the position of the First Assistant Solicitor General and the Assistant Solicitors General shall be the same as those prescribed for Judges of Courts of First Instance, and those of Solicitors shall be the same as those prescribed for provincial fiscals."

[17] Resolution, p. 6.

(1) in the Judiciary; *and* (2) of at least five years."[18] It is not readily granted to all associate justices. It may never be availed by a member of the judiciary who, as in this case, falls short of the required length of service.

As to Republic Act No. 9417, this Court explained in *Re: Vicente S.E. Veloso*:[19]

> RA 9417 passed into law on March 30, 2007. As in the case of RA 9347, this law was passed to address the plight of the members of the Office of the Solicitor General (OSG) by upgrading their salaries and benefits to improve their efficiency as the Republic's counsel.
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> . . . . . .
>
> As in the case of the NLRC, it must again be noted that this enumeration is specific with respect to the benefits granted to members of the OSG: ***it particularly referred to the benefits to be granted***.
>
> Although Section 3 of RA 9417 provides that the Solicitor General shall have the same qualifications for appointment, rank, prerogatives, salaries, allowances, benefits and privileges as the Presiding Justice of the CA (and an Assistant Solicitor General as that of a CA Associate Justice), RA 9417 still allocated express provisions for the other benefits to be enjoyed by the members of the OSG. These provisions are the following:
>
> Section 4- Compensation
> Section 5- Benefits and Privileges
> Section 6- Seminar and Other Professional Fees
> Section 7- Transportation Benefits
> Section 8- Other Benefits
> Section 10- Grant of Special Allowances
>
> *Had Congress really intended to grant the benefit of longevity pay to the members of the OSG, then it should have also included in the list of benefits granted under RA 9417 a provision pertaining to longevity pay. This provision is glaringly missing and thus cannot be included via this Court's decision without running afoul of the*

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[18] *Re: Vicente S.E. Veloso*, 760 Phil. 62, 108 (2015) [Per *J.* Brion, *En Banc*].

[19] 760 Phil. 62 (2015) [Per *J.* Brion, *En Banc*].

rule that prohibits judicial legislation. Nor can this Court recognize the past service rendered by a current judge or justice in the OSG for purposes of longevity pay.

A closer examination of this law shows that what Congress did was to grant benefits that were applicable to the type of service that the OSG provides.

For example, OSG lawyers are entitled to honoraria and allowances from client departments, agencies and instrumentalities of the Government. This benefit is only proper as the main function of the OSG is to act as the counsel of the Government and its officers acting in their official capacity. On the other hand, this benefit is not applicable to members of the Judiciary as they do not act as advocates but rather as impartial judges of the cases before them, for which they are not entitled to honoraria and allowances on a per case basis.

Another indicator that should be considered from the congressional handling of RA 9417 is that *Congress did not intend to introduce a strict one-to-one correspondence between the grant of the same salaries and benefits to members of the executive department and of the Judiciary*. The congressional approach apparently was for laws granting benefits to be of specific application that pertains to the different departments according to their personnel's needs and activities. ***No equalization or standardization of benefits was ever intended on a generalized or across-the-board basis***.[20] (Emphasis supplied, citations omitted)

Simply put, Republic Act No. 9417 did not extend the award of longevity pay to those serving in the Office of the Solicitor General.

In any case, the law was passed on March 30, 2007, long after former Associate Justice Abad had served in the Office of the Solicitor General from 1975 to 1986.[21] In the Resolution on the Motion for Reconsideration in *Re: Vicente S.E. Veloso*,[22] this Court granted Associate Justice Angelita A. Gacutan's request to credit her service in the National Labor Relations

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[20] *Id.* at 116-120.

[21] Resolution, p. 1.

[22] 791 Phil. 177 (2016) [Per *J.* Leonardo-De Castro, *En Banc*].

Commission in computing her longevity pay, as she was still with the Commission upon Republic Act No. 9347's effectivity. In extending her longevity pay, this Court engaged in judicial legislation. Retroactively applying the law to this case now is liberally construing the law further. This should not be countenanced.

II

The majority, citing three (3) cases as examples, spoke of an "enduring practice of including years served outside the Judiciary in positions statutorily given judicial rank in the computation of longevity pay of members of the Bench."[23] These cases deserve scrutiny.

Request of Judge Fernando Santiago for the Inclusion of His Services as Agrarian Counsel in the Computation of His Longevity Pay,[24] for one, was a Minute Resolution that did not cite any law as basis for its approval of Judge Fernando Santiago's request.

Likewise, in a Minute Resolution, this Court in *Re: Adjustment of Longevity Pay of Hon. Justice Emilio A. Gancayco*[25] approved Justice Emilio Gancayco's request to include his service as chief prosecuting attorney from 1963 to 1972 in computing his longevity pay. It noted that "under Republic Act No. 4140, the Chief State Prosecutor is given the same rank, qualification, and salary" as a court of first instance judge.

In another Minute Resolution in *Re: Adjustment of Longevity Pay of former Associate Justice Buenaventura S. dela Fuente*[26] this Court cited the two (2) previous cases in approving Associate Justice Buenaventura dela Fuente's request for re-computation of his longevity pay. It noted that he served as the chief legal

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[23] Resolution, pp. 9-10.

[24] Adm. Matter No. 85-8-8334-RTC, September 12, 1985 Resolution [*En Banc*].

[25] July 25, 1991 Resolution [*En Banc*].

[26] November 19, 1992 Resolution [*En Banc*].

counsel of the Department of Justice from 1963 to 1974, which, pursuant to Republic Act Nos. 2705 and 4152, had the same rank and salary as "the first and next ranking assistant solicitors general."

Parity in rank, salary, or benefit, or having the same "judicial rank," does not equate to service in the judiciary, which is the one that longevity pay seeks to reward.

Finally, the majority quotes[27] portions of former Chief Justice Teresita Leonardo-De Castro's *ponencia* in the Resolution on the Motion for Reconsideration in *Re: Vicente S.E. Veloso*.[28] I reiterate former Associate Justice Arturo D. Brion's position[29] on these justifications:

> Laws subsequent to BP 129 conferred the same salaries and benefits granted to members of the judiciary, and to certain public officials in the executive who had been given ranks equivalent to those granted in the judiciary. **The Court clarified in the June 16, 2015 Resolution that these laws do not expand the concept of longevity pay as provided in Section 42 of BP 129, and do not operate to include services in executive positions in determining the grant of longevity pay.**
>
> The Court reached this conclusion for the following reasons:
>
> 1. The Grant of Longevity Pay is only for Judges and Justices for Service in the Judiciary.
>
> ***The language and terms of Section 42 of BP 129 are very clear and unambiguous.*** A plain reading of Section 42 shows that it grants longevity pay to a judge or justice (and to none other) who has rendered five years of continuous, efficient, and meritorious ***service in the Judiciary***. The granted monthly longevity pay is equivalent to 5% of the monthly basic pay.
>
> Notably, Section 42 of BP 129 ***on longevity pay is separate from the provision on the salary*** of members of the judiciary found in

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[27] Resolution, pp. 4-5.

[28] 791 Phil. 177 (2016) [Per *J.* Leonardo-De Castro, *En Banc*].

[29] *Id.* at 203-212.

Section 41 of BP 129. This separate placement reflects the longevity pay's status as a ***separate benefit for members of the judiciary*** who have rendered "continuous, efficient and meritorious service in the judiciary;" longevity pay is not part of the salary that judges and justices are granted under Section 41.

In other words, all judges and justices are entitled to the salary prescribed for them under Section 41 of BP 129, but only those who have complied with the requisites of Section 42 are entitled to receive the additional longevity pay benefit.

Thus, when Section 42 of BP 129 required that the total salary of judges and justices receiving longevity pay should not exceed the salary of those next in rank, it simply meant that the addition of longevity pay cannot result in judges and justices of lower rank receiving a bigger total compensation than those with higher rank.

The salary of judges and justices depend on the salary grade (and subsequent step increments) of their positions under the Compensation and Classification System referred to in Section 41 of BP 129. The *proviso* in Section 42 of the same law operates to limit the amount of longevity pay granted when it disrupts the compensation system referred to in Section 41. It does not integrate longevity pay in the salary due to judges and justices under the compensation system, as not all of them are entitled to receive longevity pay in the first place.

2. Justice Gacutan's Request has no Basis in Law.

The inclusion of past services in another branch of government in the computation of longevity pay in the judiciary has no express basis in law.

. . . . . .

In Justice Gacutan's case, her services as past National Labor Relations Commission Commissioner (NLRC) places her under the operation of Republic Act No. 9347 (RA No. 9347), which amended Article 216 of the Labor Code to read:

> ART. 216. Salaries, benefits and other emoluments. — The Chairman and members of the Commission shall have the ***same rank, receive an annual salary equivalent to, and be entitled to the same allowances, retirement and benefits*** as those of the Presiding Justice and Associate Justices of the Court of

> Appeals, respectively. Labor Arbiters shall have the same rank, receive an annual salary equivalent to and be entitled to the same allowances, retirement and other benefits and privileges as those of the judges of the regional trial courts. In no case, however, shall the provision of this Article result in the diminution of the existing salaries, allowances and benefits of the aforementioned officials.

The "salary" that Article 216 of the Labor Code speaks of pertains to the "compensation and allowances" under Section 41 of BP 129, as found in the salary schedule of the government's Compensation and Position Classification System. Thus, Article 216 provided NLRC commissioners with the same salary received by Associate Justices of the Court of Appeals as prescribed in the salary schedule found in the government's Compensation and Position Classification System.

. . . . . .

As an additional benefit, NLRC commissioners may be granted the longevity pay that judges and justices receive under Section 42 of BP 129, for the commissioners' meritorious, efficient, and continuous service in the NLRC. But this is ***for CONGRESS, NOT FOR THIS COURT, to decide upon and grant***. The grant to the members of the Executive Department of this kind of benefit is an act that the Constitution exclusively assigns to Congress. This is an authority and prerogative that the Constitution exclusively grants to Congress.

To recapitulate, RA No. 9347 merely used the salary, allowances, and benefits received by CA Justices as a yardstick for the salary, allowances, and benefits to be received by NLRC commissioners. This is what RA No. 9347 meant when it granted NLRC commissioners the same salary, allowances, and benefits as CA Associate Justices.

The grant of an equivalent judicial rank does not (and cannot) make an official in the executive a member of the judiciary; thus, benefits that accrue only to members of the judiciary cannot be granted to executive officials. This is a consequence of the separation of powers principle that underlies the Constitution.

In more concrete terms, incumbent judges and justices who had previous government service ***outside the judiciary*** and who had been ***granted equivalent judicial rank*** under these previous positions, cannot credit their past non-judicial service as service in the judiciary for

purposes of securing benefits applicable only and earned while a member of the judiciary, ***unless Congress by law says otherwise and only for purposes of entitlement to salaries and benefits***.

3. The Grant of Longevity Pay Prayed for is an Act of Judicial Legislation.

The grant of longevity pay for past services in the NLRC, based on the grant of longevity pay to judges and justices of the judiciary, amounts to *prohibited judicial legislation.*

. . . . . .

It must be pointed out that the grant of the requested longevity pay can be a *blow disastrous to the reputation of the judiciary and to this Court's role as the final authority in interpreting the Constitution,* when the public realizes that this Court engaged in judicial legislation, through interpretation, to undeservedly favor its own judges and justices.

4. A Grant would effectively be a Misplaced Exercise of Liberality at the Expense of Public Funds and to the Prejudice of Sectors who are More in Need of these Funds.

. . . . . .

The Court should not forget that liberality is not a magic wand that can ward off the clear terms and import of express legal provisions; it has a place only when, between two positions that the law can both accommodate, the Court chooses the more expansive or more generous option. ***It has no place where no choice is available at all because the terms of the law are clear and do not at all leave room for discretion.***

In terms of the longevity pay's purpose, liberality has no place where service is not to the judiciary, as the element of loyalty — the virtue that longevity pay rewards — is not at all present.

I cannot overemphasize too that ***the policy of liberal construction cannot and should not be to the point of engaging in judicial legislation — an act that the Constitution absolutely forbids this Court to do.*** The Court may not, in the guise of interpretation, enlarge the scope of a statute or include, under its terms, situations that were

not provided nor intended by the lawmakers. ***The Court cannot rewrite the law to conform to what it or certain of its Members think should be the law.***

Not to be forgotten is the effect of this Court's grant on the use of public funds: funds granted to other than the legitimate beneficiaries are ***misdirected funds*** *that may be put to better use* ***by those sectors of society who need them more***.[30] (Emphasis supplied, citations omitted)

By legal fiction, this Court would have assumed that former Associate Justice Abad served in the judiciary from 1975 to 1986, when he had been employed in the Office of the Solicitor General. Moreover, we would have construed his time there as part of his "continuous service in the judiciary," where he served from 2009 to 2014, much later than his years in the executive positions.

This reading is unconstitutional. While this Court generally adopts a liberal approach in construing retirement laws, we cannot countenance judicial legislation for the self-serving interest of our members.

ACCORDINGLY, I vote to **DENY** former Associate Justice Roberto A. Abad's request that his services in the Office of the Solicitor General be included in the computation of his longevity pay.

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[30] *Id.* at 206-212.

EN BANC

[A.M. No. 19-03-16-SC. August 14, 2019]

RE: INVESTIGATION RELATIVE TO THE FAKE DECISION IN G.R. NO. 211483 (MANUEL TAMBIO v. ALBERTO LUMBAYAN, *ET AL.*)

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; THE COURT HAS DECLARED THAT IT WILL NEVER COUNTENANCE ANY ACT WHICH WOULD DIMINISH OR TEND TO DIMINISH THE FAITH OF THE PEOPLE IN THE JUDICIARY; CASE AT BAR.— The issue in this administrative matter case is no less than the integrity of the Court and its processes - a matter of paramount importance in assuring the proper administration of justice. Any attempt to undermine the Judiciary by subverting the administration of justice and as in the present case, to make a mockery of Court decisions and Philippine jurisprudence itself must not go unpunished. Time and time again, the Court has declared that it will never countenance any act which would diminish or tend to diminish the faith of the people in the Judiciary. The instant case is no exception. x x x The Court likewise agrees with the finding of the NBI that there is no direct showing that Abadies participated or had knowledge in the issuance or acquisition of the fake decision. Nevertheless, Abadies is far from being innocent. The Court concurs with the recommendation of the NBI that a case for indirect bribery under Article 211 of the Revised Penal Code be filed against Abadies. x x x In addition to the abovementioned, Abadies is liable for violating Section 7(d) of Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees. x x x **WHEREFORE**, the Court resolves to **DISMISS** Lorna G. Abadies, Clerk II of the Judicial Records Office, from the service, with the accessory penalties of forfeiture of all retirement benefits except accrued leave credits and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations. The Court further resolves to **ADOPT** the recommendations of the National Bureau

of Investigation and hereby **DIRECTS** the Chief of the Office of Administrative Services that the following cases be filed against Lorna G. Abadies: (1) indirect bribery under Article 211 of the Revised Penal Code and (2) violation of Section 7(d) of Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees.

2. CRIMINAL LAW; REVISED PENAL CODE; INDIRECT BRIBERY; ELEMENTS; PRESENT IN CASE AT BAR.— Article 211 of the Revised Penal Code penalizes the crime of indirect bribery, which has the following elements: (1) the offender is a public officer; (2) the offender accepts gifts; and (3) the said gifts are offered to the offender by reason of his or her office. In the present case, Abadies is a public officer, being a court employee, specifically working in the JRO, and accepted gifts, in the form of money, from Mr. Tambio, by reason of her office. If it were not for the fact that Abadies was a clerk in the JRO, Mr. Tambio would not have given her money and visited her on several occasions, hoping to be able to secure status updates on his case. It does not matter that Abadies returned the money that she had accepted, because the crime of indirect bribery was already consummated upon the concurrence of the aforementioned three elements under Article 211 of the Revised Penal Code.

3. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; ALL COURT PERSONNEL ARE MANDATED TO ADHERE TO THE STRICTEST STANDARDS OF HONESTY, INTEGRITY, MORALITY, AND DECENCY IN BOTH THEIR PROFESSIONAL AND PERSONAL CONDUCT.— The Court has repeatedly held that the image of a court of justice is mirrored in the conduct, official or otherwise, of its personnel. All court personnel are mandated to adhere to the strictest standards of honesty, integrity, morality, and decency in both their professional and personal conduct. In order to preserve the good name and integrity of the courts of justice, they must exemplify the highest sense of honesty and integrity not only in the performance of their official duties but also in their private dealings with other people. As a court employee, it was expected from Abadies to set a good example for other court employees in the standards of propriety, honesty, and fairness. It was incumbent upon her to practice a high degree of work ethic and to abide by the exacting principles of ethical

> conduct and decorum in both her professional and private dealings. Undoubtedly, Abadies failed to meet such standards, having placed her personal interest over the interest of the Court and its processes. Certainly, Abadies' infractions tainted the public perception of the image of the Court, casting serious doubt as to the ability of the Court to effectively exercise its power of administrative supervision over its employees.

D E C I S I O N

***PER CURIAM*:**

For resolution is the investigation conducted by the National Bureau of Investigation (NBI) regarding a Decision dated 14 March 2016 entitled *Manuel Tambio v. Alberto Lumbayan, Alvina Lumbayan and Virginia Lumbayan represented by surviving spouse Alberto Lumbayan*, purportedly issued by the Court's Third Division in G.R. No. 211483.

On 19 July 2016, Atty. Vincent Paul L. Montejo (Atty. Montejo) of Batacan, Montejo & Vicencio Law Firm, counsel of record for the respondents in the subject case, came to the Office of the Clerk of Court (OCC), Third Division, Supreme Court, seeking a certification as to the authenticity of a copy of a Decision dated 14 March 2016 entitled *Manuel Tambio v. Alberto Lumbayan, Alvina Lumbayan and Virginia Lumbayan represented by surviving spouse Alberto Lumbayan*, purportedly issued by the Third Division in G.R. No. 211483 and penned by Associate Justice Francis H. Jardeleza, which Atty. Montejo received by mail in Davao City. The Records Division of the Office informed Atty. Montejo that no such decision was promulgated by the Third Division, because the subject case was already decided in a Minute Resolution of the First Division dated 18 June 2014 denying the petition for review on *certiorari* of the petitioner in the said case and an entry of judgment was accordingly made on 17 March 2015. Moreover, the undated omnibus motion submitted by the petitioner was denied by the Third Division in its Resolution dated 9 November 2015.

Atty. Montejo asked to confer with the Third Division Clerk of Court (COC) to verify if the purported Decision of the Third Division dated 14 March 2016 is authentic or not. In its purported Decision dated 14 March 2016, the Third Division made the following rulings: (a) recalled the entry of judgment; (b) reinstated the petitioner's appeal; (c) granted the reliefs prayed for in the petition; and (d) issued orders and dispositions favorable to the petitioner, such as the payment of moral, exemplary, and actual damages. After a thorough examination of the subject document, Atty. Wilfredo V. Lapitan (Atty. Lapitan), Third Division COC, informed Atty. Montejo that such is not authentic and is fake, because of the following reasons: (a) no such document was promulgated or released by the OCC Third Division; (b) the purported decision has no accompanying Notice of Judgment duly certified by the Division COC; (c) the alleged decision was not duly certified by the Division COC; and (d) the subject decision was not in proper form, considering that the text was for short-size bond paper, instead of long-size bond paper, the signatures of the Associate Justices and the Division COC appeared to have been merely superimposed and then photocopied, the brown envelope which contained the said decision bore the name of the Judicial Records Office (JRO) and not the OCC Third Division, and such envelope indicated the postage payment of ₱79.00, instead of being free under the franking privilege, among others. Because he was in a hurry to leave for Davao City, Atty. Montejo did not leave a copy of the subject document with the OCC Third Division.

On 22 July 2016, an Incident Report[1] dated 22 July 2016 on the abovementioned was submitted by Atty. Lapitan to the Office of the Chief Justice (OCJ), as required under OCJ Office Order No. 09-2016, effective 26 May 2016, with the following recommendations: (a) a formal investigation of the subject incident be made to determine the author of the fake decision; (b) Atty. Montejo to be directed to submit to the Court such fake decision and its accompanying letter envelope; and (c)

[1] *Rollo*, pp. 180-184.

paper with the Court's watermark or any distinctive marking for authenticity be used in all decisions and resolutions issued by the Court.

In a letter[2] dated 5 August 2016, Atty. Lapitan furnished Associate Justice Presbitero J. Velasco, Jr., then Chairperson of the Third Division, with a copy of the Incident Report dated 22 July 2016, for his information and appropriate action.

On 12 July 2016, the OCC Third Division received a letter[3] dated 29 June 2016 from Hon. Jose T. Tabosares, the Presiding Judge of Branch 23, Regional Trial Court, Kidapawan City (Judge Tabosares), informing the OCC Third Division that the court *a quo* received a Decision of the Third Division dated 14 March 2016 which he suspects is fake, considering that the copy sent to him by registered mail is not a certified machine copy, the Court's logo does not appear at the back of the pages of the copy, and the copy is not accompanied by a Notice of Judgment as usually being issued by the Division COC. In his letter, Judge Tabosares requested confirmation if indeed the Third Division has already rendered a decision in Civil Case No. 2006-10. Judge Tabosares likewise attached a machine copy of the purported decision in his letter. In a letter[4] dated 25 August 2016, Atty. Lapitan replied to Judge Tabosares confirming and certifying the following: (a) the purported copy of the Decision dated 14 March 2016 in G.R. No. 211483 was not issued by the OCC Third Division; (b) the same decision is not authentic or is fake as it is not a certified true copy and is not in the standard form of a Court decision; (c) the subject decision is fraudulent as it was intended to mislead the court and the parties to the case.

On 21 July 2016, the OCC Third Division received from Atty. Montejo a letter[5] dated 19 July 2016 requesting certification

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[2] *Id*. at 194.

[3] *Id.* at 195.

[4] *Id.* at 198-199.

[5] *Id*. at 200-204.

on the non-existence of the Decision dated 14 March 2016 in G.R. No. 211483 and attaching a photocopy of the said decision. In a letter[6] dated 25 August 2016, Atty. Lapitan replied to Atty. Montejo's letter-request certifying the following: (1) the Decision dated 14 March 2016 in G.R. No. 211483 does not exist in the OCC Third Division files; (2) the subject decision was not promulgated or released by the OCC Third Division; and (3) said decision is not authentic as it is not in the standard form, it is not a certified true copy, and it is not accompanied by a Notice of Judgment certified as a true copy by the Division COC.

Subsequently, Atty. Lapitan submitted a Report[7] dated 13 October 2016 to then Chairperson of the Third Division, *i.e.*, Associate Justice Presbitero J. Velasco, Jr., and members of the Third Division, *i.e.*, Associate Justices Diosdado M. Peralta, Jose P. Perez, Bienvenido L. Reyes, and Francis H. Jardeleza, detailing the chronology of events and circumstances leading to the discovery of the fake decision, the actions he made and subsequent events, and recommending that the matter be referred to the proper office for investigation, report, and recommendation to determine the source or author of the fake decision, in order that the appropriate penalty be meted out unto the culprit or culprits. Thereafter, the Third Division issued a Resolution[8] dated 5 June 2017, noting the aforesaid report of Atty. Lapitan and referring such report to the NBI for investigation, report, and recommendation within 60 days from notice.

After the lapse of more than one year since the issuance of the Resolution of the Third Division dated 5 June 2017 and considering that the NBI had yet to submit to it its investigation, report, and recommendation, the Third Division issued a Resolution[9] dated 4 July 2018 requiring the NBI to submit the

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[6] *Id*. at 205.

[7] *Id*. at 152-155.

[8] *Id*. at 150-151.

[9] *Id*. at 142-143.

following: (a) a status report of its investigation within 10 days from receipt of notice; and (b) its investigation report and recommendation within 30 days from notice.

In compliance with the Resolution of the Third Division dated 4 July 2018 regarding the fake decision relative to G.R. No. 211483 entitled *Manuel Tambio v. Alberto Lumbayan, Alvina Lumbayan and Virginia Lumbayan represented by surviving spouse Alberto Lumbayan,* which has been transferred to the First Division, the NBI submitted its Manifestation/Compliance Initial Investigation Report[10] dated 7 October 2018, attaching its Initial Report[11] dated 3 October 2018, to Atty. Lapitan.

In a 1st Indorsement[12] dated 16 October 2018, Atty. Lapitan respectfully indorsed to Librada C. Buena, First Division COC, the Manifestation/Compliance Initial Investigation Report of the NBI dated 7 October 2018, with attached Initial Report dated 3 October 2018, for appropriate action.

In its Manifestation/Compliance Initial Investigation Report dated 7 October 2018, the NBI made the following initial findings:

> A. The present issue stemmed from the verification and follow-up of ATTY. PAUL VINCENT L. MONTEJO seeking this Court's certification as to the authenticity of the alleged Decision [sic] he received through mail, allegedly penned by JUSTICE FRANCIS H. JARDELEZA for the THIRD DIVISION;
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> B. ATTY. MONTEJO was informed[,] however, by the Records Division of this Honorable Court that no Decision was promulgated by the said division as the case was already decided in a *Minute Resolution* of the FIRST DIVISION on 18 June 2014, which effectively denied the petition for review on certiorari; accordingly, an entry of judgment was made on 17 March 2015. An undated Omnibus Motion submitted

[10] *Id.* at 2-8.

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

[12] *Id.* at 1.

by the petitioner was likewise denied by the THIRD DIVISION on 09 November 2015[;]

C. ATTY. MONTEJO was likewise informed by ATTY. WILFREDO LAPITAN that on its face the alleged "*Decision*" appears to be a fake due to several reasons;

D. On 12 July 2016, the OCC THIRD DIVISION received a letter from HON. JOSE T. TABOSARES, Presiding Judge, Branch 23, Regional Trial Court, Kidapawan City, informing the Court that they received a "DECISION", which they suspect to be a fake; [and]

E. On 25 August 2016, ATTY. LAPITAN replied that the Decision was indeed a fake one, as it was not issued by the Office of the Clerk of Court, Third Division, Supreme Court and that it was fraudulent and is apparently intended to mislead the court and the parties to the case.[13]

During the investigation conducted by the NBI, Atty. Lapitan introduced the team to Atty. Basilia T. Ringo, (Atty. Ringol), Deputy COC and Chief Judicial Records Officer. The latter mentioned that Atty. Pagwadan S. Fonacier (Atty. Fonacier), Supreme Court Assistant Chief of the JRO, once reported to her that a certain Mr. Tambio approached him and told him that an employee of the JRO was aiding him. According to Atty. Fonacier, he met Mr. Tambio in a church fellowship in Parañaque City. During the aforesaid encounter, Mr. Tambio asked for his assistance in finding a solution to his alleged legal issue with the Third Division, to which the latter replied that since he was still connected with the Court, he cannot and is in fact prohibited from handling cases. Nevertheless, Mr. Tambio inquired about the legal remedies available to him in relation to G.R. No. 211483. Mr. Tambio likewise claimed the following:

1. This Court already ruled in their favor but ATTY. LAPITAN claimed that the said Decision was fake. Hence, he filed a complaint with the Office of the Chief

[13] *Id*. at 3-4.

Justice against the former because of his unjustified refusal to honor such decision;

2. He then showed a copy of the alleged Decision and insisted that the same was genuine as it bears the supposed signature of ATTY. LAPITAN with all the markings of the Supreme Court. This document was allegedly placed inside an "Official Supreme Court Envelope";

3. He further mentioned that when he visited the Court, he was introduced by a lady employee of the Court of Appeals, who was also the wife of a judge, to a clerk of the Judicial Records Office (SC).[14]

Mr. Tambio identified to Atty. Fonacier a certain Lorna G. Abadies (Abadies) as the court employee who assisted him in securing updates of his case before the Third Division. He allegedly secured her assistance after he gave her money for every piece of information regarding his case that she provided him. He claimed that he visited the Court a number of times and was told by Abadies that the decision of his case is forth coming. He alleged likewise that they met and ate out several times outside of her office. According to Mr. Tambio, the last time he went to the Court to follow up on his case was when the remains of the late Chief Justice Renato C. Corona was interred in the Court for viewing. He averred that, during that time, Abadies told him that the decision of his case cannot be released yet as the signatories, *i.e.*, Associate Justices of the Third Division, were in the Session Hall viewing the remains of the late Chief Justice Renato C. Corona. Thereafter, the two of them went out to eat at Manila Pavilion, wherein he told her that he would do anything for his case. Before he left Manila Pavilion, he gave his contact number to Abadies so that she could contact him for any update on his case.

It was later on revealed that Mr. Tambio is actually Emiliano Tambio, the son of the petitioner in G.R. No. 211483 and the

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[14] *Id*. at 116.

person who stands to benefit the most had the subject decision turn out to be genuine.

On 1 October 2018, Mr. Tambio appeared before the NBI to air his side of the story. According to Mr. Tambio, "he has nothing to do with the 'alleged fake decision' and that he himself was wondering why the said decision was considered fake when it bore all the markings (seal and logo) of this court."[15] He further claimed that "there is no way he could lose before this court as he had already won in the lower courts."[16] When Mr. Tambio was asked about Abadies by the NBI, he stated that it was her who helped him secure updates on the status of his case before the Third Division and that he paid her for every such update she provided.

During his appearance before the NBI, Mr. Tambio declared that he also provided money to Esther Andres (Andres), whom he met through Dr. Leah Balatacan (Dr. Balatacan).[17] He claimed that Dr. Balatacan was the widow of Jose Balatacan and that he came to know of the Balatacans when he was introduced to them by Leo Vergara, who was said to be connected with the Department of Agriculture. Dr. Balatacan then introduced him to her sister, Andres. He averred that Andres asked for a standard operating procedure before she would agree to help him with his case. He alleged that he gave Andres around ₱1,400,000.00 on installment basis as compensation for her help. He also alleged that, before he met Andres, he gave Dr. Balatacan ₱380,000.00 for her assistance. However, despite the aforesaid payments, his case before the Third Division never prospered. Hence, he filed a case for estafa against Andres and Dr. Balatacan. The NBI noted that Mr. Tambio was willing to cooperate with the ongoing probe and was willing to submit all documents relating to the payments he made to Abadies, Andres, and Dr. Balatacan.

In the attached Initial Report dated 3 October 2018, the NBI cited the following as persons of interest being pursued by its Special Task Force: (1) Lorna Abadies; (2) Salvacion Garma

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[15] *Id.* at 5.

[16] *Id.*

[17] Also referred to in the records as Lilia Balatucan.

Ramirez, the daughter of Lorna Abadies, who was a former employee of the Judgment Division of the Court; (3) Esther Andres; (4) Dr. Leah Balatacan; and (5) Emiliano Tambio.

On 15 March 2019, the NBI submitted its Final Report[18] dated 11 February 2019 to Atty. Lapitan. In a letter dated 22 March 2019, Atty. Lapitan transmitted the aforesaid report to the Court for appropriate action.[19]

In its Final Report dated 11 February 2019, the NBI verified its previous findings in its Manifestation/Compliance Initial Investigation Report dated 7 October 2018 and Initial Report dated 3 October 2018. The NBI noted that Atty. Ringol and Atty. Fonacier executed their respective affidavits to formalize their previous statements and to support the investigation. Likewise, Mr. Tambio submitted an affidavit along with other documents to support his claim, *i.e.*, the estafa case he filed against Andres and Dr. Balatacan and receipts as proof of payment made by him to Andres and Dr. Balatacan.

The NBI Special Task Force sent a subpoena to Abadies for her to be informed of the allegations raised against her and to give her the opportunity to air her side on the matter. On 26 October 2018, Abadies appeared before the NBI Special Task Force and explained her side on the present controversy, having been apprised of her right to have a counsel of her own choice during the conduct of the investigation, to wit:

x x x x x x x x x

11.1 Lorna Abadies claimed Emiliano Tambio approached her in her office and introduced himself as someone who was referred by his relative who knows Atty. Fermin Garma, father of Lorna Abadies, to ask help from the latter in connection with the case (Manuel Tambio vs. Alberto

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[18] *Rollo*, pp. 41-48.

[19] Note: G.R. No. 211483 is a First Division case. However, in a Resolution dated 5 November 2018, the Supreme Court First Division resolved to refer to the Supreme Court *En Banc* the matter pertaining to the Court's order for the NBI to conduct an investigation relative to this case.

Lumbayan, Alvina Lumbayan and Virginia Lumbayan represented by surviving spouse Alberto Lumbayan) under G.R. No. 211483.

11.2 Allegedly, Mr. Tambio wanted to ask about the status of his case and he wants Lorna Abadies to inform him about it.

11.3 Several days after meeting Mr. Emiliano Tambio, a certain Esther Andres called Lorna Abadies through the landline of their office and invited her for lunch. Allegedly, Esther introduced herself as a person connected with or was under Justice Perez. (Upon verification[,] [i]t was discovered that Esther Andres was a former employee of the Supreme Court and is no longer connected with the court since 2005).

11.4 When they met for lunch, Esther [Andres] was allegedly carrying documents pertinent to the case of Mr. Emiliano Tambio. Lorna Abadies claimed that Esther Andres showed her a document which appeared to be a denial of a Motion for Reconsideration filed by the side of Emiliano Tambio. Esther Andres asked Lorna Abadies if she can do something about said denial.

11.5 Lorna Abadies answered Esther Andres by telling her to ask Emiliano Tambio if he wants the M.R. to be reviewed as she knows someone who can read and review the document.

11.6 Esther Andres gave the document to Lorna Abadies to be reviewed by Johnny Mercado, a co-employee of Lorna Abadies at the Judicial Records Office, Supreme Court[,] who was reviewing for the bar during that time.

11.7 After the lunch with Esther [Andres], Lorna Abadies claimed that they frequently saw each other at the Supreme Court and it also made Lorna conclude that Esther Andres was an employee of the Supreme Court due to her frequency in it while bearing an employee I.D.

11.8 Lorna also claimed that there were times that Esther Andres would give her gifts such as Longinus watches, 3 watches for male and 2 watches for female. Esther also allegedly gave Lorna a Gucci bag as a gift.

11.9 Lorna Abadies also acknowledged the receipt of 500 thousand pesos in staggered payment from Esther Andres. Lorna Abadies claimed that 150 thousand or 200 thousand was a debt she owed Esther who in turn got the money from Emiliano Tambio.

11.10 50 thousand pesos was allegedly given to Johnny Mercado for the preparation of the Omnibus Motion which was filed by Emiliano Tambio in relation to his case.

11.11 After several weeks, Lorna Abadies and Esther Andres met again[,] Lorna Abadies claimed that Esther Andres was pressuring her and stated that the decision is needed by Emiliano Tambio. Esther Andres even stated that she knows lawyers who are good in drafting decisions.

11.12 They met again in Robinsons Manila, and this time, with Emiliano Tambio. Lorna Abadies stated that Esther Andres showed her a draft decision in relation to the case. When asked about where the decision came from, Esther Andres answered that the decision was drafted by a lawyer. Esther Andres also told Emiliano Tambio to just wait for his copy as it will surely be received by him.

11.13 x x x x x x x x x

11.14 After said meeting, Lorna Abadies averred that she felt uneasy. She kept on wondering where they got the decision as she herself knew that a decision was already issued by the court denying their claim. Lorna Abadies stated that she immediately checked the G.R. No. Esther mentioned and to her surprise, she discovered that said decision was fake.

11.15 x x x x x x x x x

11.16 Lorna Abadies expressed her regret and she claimed that she is willing to testify. She also averred that the 500 thousand [pesos] she got from Emiliano Tambio was already returned.[20]

During one of the interviews held by the NBI Special Task Force, Mr. Tambio confirmed that Abadies called him and told

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[20] *Rollo,* pp. 44-45.

him that she will return the money she received. According to Abadies, she deposited such money to the account of Mr. Tambio.

The NBI stated the following in its Final Report dated 11 February 2019:

> It is clear from the revelation of Emiliano Tambio that Esther Andres was the one who managed to procure the fake decision. Said fake decision was shown by Esther Andres in a meeting with Emiliano Tambio and Lorna Abadies before the same was sent to the parties and to the court where the case originated. Further, Esther Andres, with her sister Lilia Balatucan[,] are the ones who received [a] large amount of money from Emiliano Tambio and the ones who misrepresented to Mr. Emiliano Tambio that they can do something about his case. Hence, the case filed against them in RTC Branch 14, Davao City[,] for Estafa under Criminal Case No. R-D10-17-02946-CR entitled *People of the Philippines vs. Jose Balatucan, Lilia Balatucan and Est[h]er Andres*.
>
> With regard to Lorna Abadies, though it can be said that she may be held liable for her acts of accepting money from Esther Andres or Emiliano Tambio by reason of her position or office, it is still unclear whether she participated or has knowledge in the issuance or acquisition of the fake decision.
>
> In so far as the other persons of interests are concerned, there [is] also no evidence that would show that Salvacion Garma [Ramirez], Lorna Abadies' daughter[,] is knowledgeable nor participated in procuring the said fake decision.
>
> Likewise, aside from the allegation that he is the one who drafted the omnibus motion that was filed by Mr. Emiliano Tambio in connection with his case, there is no evidence that would link Johnny Mercado to the issuance/acquisition of said fake decision.[21]

The NBI made the following recommendations in its Final Report dated 11 February 2019:

> In view of the foregoing, it is respectfully recommended that cases for violation of Art. 211 of the Revised Penal Code (Indirect Bribery), R.A. 6713 otherwise known as "Code of Conduct and Ethical Standards

[21] *Id.* at 46-47.

for Public Officials and Employees" and other possible administrative case be filed against Lorna Abadies.

In so far as Lilia Balatucan and Esther Andres are concerned, it appears that there is already a pending case against them in RTC Branch 14, Davao City(,] for Estafa under Criminal Case No. R-Dl0-17-02946-CR entitled *People of the Philippines vs. Jose Balatucan, Lilia Balatucan and Esther Andres*. Hence, no recommendation can be made with regard to their case.

With respect to Mr. Emiliano Tambio, it is the humble opinion of the undersigned that though Mr. Emiliano Tambio appears to be the beneficiary of the fake decision and that he has the motive to falsify said document as he is the one who stands to benefit had the fake decision passed as a legitimate one issued by the Supreme Court[,] [t]he undersigned is not wholly convinced that Mr. Emiliano Tambio can mastermind and facilitate such an intricate and complex modus. x x x.[22]

The Court agrees with the findings and recommendations of the NBI in its Final Report dated 11 February 2019.

The issue in this administrative matter case is no less than the integrity of the Court and its processes -a matter of paramount importance in assuring the proper administration of justice. Any attempt to undermine the Judiciary by subverting the administration of justice and as in the present case, to make a mockery of Court decisions and Philippine jurisprudence itself must not go unpunished. Time and time again, the Court has declared that it will never countenance any act which would diminish or tend to diminish the faith of the people in the Judiciary.[23] The instant case is no exception.

The Court concurs with the finding of the NBI that Andres is the person responsible for procuring the spurious decision. Not only was it shown that, out of all of the persons of interest investigated by the NBI, it was Andres who had a copy of the fake decision before the same was sent to the parties concerned

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[22] *Id.* at 47.

[23] *Re: Fake Decision Allegedly in G.R. No. 75242*, 491 Phil. 539, 569 (2005).

and to the court where the case originated but it was also established that it was Andres, together with her sister, Dr. Balatacan, who received a large amount of money from Mr. Tambio and who misrepresented to Mr. Tambio that they had the capacity, power, and influence to do something about his case. Consequently, realizing that he was a victim of fraud, misrepresentation, and deceit, Mr. Tambio filed a case against Andres and Dr. Balatacan for estafa by means of deceit under paragraph 2(a) of Article 315 of the Revised Penal Code. Given the aforesaid pending case, the Court agrees with the statement of the NBI that nothing more can be done with regard to Andres and Dr. Balatacan.

The Court likewise agrees with the finding of the NBI that there is no direct showing that Abadies participated or had knowledge in the issuance or acquisition of the fake decision. Nevertheless, Abadies is far from being innocent. The Court concurs with the recommendation of the NBI that a case for indirect bribery under Article 211[24] of the Revised Penal Code be filed against Abadies.

In her Comment[25] dated 29 July 2019, wherein she directly addressed the charges made against her, Abadies stated that she could not be held liable for indirect bribery under Article 211 of the Revised Penal Code, because, as stated in the NBI Final Report dated 11 February 2019, she had returned the money which she had received from Mr. Tambio through Andres. The Court finds this contention devoid of merit. The fact that Abadies returned the money that she had received does not exculpate her from being held liable for indirect bribery under Article 211 of the Revised Penal Code.

Article 211 of the Revised Penal Code penalizes the crime of indirect bribery, which has the following elements: (1) the

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[24] This provision reads: Article 211. *Indirect bribery*. - The penalties of *prision correccional* in its medium and maximum periods, and public censure shall be imposed upon any public officer who shall accept gifts offered to him by reason of his office.

[25] *Rollo*, pp. 218-219.

offender is a public officer; (2) the offender accepts gifts; and (3) the said gifts are offered to the offender by reason of his or her office. In the present case, Abadies is a public offer, being a court employee, specifically working in the JRO, and accepted gifts, in the form of money, from Mr. Tambio, by reason of her office. If it were not for the fact that Abadies was a clerk in the JRO, Mr. Tambio would not have given her money and visited her on several occasions, hoping to be able to secure status updates on his case. It does not matter that Abadies returned the money that she had accepted, because the crime of indirect bribery was already consummated upon the concurrence of the aforementioned three elements under Article 211 of the Revised Penal Code.

In addition to the abovementioned, Abadies is liable for violating Section 7(d) of Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees. The aforementioned provision states the following:

> Section 7. *Prohibited Acts and Transactions*. — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:
>
> x x x x x x x x x
>
> (d) Solicitation or acceptance of gifts. — Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

In her Comment dated 29 July 2019, Abadies asserted that she could not be held liable for a violation of Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees, because she had no participation whatsoever, with respect to the unlawful acts committed by Andres. The Court rejects such allegation for lack of merit.

The Court has repeatedly held that the image of a court of justice is mirrored in the conduct, official or otherwise, of its personnel. All court personnel are mandated to adhere to the strictest standards of honesty, integrity, morality, and decency in both their professional and personal conduct. In order to preserve the good name and integrity of the courts of justice, they must exemplify the highest sense of honesty and integrity not only in the performance of their official duties but also in their private dealings with other people.[26]

As a court employee, it was expected from Abadies to set a good example for other court employees in the standards of propriety, honesty, and fairness. It was incumbent upon her to practice a high degree of work ethic and to abide by the exacting principles of ethical conduct and decorum in both her professional and private dealings. Undoubtedly, Abadies failed to meet such standards, having placed her personal interest over the interest of the Court and its processes. Certainly, Abadies' infractions tainted the public perception of the image of the Court, casting serious doubt as to the ability of the Court to effectively exercise its power of administrative supervision over its employees.

With respect to Mr. Tambio, the Court concurs with the conclusion of the NBI that he cannot be held guilty of orchestrating the fraudulent scheme of acquiring a fake decision and passing off such decision as authentic to the concerned parties for his personal interest. Throughout the investigation of the present controversy, Mr. Tambio has shown good faith and has been cooperative and helpful in the investigation of the NBI. In fact, he had no qualms in formalizing his statements in an affidavit and submitted several documents to prove his innocence. Based on the records of the case, it likewise appears that Mr. Tambio was genuinely surprised and stunned when it was revealed to him that the subject decision is fake. At most, it can be said that Mr. Tambio is only guilty of being overeager in garnering updates on his case.

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[26] *Floria v. Sunga*, 420 Phil. 637, 650 (2001).

WHEREFORE, the Court resolves to **DISMISS** Lorna G. Abadies, Clerk II of the Judicial Records Office,[27] from the service, with the accessory penalties of forfeiture of all retirement benefits except accrued leave credits and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations. The Court further resolves to **ADOPT** the recommendations of the National Bureau of Investigation and hereby **DIRECTS** the Chief of the Office of Administrative Services that the following cases be filed against Lorna G. Abadies: (1) indirect bribery under Article 211 of the Revised Penal Code and (2) violation of Section 7(d) of Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees.

Let a copy of this Decision be attached to the records of Lorna G. Abadies in the Office of Administrative Services, Supreme Court.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, and *Zalameda, JJ.,* concur.

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[27] As of 19 March 2018, Lorna G. Abadies no longer reports to the Judicial Records Office and is detailed to the Office of Administrative Services.

THIRD DIVISION

[A.M. No. P-19-3988. August 14, 2019]
(Formerly OCA I.P.I. No. 17-4692-P)

MARILYN MEIM M. *VDA. DE* ATIENZA, *complainant, vs.* **PALERMO I. AGUILAR, Sheriff IV, Office of the Clerk of Court, Regional Trial Court, San Jose, Occidental Mindoro,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFF; A SHERIFF'S FUNCTIONS ARE PURELY MINISTERIAL; ONCE A WRIT IS PLACED IN THE SHERIFF'S HAND, IT BECOMES HIS DUTY TO PROCEED WITH REASONABLE SPEED TO ENFORCE THE WRIT TO THE LETTER, ENSURING AT ALL TIMES THAT THE IMPLEMENTATION OF THE JUDGMENT IS NOT UNJUSTIFIABLY DEFERRED, UNLESS THE EXECUTION OF WHICH IS RESTRAINED BY THE COURT.— Section 9, Rule 39 of the Rules of Court provides for the manner by which execution of judgments for money should be enforced by a sheriff, x x x Section 14 of Rule 39, on the other hand, requires sheriffs, after implementation of the writ, to make a return thereon: x x x It must be emphasized anew that the above-quoted provisions leave no room for any exercise of discretion on the part of the sheriff on how to perform his or her duties in implementing the writ. A sheriff's compliance with the Rules is not merely directory but mandatory. It is well settled that a sheriff's functions are purely ministerial, not discretionary. Once a writ is placed in his hand, it becomes his duty to proceed with reasonable speed to enforce the writ to the letter, ensuring at all times that the implementation of the judgment is not unjustifiably deferred, unless the execution of which is restrained by the court. Additionally, even if the writs are unsatisfied or only partially satisfied, sheriffs must still file the reports so that the court, as well as the litigants, may be informed of the proceedings undertaken to implement the writ. Periodic reporting also provides the court insights on the efficiency of court

processes after promulgation of judgment. Over all, the purpose of periodic reporting is to ensure the speedy execution of decisions. x x x Sheriffs, being agents of the court, play an important role, particularly in the matter of implementing the writ of execution. Indeed, [sheriffs] "are tasked to execute final judgments of courts. If not enforced, such decisions are empty victories of the prevailing parties. They must, therefore, comply with their **mandated ministerial duty to implement writs promptly and expeditiously**. As agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its order, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice."

2. ID.; ID.; ID.; WHEN GUILTY OF SIMPLE NEGLECT OF DUTY; IMPOSABLE PENALTY; CASE AT BAR.— For Aguilar's lapses in the procedures in the implementation of the writ of execution, as well as his delay in complying with the directives of the OCA to submit his comment, we find him guilty of simple neglect of duty. Simple neglect of duty is defined as the failure of an employee to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference. It is a less grave offense punishable by **suspension from office for one (1) month and one (1) day to six (6) months for the first offense**, and dismissal for the second offense under Section 46(D) of the Revised Rules on Administrative Cases in the Civil Service. However, the Court, in several cases, imposed the penalty of fine in *lieu* of suspension as an alternative penalty in order to prevent any undue adverse effect on public service which would ensue if work were otherwise left unattended by reason of respondent's suspension. Therefore, the Court imposes on Aguilar the penalty of fine in the amount equivalent to his salary for one (1) month, with a stern warning that a repetition of the same or any similar act shall be dealt with more severely.

D E C I S I O N

PERALTA, *J.*:

Before us is an administrative complaint[1] filed by Marilyn Meim M. *Vda. de* Atienza (*complainant*) against Palermo I. Aguilar (*Aguilar*), Sheriff IV, Office of the Clerk of Court, Regional Trial Court (*RTC*), San Jose, Occidental Mindoro, for misconduct and gross negligence relative to the implementation of a writ of execution issued in relation to Criminal Case No. 12655, entitled "*People v. Eleazar Candido y Janairo*."

The facts are as follows:

Complainant is one of the private complainants in a criminal case against accused Eleazar J. Candido for reckless imprudence resulting in serious physical injuries and damage to property under Article 365 of the Revised Penal Code. On April 29, 2015, Hon. Cornelio A. Sy, Presiding Judge of the Municipal Trial Court (*MTC*), San Jose, Occidental Mindoro, rendered judgment convicting the accused and awarded damages to the private complainants, the dispositive portion of which reads:

> WHEREFORE, finding the evidence more than sufficient for this conviction, the court hereby pronounces the accused ELEAZAR CANDIDO y JANAIRO, GUILTY BEYOND REASONABLE DOUBT for the crime of Reckless Imprudence Resulting in Serious Physical Injuries and Damage to Property defined and penalized under Art. 365 and sentences him to a penalty of FOUR (4) MONTHS AND ONE (1) DAY TO FOUR (4) YEARS, TWO (2) MONTHS.
>
> As far as damages is concerned, the court finds the respondent and so hold him liable to pay the following:
>
> 1) Actual damages amounting to ₱240,000.00 consisting [of] the medical and other related expenses covered by receipts;
>
> 2) Moral damages in amount of ₱25,000.00 for the outrage and wounded feelings and trauma they suffered from the reckless driving of the drunk driver;

[1] *Rollo,* pp. 2-6.

3) Exemplary damages in the amount of ₱25,000.00;

4) Cost of suit.

SO ORDERED.[2]

Subsequently, a Writ of Execution[3] was issued by Clerk of Court Socorro G. Gorospe, MTC, San Jose, Occidental Mindoro, directing Aguilar to cause the execution of the judgment of the court dated April 29, 2015, which was final and executory as regards with the awarded damages. On September 1, 2015, Clerk of Court Gorospe gave Aguilar the amount of Four Thousand Five Hundred Fifty Pesos (₱4,550.00) to cover for his expenses in the implementation of the writ.[4]

Thereafter, complainant made several follow-ups to Aguilar as to the status of the writ of execution and pleaded for his help because she needed the proceeds of the award of damages for her medical expenses. Complainant lamented that Aguilar and accused's respective houses are both located in Barangay Pag-asa, San Jose, Occidental Mindoro, yet Aguilar's usual answer to her follow-ups was, "*hindi ko matiyempo-tiyempuhan si Eleazar eh*."

On September 29, 2015, complainant went to the MTC and the OCC- RTC, San Jose, Occidental Mindoro, to inquire anew on the status of the writ's implementation, however, she was informed that Aguilar has not submitted any report on the matter.

On April 5, 2017, the Office of the Court Administrator (*OCA*) directed Aguilar to file his comment on the complaint against him.[5] In his Manifestation/Motion[6] dated June 9, 2017, Aguilar manifested that he be given more time to file his comment, or until June 30, 2017, to file his comment as he was suffering

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[2] *Id.* at 8.

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

[4] *Id.* at 11.

[5] *Id.* at 13.

[6] *Id.* at 14.

from an illness and erratic high blood pressure. On July 25, 2017, the OCA granted Aguilar's motion to extend time until June 30, 2017 to file his comment.[7] On October 6, 2017, due to Aguilar's non-compliance to submit the required comment, the OCA issued a 1st Tracer[8] and reiterated its earlier directive to require Aguilar to submit his comment on the complaint against him.

Thus, on June 13, 2018, as recommended by the OCA, the Court resolved to direct Aguilar to show cause why he should not be administratively dealt with, for his failure to submit the required comment despite two directives to do so, and to submit the said comment.[9]

In his Comment[10] dated August 30, 2018, Aguilar explained that he was unable to file his comment on time because he suffered from a life- threatening condition which required him to rest and recuperate. He submitted a medical certificate[11] dated December 12, 2017 where it was stated therein that Aguilar was diagnosed to have COPD D (*Severe Obstruction Ventilatory Defect*) and was declared as unfit to continue his current profession. Another medical certificate[12] issued on the same date also certified that Aguilar was diagnosed to have *Dilated Cardiomyopathy*, Hypertension, and Diabetes Type 2, and was advised to resume work with limitations that extreme physical and psychological stress must be avoided. Aguilar's medical records, issued by The Medical City, also showed that due to his medical condition, he was advised to rest for three (3) months.

As to the non-implementation of the subject writ of execution, Aguilar claimed that he actually served the writ to accused on

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[7] *Id.* at 15.

[8] *Id.* at 17.

[9] *Id.* at 23.

[10] *Id.* at 27-35.

[11] *Id.* at 36.

[12] *Id.*

September 14, 2015, as evidenced by the signature of accused on the copy[13] of the subject writ of execution. However, Aguilar explained that the implementation of the writ was never fully satisfied due to several circumstances, to wit: (1) accused did not have a permanent address, and sometimes accused would stay with his parents and the latter would hide him so he was unable to meet accused anymore; (2) upon receipt of the writ, accused merely shrugged off and claimed that he has no money to pay for the damages; and (3) while it may be true that accused' family has a real property in a remote island to which the judgment could be attached, the property could not be presumed to be owned by the accused.[14] Aguilar maintained that he had exerted all diligent efforts to locate the accused as well as his properties but failed to find them, thus, he could not be considered as remiss in his duties as sheriff.[15]

With regard to the periodic reporting, Aguilar admitted that he failed to make a periodic report as to the status of the execution of the subject writ. He claimed that he had so many duties and responsibilities being a sheriff of two courts that he has no free time to make periodic reports on the writs he executed. While admitting that he failed to submit the report, Aguilar alleged that the same was not deliberately done but rather it just slipped off his mind as he was already old and sickly. Aguilar acknowledged that volume of work is not an excuse from non-compliance with the mandate of the law, nevertheless, considering his circumstances, he prays for the indulgence of the Court.[16]

In a Resolution[17] dated January 16, 2019, the Court resolved to refer the instant administrative matter to the OCA for evaluation, report and recommendation.

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[13] *Id.* at 45.

[14] *Id.* at 29.

[15] *Id.* at 30.

[16] *Id.* at 30-32.

[17] *Id.* at 114.

In a Memorandum[18] dated April 22, 2019, the OCA found Aguilar guilty of Simple Neglect of Duty for his failure to (a) immediately implement the Writ of Execution dated April 29, 2015 relative to Criminal Case No. 12666; (b) submit the required periodic reports with respect to the implementation of the writ; and (c) for his delay in complying with the directives of the OCA to submit a comment on the complaint against him. It, thus, recommended that the instant complaint be re-docketed as a regular administrative complaint and that Aguilar be suspended for one (1) month and one (1) day, with stern warning that the commission of the same or any similar act will be dealt with more severely.

We agree with the findings and recommendation of the OCA.

Section 9, Rule 39 of the Rules of Court provides for the manner by which execution of judgments for money should be enforced by a sheriff, to wit:

x x x x x x x x x

(a) *Immediate payment on demand.* — The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amounts to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

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[18] *Id.* at 122-125.

The clerk of said court shall thereafter arrange for the remittance of the deposit to the account of the court that issued the writ whose clerk of court shall then deliver said payment to the judgment obligee in satisfaction of the judgment. The excess, if any, shall be delivered to the judgment obligor while the lawful fees shall be retained by the clerk of court for disposition as provided by law. In no case shall the executing sheriff demand that any payment by check be made payable to him.

(b) *Satisfaction by levy*. — If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed, of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of attachment.

(c) *Garnishment of debts and credits*. — The officer may levy on debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal property not capable of manual delivery in the possession or control of third parties. Levy shall be made by serving notice upon the person owing such debts or having in his possession or control such credits to which the judgment obligor is entitled. The garnishment shall cover only such amount as will satisfy the judgment and all lawful fees.

The garnishee shall make a written report to the court within five (5) days from service of the notice of garnishment stating whether or

not the judgment obligor has sufficient funds or credits to satisfy the amount of the judgment. If not, the report shall state how much funds or credits the garnishee holds for the judgment obligor. The garnished amount in cash, or certified bank check issued in the name of the judgment obligee, shall be delivered directly to the judgment obligee within ten (10) working days from service of notice on said garnishee requiring such delivery, except the lawful fees which shall be paid directly to the court.

In the event there are two or more garnishees holding deposits or credits sufficient to satisfy the judgment, the judgment obligor, if available, shall have the right to indicate the garnishee or garnishees who shall be required to deliver the amount due, otherwise, the choice shall be made by the judgment obligee.

The executing sheriff shall observe the same procedure under paragraph (a) with respect to delivery of payment to the judgment obligee.

Section 14 of Rule 39, on the other hand, requires sheriffs, after implementation of the writ, to make a return thereon:

SEC. 14. *Return of writ of execution*. - The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. ***If the judgment cannot be satisfied in full within thirty (30) days after his receipt of tire writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires.*** The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.[19]

In the instant case, the subject writ of execution was issued on April 29, 2015, yet records show that there was no attempt at all from Aguilar to enforce the writ by demanding the immediate payment of the full amount of damages stated in the subject writ. He claimed that he served the copy of the writ on September 14, 2015 as evidenced by the accused'

[19] Emphasis ours.

signature on the copy of the writ of execution, but service of the writ of execution upon the accused is not equivalent to enforcing the writ. After serving of the writ, Aguilar made no effort anymore to enforce the writ as he claimed that accused does not have a permanent address so it was difficult to meet him.

Other than Aguilar's failure to enforce the subject writ, he also failed to timely submit his report and explain the reason why the writ was not enforced. He tried to excuse himself by claiming that his medical condition prevented him from doing his duties. However, Aguilar's applications for leave of absence showing that he was actually on leave due to illness was only from September 1, 2017 to December 14, 2017; thus, from the service of the writ on September 14, 2015, there was a period of at least two (2) years, *i.e.*, from September 14, 2015 to September 1, 2017 where Aguilar could have acted on the writ and submitted his report but failed to do so. There was, likewise, no explanation as to what measures were taken during this interval as to why the writ was not enforced. Upon service of the writ to accused on September 14, 2015, Aguilar should have submitted a report to the court on the reason why the judgment had not been satisfied in full. This report must have been made every thirty (30) days thereafter until the judgment was satisfied in full or until its effectivity expired. Further, from the time Aguilar reported back to work on December 18, 2017 until the filing of his comment on August 30, 2018, Aguilar has still neither enforced the writ nor submitted the required sheriffs report.

It must be emphasized anew that the above-quoted provisions leave no room for any exercise of discretion on the part of the sheriff on how to perform his or her duties in implementing the writ. A sheriffs compliance with the Rules is not merely directory but mandatory.[20] It is well settled that a sheriffs functions are purely ministerial, not discretionary.[21] Once a writ is placed in his hand, it becomes his duty to proceed with

[20] *Atty. Gonzales, et al. v. Galo*, 685 Phil. 352, 360 (2012).

[21] *Erdenberger v. Aquino*, 671 Phil. 551, 556 (2011).

reasonable speed to enforce the writ to the letter, ensuring at all times that the implementation of the judgment is not unjustifiably deferred, unless the execution of which is restrained by the court.[22] Additionally, even if the writs are unsatisfied or only partially satisfied, sheriffs must still file the reports so that the court, as well as the litigants, may be informed of the proceedings undertaken to implement the writ. Periodic reporting also provides the court insights on the efficiency of court processes after promulgation of judgment. Over all, the purpose of periodic reporting is to ensure the speedy execution of decisions.[23]

Thus, from the foregoing, it is then apparent that Aguilar violated the provisions of the Rules of Court prescribing the duties of sheriffs in the implementation of court writs and processes. He failed to observe the procedure in order to ensure the proper administration of justice, and rules which he is presumed to know by heart. The long intervals of time from the service of the writ on the accused cannot be said to be a full and prompt discharge of his responsibility for the speedy and efficient execution of the court's judgment. It must be stressed that a judgment, if not executed, would be an empty victory on the part of the prevailing party. It is said that execution is the fruit and the end of the suit and is very aptly called the life of the law.[24] It is also indisputable that the most difficult phase of any proceeding is the execution of judgment. Hence, the officers charged with this delicate task must, in the absence of a restraining order, act with considerable dispatch so as not to unduly delay the administration of justice; otherwise, the decisions, orders, or other processes of the courts of justice would be futile.[25]

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[22] *Dy Teban Trading Co., Inc. v. Verga*, 661 Phil. 24, 30-31 (2011), citing *Dacdac v. Ramos*, 576 Phil. 32, 36 (2008).

[23] *Roxas v. Sicat*, A.M. No. P-17-3639 (Formerly OCA I.P.I. No. 14-4314-P), January 23, 2018.

[24] *Zarate v. Judge Untalan*, 494 Phil. 208, 218 (2005).

[25] *Id.*; *1st Endorsement dated June 3, 1991 of Atty. Danilo Cunanan*, 308 Phil. 447, 453 (1994), citing *Pascual v. Duncan*, 290-A Phil. 591, 594 (1992).

Sheriffs, being agents of the court, play an important role, particularly in the matter of implementing the writ of execution. Indeed, [sheriffs] "are tasked to execute final judgments of courts. If not enforced, such decisions are empty victories of the prevailing parties. They must, therefore, comply with their **mandated ministerial duty to implement writs promptly and expeditiously**. As agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its order, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice."[26]

For Aguilar's lapses in the procedures in the implementation of the writ of execution, as well as his delay in complying with the directives of the OCA to submit his comment, we find him guilty of simple neglect of duty. Simple neglect of duty is defined as the failure of an employee to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference.[27] It is a less grave offense punishable by **suspension from office for one (1) month and one (1) day to six (6) months for the first offense**, and dismissal for the second offense under Section 46(D) of the Revised Rules on Administrative Cases in the Civil Service. However, the Court, in several cases,[28] imposed the penalty of fine in *lieu* of suspension as an alternative penalty in order to prevent any undue adverse effect on public service which would ensue if work were otherwise left unattended by reason of respondent's suspension. Therefore, the Court imposes on Aguilar the penalty of fine in the amount equivalent to his salary for one (1) month, with a stem warning that a repetition of the same or any similar act shall be dealt with more severely.

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[26] *Olympia-Geronilla, et al. v. Montemayor, et al.*, 810 Phil. 1, 11 (2017), citing *Lucas v. Dizon*, 747 Phil. 88, 96 (2014). (Emphasis supplied)

[27] *Id.* at 15, citing *Miranda v. Raymundo, Jr.*, 749 Phil. 9, 15 (2014).

[28] *Mendoza v. Esguerra*, 703 Phil. 435 (2013); *Zamudio v. Aura*, 593 Phil. 575, 584 (2008); *Olympia-Geronilla, et al. v. Montemayor, et al.*, 810 Phil. 1 (2017).

WHEREFORE, respondent Palermo I. Aguilar, Sheriff IV of the Office of the Clerk of Court, Regional Trial Court, San Jose, Occidental Mindoro, is found **GUILTY** of simple neglect of duty. In lieu of suspension, he is **FINED** in the amount equivalent to his salary for one (1) month, and **STERNLY WARNED** that a repetition of the same or any similar act shall be dealt with more severely.

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

SO ORDERED.

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

EN BANC

[A.M. No. RTJ-18-2537. August 14, 2019]
(Formerly OCA I.P.I No. 13-4027-RTJ)

ABDULSAMAD P. BOGABONG, *complainant, vs.* **HON. RASAD G. BALINDONG, Presiding Judge, Branch 12, Regional Trial Court, Malabang, Lanao Del Sur,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; DISCIPLINE OF JUDGES; WHEN A LAW OR RULE IS BASIC, JUDGES OWE IT TO THEIR OFFICE TO SIMPLY APPLY THE LAW, ANYTHING LESS IS IGNORANCE OF THE LAW, WARRANTING ADMINISTRATIVE SANCTION; APPLICATION IN CASE AT BAR.— True, a judge's failure to interpret the law or to

properly appreciate the evidence presented does not necessarily render him administratively liable. Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice will be administratively sanctioned. However, it is also settled that when a law or rule is basic, judges owe it to their office to simply apply the law. Anything less is ignorance of the law, warranting administrative sanction. In several cases, this Court had the occasion to explain: x x x A judge is expected to keep abreast of the developments and amendments thereto, as well as of prevailing jurisprudence. Ignorance of the law by a judge can easily be the mainspring of injustice. In the absence of fraud, dishonesty, or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action. However, the assailed judicial acts must not be in gross violation of clearly established law or procedure, which every judge must be familiar with. Every magistrate presiding over a court of law must have the basic rules at the palm of his hands and maintain professional competence at all times. In this case, as found by the CA and the OCA, respondent-judge's actions are more than mere errors of judgment that can be excused and left to the judicial remedy of review by the appellate court for correction. Respondent-judge patently erred in recognizing Omera as the legitimate Barangay Chairman merely by virtue of the mayor's appointment. As held by the CA, basic is the rule under existing and established laws that permanent vacancies in elective positions are filled through automatic succession, not by appointment. Respondent-judge also patently erred in issuing a TRO and WPI without requiring the applicant to post a bond. x x x Respondent-judge's patent disregard of basic and established rules and jurisprudence undoubtedly amounts to gross ignorance of the law and inexcusable abuse of authority.

2. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; REQUIREMENT FOR POSTING OF BOND; EXEMPTION FROM THE POSTING OF THE BOND IS MERELY AN EXCEPTION, HENCE, THE REASON FOR SUCH EXEMPTION MUST BE STATED IN THE ORDER.— Section 4, Rule 58 of the Rules of Court clearly states: **SEC. 4.** ***Verified application and bond for preliminary injunction or temporary restraining order***. x x x

(b) **Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.** x x x Clearly, exemption from the posting of the bond is merely an exception. Hence, the reason for such exemption must be stated in the order. In *Universal Motors Corporation v. Judge Rojas*, we elucidated that while Section 4(b), Rule 58 of the Rules of Court gives the presiding judge the discretion to require a bond before granting a temporary restraining order, the Rules did not intend to give the judge the license to exercise such discretion arbitrarily to favor one party and prejudice the other. The importance of the bond is clearly expressed in the above-cited provision, *i.e.*, it shall answer to the damages which the enjoined party may sustain by reason of the injunction or TRO. Thus, unless it is shown that the enjoined party will not suffer any damage, the presiding judge must require the applicant to post a bond, otherwise the courts could become instruments of oppression and harassment.

3. ID.; CIVIL PROCEDURE; EXECUTION OF JUDGMENT; EXECUTION PENDING APPEAL, ALSO CALLED DISCRETIONARY EXECUTION IS ALLOWED UPON GOOD REASONS STATED IN A SPECIAL ORDER AFTER DUE HEARING; VIOLATION IN CASE AT BAR.— Execution pending appeal, also called discretionary execution under Section 2(a), Rule 39 of the Rules of Court, is allowed upon good reasons to be stated in a special order after due hearing. Here, as found by the CA, aside from Omera's bare allegations, there was no evidence presented to support the claim that execution pending appeal was necessary and justified. Worse, respondent-judge granted the motion merely on the ground that he "believes that the appeal seemed dilatory" and "the lapse of time would make the ultimate judgment ineffective." Again, basic is the rule that the authority to determine whether an appeal is dilatory or not lies with the appellate court. The trial court's assumption prematurely judged the merits of the main case on

appeal. "Except in cases where the appeal is patently or unquestionably intended to delay, it must not be made the basis of execution pending appeal if only to protect and preserve a duly exercised right to appeal."

4. ID.; DISCIPLINE OF JUDGES; GROSS IGNORANCE OF THE LAW; PENALTY.— Under A.M. No. 01-8-SC or the Amendment to Rule 140 of the Rules of Court Re: Discipline of Justices and Judges, gross ignorance of the law or procedure is considered as a serious charge which is punishable by: (1) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (2) suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

5. ID.; ID.; ID.; IN LIEU OF DISMISSAL FROM SERVICE WHICH MAY NO LONGER BE IMPOSED DUE TO AN OPTIONAL RETIREMENT, THE COURT FINDS THE PENALTY OF FORFEITURE OF ALL BENEFITS, EXCEPT ACCRUED LEAVE CREDITS, TO BE APT AND REASONABLE.— In this case, considering the gravity of respondent-judge's infraction, coupled with the fact that he is found guilty of the same or similar offense for the third time now, dismissal from service with forfeiture of benefits and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations would have been the appropriate penalty had he not availed of his optional retirement. However, as the OCA noted in its recommendation, the Court has in several occasions allowed deviations from the range of the amounts of imposable fines that are either less or more than those prescribed. In lieu of dismissal from service which may no longer be imposed due to his retirement, therefore, the Court finds the penalty of forfeiture of all benefits, except accrued leave credits, to be apt and reasonable.

D E C I S I O N

***PER CURIAM*:**

This administrative matter is rooted from a Letter-Complaint[1] filed by Abdulsamad P. Bogabong (complainant), charging Judge Rasad G. Balindong (respondent-judge) in his capacity as Acting Presiding Judge of the Regional Trial Court (RTC) of Marawi City, Lanao del Sur, Branch 8, with gross ignorance of the law, grave abuse of authority, and partiality, relative to a *Quo Warranto* case with prayer for issuance of temporary restraining order (TRO), docketed as Special Civil Action No. 1879-09 (*quo warranto* case).

Factual Antecedents

As the elected First *Kagawad* of Barangay Bubonga Marawi, Marawi City, Lanao del Sur in the July 2002 Barangay Elections, complainant assumed office as Barangay Chairman in hold-over capacity by operation of law due to the death of Dianisia P. Bacarat, incumbent Chairman in hold-over capacity due to failure of elections on December 15, 2007. On April 9 and 10, 2008, Department of Interior and Local Government (DILG), Province of Lanao del Sur, Provincial Director Haroun Alrashid A. Lucman, Jr. (Director Lucman) issued Certifications[2] to attest to complainant's assumption as Barangay Chairman.[3]

On April 10, 2008, however, Marawi City Mayor Fahad U. Salic appointed a certain civilian, Omera Hadji Isa-Ali (Omera) as Barangay Chairman. In a Certification dated May 7, 2008, Director Lucman recognized Omera as the legitimate Barangay Chairman.[4]

Complainant filed a letter-complaint before the DILG, Autonomous Region of Muslim Mindanao (ARMM), to question

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

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

[3] *Id*. at 200.

[4] *Id*.

Omera's appointment. In a DILG-ARMM Resolution dated May 5, 2009, complainant was again acknowledged as the legitimate Barangay Chairman in hold-over capacity. By virtue thereof, complainant again took over chairmanship in hold-over capacity of Barangay Bubonga Marawi. As Chairman, complainant was able to withdraw the May 2009 Internal Revenue Allotment (IRA) of the barangay.[5]

This prompted Omera to file the *quo warranto* case against complainant.[6]

In an Order dated July 2, 2009, respondent-judge granted Omera's application for TRO. Subsequently, in an Order dated July 22, 2009, respondent-judge issued a Writ of Preliminary Injunction (WPI), directing complainant and the Land Bank of the Philippines (LBP) of Marawi City to cease and desist from disbursing and releasing the IRA of the barangay pending litigation.[7]

Thereafter, in his Decision dated August 24, 2009, respondent-judge granted Omera's Petition for *Quo Warranto* and held that complainant's right to the position was deemed waived as he failed to assume office within one year and two months after Bacarat's death.[8]

Complainant appealed the decision to the Court of Appeals (CA), Cagayan de Oro City docketed as CA-G.R. SP No. 03135-MIN.[9]

Meanwhile, Omera filed an Urgent Motion for Execution Pending Appeal, citing impairment of the delivery of basic public services and the continuation of barangay projects as good reasons therefor. In his Order dated August 28, 2009, respondent-judge granted the motion on the ground cited by Omera and

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[5] *Id.* at 200-201.

[6] *Id.* at 201.

[7] *Id.*

[8] *Id.*

[9] *Id.*

that complainant's appeal "seemed dilatory" and that "the lapse of time would make the ultimate judgment ineffective." On even date, respondent-judge issued the corresponding writ of execution, directing the LBP to release the IRA to Omera.[10]

Complainant then filed a Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court before the CA-Cagayan de Oro City, docketed as CA-G.R. SP No. 03152-MIN, seeking to annul respondent-judge's Order which granted the issuance of the writ of execution pending appeal.[11]

The CA consolidated CA-G.R. SP No. 03135-MIN and CA-G.R. SP No. 03152-MIN. In its Decision[12] dated September 13, 2012, the CA reversed and set aside respondent-judge's August 24, 2009 Decision and declared complainant the rightful Barangay Chairman of Barangay Bubonga Marawi for the 2007-2010 term of office. The CA explained that both under the Local Government Code and the Muslim Mindanao Autonomy Act No. 25, permanent vacancies in elective positions for reasons such as death or permanent incapacity are filled through automatic succession. Specifically for permanent vacancy in the office of the Barangay Chairman, the highest ranking *sangguniang* barangay member becomes the Barangay Chairman. The CA further held that respondent-judge gravely erred in ruling that complainant had waived his right to public office, explaining that complainant's obedience to the authority which recognized Omera as the legitimate holder of the contested position cannot be deemed a waiver of his right and interest thereto.

Further, the CA nullified respondent-judge's August 28, 2009 Order which granted the motion for execution pending appeal. The CA found no evidence to prove Omera's alleged "good reasons" as ground to grant the said motion.[13]

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[10] *Id*.

[11] *Id*.

[12] Penned by Associate Justice Pedro B. Corales, with Associate Justices Romulo V. Borja and Ma. Luisa C. Quijano-Padilla, concurring; *id*. at 7-24.

[13] *Id*.

The CA also found respondent-judge to have committed grave abuse of discretion and gross violation of the rules, amounting to gross ignorance of the law when he ordered the issuance of the TRO and WPI without requiring the posting of bonds.[14]

The CA's September 13, 2012 Decision became complainant's basis to file the instant administrative matter against respondent-judge.

For his part, respondent-judge denied the charges against him. He averred that in resolving the subject *quo warranto* case, as in all the other *quo warranto* cases that he resolved, he acted reasonably, prudently, and appropriately. He even added that he gave both parties their day in court, acting impartially when he could have decided in favor of herein complainant who was then represented by counsel who is respondent-judge's fraternity brother. Finally, respondent-judge concluded that any error that he incurred was a mere error of judgment, which does not warrant administrative sanctions. Respondent-judge also faulted complainant for not filing a supersedeas bond under Section 3, Rule 39 of the Rules of Court to prevent the enforcement of the writ of execution pending appeal.[15]

After review and evaluation of this administrative case, the Office of the Court Administrator (OCA) recommended that respondent-judge be found guilty of gross ignorance of the law and grave abuse of authority.[16]

The OCA was one with the CA's findings that respondent-judge plainly defied established rules and jurisprudence when he ordered the execution pending appeal of his August 24, 2009 Decision without evidence on record to support the ground alleged by the applicant therefor. The OCA explained that the execution of judgment pending appeal is a mere exception to the general rule that only a final and executory judgment may be executed. As such, while the presiding judge is given the

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[14] *Id.*

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

[16] *Id.* at 200-210.

discretion to decide on the propriety of the execution pending appeal, the grant thereof must be strictly construed and firmly grounded on the existence of "good reasons" pursuant Section 2(a), Rule 39 of the Rules of Court.

In this case, the OCA noted that as found by the CA, the issuance of the writ of execution pending appeal was plainly grounded on Omera's allegation that "impairment of public services will occur" if respondent-judge's August 24, 2009 Decision, recognizing Omera as the rightful Barangay Chairman and directing the release to her of the Barangay's IRA, will not be implemented. However, no evidence was found on record to support such claim.

The OCA also found respondent-judge to have decided on the basis of pure speculation when he ordered the execution pending appeal by reasoning that complainant's appeal was merely a dilatory tactic and that the execution of the appealed Decision is necessary to avoid the possibility of rendering it ineffective. The OCA noted that it is basic that it is not within the province of the trial court to decide whether an appeal is or appears to be dilatory.

Lastly, the OCA ruled that respondent-judge gravely disregarded settled rules when he granted the TRO and WPI without requiring Omera, the applicant thereof, to file bonds as required by Section 4(b),[17] Rule 58 of the Rules of Court. The OCA explained that while said provision gives the judge the discretion to decide whether or not to exempt the TRO/WPI applicant from the posting of the bond, it does not intend

[17] Sec. 4. Verified application and bond for preliminary injunction or temporary restraining order. A preliminary injunction or temporary restraining order may be granted only when: x x x (b) Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued x x x

to give the judge the license to arbitrarily exercise such discretion. As found by the CA, such disregard of established rules constitutes gross ignorance of the law.

Such gross ignorance of the law, according to the OCA, was further demonstrated by the fact that this is the third time that respondent-judge was similarly charged for the improper issuance of a TRO/WPI.

The Court *En Banc*, in a Resolution dated February 23, 2009 in *Benito v. Balindong*,[18] found respondent-judge guilty of gross ignorance of the law for taking cognizance of a petition and actually issuing a TRO and WPI therein without jurisdiction. The said petition sought to annul a DILG-ARMM department order, issued to implement the Ombudsman's Decision finding certain local government officials guilty of conduct prejudicial to the best interest of the service and thereby ordering their suspension from office without pay for a period of nine months. The Court ruled that respondent-judge's act was a "patent disregard of simple, elementary and well-known rules" considering that the petition actually questions the Ombudsman's decision and the implementation thereof. Republic Act (R.A.) No. 6770 is basic and clear that trial courts have no jurisdiction to review Ombudsman rulings and orders. Respondent-judge was fined ₱30,000.00 for gross ignorance of the law, ₱10,000.00 for violation of the Lawyer's Oath and the Code of Professional Responsibility (CPR), and sternly warned that the commission of the same or similar acts shall be dealt with more severely.

In *Cabili v. Balindong*,[19] the Court *En Banc* again found respondent-judge guilty of gross ignorance of the law for issuing a TRO against a sheriff who was implementing a final and executory judgment of another RTC in a civil case. In finding respondent-judge guilty of gross ignorance of the law, the Court explained that he clearly ignored the principle of judicial stability by issuing a TRO against an order issued by a co-equal court,

[18] 599 Phil. 196 (2009).

[19] 672 Phil. 398 (2011).

and that he knowingly acted on matters pertaining to the execution phase of a final decision of a co-equal and coordinate court. In the said administrative case, the Court acted with leniency in not imposing the maximum penalty provided under Administrative Matter (A.M.) No. 01-8-10-SC. Hence, respondent-judge was merely fined in the amount of ₱30,000.00 with another stern warning that a repetition of the same or similar offense will be dealt with more severely.

Incidentally, respondent-judge's application for optional retirement was approved effective March 31, 2018 but the release of his retirement benefits was held in abeyance.[20]

Considering the foregoing, the OCA recommended that:

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2. respondent Judge Balindong be found **GUILTY** of gross ignorance of the law, incompetence and grave abuse of authority and, accordingly, be **FINED** in the amount of ₱200,000.00 to be deducted from whatever retirement benefits he may be entitled to receive, except his accrued leave credits; and

3. the Financial Management Office, Office of the Court Administrator be **DIRECTED** to release the remainder of the retirement pay and other benefits due Judge Balindong, unless he is charged in some other administrative complaint of the same is otherwise withheld for some other lawful cause.[21]

The Court's Ruling

We adopt the OCA's findings with modification as to the penalty recommended.

Respondent-judge's gross ignorance of the law is unquestionably evident as can be gleaned from the foregoing factual backdrop. While it may be true that his infraction arose from his erroneous rulings and orders, we cannot subscribe to his contention that they were mere error of judgments and as such, do not warrant administrative sanctions.

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[20] *Rollo*, p. 208.

[21] *Id*. at 210.

True, a judge's failure to interpret the law or to properly appreciate the evidence presented does not necessarily render him administratively liable. Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice will be administratively sanctioned.[22] However, it is also settled that when a law or rule is basic, judges owe it to their office to simply apply the law. Anything less is ignorance of the law,[23] warranting administrative sanction. In several cases, this Court had the occasion to explain:

> Though not every judicial error bespeaks ignorance of the law or of the rules, and that, when committed in good faith, does not warrant administrative sanction, the rule applies only in cases within the parameters of tolerable misjudgement. When the law or the rule is so elementary, not to be aware of it or to act as if one does not know it constitutes gross ignorance of the law. One who accepts the exalted position of a judge owes the public and the court proficiency in the law, and the duty to maintain professional competence at all times. When a judge displays an utter lack of familiarity with the rules, he erodes the confidence of the public in the courts. A judge is expected to keep abreast of the developments and amendments thereto, as well as of prevailing jurisprudence. Ignorance of the law by a judge can easily be the mainspring of injustice.
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> In the absence of fraud, dishonesty, or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action. However, the assailed judicial acts must not be in gross violation of clearly established law or procedure, which every judge must be familiar with. Every magistrate presiding over a court of law must have the basic rules at the palm of his hands and maintain professional competence at all times.[24] (Citations omitted)

In this case, as found by the CA and the OCA, respondent-judge's actions are more than mere errors of judgment that

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[22] *Salvador v. Judge Limsiaco*, 519 Phil. 683, 687 (2006), citing *Cruz v. Judge Ituralde*, 450 Phil. 77, 88 (2003).

[23] *Philippine Investment Two (SPV-AMC), Inc. v. Judge Mendoza*, A.M. No. RTJ-18-2538, November 21, 2018.

[24] *Dr. Sunico v. Judge Gutierrez*, 806 Phil. 94, 109 (2017).

can be excused and left to the judicial remedy of review by the appellate court for correction.

Respondent-judge patently erred in recognizing Omera as the legitimate Barangay Chairman merely by virtue of the mayor's appointment. As held by the CA, basic is the rule under existing and established laws that permanent vacancies in elective positions are filled through automatic succession, not by appointment.

Respondent-judge also patently erred in issuing a TRO and WPI without requiring the applicant to post a bond. Section 4, Rule 58 of the Rules of Court clearly states:

SEC. 4. *Verified application and bond for preliminary Injunction or temporary restraining order.* — A preliminary injunction or temporary restraining order may be granted only when:

(a) The application in the action or proceeding is verified, and shows facts entitling the applicant to the relief demanded; and

(b) **Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.** (Emphasis supplied)

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Clearly, exemption from the posting of the bond is merely an exception. Hence, the reason for such exemption must be stated in the order. In *Universal Motors Corporation v. Judge Rojas*,[25] we elucidated that while Section 4(b), Rule 58 of the Rules of Court gives the presiding judge the discretion to require a bond before granting a temporary restraining order, the Rules did not intend to give the judge the license to exercise such discretion arbitrarily to favor one party and prejudice the other.

[25] 498 Phil. 62 (2005).

The importance of the bond is clearly expressed in the above-cited provision, *i.e.*, it shall answer to the damages which the enjoined party may sustain by reason of the injunction or TRO. Thus, unless it is shown that the enjoined party will not suffer any damage, the presiding judge must require the applicant to post a bond, otherwise the courts could become instruments of oppression and harassment.

In this case, respondent-judge's order contained no explanation or, at least, any mention with regard to the posting of the bond when the injunctive reliefs were issued.

Lastly, respondent-judge also gravely erred when he granted Omera's motion for execution pending appeal when there was no evidence presented to justify the same. Execution pending appeal, also called discretionary execution under Section 2(a),[26] Rule 39 of the Rules of Court, is allowed upon good reasons to be stated in a special order after due hearing. Here, as found by the CA, aside from Omera's bare allegations, there was no evidence presented to support the claim that execution pending appeal was necessary and justified.

Worse, respondent-judge granted the motion merely on the ground that he "believes that the appeal seemed dilatory"[27] and "the lapse of time would make the ultimate judgment ineffective."[28] Again, basic is the rule that the authority to

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[26] Sec. 2. *Discretionary execution.*

(a) Execution of a judgment or final order pending appeal. — On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

[27] *Rollo*, p. 176.

[28] *Id.*

determine whether an appeal is dilatory or not lies with the appellate court. The trial court's assumption prematurely judged the merits of the main case on appeal. "Except in cases where the appeal is patently or unquestionably intended to delay, it must not be made the basis of execution pending appeal if only to protect and preserve a duly exercised right to appeal."[29]

Respondent-judge's patent disregard of basic and established rules and jurisprudence undoubtedly amounts to gross ignorance of the law and inexcusable abuse of authority.

Under A.M. No. 01-8-SC or the Amendment to Rule 140 of the Rules of Court Re: Discipline of Justices and Judges,[30] gross ignorance of the law or procedure is considered as a serious charge which is punishable by: (1) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (2) suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

In this case, considering the gravity of respondent-judge's infraction, coupled with the fact that he is found guilty of the same or similar offense for the third time now, dismissal from service with forfeiture of benefits and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations would have been the appropriate penalty had he not availed of his optional retirement. However, as the OCA noted in its recommendation, the Court has in several occasions allowed deviations from the range of the amounts of imposable fines that are either less

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[29] *Villamor v. National Power Corporation*, 484 Phil. 298, 315 (2004), citing *Intramuros Tennis Club, Inc. v. Philippine Tourism Authority*, 395 Phil. 278, 299 (2000).

[30] Effective October 1, 2001.

or more than those prescribed.[31] In lieu of dismissal from service which may no longer be imposed due to his retirement, therefore, the Court finds the penalty of forfeiture of all benefits, except accrued leave credits, to be apt and reasonable.

CONSIDERING THE FOREGOING, Judge Rasad G. Balindong in his capacity as Acting Presiding Judge of the Regional Trial Court of Marawi City, Lanao del Sur, Branch 8, is found **GUILTY** of Gross Ignorance of the Law and thereby, in lieu of dismissal from service which may no longer be imposed due to his retirement, all his benefits, except accrued leave credits, are hereby **FORFEITED**. He is further **DISQUALIFIED** from reinstatement or appointment to any public office, including government-owned and controlled corporations.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, and *Zalameda, JJ.,* concur.

EN BANC

[A.M. No. RTJ-19-2559. August 14, 2019]
(Formerly OCA IPI No. 11-3810-RTJ)

PRESIDING JUDGES TOMAS EDUARDO B. MADDELA III and MERINNISA O. LIGAYA, Municipal Trial Court in Cities, Branches 5 and 1, respectively, Olongapo City, Zambales, *complainants, vs.* **PRESIDING JUDGE NORMAN V. PAMINTUAN,**

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[31] See *Office of the Court Administrator v. Judge Aventurado,* 808 Phil. 786 (2017).

Regional Trial Court, Branch 73, Olongapo City, Zambales, *respondent.*

[A.M. No. RTJ-19-2561. August 14, 2019]
(formerly A.M. No. 15-02-49-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **PRESIDING JUDGE NORMAN V. PAMINTUAN, Regional Trial Court, Branch 73, Olongapo City, Zambales,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; DISCIPLINE OF JUDGES; OCA CIRCULAR NO. 87-2008; UNLESS FOR VALID REASONS, THE REFUSAL OF A JUDGE TO PARTICIPATE IN THE RAFFLE OF REQUEST FOR SOLEMNIZATION OF MARRIAGE SHALL BE CONSTRUED AS SHIRKING FROM JUDICIAL DUTY; APPLICATION IN CASE AT BAR.— OCA Circular No. 87-2008 provides that the Court, in its August 12, 2008 Resolution in A.M. No. 08-7-429-RTC, resolved, among others, to "**DIRECT** the Judges of multiple *sala* courts to strictly observe the raffling of requests for solemnization of marriage because of numerous anomalies discovered in the solemnization of marriage during various judicial audits in the lower court. Unless for valid reasons, the refusal of a judge to participate in the raffle of request for solemnization of marriage shall be construed as shirking from judicial duty." The OCA reported that the following fourteen (14) requests for solemnization of marriage raffled to respondent were re-raffled to other Judges: x x x The Court is clear in its directive that "[u]nless for valid reasons, the refusal of a judge to participate in the raffle of request for solemnization of marriage shall be construed as shirking from judicial duty." Considering that his absences on July 20, 2011 and August 20, 2011 were not covered by any applications for leave, there is no valid reason for his failure to solemnize the three (3) marriages raffled to him on the said dates. His failure to solemnize the three (3) marriages for no valid reason is tantamount to a refusal to

participate in the raffle. Respondent shirked from his judicial duty of participating in the raffle for requests of solemnization of marriage. In doing so, he violated Supreme Court rules, directives, and circulars.

2. POLITICAL LAW; ADMINISTRATIVE LAW; IN ADMINISTRATIVE PROCEEDINGS, ONLY SUBSTANTIAL EVIDENCE, THAT IS, THAT AMOUNT OF EVIDENCE THAT A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO SUPPORT A CONCLUSION, IS REQUIRED.— Preliminarily, it must be emphasized that "in administrative proceedings, only substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required. The standard of substantial evidence is satisfied when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant."

3. REMEDIAL LAW; DISCIPLINE OF JUDGES; GROSS MISCONDUCT BASED ON BRIBERY; AN ACCUSATION OF BRIBERY IS EASY TO CONCOCT AND DIFFICULT TO DISPROVE; ESTABLISHED IN CASE AT BAR.— The Court recognizes that "[a]n accusation of bribery is easy to concoct and difficult to disprove." This is owing to the fact that in cases of this nature, no witness can be called to testify on the attempt at bribery. No third party is ordinarily involved to witness the incident. The only ones present in such a case is the one offering the bribe and the one to whom the bribe is offered. This is the reality of a charge of gross misconduct on the basis of bribery. Based on the foregoing, only two persons have personal knowledge of the actual bribery attempt: Exec. Judge Paradeza and respondent. However, the incidents immediately prior to and after the bribery attempt could be corroborated by Mr. Dalit and Atty. Aquino, which they did in their respective affidavits. x x x In the face of Exec. Judge Paradeza's straightforward account of the incident, corroborated circumstantially by Mr. Dalit and Atty. Aquino, respondent's bare denial deserves scant consideration. "Suffice it to say that 'denial is an intrinsically weak defense. To merit credibility, it must be buttressed by strong evidence of non-culpability. If unsubstantiated by clear and convincing evidence [as in this

case], it is negative and self-serving, deserving no greater value than the testimony of credible witnesses who testify on affirmative matters.'" Besides, Exec. Judge Paradeza had no ill motive to accuse respondent of such a serious charge. Further, respondent's attempt to cast doubt on the testimonies of Mr. Dalit and Atty. Aquino due to their professional relationship with Exec. Judge Paradeza does not persuade the Court. Taken together, their affidavits convince the Court that, indeed, respondent attempted to bribe Exec. Judge Paradeza with the sum of One Hundred Thousand Pesos (₱100,000.00) to secure the conviction of the accused in the case of *People v. Terrie*. Respondent's attempt to bribe Exec. Judge Paradeza constitutes gross misconduct. x x x Further, respondent's act is violative of the New Code of Judicial Conduct for the Philippine Judiciary, specifically, Canons 1, 2, and 4, x x x Respondent's attempt to bribe Exec. Judge Paradeza with ₱100,000.00 to influence the outcome of the case of *People v. Terrie*, to the benefit of his best friends, the children of therein private complainant, is plainly unlawful behavior. It is motivated by a corrupt intent to wrongfully use his station to procure some benefit for the children of private complainant, contrary to duty and the rights of others. For this reason, respondent is administratively liable for gross misconduct.

4. ID.; ID.; MISCONDUCT; IN ORDER TO DIFFERENTIATE GROSS MISCONDUCT FROM SIMPLE MISCONDUCT, THE ELEMENTS OF CORRUPTION, CLEAR INTENT TO VIOLATE THE LAW, OR FLAGRANT DISREGARD OF ESTABLISHED RULE, MUST BE MANIFEST IN THE FORMER.— "Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former." Corruption, as an element of grave misconduct, consists in the

act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.

5. ID.; EVIDENCE; TESTIMONIAL EVIDENCE; DOCTRINE OF INDEPENDENTLY RELEVANT STATEMENTS; THE DOCTRINE HOLDS THAT CONVERSATIONS COMMUNICATED TO A WITNESS BY A THIRD PERSON MAY BE ADMITTED AS PROOF THAT, REGARDLESS OF THEIR TRUTH OR FALSITY, THEY WERE ACTUALLY MADE; HEARSAY RULE DOES NOT APPLY, HENCE, THE STATEMENTS ARE ADMISSIBLE AS EVIDENCE.— The Court stated in *Gubaton v. Amador* that "[u]nder the doctrine of independently relevant statements, only the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial. The doctrine on independently relevant statements holds that conversations communicated to a witness by a third person may be admitted as proof that, regardless of their truth or falsity, they were actually made. Evidence as to the making of such statements is not secondary but primary, for in itself it (*a*) constitutes a fact in issue or (*b*) is circumstantially relevant to the existence of such fact. Accordingly, the hearsay rule does not apply and, hence, the statements are admissible as evidence."

6. ID.; DISCIPLINE OF JUDGES; THE NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY; THE PRESTIGE OF JUDICIAL NOTICE SHALL NOT BE USED OR LENT TO ADVANCE PRIVATE INTEREST OF OTHERS, NOR CONVEY OR PERMIT OTHERS TO CONVEY THE IMPRESSION THAT THEY ARE IN A SPECIAL POSITION TO INFLUENCE THE JUDGE; VIOLATION IN CASE AT BAR.— The New Code of Judicial Conduct for the Philippine Judiciary mandates that "[p]ropriety and the appearance of propriety are essential to the performance of all the activities of a judge." Further, Section 1 of Canon 4 provides that "[j]udges shall avoid impropriety and the appearance of impropriety in all of their activities." Meanwhile, Section 4 of Canon 1 states that "[j]udges shall not allow family, social, or other relationships to influence judicial conduct or judgment. **The prestige of judicial office shall not be used or lent to advance the private interests of others,**

nor convey or permit others to convey the impression that they are in a special position to influence the judge." Respondent admitted that he engaged in the following activities: (1) the organization of the Freddie Aguilar concert and solicitation of donations therefor; (2) the celebration of the 60th birthday of his wife in a venue owned by a person who apparently has a pending case for trafficking in the RTC of Olongapo City; and (3) the organization of a shooting event in his name and request of donations therefor. The Court finds that his participation in the above activities, while not directly related to his judicial functions, duties, and responsibilities, nonetheless constitutes a violation of the New Code of Judicial Conduct for the Philippine Judiciary. As previously stated, judges are mandated to avoid the appearance of impropriety in their activities. Further, judges shall not allow others to convey the impression that they are in a special position to influence him. By engaging in such activities that impart a sense of impropriety, respondent violated provisions of the New Code of Judicial Conduct for the Philippine Judiciary. It also conveys the impression that he may be influenced by certain people involved in the said activities.

7. **ID.; ID.; GROSS INEFFICIENCY AND UNDUE DELAY IN RENDERING DECISIONS; THE 1987 CONSTITUTION MANDATES THAT ALL CASES OR MATTERS BE DECIDED OR RESOLVED BY THE LOWER COURTS WITHIN THREE (3) MONTHS FROM DATE OF SUBMISSION; VIOLATION IN CASE AT BAR.—** "The 1987 Constitution mandates that all cases or matters be decided or resolved by the lower courts within three months from date of submission. Judges are expected to perform all judicial duties, including the rendition of decisions, efficiently, fairly, and with reasonable promptness." In this regard, the Court has previously proclaimed that "[j]udges have the sworn duty to administer justice and decide cases promptly and expeditiously because justice delayed is justice denied." x x x The Court cannot exonerate respondent from administrative liability based on his flimsy reason. In *Office of the Court Administrator v. Lopez, et al.*, the Court reminded "judges to decide cases with dispatch" and "that the failure of a judge to decide a case within the required period is not excusable and constitutes gross inefficiency, and non-observance of this rule is a ground for administrative sanction

against the defaulting judge. Upon proper application and in meritorious cases, however, the Court has granted judges of lower courts additional time to decide cases beyond the 90-day reglementary period." In the instant case, respondent could have applied for additional time to decide the 16 cases beyond the mandated reglementary period. He did not do so. His failure to apply for additional time is fatal to his defense. Respondent's failure to decide the 16 cases within the mandated period constitutes gross inefficiency and undue delay in rendering decisions assigned to him.

8. ID.; ID.; WHEN ADJUDGED ADMINISTRATIVELY LIABLE FOR GROSS MISCONDUCT, UNDUE DELAY IN RENDERING DECISIONS, AND VIOLATION OF SUPREME COURT RULES, DIRECTIVES, AND CIRCULARS; IMPOSABLE PENALTY.— In sum, respondent is adjudged administratively liable for gross misconduct, undue delay in rendering decisions, and violation of Supreme Court rules, directives, and circulars. In previous administrative cases, the Court imposed the penalty corresponding to the most serious charge and considered the rest as aggravating circumstances in accordance with Section 50, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (*RRACCS*). However, it is more proper to impose upon respondent separate penalties for each offense he is adjudged administratively liable. This is pursuant to the Court's ruling in *Boston Finance and Investment Corp. v. Judge Gonzalez*, which set forth the following guidelines in the imposition of penalties in administrative matters involving members of the Bench or court personnel: x x x While the Court has not had the occasion to apply *Boston Finance and Investment Corp. v. Gonzalez* in the discipline of judges or justices of the lower courts, the instant matter presenting the first opportunity to do so, the Court applied the said case in *Re: Complaint Against Mr. Ramdel Rey M. De Leon* and *Office of the Court Administrator v. Laranjo*. Specifically, the Court applied its ruling on the discipline of court personnel by imposing the penalty for the most serious charge in the said cases and considering the other charges as aggravating circumstances. Considering the foregoing, the Court shall impose upon respondent separate penalties for each count of administrative offense. x x x For his gross misconduct in attempting to bribe Exec. Judge Paradeza to enter a guilty verdict

in the case of *People v. Terrie,* the Court imposes upon respondent the penalty of dismissal from service with forfeiture of all retirement benefits, except his accrued leave credits, and with prejudice to re-employment in the government, including government-owned or controlled corporations. Considering that the Court has already dismissed respondent, the penalty of suspension from office without salary and other benefits is no longer possible. Hence, the penalty of fine is more appropriate in the case of his three *less serious charges*. The Court, thus, imposes on respondent a fine of Twelve Thousand Pesos (₱12,000.00) each for (1) undue delay in rendering a decision in the cases assigned to him, (2) violation of the Supreme Court rules, directives, and circulars due to his act of shirking from judicial duty, and (3) violation of the New Code of Judicial Conduct for the Philippine Judiciary by engaging in conflict-of-interest activities.

9. ID.; ID.; GROSS MISCONDUCT IS CLASSIFIED AS A SERIOUS CHARGE; IMPOSABLE PENALTIES.— Gross misconduct is classified as a serious charge under Section 8, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC. Section 11 (A) thereof provides that "[i]f the respondent is guilty of a serious charge, any of the following sanctions may be imposed: 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months[;] or A fine of more than ₱20,000.00 but not exceeding ₱40,000.00."

10. ID.; ID.; UNDUE DELAY IN RENDERING DECISIONS AND VIOLATION OF SUPREME COURT RULES, DIRECTIVES, AND CIRCULARS ARE CLASSIFIED AS LESS SERIOUS CHARGES; IMPOSABLE PENALTIES.— On the other hand, under Section 9, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, the offenses "undue delay in rendering decisions" and "violation of Supreme Court rules, directives, and circulars" are classified as less serious charges. Thus, respondent may be imposed with any of the following sanctions for each of the said less serious charges: 1.

Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or 2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

D E C I S I O N

***PER CURIAM*:**

Antecedents

A.M. No. RTJ-19-2559
[formerly OCA IPI No. 11-3810-RTJ]

This administrative case stemmed from a Letter-Complaint[1] dated October 4, 2011 filed by Hon. Tomas Eduardo B. Maddela III (*Judge Maddela*) and Hon. Merinnisa O. Ligaya (*Judge Ligaya*), Presiding Judges of Branches 5 and 1, respectively, of the Municipal Trial Court in Cities (*MTCC*), Olongapo City, Zambales, addressed to Hon. Richard A. Paradeza (*Exec. Judge Paradeza*), Executive Judge of the Regional Trial Court (*RTC*) of Olongapo City. The subject of the complaint is the alleged failure and neglect of Judge Norman V. Pamintuan (*respondent*), Presiding Judge of Branch 73, Regional Trial Court of Olongapo City, Zambales, to perform the solemnization of marriage of applicants after their requests had been raffled to him, pursuant to Office of the Court Administrator (*OCA*) Circular No. 87-2008 Re: *Guidelines on the Solemnization of Marriage by the Members of the Judiciary*.[2]

In their joint letter-complaint, Judge Maddela and Judge Ligaya alleged that the Office of the Clerk of Court-RTC referred and endorsed the requests for solemnization of marriage to other judges because respondent was, on the scheduled dates, either absent or unavailable due to either high blood pressure, flu, loose bowel movement, or fever. They further averred that, being among the judges to whom said requests were consequently referred, they were confronted with verbal complaints from

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[1] *Rollo* (A.M. No. RTJ-19-2559), p. 4.

[2] *Rollo* (A.M. No. RTJ-19-2561), p. 110.

the couples intending to get married and from their parents and relatives who found themselves being ushered out of the courtroom after being told that respondent was absent.[3]

Judge Maddela and Judge Ligaya contended that respondent's alleged failure to solemnize the marriages raffled to him constitutes "*shirking from judicial duty*."[4] This is pursuant to OCA Circular No. 87-2008, which mandates the strict observance by judges in multiple sala courts of the raffling of requests for solemnization of marriage due to numerous anomalies discovered during various judicial audits in the lower courts. The circular provides in paragraph (c) that "[u]nless for valid reasons, the refusal of a judge to participate in the raffle of request for solemnization of marriage shall be construed as shirking from judicial duty."[5]

In his Letter-Comment[6] dated February 8, 2012, respondent denied that his failure to solemnize various marriages raffled to his sala was part of a "vicious pattern of neglect."[7] He insisted that unavoidable circumstances happened; his sickness was beyond his control and never intentional. He declared that despite his then pending surgery for his multinoduled-thyroid and hypertension, stage II, he returned to work on November 15, 2011. He also submitted that all absences due to his ailment were covered by the necessary applications for leave of absence with attached medical certificates. These applications were all duly approved by the then incumbent Executive Judge of the RTC of Olongapo City.[8]

In its October 13, 2014 Resolution,[9] the Court reminded respondent of his duty to dispose of the court's business promptly

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[3] *Id.*

[4] *Id.* at 111.

[5] *Id.*

[6] *Rollo* (AM. No. RTJ-19-2559), pp. 24-25.

[7] *Id.* at 24.

[8] *Id.*

[9] *Id.* at 61-62.

and to be mindful of his absences. It also directed the OCA to immediately conduct a judicial audit of the RTC of Olongapo City, Zambales, Branch 73, presided by respondent, starting August 2011 onwards and to submit a report thereon within sixty (60) days from completion thereof.[10]

A.M. No. RTJ-19-2561
[formerly A.M. No. 15-02-49-RTC]

In the course of the judicial audit conducted from January 26 to January 30, 2015, with Atty. Rullyn S. Garcia (*Atty. Garcia*) presiding, the other judges of the first and second level courts in Olongapo City, as well as the Clerk of Court of the RTC, Olongapo City, ventilated their complaints against respondent.[11]

Exec. Judge Paradeza, Presiding Judge of the RTC of Olongapo City, Zambales, Branch 72, executed an Affidavit-Complaint[12] against respondent in which he narrated the circumstances of the latter's attempt to bribe him in exchange for a verdict against the accused in a criminal case. He also stated that he intends to file an administrative case for grave misconduct against respondent.[13]

In support of Exec. Judge Paradeza's accusation of bribery against respondent, Atty. John V. Aquino (*Atty. Aquino*), Clerk of Court of the RTC of Olongapo City, Mr. Leo C. Dalit (*Mr. Dalit*), Officer-in-Charge/Legal Researcher II of the RTC of Olongapo City, Branch 72, and Judge Jose L. Bautista, Jr. (*Judge Bautista*), Assisting Presiding Judge of the RTC of Olongapo City, Branch 73, executed their respective Affidavits.[14]

In addition to the allegation of bribery, the other judges present at the meeting divulged that respondent engaged in other

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[10] *Id.* at 62.

[11] *Rollo* (AM. No. RTJ-19-2561), p. 111.

[12] *Id.* at 16-20.

[13] *Id*. at 112.

[14] *Id.* at 49-50, 51-52, 53.

activities which presented a conflict-of-interest situation on his part, such as:

(1) following up on a case involving his Korean friend Park Tae Min, entitled "*People of the Philippines v. Evangeline Kim*," which is pending before the MTCC of Olongapo City, Branch 4;

(2) establishing a surety company, "SURETY BOND INSURANCE SERVICES," its primary purpose to transact business with the lower courts, particularly in Olongapo City, with Ms. Glenda H. Tulio (*Ms. Tulio*), then Sheriff IV of Branch 4;

(3) organizing the concert of Freddie Aguilar in December 2013 for which respondent solicited donations from business establishments; and

(4) holding the 60th birthday party of his wife on January 29, 2014 at the Arizona Beach Resort Hotel in Olongapo City, reportedly owned by someone who is known to have a pending trafficking case in the RTC of Olongapo City.[15]

In support of these charges, Judge Esmeralda B. David (*Judge David*), then Presiding Judge of the MTCC Olongapo City, Branch 4, executed an Affidavit[16] to attest to the foregoing facts.[17]

The judges present at the meeting on January 26, 2015 also claimed that respondent solicited, through Ms. Tulio, monetary donations from lawyers in Olongapo City, for the "1st JUDGE PAMINTUAN SHOOTFEST CUP" held in December 2014. In another meeting held on January 27, 2015, Atty. Manuel R. Rosapapan, Jr. (*Atty. Rosapapan*) and Atty. Leonardo W. Bernabe (*Atty. Bernabe*), Chapter President and Chapter Secretary, respectively, of the Integrated Bar of the Philippines (*IBP*), informed Atty. Garcia that they and other members of their IBP Chapter received the solicitation letter from Ms. Tulio.

[15] *Supra* note 13.

[16] *Id.* at 57-60.

[17] *Supra* note 13.

Atty. Bernabe also stated that respondent would deny motions for reduction of bail so that the accused would be compelled to post a surety bond for their temporary liberty. Both Atty. Rosapapan and Atty. Bernabe, however, declined to execute sworn statements to attest to the fact of their allegations.[18]

Lastly, the judicial audit of the RTC of Olongapo City, Zambales, Branch 73, revealed that of the eight hundred thirty-one (831) cases whose records were presented to and examined by the audit team, only sixty-two (62) cases, or 7.46%, were being handled by respondent, while the rest, consisting of seven hundred sixty-nine (769) cases or 92.54%, were being handled by Judge Bautista. Of the sixty-two (62) cases handled by respondent, eighteen (18) had been submitted for decision. Dismally, sixteen (16) of these cases, or 88%, had been awaiting decision beyond the mandated 90-day period.[19]

In its March 9, 2015 Resolution,[20] the Court preventively suspended respondent from the service, effective immediately, until further orders. It also ordered respondent, within fifteen (15) days from notice, (1) to comment on the January 28, 2015 Affidavit-Complaint[21] of Exec. Judge Paradeza, (2) show cause why no disciplinary action should be taken against him for the conflict-of-interest activities charged against him, and (3) to explain his failure to decide the sixteen (16) cases within the mandated period despite his very minimal caseload.[22] It also consolidated A.M. No. RTJ-19-2561 [formerly A.M. No. 15-02-49-RTC] with A.M. No. RTJ-19-2559 [formerly OCA IPI No. 11-3810-RTJ].[23]

On March 31, 2015, respondent filed an "Urgent Partial Motion for Reconsideration on my Preventive Suspension."[24]

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

[19] *Id*. at 113.

[20] *Id.* at 66-69.

[21] *Supra* note 12.

[22] *Id.* at 67-68.

[23] *Id.* at 69.

[24] *Id.* at 70-72.

Therein, he urged the Court to immediately recall the order for his preventive suspension and to be detailed to the OCA, particularly under the supervision of Court Administrator Jose Midas Marquez, pending investigation of the charges against him. He also prayed that he be allowed to continue receiving his monthly salary and emoluments pending resolution of his case.[25]

On April 16, 2015, respondent filed his Comment[26] in compliance with the Court's March 9, 2015 Resolution. He argued, as summarized by Investigating CA Justice Henri Jean Paul B. Inting[27] (*Investigating Justice Inting*), the following:

> xxx [R]espondent Judge Pamintuan denies the accusation of attempted bribery in its entirety and alleges that the sworn statements submitted by [Exec.] Judge Paradeza, Judge Bautista, Atty. Aquino, and Mr. Dalit are incredible and unsupported by evidence.
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> Respondent Judge Pamintuan insists that he did not commit bribery, much less an attempt thereof, and thus cannot be held liable for the offense. He argues that even if the allegations against him were true, they do not amount to bribery as defined and penalized under the Revised Penal Code.
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> Furthermore, respondent Judge Pamintuan denies having offered the sum of ₱100,000.00 to [Exec.] Judge Paradeza in his office to coax the latter to render a judgment of conviction in a criminal case. He also denies that he subsequently returned to the latter's office on a number of occasions to inquire about the case. He theorizes that given the volume of people who frequent [Exec.] Judge Paradeza's court, it is possible that [Exec.] Judge Paradeza mistook him as the one who went to his office on the alleged occasions. He further speculates: "*[in] all likelihood, the person who passed by and went back to the office of Paradeza was [Judge] Bautista who he mistakenly thought was me. This conclusion is not far-fetched considering that Bautista is likewise a Presiding Judge of a Regional Trial Court of Olongapo City who assists me in the management of Branch 73. Furthermore, this is also probable since [Judge] Bautista is related*

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

[26] *Id.* at 73-99.

[27] Now a Member of this Court.

by affinity to the children of the private complainant in said case and was aware of their intentions to influence the outcome of the same with money."

Alleging that [Exec.] Judge Paradeza's allegations against him are preposterous, respondent Judge Pamintuan reasons the following: 1) he would not have offered money to [Exec.] Judge Paradeza, explained the reasons therefor, and vigorously insisted that the latter accept it in a venue where there was high risk that said activity would be discovered; 2) he would not have gone to the office of [Exec.] Judge Paradeza with ₱100,000.00 in his pocket considering that the amount is of considerable value, which would be quite thick in cash regardless of the denominations of the bills involved, and thus would have been easily detected and would have aroused the suspicion of any reasonable observer; 3) he would not have waited for almost an hour outside the office of [Exec.] Judge Paradeza in the presence of Mr. Dalit given the sensitive nature of the activities and discussion that were to take place in the office of [Exec.] Judge Paradeza, but would have instead called [Exec.] Judge Paradeza through his cellular phone if it was his intention to cajole him to accept his supposed offer; 4) he would not have returned to the office of [Exec.] Judge Paradeza on a number of occasions after a lapse of only a few days from their first encounter considering that [Exec.] Judge Paradeza already exhibited displeasure towards him and even threatened to inform others of what he had done; and 5) he would not have done the acts alleged in light of his career and record in the judiciary. Respondent Judge Pamintuan avers that he would not have engaged in activities such as those alleged given that they would potentially jeopardize his record and career in the judiciary, which is his main source of livelihood.

Respondent Judge Pamintuan further denies having received the amount of ₱400,000.00 from the children of [the] private complainant and thereafter failed to return it following a judgment of acquittal by [Exec.] Judge Paradeza. He likewise denies having subsequently returned to them the amount using his own funds. His reasons are the following: 1) he would not have accepted the amount of ₱400,000.00 from the children of private complainant in the criminal case knowing that it was intended to be given to [Exec.] Judge Paradeza to cause him to render a judgment of conviction in the said case and subsequently failed to return it in the event that an adverse decision is rendered; 2) and assuming that he indeed received the ₱400,000.00, he would not have returned it using his own money as he is in no position to part ways with such a huge amount of money considering his meager

salary as a judge. He adds that the prudent course of action he would have done was to simply retrieve the ₱300,000.00 and ₱100,000.00 purportedly given to [Exec.] Judge Paradeza and Judge Bautista, respectively, and make whole the children of private complainant with these amounts.

Moreover, respondent Judge Pamintuan denies having deposited ₱100,000.00 in the bank account of Judge Bautista on December 8, 2014 for the following reasons: 1) he would not have deposited any amount in the bank account of Judge Bautista given that the latter was not the judge who would render the decision in the criminal case and had absolutely nothing to do with his purported objective of securing a guilty verdict in the case on behalf of the children of private complainant; and 2) he would not have delivered any sum to Judge Bautista since [Exec.] Judge Paradeza had already rendered a judgment of acquittal in said case several months before. He also avers that it is impossible for him to have actually deposited the amount in Judge Bautista's account as he did not have the details of the judge's bank accounts.

Based on the foregoing, respondent Judge Pamintuan contends that [Exec.] Judge Paradeza is not a credible witness.

With respect to Atty. Aquino and Mr. Dalit, respondent Judge Pamintuan avers that they are also incredible witnesses in view of their professional connection and bias towards [Exec.] Judge Paradeza. Additionally, he points out that the sworn statements of Atty. Aquino and Mr. Dalit merely mimic the story of [Exec.] Judge Paradeza; and that the few additional details therein have little importance.

Respondent Judge Pamintuan also contends that the credibility of Judge Bautista as a witness is likewise doubtful in view of his relationship to [Exec.] Judge Paradeza and Atty. Aquino as well as the contents of his sworn statement. He avers that Judge Bautista merely adopted and confirmed the sworn statements of the two as his own. Alleging that it is Judge Bautista who had personal knowledge of the revelations and actuations of the children of private complainant, respondent Judge Pamintuan argues that it is perplexing why Judge Bautista did not elaborate and provide details concerning their attempts at influencing the outcome of the criminal case. In addition, he avers that despite the confirmation of Judge Bautista that he purportedly received ₱100,000.00 from him, Judge Bautista did not renounce the receipt of the amount or return it, but instead kept the money.

Respondent Judge Pamintuan likewise denies that he followed up on the case of a friend pending in another court and that he established a surety bonding company, alleging that these accusations are absurd and unsubstantiated by proof. He also denies having engaged in activities that presented a conflict-of-interest on his part and avers that the alleged activities plainly did not constitute one. He avers that he is wholly unaware of the case entitled "*People v. Evangeline Kim*" which was pending before Judge David's court and does not know any of the parties to the case, especially private complainant. He also points out that the accusation of Judge David regarding his purported outings to her court is not entitled to belief as it is unsupported by competent proof and not based on personal knowledge.

On the allegations that he founded, operated and publicized a surety bonding company by the name of Travellers Insurance & Surety Corporation, respondent Judge Pamintuan avers that it is impossible for him to have undertaken these acts for the following reasons: 1) he does not have knowledge or capabilities to establish or operate this type of business; and 2) he would not have chosen the frontage of the Hall of Justice of Olongapo City as the principal place of business of Travellers Insurance and Surety Corporation or passed around flyers and calling cards pertaining thereto, for if he did so, he would have easily made known and provided evidence for his wrongful and improper acts. He adds that the documentary evidence submitted to substantiate the allegations pertaining to his connection with Travellers Insurance & Surety Corporation does not support the accusation against him. Specifically, there is no indication that he participated in or had any responsibility with respect to the generation of flyers and calling cards pertaining to Travellers Insurance & Surety Corporation. The documents also reveal that it is Ms. Tulio who is actually connected with Travellers Insurance & Surety Corporation and is responsible for its operations.

Respondent Judge Pamintuan also denies the allegations that the following activities presented a conflict-of-interest on his part: 1) the organization of the Freddie Aguilar concert and solicitation of donations therefor; 2) the celebration of the 60th birthday of his wife in a venue owned by a person who apparently has a pending case for trafficking in the RTC of Olongapo City; and 3) the organization of a shooting event in his name and request of donations therefor. He argues that these activities have absolutely nothing to do with his judicial functions, duties and responsibilities.

Respondent Judge Pamintuan further denies the accusation of inefficiency in the disposition of cases and argues that there is valid justification for those that remained undecided beyond the mandated period notwithstanding his light caseload. He alleges that the stenographer involved in the sixteen (16) cases that remained undecided namely, Corazon Balilu, abruptly resigned and left the country. Corazon Balilu allegedly did not complete and submit the relevant transcripts of the cases, thus ultimately preventing him from fully studying the records thereof prior to rendering the appropriate decisions in accordance with due process.

On the basis of all the foregoing, he thereby prays for the dismissal of the complaint against him.[28]

In its April 19, 2016 Resolution,[29] the Court denied the urgent motion of respondent for recall of his preventive suspension and his request to be detailed at the OCA under Court Administrator Marquez for lack of merit. It referred the consolidated administrative cases to the Court of Appeals (*CA*) for raffle among its members. The investigating CA justice was directed to evaluate the cases and make a report and recommendation thereon within ninety (90) days from notice.[30]

Report and Recommendation of the Investigating Justice

The instant administrative cases were raffled to CA Associate Justice Inting. He submitted his Report[31] on October 26, 2016.

In his Report, Investigating Justice Inting stated that the parties manifested, during the hearing held on September 8, 2016, that they were adopting all the pleadings filed before the OCA as their pleadings in the present administrative case and that they were submitting the case based solely on the documentary exhibits and without oral examination.[32]

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[28] *Rollo* (A.M. No. RTJ-19-2561), pp. 121-125.

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

[30] *Id*. at 104.

[31] *Id.* at 109-133.

[32] *Id*. at 114.

Investigating Justice Inting made the following findings:

First, Investigating Justice Inting held that respondent is guilty of undue delay in rendering decisions. He found respondent's failure to decide the sixteen (16) cases within the mandated period unjustifiable. He stated that, considering respondent's light caseload, it is highly unreasonable that 88% of the cases submitted for decision remained undisposed of despite the lapse of the reglementary period. He did not accept the excuse proffered by respondent about the delay being caused by the unexpected resignation of the stenographer and her failure to complete and submit the relevant transcripts of the cases. For him, respondent should have requested an extension of time before the expiration of the reglementary period.[33] Considering that the undue delay involved not just one but numerous decisions, he found that the charge amounts to a serious one. Hence, he recommended that respondent be imposed the maximum penalty for the charge, which is suspension from office without salary and other benefits for six (6) months.[34]

Second, with respect to respondent's absences, Investigating Justice Inting found that, despite being frequent, they cannot be said to be unjustified since corresponding applications for leave of absences were filed and were approved by the Executive Judge. Thus, he did not find respondent's failure to solemnize the marriages raffled to him, on the dates specified, as tantamount to "shirking from judicial duty" under paragraph (c) of OCA Circular 87-2008.[35]

Third, the Investigating Justice found that the charge of bribery against respondent was not proved. He observed that the evidence to support this charge consists of pure allegations by Exec. Judge Paradeza, Atty. Aquino, Mr. Dalit, and Judge Bautista. No other evidence was presented to corroborate and substantiate the charge. Further, he noted that many of the allegations in

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

[34] *Id.* at 128-129.

[35] *Id*. at 128.

the sworn statements of the witnesses were not based on personal knowledge.[36] He, thus, recommended the dismissal of the complaint for bribery against respondent.

Fourth, on the alleged conflict-of-interest, the Investigating Justice found unsupported by competent proof the allegations that respondent (1) personally followed up on the case of a friend which was pending before the court of Judge David; and (2) established, ran, and promoted a surety bonding company with the assistance of Ms. Tulio.[37]

Nevertheless, since respondent admitted that he (1) organized the Freddie Aguilar concert and solicited donations therefor, (2) celebrated the 60th birthday of his wife at a venue owned by a person who apparently has a pending case for trafficking with the RTC of Olongapo City, and (3) organized a shooting event in his name and requested donations therefor, the Investigating Justice found that respondent violated the New Code of Judicial Conduct for the Philippine Judiciary, specifically Section 4[38] of Canon 1[39] in relation to Section 10[40]

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[36] *Id.* at 129-130.

[37] *Id.* at 131.

[38] **SECTION 4.** Judges shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge. (*New Code of Judicial Conduct for the Philippine Judiciary*, A.M. No. 03-05-01-SC, April 27, 2004)

[39] Entitled "Independence."

[40] **SECTION 10.** Subject to the proper performance of judicial duties, judges may:

(a) Write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;

(b) Appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;

(c) Engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

of Canon 4.[41] Thus, Investigating Justice Inting recommended that respondent be fined the amount of ₱10,000.00, with a warning that any similar violation in the future shall be dealt with more severely.[42]

Accordingly, Investigating Justice Inting made the following recommendations to the Court:

> A. In [A.M. No. RTJ-19-2559 formerly] OCA IPI No. 11-3810-RTJ
>
> 1. DISMISSAL OF THE COMPLAINT FOR VIOLATION OF OCA CIRCULAR 87-2008 for lack of sufficient basis that respondent Judge Pamintuan's failure to solemnize the marriages raffled to him on the dates specified is tantamount to "shirking from judicial duty" under paragraph (c) of the circular.
>
> B. In [A.M. No. RTJ-19-2561 formerly] A.M. No. 15-02-49-RTC
>
> 1. DISMISSAL OF THE CHARGE OF BRIBERY for insufficiency of evidence;
>
> 2. SUSPENSION OF RESPONDENT JUDGE PAMINTUAN FROM OFFICE WITHOUT SALARY AND OTHER BENEFITS FOR SIX (6) MONTHS for inefficiency and undue delay in rendering decisions assigned to him; and
>
> 3. IMPOSITION UPON RESPONDENT JUDGE PAMINTUAN OF A FINE IN THE AMOUNT OF ₱10,000.00 for violation of Section 4 of Canon 1 and Section 1 of Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary, WITH A WARNING THAT ANY SIMILAR VIOLATION IN THE FUTURE SHALL BE DEALT WITH MORE SEVERELY.[43]

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[41] Entitled "Propriety."

[42] *Rollo* (A.M. No. RTJ-19-2561), p. 132.

[43] *Id.* at 132-133.

Report and Recommendation of the OCA

In its November 23, 2016 Resolution,[44] the Court resolved to refer the administrative matters to the OCA for evaluation, report and recommendation.[45]

In its June 6, 2017 Memorandum,[46] the OCA recommended that respondent "be **ADJUDGED GUILTY** of gross misconduct constituting violations of the Code of Judicial Conduct, undue delay in rendering decisions, and violation of Supreme Court rules, directives and circulars, and be **METED** the penalty of **DISMISSAL** from the service, with forfeiture of his retirement benefits, except his accrued leave credits, and with prejudice to reinstatement in any branch of the government, including government-owned and controlled corporations."[47]

First, as to respondent's failure to solemnize marriages raffled to his sala, the OCA held that his failure is hardly justified and may, in fact, be construed as "*shirking from judicial duty*." It noted that fourteen (14) requests for solemnization of marriage raffled to respondent were re-raffled to other judges. These 14 marriages were scheduled for solemnization before respondent on nine (9) separate days from June to October 2011: three (3) days in June, *i.e.*, on the 15th, 16th and 21st; one (1) day in July, on the 20th; two (2) days in August, *i.e.*, on the 10th and 20th; two (2) days in September, *i.e.*, on the 8th and 22nd; and one (1) day in October, on the 20th.

The OCA concluded that, contrary to respondent's claim that all his absences resulting in his failure to solemnize the marriages assigned to him were "*due to his ailment*," the records of the Employees' Leave Division, OCA, Office of Administrative Services show that out of the nine (9) days that respondent was absent, he was on sick leave for four (4) days

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[44] *Rollo* (A.M. No. RTJ-19-2559), p. 214.

[45] *Id.*

[46] *Rollo* (A.M. No. RTJ-19-2561), pp. 134-161.

[47] *Id.* at 161.

only, *i.e.*, on August 10, 2011, September 8 and 22, 2011, and October 20, 2011; and on forfeitable leave for three (3) days, *i.e.*, June 15, 16, and 21, 2011. There is no showing that he filed his applications for leave of absence for July 20, 2011 and August 20, 2011. The OCA concluded that his failure to solemnize the marriages on those dates cannot be justified and can be construed as "*shirking from judicial duty*."[48]

Second, on the alleged bribery attempt, the OCA noted that Exec. Judge Paradeza's testimony was based on his personal knowledge. However, his testimony that respondent came to his office was corroborated by Mr. Dalit. The OCA declared that while there is no direct evidence that will corroborate Exec. Judge Paradeza's allegations that respondent attempted to bribe him, said allegations deserve full faith and credit. Further, it found that the respective statements of Mr. Dalit and Atty. Aquino that Exec. Judge Paradeza told them immediately after respondent had left that the latter attempted to bribe him constituted independently relevant statements and are, thus, admissible as an exception to the hearsay rule. Also, the OCA observed that respondent failed to impute, much less prove, any evil motive on the part of Exec. Judge Paradeza for implicating him on the bribery charge. It concluded that there exists substantial evidence to hold respondent responsible for the misconduct complained of and that his acts constitute gross misconduct.[49]

Third, on the alleged conflict of interest, the OCA declared that respondent may be held liable for violating Section 8,[50] Canon 4[51] of the New Code of Judicial Conduct for the Philippine Judiciary. This is on the basis of the acts that respondent admitted

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[48] *Id.* at 150-151.

[49] *Rollo* (A.M. No. RTJ-19-2561), pp. 152-156.

[50] **SECTION 8.** Judges shall not use or lend the prestige of the judicial office to advance their private interests, or those of a member of their family or of anyone else, nor shall they convey or permit others to convey the impression that anyone is in a special position improperly to influence them in the performance of judicial duties.

[51] Entitled "Propriety."

doing — the organization of the Freddie Aguilar concert and the solicitation of donations therefor, the celebration of the 60th birthday of his wife at a venue owned by a person with a pending case before the RTC of Olongapo City, and the organization of a shooting event in his name and the solicitation of donations therefor. Similarly with Investigating Justice Inting, the OCA did not give weight to the allegations concerning respondent following up on the case of his Korean friend and his establishing a surety company with Ms. Tulio. This is because these allegations were not supported by any competent proof.[52]

Fourth, the OCA stated that respondent's gross inefficiency is evident in his failure to decide within the mandated period sixteen (16) cases, or 25.8%, of his minimal caseload of sixty-two (62). It declared that respondent cannot use the unexpected resignation of his stenographer and her failure to complete and submit the transcript of stenographic notes as excuse for his delay.[53]

In conclusion, the OCA found that respondent may be held accountable for: (a) gross misconduct constituting violations of the Code of Judicial Conduct, (b) undue delay in rendering decisions, and (c) violation of Supreme Court rules, directives, and circulars. Pursuant to Section 17,[54] Rule XIV[55] of the "Rules Implementing Book V of Executive Order No. 292 and other Pertinent Civil Service Laws,"[56] when the respondent is guilty of two or more charges, the penalty for the most serious charge shall be imposed and the other charges may be considered as aggravating circumstances. Hence, the OCA recommended the imposition of the penalty of dismissal upon respondent.[57]

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[52] *Rollo* (A.M. No. RTJ-19-2561), pp. 156-157.

[53] *Id.* at 157-159.

[54] **SECTION 17.** If the respondent is found guilty of two or more charges or counts, the penalty imposed should be that corresponding to the most serious charge or count and the rest may be considered as aggravating circumstances.

[55] Entitled "Discipline."

[56] CSC Resolution No. 91-1631, December 27, 1991.

[57] *Rollo* (A.M. No. RTJ-19-2561), pp. 159-161.

THE RULING OF THE COURT

The Court finds the OCA's recommendation to be well-taken.

Respondent is charged with the following acts: (1) shirking from his judicial duty to solemnize marriages raffled to him, (2) attempting to bribe Exec. Judge Paradeza to influence the outcome of a pending case in the latter's sala, (3) engaging in conflict-of-interest activities, and (4) failing to decide cases within the mandated period.

There is substantial evidence to hold respondent administratively liable for these charges.

Respondent shirked from his judicial duty by failing to solemnize marriages raffled to him.

OCA Circular No. 87-2008[58] provides that the Court, in its August 12, 2008 Resolution in A.M. No. 08-7-429-RTC, resolved, among others, to "**DIRECT** the Judges of multiple *sala* courts to strictly observe the raffling of requests for solemnization of marriage because of numerous anomalies discovered in the solemnization of marriage during various judicial audits in the lower court. Unless for valid reasons, the refusal of a judge to participate in the raffle of request for solemnization of marriage shall be construed as shirking from judicial duty."

The OCA reported that the following fourteen (14) requests for solemnization of marriage raffled to respondent were re-raffled to other Judges:[59]

	Request No.	Schedule of Marriage	Cause of Re-Raffle	Judge to WhomRequest was Re-Raffled
1.	M-78-2011	15 June 2011	"*(U)navailability*" of respondent Judge	Judge Tomas Eduardo B. Maddela III, Br. 5, MTCC, Olongapo City

[58] *Guidelines on the Solemnization of Marriage by the Members of the Judiciary,* September 8, 2008.

[59] *Rollo* (A.M. No. RTJ-19-2561), pp. 150-151.

2.	M-113-2011	21 June 2011	"*(U)navailability*" of respondent Judge	Judge Jacinto C. Gonzales, Br. 2, MTCC, Olongapo City
3.	M-116-2011	16 June 2011	"*(U)navailability*" of respondent Judge	Acting Presiding Judge Josefina D. Farrales, Br. 74, RTC, Olongapo City
4.	M-117-2011	16 June 2011	(Not indicated)	Judge Farrales
5.	M-136-2011	20 Aug. 2011	"*(U)navailability*" of respondent Judge	Judge Richard A. Paradeza, Br. 72, RTC, Olongapo City
6.	M-139-2011	20 July 2011	"*(I)n view of the written request of Ms. Susafe F Lodivero*" (apparently, a relative of the bride, Jenny Faye Fontanares Lodivero)	Judge Maddela III
7.	M-142-2011	20 July 2011	(Not indicated)	Judge Maddela III
8.	M-143-2011	20 Oct. 2011	Respondent Judge "*is presently indisposed and to equalize the advances of other Court*"	Judge Raymond C. Viray, Br. 75, RTC, Olongapo City
9.	M-150-2011	8 Sept. 2011	Respondent Judge "*is suffering from High Blood Pressure*"	Judge Merinnisa O. Ligaya, Br. 1, MTCC, Olongapo City
10.	M-154-2011	20 Oct. 2011	Respondent Judge "*is presently indisposed*"	Acting Presiding Judge Farrales
11.	M-158-2011	10 Aug. 2011	(Not indicated)	Judge Maddela III
12.	M-165-2011	22 Sept. 2011	(Not indicated)	Acting Presiding Judge Farrales
13.	M-166-2011	22 Sept. 2011	Respondent Judge "*is suffering from LBM*"	Acting Presiding Judge Farrales
14.	M-169-2011	8 Sept. 2011	Respondent Judge "*is suffering from High Blood Pressure*"	Judge Gonzales

As may be observed, the fourteen (14) requests that were eventually re-raffled to other Judges were scheduled for

solemnization before respondent on nine (9) separate days from June to October 2011.[60]

Respondent claims that all his absences resulting in his failure to solemnize the marriages raffled to him were due to his ailments and that he filed the necessary applications for leave for said absences with attached medical certificates.[61]

However, it appears that respondent has not been forthright with the Court. The OCA reported that out of the nine (9) days respondent was absent, he was on sick leave for only four (4) days: August 10, 2011; September 8 and 22, 2011; and October 20, 2011 and was on forfeitable leave for three (3) days: June 15, 16, and 21, 2011. For his absences on July 20, 2011 and August 20, 2011, respondent did not file applications for leave.[62]

As a result of his unexcused absences, three (3) requests for solemnization of marriage had to be re-raffled to other Judges: two (2) marriages on July 20, 2011, and one (1) marriage on August 20, 2011.

The Court is clear in its directive that "[u]nless for valid reasons, the refusal of a judge to participate in the raffle of request for solemnization of marriage shall be construed as shirking from judicial duty."[63] Considering that his absences on July 20, 2011 and August 20, 2011 were not covered by any applications for leave, there is no valid reason for his failure to solemnize the three (3) marriages raffled to him on the said dates. His failure to solemnize the three (3) marriages for no valid reason is tantamount to a refusal to participate in the raffle. Respondent shirked from his judicial duty of participating in the raffle for requests of solemnization of marriage. In doing so, he violated Supreme Court rules, directives, and circulars.

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[60] *Id*. at 151.

[61] *Rollo* (A.M. No. RTJ-19-2559), p. 24.

[62] *Rollo* (A.M. No. RTJ-19-2561), p. 151.

[63] *Supra* note 58.

Respondent is administratively liable for gross misconduct for attempting to bribe Exec. Judge Paradeza to issue a guilty verdict in the case of People v. Terrie.

Preliminarily, it must be emphasized that "in administrative proceedings, only substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required. The standard of substantial evidence is satisfied when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant."[64]

The Court finds in the instant case that there is substantial evidence to hold respondent administratively liable for gross misconduct. Exec. Judge Paradeza's account, verified on its material points by the affidavits of Atty. Aquino and Mr. Dalit, establishes that sometime in June 2014, respondent attempted to bribe him in order to influence the outcome of Criminal Case No. 670-2002, entitled *People v. Terrie*, then pending before his sala.

Exec. Judge Paradeza's account, particularly on the bribery attempt itself (paragraphs 2-7 of his Affidavit-Complaint),[65] rests solely on his personal knowledge of the matter. He attested that sometime in June 2014, at around 1:00 p.m., he opened the door of his chambers and saw respondent sitting on the chair next to the door. Mr. Dalit then informed him that respondent had been waiting for almost one (1) hour. He invited respondent to his chambers to discuss his reason for visiting. It was then that respondent spoke about the case of *People v. Terrie*.[66]

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[64] *Re: Allegations Made Under Oath at the Senate Blue Ribbon Committee Hearing Held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan*, 743 Phil. 622, 668 (2014).

[65] *Rollo* (A.M. No. RTJ-19-2561), pp. 16-18.

[66] *Id.* at 16.

Respondent relayed to him that the children of private complainant Leticia M. Cuico (deceased) were his best friends. Exec. Judge Paradeza attested that respondent "told" him to convict the accused in the said case. When Exec. Judge Paradeza responded that he could not do that and that he would decide the case on the basis of the evidence adduced, respondent extended his hand to show him an envelope containing money. Respondent then told him that the envelope contained One Hundred Thousand Pesos (₱100,000.00) intended for him. Exec. Judge Paradeza declined the money and asked respondent to leave the room. When respondent insisted, Exec. Judge Paradeza threatened to call all his employees and tell them that respondent was bribing him. He also threatened he would distribute the money among his employees and still charge respondent with bribery. This was when respondent placed the money back inside his pocket and then left Exec. Judge Paradeza's room.[67]

After respondent had left Exec. Judge Paradeza's room, the latter immediately called Mr. Dalit to his chambers and told him about respondent's attempt to bribe him relative to the case of *People v. Terrie*. He also called Atty. Aquino to his chambers and told him of the act of respondent. After talking to both Mr. Dalit and Atty. Aquino, Exec. Judge Paradeza came out of his chambers and told his staff about the incident.[68]

The Court recognizes that "[a]n accusation of bribery is easy to concoct and difficult to disprove."[69] This is owing to the fact that in cases of this nature, no witness can be called to testify on the attempt at bribery. No third party is ordinarily involved to witness the incident. The only ones present in such a case is the one offering the bribe and the one to whom the bribe is offered. This is the reality of a charge of gross misconduct on the basis of bribery.

Based on the foregoing, only two persons have personal knowledge of the actual bribery attempt: Exec. Judge Paradeza

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

[68] *Id.* at 17.

[69] *Supra* note 64 at 669.

and respondent. However, the incidents immediately prior to and after the bribery attempt could be corroborated by Mr. Dalit and Atty. Aquino, which they did in their respective affidavits.

In his January 28, 2015 Affidavit,[70] Mr. Dalit attested that sometime in June 2014, respondent went to their office at around 12:00 noon and requested to speak with Exec. Judge Paradeza. Since the door to the latter's chambers was locked, Mr. Dalit asked respondent to just return later. However, respondent chose to stay and sat near the doors of the chamber. When Exec. Judge Paradeza opened the door of his chambers almost an hour later, he saw respondent and invited him to enter. Mr. Dalit further attested that after respondent had left the office, Exec. Judge Paradeza immediately called him and relayed to him respondent's bribery attempt relating to the case of *People v. Terrie*. Further, he attested that Exec. Judge Paradeza called Atty. Aquino to his office and also informed him of respondent's attempt to bribe him.[71]

On his part, Atty. Aquino attested in his January 28, 2015 Affidavit[72] that sometime in June 2014, Exec. Judge Paradeza called him to his chambers and relayed to him the bribery attempt of respondent.[73]

The statements of Mr. Dalit and Atty. Aquino on these material points corroborate the statement of Exec. Judge Paradeza. Mr. Dalit's statement establishes that, indeed, sometime in June 2014, respondent (not any other person) visited Exec. Judge Paradeza in his chambers. This is based on Mr. Dalit's personal knowledge of the events that day. Further, Mr. Dalit and Atty. Aquino's accounts establish that Exec. Judge Paradeza had relayed to them the bribery attempt of respondent immediately after it occurred. Their statements on this point are admissible on the basis of the doctrine of *independently relevant statements*.

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[70] *Rollo* (A.M. No. RTJ-19-2561). pp. 51-52.

[71] *Id.*

[72] *Id.* at 49-50.

[73] *Id.* at 49.

The Court stated in *Gubaton v. Amador*[74] that "[u]nder the doctrine of independently relevant statements, only the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial. The doctrine on independently relevant statements holds that conversations communicated to a witness by a third person may be admitted as proof that, regardless of their truth or falsity, they were actually made. Evidence as to the making of such statements is not secondary but primary, for in itself it (*a*) constitutes a fact in issue or (*b*) is circumstantially relevant to the existence of such fact. Accordingly, the hearsay rule does not apply and, hence, the statements are admissible as evidence."

Again, both Mr. Dalit and Atty. Aquino stated that Exec. Judge Paradeza relayed to them the bribery attempt of respondent immediately after it occurred. Clearly, the making of such statements is circumstantially relevant to this case and, therefore, may be considered in evidence against respondent.[75] While their statements do not attest to the occurrence of the actual bribery attempt, it lends credence to the narration of events by Exec. Judge Paradeza and, overall, on his account of the bribery attempt.

In the face of Exec. Judge Paradeza's straightforward account of the incident, corroborated circumstantially by Mr. Dalit and Atty. Aquino, respondent's bare denial deserves scant consideration. "Suffice it to say that 'denial is an intrinsically weak defense. To merit credibility, it must be buttressed by strong evidence of non-culpability. If unsubstantiated by clear and convincing evidence [as in this case], it is negative and self-serving, deserving no greater value than the testimony of credible witnesses who testify on affirmative matters.'"[76] Besides, Exec. Judge Paradeza had no ill motive to accuse respondent of such a serious charge. Further, respondent's attempt to cast doubt on the testimonies of Mr. Dalit and Atty.

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[74] A.C. No. 8962, July 9, 2018.

[75] *Id.*

[76] *Id.*

Aquino due to their professional relationship with Exec. Judge Paradeza does not persuade the Court.

Taken together, their affidavits convince the Court that, indeed, respondent attempted to bribe Exec. Judge Paradeza with the sum of One Hundred Thousand Pesos (₱100,000.00) to secure the conviction of the accused in the case of *People v. Terrie*.

Respondent's attempt to bribe Exec. Judge Paradeza constitutes gross misconduct.

"Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former."[77] Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.[78]

Further, respondent's act is violative of the New Code of Judicial Conduct for the Philippine Judiciary,[79] specifically, Canons 1, 2, and 4, which read:

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[77] *Office of the Ombudsman v. De Zosa, et al.*, 751 Phil. 293, 299-300 (2015).

[78] *Judge Buenaventura v. Mabalot*, 716 Phil. 476, 494 (2013).

[79] A.M. No. 03-05-01-SC, April 27, 2004.

CANON 1
Independence

x x x x x x x x x

SECTION 3. Judges shall refrain from influencing in any manner the outcome of litigation or dispute pending before another court or administrative agency.

x x x x x x x x x

CANON 2
Integrity

SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

SECTION 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.
x x x x x x x x x

CANON 4
Propriety

SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

x x x x x x x x x

Respondent's attempt to bribe Exec. Judge Paradeza with ₱100,000.00 to influence the outcome of the case of *People v. Terrie*, to the benefit of his best friends, the children of therein private complainant, is plainly unlawful behavior. It is motivated by a corrupt intent to wrongfully use his station to procure some benefit for the children of private complainant, contrary to duty and the rights of others. For this reason, respondent is administratively liable for gross misconduct.

Respondent violated the New Code of Judicial Conduct for the Philippine Judiciary by engaging in conflict-of-interest activities.

The New Code of Judicial Conduct for the Philippine Judiciary mandates that "[p]ropriety and the appearance of propriety are essential to the performance of all the activities of a judge." Further, Section 1 of Canon 4[80] provides that "[j]udges shall avoid impropriety and the appearance of impropriety in all of their activities."

Meanwhile, Section 4 of Canon 1[81] states that "[j]udges shall not allow family, social, or other relationships to influence judicial conduct or judgment. **The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.**"

Respondent admitted that he engaged in the following activities: (1) the organization of the Freddie Aguilar concert and solicitation of donations therefor; (2) the celebration of the 60th birthday of his wife in a venue owned by a person who apparently has a pending case for trafficking in the RTC of Olongapo City; and (3) the organization of a shooting event in his name and request of donations therefor.

The Court finds that his participation in the above activities, while not directly related to his judicial functions, duties, and responsibilities, nonetheless constitutes a violation of the New Code of Judicial Conduct for the Philippine Judiciary. As previously stated, judges are mandated to avoid the appearance of impropriety in their activities. Further, judges shall not allow others to convey the impression that they are in a special position to influence him. By engaging in such activities that impart a sense of impropriety, respondent violated provisions of the New Code of Judicial Conduct for the Philippine Judiciary. It also conveys the impression that he may be influenced by certain people involved in the said activities.

With regard to the following imputations: (1) that respondent personally followed up on the case of a friend pending before

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[80] Entitled "Propriety."

[81] Entitled "Independence." (emphasis supplied)

the court of Judge David; and (2) that he established, ran, and promoted a surety bonding company with the assistance of Ms. Tulio, the Court finds that these deserve scant consideration. The imputations are unsupported by any competent proof.

The allegation that he followed up on a case pending before Judge David's court is a bare assertion. Judge David merely stated in her January 28, 2015 Affidavit[82] that she received reports from her staff that respondent came to her office to follow up on the case of *People of the Philippines v. Evangeline Kim*, in which Park Tae Min is the private complainant. She further stated that she learned from her clerk of court and interpreter that Park Tae Min is respondent's friend who accompanied him to Korea. Clearly, these statements are mere hearsay and cannot be given any weight.

As to the allegation that respondent established, ran, and promoted a surety bonding company with the assistance of Ms. Tulio, the Court rules that the evidence on record does not support such a finding. As observed by Investigating Justice Inting, "the documents submitted to substantiate respondent Judge Pamintuan's alleged involvement in a surety bonding company, *i.e.*, calling card, flyer and Certification of Accreditation and Authority, provide no clear indication that he is connected to and responsible for the company's operations."[83]

On the activities he admitted participating in, respondent is held administratively liable for violation of the New Code of Judicial Conduct for the Philippine Judiciary.

Respondent is guilty of gross inefficiency and undue delay in rendering decisions assigned to him.

"The 1987 Constitution mandates that all cases or matters be decided or resolved by the lower courts within three months from date of submission. Judges are expected to perform all

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[82] *Supra* note 16.

[83] *Rollo* (A.M. No. RTJ-19-2561), p. 131.

judicial duties, including the rendition of decisions, efficiently, fairly, and with reasonable promptness."[84] In this regard, the Court has previously proclaimed that "[j]udges have the sworn duty to administer justice and decide cases promptly and expeditiously because justice delayed is justice denied."[85]

Despite having a minimal caseload of sixty-two (62) cases, respondent failed to decide sixteen (16) cases, or 25.8%, within the mandated period of ninety (90) days.[86]

He argues, however, that he should not be faulted for the delay in the resolution of these cases because it was caused by the unexpected resignation of his stenographer who failed to complete and submit the TSNs for the 16 cases.

The Court cannot exonerate respondent from administrative liability based on his flimsy reason.

In *Office of the Court Administrator v. Lopez, et al.*,[87] the Court reminded "judges to decide cases with dispatch"[88] and "that the failure of a judge to decide a case within the required period is not excusable and constitutes gross inefficiency, and non-observance of this rule is a ground for administrative sanction against the defaulting judge. Upon proper application and in meritorious cases, however, the Court has granted judges of lower courts additional time to decide cases beyond the 90-day reglementary period."[89]

In the instant case, respondent could have applied for additional time to decide the 16 cases beyond the mandated reglementary period. He did not do so. His failure to apply for additional time is fatal to his defense. Respondent's failure to

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[84] *Office of the Court Administrator v. Judge Lopez, et al.*, 723 Phil. 256, 267-268 (2013).

[85] *Id*. at 267.

[86] *Rollo* (A.M. No. RTJ-19-2561), p. 157.

[87] *Supra* note 84.

[88] *Id*. at 268.

[89] *Id*.

decide the 16 cases within the mandated period constitutes gross inefficiency and undue delay in rendering decisions assigned to him.

The proper penalty to be imposed on respondent is dismissal from service and a fine of ₱12,000.00 each for his two counts of violation of Supreme Court rules, directives, and circulars and for his undue delay in rendering decisions assigned to him.

To recapitulate, the Court declares that:

1. Respondent shirked from his judicial duty in failing to solemnize marriages raffled to him on account of his unexcused absences. This constitutes violation of Supreme Court rules, directives, and circulars.
2. Respondent is administratively liable for gross misconduct. There is substantial evidence that he attempted to bribe Exec. Judge Paradeza to influence the outcome of the case of *People v. Terrie*.
3. Respondent violated the New Code of Judicial Conduct for the Philippine Judiciary by engaging in conflict-of-interest activities.
4. Respondent is guilty of gross inefficiency and undue delay in rendering decisions assigned to him.

In sum, respondent is adjudged administratively liable for gross misconduct, undue delay in rendering decisions, and violation of Supreme Court rules, directives, and circulars.

In previous administrative cases, the Court imposed the penalty corresponding to the most serious charge and considered the rest as aggravating circumstances in accordance with Section 50, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (*RRACCS*). However, it is more proper to impose upon respondent separate penalties for each offense he is adjudged administratively liable. This is pursuant to the

Court's ruling in *Boston Finance and Investment Corp. v. Judge Gonzalez*,[90] which set forth the following guidelines in the imposition of penalties in administrative matters involving members of the Bench or court personnel:

> (a) Rule 140 of the Rules of Court shall exclusively govern administrative cases involving judges or justices of the lower courts. If the respondent judge or justice of the lower court is found guilty of multiple offenses under Rule 140 of the Rules of Court, the Court shall impose separate penalties for each violation; and
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> (b) The administrative liability of court personnel (who are not judges or justices of the lower courts) shall be governed by the Code of Conduct for Court Personnel, which incorporates, among others, the civil service laws and rules. If the respondent court personnel is found guilty of multiple administrative offenses, the Court shall impose the penalty corresponding to the most serious charge, and the rest shall be considered as aggravating circumstances.[91] (boldface omitted)

While the Court has not had the occasion to apply *Boston Finance and Investment Corp. v. Gonzalez*[92] in the discipline of judges or justices of the lower courts, the instant matter presenting the first opportunity to do so, the Court applied the said case in *Re: Complaint Against Mr. Ramdel Rey M. De Leon*[93] and *Office of the Court Administrator v. Laranjo*.[94] Specifically, the Court applied its ruling on the discipline of court personnel by imposing the penalty for the most serious charge in the said cases and considering the other charges as aggravating circumstances.

Considering the foregoing, the Court shall impose upon respondent separate penalties for each count of administrative offense.

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[90] A.M. No. RTJ-18-2520, October 9, 2018.

[91] *Id*.

[92] *Id*.

[93] A.M. No. 2014-16-SC, January 15, 2019.

[94] A.M. No. P-18-3859, June 4, 2019.

Gross misconduct is classified as a serious charge under Section 8, Rule 140[95] of the Rules of Court, as amended by A.M. No. 01-8-10-SC. Section 11 (A) thereof provides that "[i]f the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months[;] or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00."[96]

On the other hand, under Section 9, Rule 140[97] of the Rules of Court, as amended by A.M. No. 01-8-10-SC, the offenses "undue delay in rendering decisions" and "violation of Supreme Court rules, directives, and circulars" are classified as less serious charges. Thus, respondent may be imposed with any of the following sanctions for each of the said less serious charges:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[98]

For his gross misconduct in attempting to bribe Exec. Judge Paradeza to enter a guilty verdict in the case of *People v. Terrie*,

[95] Entitled "Discipline of Judges of Regular and Special Courts and Justices of the Court of Appeals and the Sandiganbayan."

[96] RULES OF COURT, Rule 140, Sec. 11(A), as amended by A.M. No. 01-8-10-SC.

[97] *Supra* note 95.

[98] RULES OF COURT, Rule 140, Sec. 11(8), as amended by A.M. No. 01-8-10-SC.

the Court imposes upon respondent the penalty of dismissal from service with forfeiture of all retirement benefits, except his accrued leave credits, and with prejudice to re-employment in the government, including government-owned or controlled corporations.

Considering that the Court has already dismissed respondent, the penalty of suspension from office without salary and other benefits is no longer possible. Hence, the penalty of fine is more appropriate in the case of his three *less serious charges*.[99] The Court, thus, imposes on respondent a fine of Twelve Thousand Pesos (₱12,000.00) each for (1) undue delay in rendering a decision in the cases assigned to him, (2) violation of the Supreme Court rules, directives, and circulars due to his act of shirking from judicial duty, and (3) violation of the New Code of Judicial Conduct for the Philippine Judiciary by engaging in conflict-of-interest activities.

On a last note, the Court takes this opportunity to remind all members of the Bench to conduct themselves in a manner beyond reproach. Appointment to the Bench is a privilege, which requires, among other virtues, moral uprightness, integrity, independence, and impartiality. Judges are behooved to conduct themselves in a manner consistent with these ideals, lest public confidence in the judiciary as an institution erodes. The Court will not hesitate to discipline members of the Bench upon their failure to meet these exacting standards, as it does in the instant case.

WHEREFORE, respondent JUDGE NORMAN V. PAMINTUAN, Presiding Judge of Branch 73, Regional Trial Court of Olongapo City, Zambales, is hereby found **GUILTY** of gross misconduct, undue delay in rendering decisions, and violation of Supreme Court rules, directives, and circulars.

He is **DISMISSED** from the service effective immediately, with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch or

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[99] See *National Power Corp. v. Judge Adiong*, 670 Phil. 21, 35 (2011).

agency of the government, including government-owned or controlled corporations, for his gross misconduct.

Respondent is **FINED** ₱12,000.00 for his act of shirking from judicial duty by failing to solemnize marriages raffled to him on account of his unexcused absences. He is further **FINED** another ₱12,000.00 for his violation of the New Code of Judicial Conduct for the Philippine Judiciary. Both acts are considered as violation of Supreme Court rules, directives, and circulars. Lastly, he is **FINED** ₱12,000.00 for his undue delay in rendering a decision.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, and *Zalameda, JJ.*, concur.

Inting, J., no part.

THIRD DIVISION

[A.M. No RTJ-19-2567. August 14, 2019]
(Formerly A.M. No. 01-12-641-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **HON. DANILO P. GALVEZ (Ret.), Regional Trial Court, Branch 24, Iloilo City,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; NEW CODE OF JUDICIAL CONDUCT; COMPLIANCE WITH THE DIRECTIVES ISSUED BY THE COURT IS ONE OF THE FOREMOST

DUTIES THAT A JUDGE ACCEPTS UPON ASSUMPTION TO OFFICE.— The judge is the visible representation of the law and, more importantly, of justice.Thus, a judge must be the first to abide by the law and weave an example for the others to follow.He/She should be studiously careful to avoid committing even the slightest infraction of the Rules.Compliance with the directives issued by the Court is one of the foremost duties that a judge accepts upon assumption to office as laid out in Canon 1 of the New Code of Judicial Conduct.

2. ID.; ID.; GROSS MISCONDUCT; DELIBERATE AND REPEATED FAILURE TO COMPLY WITH THE SUPREME COURT'S LAWFUL ORDERS AND DIRECTIVES MAKES A JUDGE LIABLE THEREFOR; CASE AT BAR.— In this case, the Court cannot countenance the unjustified refusal of Judge Galvez to comply with the Court's twin Resolutions dated January 28, 2002 and August 19, 2002, as well as the directive from DCA Elepaño. The Court thus agrees with the findings of the OCA that Judge Galvez is guilty of gross misconduct for his deliberate and repeated failure to comply with the Court's lawful orders and directives. He owes candor to the Court when rendering an explanation, in the same way that he expected it from lawyers who appeared before his court. It is even hardly necessary to remind Judge Galvez that judges should respect the orders and decisions of higher tribunals, much more the Highest Tribunal of the land from which all other courts should take their bearings. Ultimately, a resolution of the Supreme Court should not be construed as a mere request and should be complied with promptly and completely. x x x[A]ll directives coming from the Court Administrator and his deputies are issued in the exercise of this Court's administrative supervision of trial courts and their personnel, hence, should be respected. Similarly, these directives are not mere requests, but should be complied with promptly and completely. Assuming *arguendo* that the twin Resolutions were not served upon Judge Galvez, his unexplained disregard of the directive of the OCA for him to decide or otherwise dispose of the cases raffled to him shows his disrespect for and contempt, not just for the OCA, but more importantly for the Court, which exercises direct administrative supervision over trial court officers and employees through the OCA. His indifference to, and disregard of the directives issued to him clearly constituted insubordination which this Court will not

tolerate.Thus, the Court finds reason to wield disciplinary sanction upon Judge Galvez for his gross misconduct of, even outright disrespect for the Court, for his indifference to the directive of the OCA and the Court. Gross misconduct is a serious offense under Section 8(3), Rule 140 of the Rules of Court.

3. ID.; ID.; ID.; INDIFFERENCE OR DEFIANCE TO THE SUPREME COURT'S ORDERS OR RESOLUTIONS MAY BE PUNISHED WITH DISMISSAL, SUSPENSION OR FINE AS WARRANTED BY THE CIRCUMSTANCES; PENALTY IN CASE AT BAR.— Veritably, indifference or defiance to the Court's orders or resolutions may be punished with dismissal, suspension or fine as warranted by the circumstances. x x x Considering that the transgression committed herein by Judge Galvez touched on the parties' right to the speedy disposition of cases which resulted in the delay in the resolution thereof for at least 17 years (or from 2001 to 2018), not to mention his indifference and recalcitrant behavior towards judicial processes, this Court holds that the imposition of the penalty of suspension from office for six (6) months, without salary, as commensurate thereto. However, in lieu of his retirement, the alternative penalty of fine equivalent to his six (6) months salary shall be imposed instead.

D E C I S I O N

INTING, *J.*:

For this Court's consideration is a Memorandum[1] dated January 10, 2019 from the Office of the Court Administrator (OCA) on the administrative liability of retired Judge Danilo P. Galvez (Judge Galvez), former Presiding Judge of the Regional Trial Court (RTC), Branch 24, Iloilo City, in connection with the unresolved cases pending before Branch 25 of said court, of which Judge Galvez was the Pairing Judge.

On July 16-20, 2001, the OCA conducted a judicial audit and physical inventory of cases in Branch 25. It was conducted after the erstwhile Presiding Judge of Branch 25, Judge

[1] *Rollo*, pp. 300-306.

Bartolome M. Fanuñal (Judge Fanuñal), compulsorily retired on April 21, 2001.

The audit and inventory revealed, among others, that there were eight (8) criminal and thirty-six (36) civil cases that were already submitted for decision but left undecided by Judge Fanuñal. Thus, in its Resolution[2] dated January 28, 2002, the Court directed Judge Galvez to resolve the aforesaid cases; and designated Judge Lolita C. Besana (Judge Besana), Presiding Judge of RTC, Branch 32, Iloilo City, and Judge Roger B. Patricio (Judge Patricio), Presiding Judge of RTC, Branch 38, Iloilo City, to assist Judge Galvez in the resolution of said cases, *viz*.:

> (a) to DIRECT Judge Danilo P. Galvez, Pairing Judge of Regional Trial Court, Iloilo City, Branch 25 to: (1) DECIDE with dispatch the thirty six (36) inherited civil cases which were left undecided by Judge Bartolome Fanuñal but with complete transcript of stenographic notes, to wit: Civil Cases Nos. 18984, 19279, 20374, 20402, 19189, 17632, 18732, 19344, 13681, 19077, 12626, 18453, 15060, LRC N-949, 12655, 15189, 18513, 13296, 19990, 15405, 15540, 17824, 13793, 12293, 14405, 18861, 18670, 17218, 14690, 13780, 17847, 13801, 10570, 12501, 13035, 16681 as well as Criminal Cases Nos. 47984, 47985, 47986, 47987, 47988, 47989, 47990 and 47991 which are submitted for decision before Judge Fanuñal but still within the ninety (90) day period to decide; (2) RESOLVE the following cases with pending incidents/motions within thirty (30) days from notice, to wit: Criminal Cases Nos. 01-5352, 99-50554, 99-50595, 99-50596, 99- 50597 and 99-50598; and (3) TAKE APPROPRIATE ACTION on Criminal Cases Nos. 00-52682, 00-52165, 00-52166 and Civil Case No. 99-14732 taking preferential attention on Criminal Cases Nos. 99-51326 and 99-51327 where the defense have complied with the order of September 26, 2000 requiring him to submit his formal Offer of Exhibits within ten (10) days from said date, as well as archive Criminal Cases Nos. 00-51693, 00-51861, 00-51491, 00-52063, 00-52064, 99-51445, 00-52094, 00-52603, 00-52405 and 00-51942 pursuant to the guidelines set forth in Administrative Circular No. 7-A-92, dated June 21, 1993;

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

(b) to DESIGNATE Judges Lolita Contreras Besa[n]a, Presiding Judge, Branch 32 and Roger B. Patricio, Presiding Judge, Branch 38, same court, to assist Judge Galvez in the writing of the decisions of the inherited cases mentioned in Item (1-a) and for this purpose to assign said cases to these 3 Judges thru raffle;

(c) to DIRECT Judges Danilo Galvez, Lolita Besana and Roger B. Patricio to SUBMIT a report together with certified copies of the decisions within ten (10) days from rendition/promulgation thereof; and

(d) to ORDER Branch Clerk of Court Marie Yvette D. Go. Regional Trial Court, Iloilo City, assisted by the Clerks in charge of criminal and civil cases to UPDATE the entries in the criminal and civil docket books and to NOTIFY this office [*sic*] within ten (10) days of their compliance.[3]

On August 19, 2002, however, the Court issued a show cause order[4] against the three judges for their failure to comply with the aforementioned January 28, 2002 Resolution.

In a letter dated September 13, 2002, Judge Patricio informed the Court that he received nineteen (19) cases and already rendered decisions on nine (9) of those cases.[5]

After almost a year, telegrams[6] were sent to Judge Galvez and Judge Besana by Deputy Court Administrator Zenaida N. Elepaño (DCA Elepaño) reminding them to comply with the Court's twin Resolutions.

Judge Besana submitted her letter dated January 7, 2003, with an explanation that she already decided, disposed of, or terminated twelve (12) of her inherited cases.[7]

On February 24, 2003, this Court issued a Resolution[8] wherein the letters of Judge Patricio and Judge Besana were deemed as

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[3] *Id*.

[4] *Id*. at 20.

[5] *Id*. at 28-30.

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

[7] *Id*. at 133-282.

[8] *Id*. at 287.

satisfactory compliance. With regard to Judge Galvez, he was merely required to make the proper manifestation as to whether "he is submitting the case on the basis of the pleadings/records already filed and submitted."[9]

Allegedly unaware of the pendency of the Court's twin resolutions against him, Judge Galvez filed a motion[10] which was received by the Court on June 13, 2018. He explains therein that it was, neither his intention to defy nor to disregard the earlier resolutions of the Court as he only came to know about the matter when he was processing his clearance after he compulsorily retired last April 27, 2018. He recalls that the judicial audit was a result of the designation of Branch 25 as a drugs court sometime in 2002 and upon retirement of Judge Fanuñal, and the thirty-six (36) pending cases therein were raffled to him, to Judge Besana and to Judge Patricio per DCA Elepaño's directive. He admits that he misunderstood the foregoing directive and that he adopted a remedy to separate these inherited cases from the regular docket of Branch 24, with the intention to treat the incidents separately, in the event that the parties concerned and their counsel raise any matter therein. He professes that these cases have already been abandoned as none of the parties or their counsel called his attention by filing the appropriate motion, except for one case which was already decided on the merits. Lastly, he accepts the OCA's recommendation of the imposition of a ₱20,000.00 fine against him.

Judge Galvez reiterated his explanation in a similarly worded letter[11] dated June 26, 2018 addressed to the Court Administrator.

The Court then referred the motion to the OCA for evaluation, report and recommendation.

The OCA's Recommendation

In its Memorandum dated January 10, 2019, the OCA found that Judge Galvez was "less than honest as he tried to feign

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[9] *Id.*

[10] *Id.* at 288-290.

[11] *Id.* at 294-295.

ignorance" of the pendency of the instant case.[12] For the OCA, Judge Galvez gravely ignored the Court's directives and "[h]is failure to comply accordingly betrays not only a recalcitrant streak in character, but also disrespect for the Court's lawful order and directive."[13] It added that "[t]his contumacious conduct of refusing to abide by the lawful directives issued by the Court [is] an utter lack of interest to remain with, if not contempt of, the system."[14]

The OCA further mentions of a pending administrative case filed by former Judge Ofelia Artuz against Judge Galvez for gross ignorance of the law, grave misconduct, gross negligence and conduct prejudicial to the best interest of service docketed as A.M. No. 17-4774-RTJ. It also cites A.M. No. 4189-RTJ for gross ignorance of the law and A.M. No. 04-2080-RTJ for knowingly rendering unjust judgment which were likewise filed against Judge Galvez but were earlier dismissed.

Thus, the OCA recommends that Judge Galvez be adjudged guilty of gross misconduct and fined in the amount of Forty Thousand Pesos (₱40,000.00) which shall be deducted from his retirement gratuity.

The Ruling of this Court

The judge is the visible representation of the law and, more importantly, of justice.[15] Thus, a judge must be the first to abide by the law and weave an example for the others to follow.[16] He/She should be studiously careful to avoid committing even the slightest infraction of the Rules.[17]

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[12] *Id*. at 305.

[13] *Id*.

[14] *Id*.

[15] *Re: A.M. No. 05-8-244-MTC, Los Baños, Laguna*, 569 Phil. 333, 341 (2008).

[16] *Id*.

[17] *Id*.

Compliance with the directives issued by the Court is one of the foremost duties that a judge accepts upon assumption to office as laid out in Canon 1 of the New Code of Judicial Conduct:[18]

> Section 7. Judges shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
>
> Section 8. Judges shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary, which is fundamental to the maintenance of judicial independence.

In this case, the Court cannot countenance the unjustified refusal of Judge Galvez to comply with the Court's twin Resolutions dated January 28, 2002 and August 19, 2002, as well as the directive from DCA Elepaño. The Court thus agrees with the findings of the OCA that Judge Galvez is guilty of gross misconduct for his deliberate and repeated failure to comply with the Court's lawful orders and directives. He owes candor to the Court when rendering an explanation, in the same way that he expected it from lawyers who appeared before his court.[19] It is even hardly necessary to remind Judge Galvez that judges should respect the orders and decisions of higher tribunals, much more the Highest Tribunal of the land from which all other courts should take their bearings.[20] Ultimately, a resolution of the Supreme Court should not be construed as a mere request and should be complied with promptly and completely.[21]

The Court is equally not convinced that Judge (Galvez was unaware of the pendency of the Court's directives against him. It is highly incredulous that he could feign ignorance of the Court orders and, at the same time, admit that he was aware of

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[18] A.M. No. 03-05-01-SC dated April 27, 2004.

[19] Re: List of Judges who failed to comply with Administrative Circular No. 10-94, dated June 29, 1994, 439 Phil. 118, 135 (2002).

[20] *Guerrero v. Deray*, 442 Phil. 85, 94 (2002).

[21] *Re: Audit Report on Attendance of Court Personnel of RTC, Br. 32, Manila*, 532 Phil. 51, 64 (2006).

DCA Elepaño's directive that the pending cases left behind by retired Judge Fanuñal be raffled among Judge Besana, Judge Patricio and himself. It is also dubious that he conveniently omitted to specify the number of cases raffled to him and the docket number of the sole case which he claimed to have already decided on the merits. These circumstances taken as a whole would lead to no other conclusion than that of the contumacious conduct of Judge Galvez manifested by his blatant disregard and refusal to respect the Court's directive to decide or otherwise dispose of the thirteen (13) cases which were raffled to him by reason of Judge F animal's retirement.

Concomitant therewith, all directives coming from the Court Administrator and his deputies are issued in the exercise of this Court's administrative supervision of trial courts and their personnel, hence, should be respected.[22] Similarly, these directives are not mere requests, but should be complied with promptly and completely.[23] Assuming *arguendo* that the twin Resolutions were not served upon Judge Galvez, his unexplained disregard of the directive of the OCA for him to decide or otherwise dispose of the cases raffled to him shows his disrespect for and contempt, not just for the OCA, but more importantly for the Court, which exercises direct administrative supervision over trial court officers and employees through the OCA.[24] His indifference to, and disregard of the directives issued to him clearly constituted insubordination which this Court will not tolerate.[25]

Thus, the Court finds reason to wield disciplinary sanction upon Judge Galvez for his gross misconduct of, even outright disrespect for the Court, for his indifference to the directive of the OCA and the Court. Gross misconduct is a serious offense under Section 8(3), Rule 140 of the Rules of Court.

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[22] *Re: Findings on the Judicial Audit Conducted in Regional Trial Court, Branch 8, La Trinidad, Benguet*, 806 Phil. 786, 818 (2017).

[23] *Id.*

[24] *Clemente v. Bautista*, 710 Phil. 10, 16 (2013).

[25] *Id.*

In *Alonto-Frayna vs. Astih*,[26] the Supreme Court ruled that a judge who deliberately and continuously fails and refuses to comply with the resolution of this Court is guilty of gross misconduct and insubordination. Also, in the case of *Davila vs. Generoso*,[27] the failure of respondent judge to comply with the show-cause resolutions of the Court was deemed as grave and serious misconduct affecting his fitness and worthiness of the honor and integrity attached to his office.

To reiterate, the Court cannot tolerate the conduct exhibited by Judge Galvez which constitutes no less than clear acts of defiance against the Court's authority. It is not enough that no parties were prejudiced or that the cases were deemed abandoned because of their inaction. What is more important is whether in the course of the judicial process, judicial norms have been maintained with the end in view that a judge must discharge his functions with diligence and efficiency as mandated by Canon 3, Rule 3.08, of the Code of Judicial Conduct which provides that "a judge should diligently discharge administrative responsibilities, maintain professional competence in court management and facilitate the performance of the administrative functions of other judges and court personnel."[28]

It is also worthy to note that court personnel should conduct themselves in a dignified manner befitting the public office they are holding to achieve public confidence in the judiciary.[29] Judges should avoid any conduct or demeanor that may tarnish or diminish the authority of the Supreme Court.[30] In the case at bench, the callous and brazen disregard by Judge Galvez of the Supreme Court's directives, his lack of candor as well as his recalcitrant attitude betray his absence of concern for his office.

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[26] 360 Phil. 385, 389 (1998).

[27] 391 Phil. 466, 471 (2000).

[28] *Longboan v. Polig*, 264 Phil. 897, 902 (1990).

[29] *Re: Findings on the Judicial Audit Conducted in Regional Trial Court, Branch 8, La Trinidad, Benguet*, *supra* note 22 at 819.

[30] *Id.*

Veritably, indifference or defiance to the Court's orders or resolutions may be punished with dismissal, suspension or fine as warranted by the circumstances.[31] Section 11 (A), Rule 140 of the Rules of Court provides:

> Section 11. *Sanctions*. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:
>
> 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided*, however, that the forfeiture of benefits shall in no case include accrued leave credits;
>
> 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
>
> 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

Considering that the transgression committed herein by Judge Galvez touched on the parties' right to the speedy disposition of cases which resulted in the delay in the resolution thereof for at least 17 years (or from 2001 to 2018), not to mention his indifference and recalcitrant behavior towards judicial processes, this Court holds that the imposition of the penalty of suspension from office for six (6) months, without salary, as commensurate thereto. However, in lieu of his retirement, the alternative penalty of fine equivalent to his six (6) months salary shall be imposed instead.

WHEREFORE, Judge Danilo P. Galvez, former Presiding Judge of the Regional Trial Court, Branch 24, Iloilo City, is found **GUILTY** of **GROSS MISCONDUCT** and **METED OUT** the penalty of **FINE** equivalent to six (6) months salary, which shall be deducted from his retirement gratuity.

Let a copy of this decision be **FORWARDED** to the Office of the Court Administrator for the prompt release of the

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[31] *Office of the Court Administrator vs. Galvez*, 562 Phil. 332, 343 (2007).

remaining benefits due to Judge Galvez after the appropriate reductions therefrom, unless there exists another lawful cause for withholding the same.

Atty. Warme P. Araneta, Branch Clerk of Court, Branch 25, Regional Trial Court, Iloilo City is **DIRECTED** to inform the Court in writing, through the Office of the Court Administrator, of the status of Civil Cases Nos. 13681, 13793, 13801, 15060, 17632, 17847, 18453, 18513, 18670, 18861, 19344, 20402, and LRC N-949, attaching therewith copies of the latest orders or decisions therein, if any, within fifteen (15) days from notice hereof.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 196743. August 14, 2019]

SPOUSES LOLITO CHUA and MYRNA PALOMARIA and SPOUSES SERGIO CHUA (Deceased) and ELENA CHUA, *petitioners, vs.* **SPOUSES AGUSTIN LO and JOSEFINA N. BECINA, VICTOR LO and AGUSTIN LO REALTY CORPORATION,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; CONTRACT TO SELL; A CONTRACT TO SELL IS DEFINED AS A BILATERAL CONTRACT WHEREBY THE PROSPECTIVE SELLER, WHILE EXPRESSLY RESERVING THE OWNERSHIP OF THE SUBJECT PROPERTY DESPITE DELIVERY

THEREOF TO THE PROSPECTIVE BUYER, BINDS HIMSELF TO SELL THE SAID PROPERTY EXCLUSIVELY TO THE PROSPECTIVE BUYER UPON FULFILLMENT OF THE CONDITION AGREED UPON, THAT IS, PAYMENT OF THE PURCHASE PRICE; PRESENT IN CASE AT BAR.— The spouses Chua contend that said sale transactions were essentially contracts to sell such that a contract of sale (transferring the ownership) will be executed upon full payment by the vendees of the purchase price. If indeed ownership over the lot is reserved in favor of the vendor and transfer thereof would only be effected upon full payment of the price, then no doubt, the 1976 and 1977 sale transactions are Contracts to Sell. By law, a contract to sell is defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, the full payment of the purchase price. True enough, at the time of the execution of the said Deeds of Sale, ownership to the subject lot was not yet transferred to the buyers, Josefina and Delia. As a matter of fact, Josefina and Delia even acquiesced to the subdivision of Lot No. 505 on March 1, 1978, with title issued in the name of the spouses Chua, but reserving a portion of the land sold to Josefina and Delia.

2. ID.; ID.; SALES; THE RULE IS THAT ONE CANNOT SELL WHAT HE DOES NOT OWN AND THIS RULE HAS MUCH FORCE WHEN THE SUBJECT OF SALE IS A TITLED LAND THAT BELONGS TO ANOTHER PERSON; APPLICATION IN CASE AT BAR.— Clearly, the sale of Victor in favor of Agustin Lo Realty Corporation is in excess of the area of 600 sq m. The heirs of Delia could only dispose of Delia's rightful share, which as per their agreement, is up to 1,478 sq m area only. This is consistent with the rule that one cannot sell what he does not own and this rule has much force when the subject of the sale is a titled land that belongs to another person. Thus, the Deed of Sale executed by Victor in favor of Agustin Lo Realty Corporation (which conveyed upon the latter 2,078 sq m of the lot) should be nullified as it includes the 600 sq m portion of a land not owned by the seller.

3. ID.; PROPERTY; OWNERSHIP; QUIETING OF TITLE; IN AN ACTION FOR QUIETING OF TITLE, THE COMPLAINANT IS SEEKING FOR AN ADJUDICATION THAT A CLAIM OF TITLE OR INTEREST IN PROPERTY ADVERSE TO THE CLAIMANT IS INVALID, TO FREE HIM FROM THE DANGER OF HOSTILE CLAIM, AND TO REMOVE A CLOUD UPON OR QUIET TITLE TO LAND WHERE STALE OR UNENFORCEABLE CLAIMS OR DEMANDS EXIST; REQUISITES.— In an action for quieting of title, the complainant is seeking for an adjudication that a claim of title or interest in property adverse to the claimant is invalid, to free him from the danger of hostile claim, and to remove a cloud upon or quiet title to land where stale or unenforceable claims or demands exist. For an action to quiet title to prosper, two indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.

4. ID.; ID.; ID.; CERTIFICATE OF TITLE; AFTER THE EXPIRATION OF ONE YEAR PERIOD FROM THE ISSUANCE OF THE DECREE OF REGISTRATION UPON WHICH THE CERTIFICATE OF TITLE IS BASED, IT BECOMES INCONTROVERTIBLE.— It is fundamental that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. After the expiration of the one year period from the issuance of the decree of registration upon which it is based, it becomes incontrovertible.

APPEARANCES OF COUNSEL

Edilberto Cosca for petitioners.

Mary Grace A. Checa-Hinojosa for respondents Sps. Agustin Lo and Josefina N. Becina & Agustin Lo Realty Corp.

Ceriaco A. Sumaya for respondents Victor Lo, *et al*.

D E C I S I O N

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

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks to reverse and set aside the November 23, 2010 Decision[1] and the April 28, 2011 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 85892, denying the appeal and the motion for reconsideration, respectively, for lack of merit.

The case arose from a Complaint for Quieting of Title, Annulment of Sale, Recovery of Possession and Damages, with Preliminary Injunction filed by petitioners spouses Lolito Chua (Lolito) and Myrna Palomaria (Myrna) and spouses Sergio Chua (Sergio) and Elena Chua (Elena) seeking to:

1. Quiet title over the parcel of land of land covered by Transfer Certificate of Title (TCT) No. T-114915[3] in the name of petitioner Sergio Chua;
2. Annul the Deed of Sale dated September 21, 1999 executed by respondent Victor Lo in favor of co-respondent Agustin Lo Realty Corporation over Lot 505-B-3 with an area of 2,078 square meters (sq m); and
3. Evict the respondents from and recover possession of Lot 505-B-3-A with an area of 600 sq m.

The facts of the case are as follows:

The spouses Lolito and Myrna (spouses Chua) were the owners of a parcel of coconut land (Lot 505) located in Sta. Cruz, Laguna, with an area of 21,644 sq m and covered by Original

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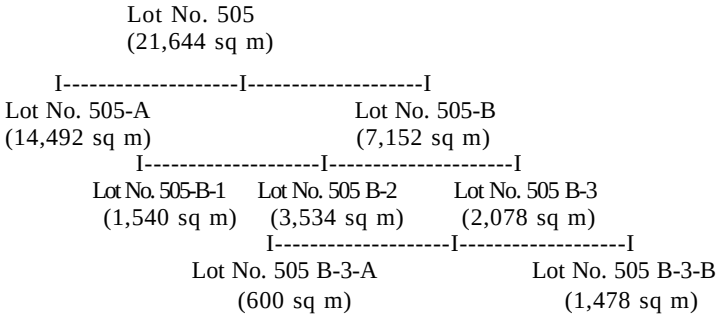
[1] Penned by Associate Justice Rosalinda Asuncion-Vicente, with retired Presiding Justice Romeo F. Barza and Associate Justice Franchito N. Diamante, concurring; *rollo,* pp. 36-47.

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

[3] As referred to in the Petition and in the CA Decision, but as per RTC, it is TCT No. T-114916, Exhibit "B" (for Sergio Chua), *id.* at 57.

Certificate of Title No. P-3264. On January 15, 1976, Myrna, with the consent of Lolito, sold to sisters Delia N. Becina (Delia) and Josefina N. Becina (Josefina),[4] a portion of Lot No. 505 with an area of 4,612 sq m. On August 5, 1977, Lolito, with the consent of Myrna, sold to Delia and Josefina[5] an additional 400 sq m of Lot No. 505. All in all, Josefina and Delia acquired from the spouses Chua a total area of 5,012 sq m as a result of these two sales.

On March 1, 1978, Lot No. 505 was subdivided into two lots: Lot No. 505-A with an area of 14,492 sq m and Lot No. 505-B with an area of 7,152 sq m. Lot No. 505-B is covered by TCT No. 83840 under the name of Lolito. Subsequently, Lot No. 505-B was subdivided into three lots, namely: Lot No. 505-B-1 (1,540 sq m); Lot No. 505-B-2 (3,534 sq m); and Lot No. 505-B-3 (2,078 sq m). Lot No. 505-B-3 was further subdivided into Lot No. 505-B-3-A (600 sq m) and Lot No. 505-B-3-B (1,478 sq m). For a clearer picture, the following illustration is provided, thus:



In view of the 1976 and 1977 sales in favor of Josefina and Delia, Lot No. 505-B-2 and Lot No. 505-B-3 were allotted to them. However, the spouses Lolito and Myrna objected, claiming that Lot Nos. 505-B-2 and 505-B-3 covered a total area of 5,612 sq m or 600 sq m more than what they sold to Josefina and Delia.

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[4] Exhibit "E", *id*.

[5] Exhibit "F", *id*.

A confrontation was held among the parties at the Office of Atty. Tomas Añonuevo (Atty. Añonuevo). To settle the dispute, the parties eventually agreed that Lot No. 505-B-2 (3,534 sq m) be conveyed and transferred to Josefina (wife of Agustin Lo [Agustin]),[6] but the title to Lot No. 505-B-3 would remain in the name of Lolito. Lot No. 505-B-3 will be further subdivided into two lots to segregate the excess area of 600 sq m therefrom. Thus, Lot No. 505-B-3 was subdivided into Lot No. 505-B-3-A (600 sq m) and Lot No. 505-B-3-B (1,478 sq m).[7]

To carry-out their agreement, a Deed of Sale was executed on February 25, 1984, whereby Lolito sold to Josefina Lot No. 505-B-2 for a consideration of ₱94,180.00 where TCT No. T-101045 was issued in Josefina's name. Lot No. 505-B-3 became TCT No. T-101046 and was registered under the name of Lolito. Since this Lot No. 505-B-3 was subdivided into two, the other half (Lot No. 505-B-3-A) comprising of 600 sq m was sold by Lolito to his brother, Sergio, and is now covered by TCT No. T-114915. However, in violation of the agreement, Josefina and her spouse Agustin forcibly occupied the whole area of Lot No. 505-B-3, even encroaching upon Lot No. 505-B-3-A.

Meanwhile, on January 23, 1987, Delia died, leaving her husband Victor Lo (Victor) and children, Nelia Lo (Nelia), Henry Lo (Henry), Vicky Lo (Vicky) and Bernie Lo (Bernie), as heirs. On September 12, 1999, Victor sold to Agustin Lo Realty Corporation, the entire Lot No. 505-B-3 (2,078 sq m) and another non-existent Lot No. 505-B-4 with an area of 428 sq m.[8] Pursuant thereto, Agustin Lo Realty Corporation occupied the entire Lot No. 505-B-3 comprising of Lot No. 505-B-3-A and Lot No. 505-B-3-B and started constructing a building thereon.[9]

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[6] *Id*. at 56.

[7] See illustration.

[8] *Rollo*, p. 57.

[9] *Supra* note 6.

The spouses Chua demanded from them to vacate Lot No. 505-B-3-A which is the alleged excess area consisting of 600 sq m and to remove the construction being built thereon, but to no avail. The parties failed to reach an amicable settlement. This prompted the spouses Chua to file the instant action.

Respondents Agustin, Josefina and Agustin Lo Realty Corporation admitted the existence of the 1976 and 1977 Deeds of Sale in favor of Delia and Josefina. However, they claimed that prior to that or on December 30, 1975, Myrna sold to Josefina a portion of the lot containing 500 sq m. Further, they alleged that it was the spouses Chua who caused the subdivision of Lot No. 505 into two lots (Lot No. 505-A and Lot No. 505-B). And that on February 15, 1980 and February 21, 1981, the spouses Chua, with bad faith, mortgaged Lot No. 505-B and on September 23, 1983, mortgaged Lot No. 505-A-3-B,[10] even though said lots were already sold to them.[11]

It was on February 25, 1984 when Lolito, with the conformity of his wife Myrna, conveyed by way of registrable deed of sale in favor of Josefina the whole Lot No. 505-B-2 with an area of 3,534 sq m which consists of the following: (a) the 500 sq m subject of the 1975 sale; (b) 2,506 sq m, Josefina's share in the 1976 and 1977 sale; and (c) the 528 sq m portion which was subject of an amicable settlement between the parties as compensation for the damages suffered by Josefina arising from the delay in the transfer of the 500 sq m lot to her, the Department of Public Works and Highways (DPWH) road widening, the river easement, the disturbance caused on the portion of Lot No. 505 sold to her, and the mortgage done by the spouses Chua (for three times) of the said portion of lot. Josefina took possession of Lot No. 505-B-2 (now registered in her name) together with the additional 528 sq m in the concept of an owner.

As impleaded defendants, the heirs of Delia alleged that it was only on February 25, 1984 when they discovered that the spouses Chua, in conspiracy with Josefina and Agustin caused

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[10] Referred to as Lot No. 503-A-3-B in the RTC Decision, *id.* at 58.

[11] *Id.*

the execution of a Deed of Sale of a portion of Lot No. 505 with an area of 3,534 sq m (Lot No. 505-B-2) to Josefina instead of only 2,506 sq m reducing the *pro-indiviso* portion pertaining to Delia by 1,028 sq m. The children of Delia, namely, Nelia, Henry, Vicky and Bernie claim that they are not selling their share of their deceased mother's portion of the lot and if ever their father sold the same to Agustin Lo Realty Corporation, the same is valid only to one-fifth *pro-indiviso* share of their father, Victor.

On October 29, 2004, the Regional Trial Court (RTC) rendered a Decision in favor of respondents, thereby dismissing the complaint of the petitioners. The CA affirmed the Decision of the RTC. The spouses Chua filed the instant Petition with this Court questioning both the ownership and possessory rights of the respondents over Lot No. 505-B-3-A comprising of 600 sq m.

The spouses Chua contend that respondents are only entitled to 5,012 sq m of Lot No. 505 as it is the only area sold to them by virtue of the contracts to sell executed in 1976 and 1977. By virtue of the February 25, 1984 Deed of Sale, Lot No. 505-B-2 comprising of 3,534 sq m was already given to Josefina. If Delia (represented by her heirs) will be given Lot No. 505-B-3 comprising of 2,078 sq m, they would own a total of 5,612 sq m which is 600 sq m more than the original 5,012 sq m sold to Josefina and Delia. The instant action sought to recover the said 600 sq m.

The lone issue in this case is:

WHETHER OR NOT PETITIONERS ARE ENTITLED TO RECOVER LOT NO. 505-B-3-A CONTAINING AN AREA OF 600 SQ M ALLEGEDLY REPRESENTING THE EXCESS AREA SOLD TO DELIA AND JOSEFINA.

In resolving the issue, we laid down first some important premises on the basis of the evidence on records, such as documents presented by the parties and admissions which they made.

There is no doubt as to the existence of the 1976 and 1977 sale transactions between the spouses Chua and Delia and Josefina, the subject matter of which pertains respectively to 4,612 sq m and the 400 sq m portion of Lot No. 505. Extant on records are the Deeds of Sale dated January 15, 1976 (Exhibit "E") and August 5, 1977 (Exhibit "F").[12]

The spouses Chua contend that said sale transactions were essentially contracts to sell such that a contract of sale (transferring the ownership) will be executed upon full payment by the vendees of the purchase price. If indeed ownership over the lot is reserved in favor of the vendor and transfer thereof would only be effected upon full payment of the price, then no doubt, the 1976 and 1977 sale transactions are Contracts to Sell. By law, a contract to sell is defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, the full payment of the purchase price.[13]

True enough, at the time of the execution of the said Deeds of Sale, ownership to the subject lot was not yet transferred to the buyers, Josefina and Delia. As a matter of fact, Josefina and Delia even acquiesced to the subdivision of Lot No. 505 on March 1, 1978, with title issued in the name of the spouses Chua, but reserving a portion of the land sold to Josefina and Delia. Also admitted by respondents, was the fact that the subject lot was mortgaged by the spouses Chua for three times, suggesting that the latter were still the owners of the said Lot No. 505.

As seen on records, the Contract of Sale executed in February 25, 1984 was indeed an off-shoot of the 1976 and 1977 Deeds of Sale, which we ruled to be, in reality, Contracts to Sell. This is categorically admitted by the spouses Chua and was

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[12] *Id.* at 57.

[13] *Spouses Edrada v. Spouses Ramos,* 505 Phil. 672, 680 (2005).

admitted by Josefina and Delia's heirs when they were referring to said 1976 and 1977 sale transactions as bases of their present claims. In other words, the February 25, 1984 Contract of Sale is not a separate transaction from the 1976 and 1977 Deeds of Sale.

Confusion arose when the February 25, 1984 Contract of Sale was executed, which conveyed in favor of Josefina alone Lot No. 505-B-2 with an area of 3,534 sq m. This erroneous execution of the Contract of Sale, which was supposed to reflect the intent of the parties in the earlier "Contract to Sell" gave rise to the parties' different and conflicting claims.

As shown by records, the execution of the February 25, 1984 Contract of Sale was a result of the agreement made by all the parties which took place during the confrontation at the office of Atty. Añonuevo. The parties came into an agreement to execute a Contract of Sale in favor of Josefina conveying upon her Lot No. 505-B-2 with an area of 3,534 sq m. No one from the parties disputed this agreement which they voluntarily made. Consequently, TCT No. T-101045 was issued in the name of Josefina.

There was no showing that the other buyer, Delia, objected to the said agreement nor to the issuance of the TCT in favor of Josefina. From 1984, the time of the execution of the said Contract of Sale up to her death in 1987, no opposition came from her part. If Delia consented to the agreement, more so her heirs, who should be bound by her (Delia's) actions. As a matter of fact, after Delia's death, her heirs (spouse and children) executed a Deed of Extra-judicial Partition and Sale of the Estate[14] of the deceased Delia. To carry-out their intention, a Deed of Sale[15] dated September 21, 1999 was executed by Victor over Lot No. 505-B-3 with an area of 2,078 sq m in favor of Agustin Lo Realty Corporation, presumably owned by Josefina's spouse, Agustin. Even the children of Delia, namely, Henry,

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[14] Exhibit "18", *rollo*, p. 61.

[15] Exhibit "13", *id*.

Nelia, Vicky and Bernie subsequently sold their perceived respective shares in Lot No. 505 in favor of Agustin Lo Realty Corporation, as evidenced by the Deeds of Sale which they each executed on February 26, 1998 except for Nelia who executed hers on May 27, 1998.[16]

This only shows that from the 5,012 sq m which Delia bought with her sister Josefina from the spouses Chua, Delia agreed that the 3,534 sq m would go to Josefina and the remaining area would go to her. Nothing from the law would prohibit co-owners to agree with the said sharing. On the part of the sellers (spouses Chua), it is no longer their concern how the buyers would divide the property which they jointly purchased. Thus, when Delia agreed to issue Lot No. 505-B-2 in favor of Josefina, she, in effect, agreed to the physical partition of their undivided portion of the co-ownership. Hence, her heirs are now precluded to question the area of the lot that was delivered to their predecessor.

Since the 3,534 sq m was already physically delivered to Josefina by the issuance of the TCT in her favor, then Delia, as per their agreement, is only entitled to 1,478 sq m. What was puzzling, however, is how Victor, Delia's spouse, was able to sell the entire Lot No. 505-B-3 with an area of 2,078 sq m in favor of Agustin Lo Realty Corporation. Evidently, the said sale in favor of Agustin Lo Realty Corporation is in excess of 600 sq m which is now the subject of the dispute in the instant case.

By mathematical precision, the parties cannot deny that the total area delivered to Josefina and Delia was in excess of 600 sq m. Out of the total area of 5,012 sq m, subject of the 1976 and 1977 Contracts to Sell, what were already given by the spouses Chua were Lot No. 505-B-2 with an area of 3,534 sq m to Josefina (by virtue of the Contract of Sale in favor of Josefina) and Lot No. 505-B-3 to Delia with an area of 2,078 sq m (by implied acquiescence of Delia based on the parties' agreement). Adding up the areas of the two lots that were

[16] Exhibits "14" – "17", *id*.

delivered, the spouses Chua had conveyed a total of 5,612 sq m (3,534 sq m + 2,078 sq m) or 600 sq m more of the 5,012 sq m agreed upon by the parties in their 1976 and 1977 sale transactions.

Josefina and Delia cannot feign ignorance of this excess area. As in fact records show that all the parties (spouses Chua, Josefina and Delia) voluntarily agreed to subdivide Lot No. 505-B-3 into two lots, purposely to segregate the excess 600 sq m which was inadvertently delivered by the spouses Chua in favor of Josefina and Delia. The segregated 600 sq m was even already transferred by Lolito to his brother Sergio and a TCT was issued in the name of the latter. Up until the filing of the complaint by the spouses Chua, no opposition/objection was heard from Josefina nor from Delia or the latter's heirs on the issuance of a certificate of title in favor of Sergio.

Clearly, the sale of Victor in favor of Agustin Lo Realty Corporation is in excess of the area of 600 sq m. The heirs of Delia could only dispose of Delia's rightful share, which as per their agreement, is up to 1,478 sq m area only. This is consistent with the rule that one cannot sell what he does not own and this rule has much force when the subject of the sale is a titled land that belongs to another person.[17] Thus, the Deed of Sale executed by Victor in favor of Agustin Lo Realty Corporation (which conveyed upon the latter 2,078 sq m of the lot) should be nullified as it includes the 600 sq m portion of a land not owned by the seller.

On this score, we rule that petitioners' action to quiet title stands on legal grounds. In an action for quieting of title, the complainant is seeking for an adjudication that a claim of title or interest in property adverse to the claimant is invalid, to free him from the danger of hostile claim, and to remove a cloud upon or quiet title to land where stale or unenforceable claims or demands exist.[18]

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[17] *Cervantes v. Court of Appeals*, 404 Phil. 651, 660 (2001).

[18] *Heirs of Pocdo v. Avila*, 730 Phil. 215, 224 (2014).

For an action to quiet title to prosper, two indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.[19]

Both requisites are present in the instant case.

No doubt the 600 sq m portion of the lot (designated as Lot No. 505-B-3-A) is covered by TCT No. T-114915 in the name of Sergio. Clearly, Sergio has a legal title to the said portion of the disputed lot. It is fundamental that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein.[20] After the expiration of the one year period from the issuance of the decree of registration upon which it is based, it becomes incontrovertible.[21]

Secondly, the Deed of Sale executed by Victor, conveying the entire Lot No. 505-B-2 in favor of Agustin Lo Realty Corporation, which appears to be valid, but in fact invalid, casts a cloud on the title of Sergio. As earlier discussed, Lot No. 505-B-2 was not entirely owned by Victor, the spouse of Delia. Hence, the latter has no right to dispose of that said portion by virtue of the Deed of Sale. By reason of the void sale, Agustin Lo Realty Corporation has no right, whatsoever, over the said 600 sq m portion of the lot. Possession thereof must be returned to the registered owner, Sergio.

In a last ditch attempt to show that the spouses Chua is still obligated to deliver the other half-portion of the 5,012 sq m, subject of the sale which is 2,506 sq m in favor of Delia's heirs, respondent spouses Josefina and Agustin claim that the

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[19] *Salvador v. Patricia, Inc.,* 799 Phil. 116, 134 (2016).

[20] *Arjonillo v. Pagulayan,* G.R. No. 196074, October 4, 2017, 841 SCRA 588, 597.

[21] *Republic v. Hachero,* 785 Phil. 784, 796 (2016); citations omitted.

3,534 sq m subject of the February 25, 1984 Contract of Sale in favor of Josefina comprised not only of Josefina's share (2,506 sq m or one-half of 5,012 sq m) in the lot sold to her by the spouses Chua, but also includes the 500-sq m lot earlier sold to Josefina by Myrna in 1975 and the 528 sq m subject of an amicable settlement as compensation given by the spouses Chua for the damages sustained by Josefina arising from the delay in the transfer of the 500-sq m lot to her, the DPWH road widening, the river easement, the disturbance caused on the portion of Lot No. 505 sold to her, and the mortgage done by the spouses Chua (for three times) of the said portion of lot. Thus:

Lot sold to Josefina in 1975	500 sq m
One-half of the Lot sold to Josefina in 1976 and 1977	2,506 sq m
Compensation for damages	528 sq m
TOTAL area conveyed (as per Contract of Sale)	3,534 sq m

We do not subscribe. Their claim, while characterized with exactness, was not supported by sufficient evidence. Quite telling is the fact that even the 1984 Contract of Sale itself does not mention of this arrangement, where the breakdown of the 3,534 sq m, subject matter of the sale, was specifically delineated. What was clear, from the above discussion, are the parties' admission that the 1984 Contract of Sale was an off-shoot of the Contracts to Sell executed by the parties in 1976 and 1977 and was never a separate contract from one another and their compromise agreement to convey the said Lot No. 505-B-2 with an area of 3,534 sq m in favor of Josefina.

But this does not mean that we invalidate the sale by Myrna of the 500 sq m in favor of Josefina in 1975. On the contrary, we sustain its validity and the binding force and effect of the said contract as between the parties. Apart from the fact that said sale was well-supported by a Certification[22] dated December

[22] Exhibit "1", *rollo,* p. 59.

30, 1975 signed by Myrna, attesting to the sale of 500 sq m in favor of Josefina, no one from the parties disputed its existence and genuineness. For this reason, the spouses Chua is obligated to execute a separate contract/agreement to fortify this 1975 sale transaction and to deliver the said 500 sq m apart from the 5,012 sq m subject matter of the 1976 and 1977 sale transactions.

We, however, cannot sustain the veracity of 528 sq m, which was allegedly subject of the amicable settlement as compensation for the damages sustained by Josefina. Apart from respondents' bare allegation, no other clear, concrete and convincing evidence was presented that the spouses Chua were amenable to compensate Josefina of the damages and that they are expressly relinquishing their 528 sq m interest in Lot No. 505.

As to the claim of Delia's children that they did not agree to the sale made by their father Victor to Agustin Lo Realty Corporation, this is effectively belied by their execution of the Deed of Extra-Judicial Partition and Sale[23] of the estate of the deceased Delia and the Deeds of Sale[24] which they executed in favor of Agustin Lo Realty Corporation.

WHEREFORE, the instant Petition is **GRANTED.** The questioned Decision dated November 23, 2010 and the April 28, 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 85892 are **REVERSED and SET ASIDE.** Accordingly, a new one is issued, as follows:

1. Petitioners' action to quiet TCT No. T-114915 is **GRANTED.**
2. The Deed of Sale dated September 21, 1999 executed by Victor Lo in favor of Agustin Lo Realty Corporation is declared **NULL and VOID** insofar as the 600 sq m area is concerned.
3. Agustin Lo Realty Corporation is ordered to **SURRENDER POSSESSION** of Lot No. 505-B-3-A

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[23] Exhibit "18", *supra* note 14.

[24] Exhibits "14"-"17", *supra* note 16.

with an area of 600 sq m in favor of the estate of the deceased petitioner Sergio Chua.

4. Petitioner spouses Lolito and Myrna Chua are ordered to **DELIVER** in favor of Josefina Lo the 500 sq m subject of the 1975 sale transaction between Myrna Chua and Josefina Lo.

No costs.

SO ORDERED.

Caguioa (*Acting Chairperson*),[*] *Lazaro-Javier,* and *Zalameda, JJ.,* concur.

Carpio, S.A.J. (*Chairperson*), on official leave.

SECOND DIVISION

[G.R. No. 197722. August 14, 2019]

JOCELYN MODOMO and DR. ROMY MODOMO, *petitioners, vs.* **SPOUSES MOISES P. LAYUG, JR. and FELISARIN[*] E. LAYUG; MOISES P. LAYUG, JR., substituted by his heirs, namely: his wife, FELISARIN E. LAYUG, and children, MA. CELESTE LAYUG CO, EUGENE ESPINOSA LAYUG, FRANCIS ESPINOSA LAYUG and SHERYL ESPINOSA LAYUG,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; NOVATION IS NEVER

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[*] Per Special Order No. 2688 dated July 30, 2019.

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

PRESUMED, AND THE *ANIMUS NOVANDI*, WHETHER TOTAL OR PARTIAL, MUST APPEAR BY EXPRESS AGREEMENT OF THE PARTIES, OR BY THEIR ACTS THAT ARE TOO CLEAR AND UNEQUIVOCAL TO BE MISTAKEN.— Noted civilist Justice Eduardo P. Caguioa elucidated on the concept of modificatory novation as follows: x x x Novation has been defined as the substitution or alteration of an obligation by a subsequent one that cancels or modifies the preceding one. Unlike other modes of extinction of obligations, novation is a juridical act of dual function, in that at the time it extinguishes an obligation, it creates a new one in lieu of the old. x x x **This is not to say however, that in every case of novation the old obligation is necessarily extinguished. Our Civil Code now admits of the so-called imperfect or modificatory novation where the original obligation is not extinguished but modified or changed in some of the principal conditions of the obligation. Thus, article 1291 provides that obligations may be *modified*.** While the Civil Code permits the subsequent modification of existing obligations, these obligations cannot be deemed modified in the absence of clear evidence to this effect. Novation is never presumed, and the *animus novandi*, whether total or partial, must appear by express agreement of the parties, or by their acts that are too clear and unequivocal to be mistaken. Accordingly, the burden to show the existence of novation lies on the party alleging the same.

2. ID.; OBLIGATIONS AND CONTRACTS; ESTOPPEL; ESTOPPEL *IN PAIS*, DEFINED; WHEN APPLICABLE, REQUISITES.— Estoppel *in pais* arises when one, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts. For the principle of estoppel *in pais* to apply, there must be: (i) conduct amounting to false representation or concealment of material facts or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (ii) intent, or at least expectation that this conduct shall be acted upon, or at least influenced by the other party; and (iii) knowledge, actual or constructive, of the actual facts.

APPEARANCES OF COUNSEL

Gordon Dario Reyes Hocson Viado & Blanco Law Firm for petitioners.

Taguyana Panopio Escober Law Firm for respondents.

D E C I S I O N

CAGUIOA,[**] ***J.*:**

The Case

This is a petition for review on *certiorari*[1] (Petition) filed under Rule 45 of the Rules of Court against the Decision[2] dated March 22, 2011 (assailed Decision) and Resolution[3] dated July 20, 2011 (assailed Resolution) in CA-G.R. SP No. 113807 rendered by the Court of Appeals (CA).

The assailed Decision and Resolution affirm the lower courts' uniform rulings which ordered petitioners Dr. Romy Modomo and Jocelyn Modomo (collectively, Spouses Modomo) to immediately surrender possession of a certain parcel of land covered by Transfer Certificate of Title (TCT) No. 208683 registered in the name of respondents Moises P. Layug, Jr. and Felisarin E. Layug (collectively, Spouses Layug).[4]

The Facts

The facts, as narrated by the Metropolitan Trial Court (MeTC) of Makati City, Branch 64, and subsequently adopted by the CA, are as follows:

[**] Designated Acting Chairperson per Special Order No. 2688 dated July 30, 2019.

[1] *Rollo*, pp. 10-40, excluding Annexes.

[2] *Id.* at 106-114. Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Ramon M. Bato, Jr. and Florito S. Macalino concurring.

[3] *Id.* at 116-117.

[4] See *id.* at 41, 44.

[Spouses Layug filed] a complaint for [e]jectment x x x before the [MeTC], Branch 65 of Makati on July 23, 2008 which was raffled off to [Branch 64] after a failed Mediation and Judicial Dispute Resolution (JDR) x x x.

x x x x x x x x x

[Spouses Layug] alleged among others that[:] they are the registered owner[s] and legal possessors of a parcel of land located at No. 1038 A.P. Reyes Street corner Cristobal Street, Barangay Tejeros, Makati City covered by [Transfer Certificate of Title (TCT)] No. 208683. Aforesaid property was leased to [Spouses Modomo] for a period of seven (7) years. Pursuant to the [Contract of Lease[5] dated February 11, 2005 (Contract of Lease), Spouses Modomo agreed to] pay the amount of **Php170,000.00** as monthly rentals subject to an escalation of 10% for the second and third year, 15% on the fourth and fifth year and 20% on the sixth and seventh year. **It was also agreed by the parties that real estate taxes on the property shall be paid by [Spouses Modomo].** In view of [these] stipulation[s], an Addendum to the Contract was executed by the parties [also] on February 11, 2005 regarding the terms and conditions of payment of rentals. **Subsequently, [Spouses Modomo] defaulted in the payment of the escalation of [rental fees] commencing from the year 2006 up to [the filing of the complaint for ejectment on July 23, 2008].** [Spouses Modomo] also failed to pay their rentals for the year 2008 which would have been paid in advance. [Spouses Layug] also alleged, that [Spouses Modomo] failed to pay the real estate taxes due on the property x x x which [Spouses Layug] paid in [Spouses Modomo's] behalf. [Spouses Layug sent a] letter x x x to [Spouses Modomo] [demanding that they] settle their unpaid monthly rentals x x x but to no avail. **Ultimately, [a] letter dated March 24, 2008 was sent to [Spouses Modomo] terminating the [C]ontract [of Lease] and containing therein a demand for [Spouses Modomo] to vacate the premises.** To thresh out the matter, the case was referred to the Barangay of Tejeros for conciliation but to no avail. Hence, a certification to file action was issued. **To protect [their] interest, [Spouses Layug] instituted the present suit claiming that [Spouses Modomo] should vacate the premises, x x x pay [Spouses Layug] rental arrearages, attorney's fees and costs of suit.**

On the contrary, [Spouses Modomo] argued that[: the] parties originally agreed that [Spouses Modomo] would pay the amount of

[5] *Id*. at 125-131.

Php170,000.00 subject to an escalation of 10% for the second and third year, 15% on the fourth and fifth year and 20% on the sixth and seventh year. However, considering that [Jocelyn] Modomo [had] introduce [d] improvements thereon[,] she [asked] [Spouses Layug] to change certain provisions in the Contract of Lease. **Based on their conversation[,] [Spouses Layug] agreed to reduce the monthly rentals to Php150,000.00 and the non-imposition of the escalation clause and the real estate tax provision.** [Spouses Modomo] religiously paid the rentals strictly in accordance with their subsequent agreements. **[Spouses Layug], on the second year of the [C]ontract [of Lease], imposed the 10% escalation x x x. [Spouses Modomo] however, reminded [Spouses Layug] of their previous agreement regarding the non-imposition of the escalation clause and the real estate tax provision.** Thereafter, [Spouses Modomo] alleged that [Spouses Layug agreed not to] impose the escalation clause [in] the [C]ontract of [L]ease in view of the introduction of the improvements in the premises amounting to approximately Two Million pesos [Php2,000,000.00]. Again [i]n 2008[, Spouses Layug] [purportedly] reneged on their agreements by imposing the escalation clause. Therefore, [Spouses Modomo] pray[ed] that the case be dismissed because the [C]ontract of [L]ease dated February 11, 2005 ha[d] been amended by the subsequent oral agreements between the parties. [Spouses Modomo further claimed that Spouses Layug] are in estoppel *in pais*, [due to] their unconditional acceptance of the reduced x x x monthly [rental] x x x of Php150,000.00 instead of Php170,000.00. [Spouses Modomo] also alleged that the [C]ontract of [L]ease has been novated in view of the subsequent oral agreements of the parties. Hence, [Spouses Modomo] pray[ed] for the dismissal of the case and [that] they be [declared] entitled to their counterclaim.[6] (Emphasis supplied)

MeTC Ruling

On July 20, 2009, the MeTC issued a Decision[7] in favor of Spouses Layug, the dispositive portion of which reads:

WHEREFORE, the [MeTC] renders judgment ordering [Spouses Modomo] to immediately surrender the peaceful possession of the leased property with improvements thereon located at No. 1038 A.P. Reyes Street corner Cristobal Street, Barangay Tejeros, Makati City.

[6] *Id*. at 41-43; see also *id*. at 107-109.

[7] *Id*. at 41-45. Penned by Judge Ronald B. Moreno.

[Spouses Modomo] are likewise ordered to pay [Spouses Layug] the amount of Php3,119,200.00 as rental arrearages. The amount of Php208,725.00 per month as payment for the reasonable use and occupation of the property [is also imposed], computed from July 23, 2008 until [Spouses Modomo] actually [vacate] the premises.

[Spouses Modomo] are also ordered to pay [Spouses Layug] Php10,000.00 as attorney's fees. Costs against [Spouses Modomo].

The [MeTC] **DISMISSES** the counterclaim filed by [Spouses Modomo].

So Ordered.[8] (Emphasis supplied)

RTC Proceedings

Spouses Modomo filed an appeal before the RTC[9] *via* Rule 40 of the Rules of Court.

Therein, Spouses Modomo insisted that Spouses Layug failed to refute the existence of their subsequent oral agreement which caused the novation of the Contract of Lease, particularly the provisions: (i) fixing the rental fee at Php 170,000.00; (ii) imposing annual escalation on rental fees; and (iii) requiring Spouses Layug to pay real estate tax during the lease term.[10] Spouses Modomo further argued that Spouses Layug are estopped from denying the existence of such oral agreement, considering that they accepted their monthly rental payments at the reduced amount of Php 150,000.00 without protest.[11]

In its Decision[12] dated January 28, 2010, the RTC affirmed the findings of the MeTC *in toto*, disposing the case in these words:

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

[9] Regional Trial Court of Makati City, Branch 59.

[10] *Rollo*, p. 47.

[11] *Id*.

[12] *Id*. at 46-48. Penned by Judge Winlove M. Dumayas.

After a careful consideration of the pleadings and the evidence on record, this Court finds that the court-a-quo did not commit an error in rendering judgment in favor of [Spouses Layug].

WHEREFORE, premises considered, the appealed decision is hereby AFFIRMED with costs against [Spouses Modomo].

SO ORDERED.[13]

Like the MeTC, the RTC also harped on the Parole Evidence Rule set forth in Rule 130 of the Rules of Court[14] and held that if the parties' real intention was to "cancel" the original Contract of Lease, they should have executed a new Contract of Lease expressing "their intention to eliminate the stipulation[s] regarding the escalation clause and the provision on real estate tax."[15]

The RTC also noted that while Spouses Layug accepted Spouses Modomo's monthly rental payments in the reduced amount of Php150,000.00 without escalation, they did not do so unconditionally. As basis, the RTC cited Spouses Layug's letters dated December 7, 2006, February 6, 2007 and January 9, 2008 objecting to Spouses Modomo's deficient payments.[16]

Spouses Modomo filed a motion for reconsideration, which the RTC denied on April 6, 2010.[17]

CA Proceedings

Aggrieved, Spouses Modomo filed a petition for review before the CA, reiterating the arguments they raised before the RTC.

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[13] *Id.* at 48.

[14] Section 9 of Rule 130 states, in part:

SEC. 9. *Evidence of written agreements.* — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

[15] *Rollo*, p. 47.

[16] *Id.*

[17] *Id.* at 49.

The CA denied said petition through the assailed Decision,[18] the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED DUE COURSE** and accordingly, **DISMISSED** for lack of merit. The assailed Decision dated January 28, 2010 and Order dated April 6, 2010, issued by the RTC, Branch 59, Makati, in Civil Case No. 09-981 are hereby **AFFIRMED** with **MODIFICATION** that petitioners are further **ORDERED** to pay [Spouses Layug] legal interest of twelve percent (12%) per annum on the back rentals [amounting to Php3,119,200.00] from the date of judicial demand on July 23, 2008 until fully paid.
>
> **SO ORDERED.**[19]

The CA held that Spouses Modomo failed to establish the concurrence of the requisites necessary to extinguish or modify the Contract of Lease by way of novation.[20] As well, the CA affirmed the lower courts' findings regarding the inapplicability of the principle of estoppel.[21]

Finally, considering that Spouses Modomo vacated the leased premises on November 2009, the CA clarified that the monetary award of Php208,725.00 per month as payment for reasonable use and occupation of the leased premises shall run from the filing of the complaint for ejectment in July 2008, but only until the surrender of the leased premises in November 2009.[22]

Spouses Modomo's subsequent motion for reconsideration was also denied through the CA's assailed Resolution,[23] which the former received on July 26, 2011.[24]

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[18] *Id.* at 106-114.

[19] *Id*. at 113.

[20] *Id.* at 111.

[21] *Id*. at 112.

[22] *Id*. at 113.

[23] *Id.* at 116-117.

[24] *Id.* at 13.

On August 5, 2011, Spouses Modomo filed a Motion for Extension of Time to File Petition for Review on *Certiorari*[25] (Motion for Extension), praying for an additional period of thirty (30) days, or until September 9, 2011, to file their Petition.

Finally, this Petition was filed on September 9, 2011, the last day of the additional period prayed for.

On October 3, 2011, the Court issued a Resolution[26] granting Spouses Modomo's Motion for Extension, and directing Spouses Layug to file their comment to the Petition.

It appears, however, that the RTC issued a Writ of Execution against Spouses Modomo for the satisfaction of the monetary award granted in Spouses Layug's favor. Hence, Spouses Modomo's real property covered by TCT No. T-130972 was made subject of a Notice of Sheriffs Sale on Execution of Real Property[27] scheduled on March 5 and 9 of the following year.[28] This prompted Spouses Modomo to file an Urgent Motion for the Issuance of a Temporary Restraining Order/Status Quo Order[29] (Urgent Motion) on February 21, 2012.

The Urgent Motion was opposed by Spouses Layug through their Comment (To Petitioners' Urgent Motion)[30] filed on June 25, 2012. Appended to this Comment is a copy of the RTC's Order[31] dated March 2, 2012 granting the Urgent Motion to Defer Sale on Execution filed therein by Spouses Modomo. The Order states, in part:

In this case, considering that there is a pending *Urgent Motion for the Issuance of a Temporary Restraining Order/Status Quo and Petition*

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

[26] *Id.* at 169.

[27] *Id.* at 202-203.

[28] *Id*. at 197.

[29] *Id.* at 197-201.

[30] *Id*. at 238-244. Denominated as "Comment (To Petitioner's Urgent Motion for the Issuance of a Temporary Restraining Order/*Status Quo* Order)."

[31] *Id.* at 245-246.

for Review on Certiorari under Rule 45 before the Honorable Supreme Court x x x [the RTC], which is a mere lower [c]ourt, deems it wise and appropriate to defer the scheduled auction sale on March 5 and 9, 2012, so as not to render the issues pending before the High Court moot and moribund. Moreover, the Court believes that the deferment of the auction sale will not prejudice nor cause irreparable damage against [Spouses Layug] considering that should the High Court rule on the pending issues therein, [the RTC] can promptly act accordingly.

WHEREFORE, in view of the foregoing, [Spouses Modomo's] Urgent Motion to Defer Sale on Execution is hereby GRANTED. Accordingly, the auction sale scheduled on March 5 and 9, 2012 is hereby deferred until further ordered.[32] (Italics supplied)

According to Spouses Layug, the foregoing Order rendered Spouses Modomo's Urgent Motion before this Court moot and academic.[33]

Spouses Layug's Comment on the Urgent Motion was noted by the Court through its Resolution[34] dated September 3, 2012.

Meanwhile, Spouses Layug filed their Comment[35] to the Petition on January 4, 2012, to which Spouses Modomo filed their Reply.[36]

In this Petition, Spouses Modomo fault the CA for ruling that no novation of the Contract of Lease had taken place.[37] In this connection, Spouses Modomo also claim that the CA erred when it failed to apply the principle of estoppel *in pais* in the present case.[38]

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[32] *Id*. at 246.

[33] *Id*. at 238.

[34] *Id.* at 258.

[35] *Id*. at 170-186. Denominated as "Comment (with Motion to Admit)."

[36] *Id.* at 215-229. Denominated as "Reply to Comment."

[37] *Id.* at 23-30.

[38] *Id.* at 31-35.

Finally, Spouses Modomo argue that the CA erred in failing to rule upon their claim for reimbursement for useful improvements under Article 1678 of the Civil Code.[39]

The Issues

The issues submitted for the Court's resolution are:

1. Whether the provisions of the Contract of Lease governing rental fees, escalation and real estate tax payment have been partially novated by the parties' alleged subsequent verbal agreement;
2. Whether the principle of estoppel *in pais* applies so as to preclude Spouses Layug from denying the partial novation of the Contract of Lease; and
3. Whether Spouses Modomo are entitled to reimbursement for useful improvements made upon the leased property.

The Court's Decision

The Petition is granted in part.

Partial Novation

Spouses Modomo adamantly insist that the terms of the Contract of Lease governing rental fees, escalation and real estate tax payments have been modified through a subsequent verbal agreement.

Spouses Modomo alludes to the existence of a partial novation, governed by Article 1291 of the Civil Code which states:

ART. 1291. Obligations may be modified by:

(1) Changing their object or principal conditions;

(2) Substituting the person of the debtor;

(3) Subrogating a third person in the rights of the creditor. (Emphasis supplied)

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

Noted civilist Justice Eduardo P. Caguioa elucidated on the concept of modificatory novation as follows:

> x x x Novation has been defined as the substitution or alteration of an obligation by a subsequent one that cancels or modifies the preceding one. Unlike other modes of extinction of obligations, novation is a juridical act of dual function, in that at the time it extinguishes an obligation, it creates a new one in lieu of the old. x x x **This is not to say however, that in every case of novation the old obligation is necessarily extinguished. Our Civil Code now admits of the so-called imperfect or modificatory novation where the original obligation is not extinguished but modified or changed in some of the principal conditions of the obligation. Thus, article 1291 provides that obligations may be *modified*.**[40] (Emphasis supplied)

While the Civil Code permits the subsequent modification of existing obligations, these obligations cannot be deemed modified in the absence of clear evidence to this effect. Novation is never presumed, and the *animus novandi*, whether total or partial, must appear by express agreement of the parties, or by their acts that are too clear and unequivocal to be mistaken.[41]

Accordingly, the burden to show the existence of novation lies on the party alleging the same.

Applying the foregoing principles, the Court finds that while there has been a modificatory novation of the Contract of Lease through the parties' subsequent verbal agreement, such novation relates solely to the lowering of the monthly rental fee from Php170,000.00 to Php150,000.00.

The provisions governing escalation and real estate tax payment, as set forth under the Contract of Lease and modified by the subsequent written Addenda, stand.

The modification of the monthly rental fee through the parties' subsequent

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

[41] *Quinto v. People*, 365 Phil. 259, 267 (1999).

verbal agreement is confirmed by the evidence on record, and Spouses Layug's own submissions.

The records are replete with evidence confirming the modification of the monthly rental fee through the subsequent verbal agreement of the parties.

Foremost, the Spouses Layug served upon Spouses Modomo several Statements of Account[42] reflecting the latter's unpaid balance. These statements show that Spouses Layug consistently computed Spouses Modomo's unpaid balance on the basis of the lowered monthly rental fee of Php150,000.00, instead of Php170,000.00.

In addition, Spouses Layug's Letter[43] dated March 24, 2008 (Final Demand) also reflects a computation of Spouses Modomo's unpaid balance on the basis of the lowered monthly rental fee.

Finally, any doubt as to the modification of the monthly rental fee is dispelled by the statements in Spouses Layug's Comment to the Petition which unequivocally confirm such modification:

> x x x The alleged novation on the monthly rental rate of [Php]150,000.00 from [Php]170,000.00 would not in anyway novate an existing and valid contract whereby all its valid and enforceable stipulations would be put to naught.
>
> x x x x x x x x x
>
> **In fine, it may be true that the rental rate of [Php]170,000.00 was modified by the parties and a novation of the principal condition of the [C]ontract of [L]ease was thereby effected, nevertheless, such a modification did not render the [C]ontract of [L]ease as totally extinguished but rather[,] merely modified.** In fine, all other conditions of the contract[,] including the escalation clause on the monthly rental rate and the proportional payment of

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[42] Statement of Account as of February 7, 2007, *rollo*, p. 250; Statement of Account as of January 9, 2008, *id.* at 251-252; Statement of Account as of May 2008, *id.* at 167-168.

[43] *Rollo*, pp. 253-254.

real property taxes and assessments by [Spouses Modomo] remain valid and subsisting.[44] (Emphasis supplied)

These statements, coupled with the computation in the Statements of Account and Final Demand, confirm the parties' subsequent verbal agreement to lower the monthly rental fee from Php170,000.00 to Php150,000.00. Notably, even the MeTC, RTC and CA appear to have computed Spouses Layug's award for rental arrearages based on the lowered rental fee,[45] despite the absence of an explicit recognition of the rental fee's modification in their respective judgments.

Spouses Modomo failed to establish that the provisions governing escalation and proportional payment of real estate tax payment have been similarly modified.

While the records bear sufficient evidence to show the subsequent modification of the monthly rental fee, no similar evidence exists on record to warrant the non-imposition of the provisions on annual escalation and proportional payment of real estate tax.

To note, the parties took pains to execute two *written* Addenda for the purpose of modifying the terms and conditions of the parties' Contract of Lease.

The first Addendum[46] dated February 11, 2005 sets forth a detailed schedule of payment of rentals for the entire seven (7)-year term of the lease.

The second Addendum[47] dated February 15, 2005 reflects the following modifications in relation to taxes and assessments, among others:

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[44] *Id.* at 178-179.

[45] Computation set forth in the discussion below.

[46] *Id.* at 132-134.

[47] *Id.* at 135-138.

WHEREAS, the **LESSORS** and **LESSEE** thereat mutually further agree to incorporate the following corrections to and additional stipulations to form part of the Contract of Lease, to wit:

x x x x x x x x x

TAXES AND ASSESSMENTS

For the entire duration of this contract, including any extension and renewal thereof, the parties agreed that the **LESSEE** shall pay all taxes and assessments due the government for the portion of the above-mentioned parcels of land occupied by the building constructed thereon by the **LESSEE** which is the subject of this lease. The parties agree to share whatever assessment of taxes for every year during the term of this Contract on the following sharing basis, to wit:

	Lessors	Lessee
Lot	40%	60%
Building	25%	75%[48]

To be sure, neither the first nor second Addendum has the effect of: (i) waiving the imposition of escalation; or (ii) completely absolving Spouses Modomo from real estate tax liability. **On the contrary, these Addenda reinforce the parties' intention to: (i) impose annual escalation at the rates set forth under the Contract of Lease; and (ii) impose proportional payment of real estate tax during the subsistence of the lease.**

If the parties truly intended to further modify the Contract of Lease by deleting the provisions on escalation and proportional payment of real estate tax, they would have done so through *another* written document, as they have consistently done with all modifications relating to such matters. **It must be stressed that unlike the modification of the monthly rental fee which is supported by several pieces of documentary evidence and confirmed by Spouses Layug's own submissions, the modification of the provisions on annual escalation and proportional payment of real estate tax is supported solely by Spouses Modomo's own self-serving statements.**

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[48] *Id.* at 135-136.

Estoppel does not apply.

Spouses Modomo also insist that Spouses Layug should be precluded from denying the partial novation of the Contract of Lease since they accepted Spouses Modomo's monthly rental payments without escalation and proportional share in the real estate tax for three (3) years, starting on the second year of the lease term. As basis, Spouses Modomo harp on the principle of estoppel *in pais*.

Estoppel *in pais* arises when one, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts.[49]

For the principle of estoppel *in pais* to apply, there must be: (i) conduct amounting to false representation or concealment of material facts or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (ii) intent, or at least expectation that this conduct shall be acted upon, or at least influenced by the other party; and (iii) knowledge, actual or constructive, of the actual facts.[50]

Based on the records, Spouses Layug served upon Spouses Modomo several letters dated December 7, 2006,[51] February 6, 2007[52] and January 9, 2008[53] expressing their objection to the latter's deficient payments.[54] These letters belie Spouses Modomo's imputation of silence and acquiescence on the part

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[49] *The City of Cebu v. Spouses Dedamo*, 431 Phil. 524, 534 (2002).

[50] *Pacific Mills, Inc. v. Court of Appeals*, 513 Phil. 534, 544-545 (2005).

[51] *Rollo*, pp. 247-248.

[52] *Id*. at 249.

[53] *Id.* at 251-252.

[54] See *id*. at 112.

of Spouses Layug. It can hardly be said that Spouses Layug falsely conveyed their acquiescence to Spouses Modomo's deficient payments through silence, there being no "silence" to speak of.

Spouses Modomo are not entitled to reimbursement for the cost of improvements made on the leased property.

Finally, Spouses Modomo maintain that they are entitled to reimbursement under Article 1678 of the Civil Code, which reads:

> ART. 1678. If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon the termination of the lease shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary.

Suffice it to state that Spouses Modomo have, by their own acts, deprived the Spouses Layug of the option to appropriate the improvements made upon the leased premises by causing their demolition. Notably, Spouses Modomo did not dispute that they had "vacated the leased premises [and] left no single piece of wood or materials on the premises [and] demolished everything."[55] Hence, they are precluded from seeking reimbursement for improvements that are now inexistent.

The computation of rental arrearages and compensation for reasonable use of the leased premises, together with applicable interest, must be corrected.

The assailed Decision awards the following amounts in Spouses Layug's favor:

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[55] *Id.* at 185.

1. Rental arrearages amounting to **Php3,119,200.00**, with **12% interest** computed from the date of judicial demand (*i.e.*, filing of the complaint for ejectment on July 23, 2008);
2. Payment for reasonable use and occupation of the leased premises amounting to Php208,725.00 per month **from the filing of the complaint for ejectment in July 2008** to November 2009, when Spouses Modomo finally vacated the leased premises; and
3. Attorney's fees amounting to Php10,000.00.

The Court notes that the value of rental arrearages was arrived at by applying the escalation rates stipulated under the Contract of Lease, thus:

Unpaid rental on the second floor during construction	Php 56,500.00
Unpaid rental on the 10% increase for the year 2006 (Php165,000.00[56] - Php150,000.00 = Php15,000.00 x 12 months)	180,000.00
Unpaid rental on the 10% increase for the year 2007 (Php181,500.00[57] - Php 150,000.00 = Php31,500 x 12 months)	378,000.00
Unpaid rental for the entire year of 2008 payable at the beginning of the year per first Addendum, plus 15% escalation (Php208,725.00[58] x 12 months)	2,504,700.00
Total	**Php3,119,200.00**[59]

[56] Base rental fee for year 2, after application of 10% escalation.

[57] Base rental fee for year 3, after application of 10% escalation.

[58] Base rental fee for year 4, after application of 15% escalation.

[59] See Final Demand Letter, *rollo*, pp. 253-254.

Considering that the provision on the proportional sharing of real estate tax liability remains effective, the Court deems it proper to award, in addition to rental arrearages, Spouses Modomo's unpaid share in real estate taxes amounting to Php27,539.80.[60]

As well, the Court finds that the additional award for monthly payment for reasonable use and occupation of the leased premises should start to run *not* from the filing of the complaint for ejectment on July 23, 2008, but rather in January 2009, considering that the award for rental arrearages already includes unpaid rental fees for the entire year of 2008, that is, until December 2008.

Finally, inasmuch as the rental arrearages and unpaid real estate taxes do not constitute a loan or forbearance of money,[61] the proper interest applicable thereon is *not* 12%, but 6% per annum.

WHEREFORE, premises considered, the Petition is **GRANTED IN PART**. The Decision dated March 22, 2011 rendered by the Court of Appeals in CA-G.R. SP No. 113807 is **AFFIRMED WITH MODIFICATION.**

Petitioners Dr. Romy Modomo and Jocelyn Modomo are **ORDERED TO PAY** respondents Spouses Moises P. Layug, Jr. and Felisarin E. Layug the following amounts:

1. Rental arrearages and unpaid real estate taxes amounting to **Php3,146,739.80**, with **6% interest** per annum computed from the date of judicial demand (*i.e.*, filing of the complaint for ejectment on July 23, 2008) until finality of this Decision;

2. Payment for reasonable use and occupation of the leased premises at the rate of Php208,725.00 per month **from January 2009 until November 2009, when respondents**

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[60] See *rollo*, p. 254.

[61] See *New World Developers and Management, Inc. v. AMA Computer Learning Center, Inc.*, 754 Phil. 463, 477-478 (2015).

surrendered possession of the leased premises in November 2009, amounting to a total of Php2,295,975.00, with 6% interest per annum from December 1, 2009 until finality of this Decision;

3. Attorney's fees amounting to Php10,000.00; and

4. The sum of the amounts in paragraphs 1, 2 and 3 herein, with 6% interest per annum from finality of this Decision until full satisfaction.

SO ORDERED.

Reyes, J. Jr., Lazaro-Javier, and *Zalameda, JJ.*, concur.

Carpio, S.A.J. (*Chairperson*), on official leave.

SECOND DIVISION

[G.R. No. 199558. August 14, 2019]

KAWASA MAGALANG and MONA WAHAB, *petitioners, vs.* **SPOUSES LUCIBAR HERETAPE and ROSALINA FUNA, ROBERTO LANDERO, SPOUSES NESTOR HERETAPE and ROSA ROGADOR, and ENGR. EUSEBIO F. FORTINEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF APPELLATE COURTS WILL NOT BE DISTURBED ON APPEAL TO THE SUPREME COURT; AN EXCEPTION WOULD BE WHEN THE FINDINGS OF THE COURT OF APPEALS ARE CONTRARY TO THOSE OF THE TRIAL COURT, AS IN CASE AT BAR.—The Rules of Court requires

that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are final, binding, or conclusive on the parties and upon this court when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court. An exception would be when the findings of the Court of Appeals are contrary to those of the trial court,as in this case. Verily, the Court will have to make its own factual determination for the purpose of resolving the present case.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; IMPLIED TRUSTS; ACTION FOR RECONVEYANCE; AN ACTION WHICH ADMITS OF REGISTRATION OF TITLE OF ANOTHER PARTY BUT CLAIMS THAT SUCH REGISTRATION WAS ERRONEOUS OR WRONGFUL; RELIEF PRAYED FOR MAY BE GRANTED ON THE BASIS OF INTRINSIC FRAUD, FRAUD COMMITTED ON THE TRUE OWNER INSTEAD OF FRAUD COMMITTED ON THE PROCEDURE AMOUNTING TO LACK OF JURISDICTION.—An action for reconveyance is based on Article 1456 of the New Civil Code of the Philippines. x x x Article 1456 of the Civil Code provides that a person acquiring property through fraud becomes by operation of law, a trustee of an implied trust for the benefit of the real owner of the property. If fraud was indeed committed, it gives a complainant the right to seek reconveyance of the property from the registered owner or subsequent buyers. A complaint for reconveyance is an action which admits the registration of title of another party but claims that such registration was erroneous or wrongful. It seeks the transfer of the title to the rightful and legal owner, or to the party who has a superior right over it, without prejudice to innocent purchasers in good faith. It seeks the transfer of a title issued in a valid proceeding. The relief prayed for may be granted on the basis of intrinsic fraud-fraud committed on the true owner instead of fraud committed on the procedure amounting to lack of jurisdiction. The party seeking to recover the property must prove, by clear and convincing evidence, that he or she is entitled to the property, and that the adverse party has committed fraud in obtaining his or her title. As to what is clear and convincing evidence. x x x Surely, bare allegations of fraud are not enough.

"*Intentional acts to deceive and deprive another of his right, or in some manner injure him, must be specifically alleged and proved*." In the absence of such required proof, the complaint for reconveyance will not prosper.

3. **ID.; PROPERTY; OWNERSHIP; TWO THINGS THAT MUST BE PROVED BY THE PERSON CLAIMING A BETTER RIGHT OF OWNERSHIP TO THE PROPERTY SOUGHT TO BE RECOVERED; CASE AT BAR.—**Article 434 of the New Civil Code further provides what complainant must prove in order to recover the property. x xx In other words, the person who claims a better right of ownership to the property sought to be recovered must prove two things: first, the identity of the land claimed; and second, his title thereto. As for the first requisite, there is no doubt that the land sought to be reconveyed is Lot 1064, a 10-hectare property located at Salabaca, Ampatuan,Cotabato, which was later subdivided into Lot 1064-A, Lot 2238-A, and Lot 2238-B. As to the second requisite pertaining to ownership, the parties have conflicting claims. On one hand, petitioners claim to be the real owners of Lot 1064. They presented in evidence tax receipts for years 1963 to 1967 and Tax Declaration No. 6085 dated 1963. These pieces of evidence, however, cannot prevail, let alone, defeat respondents' respective original certificates of title to the lots in question, *viz*: OCT (P-45002) Pls-9154 (Lot 2238-B) - Lucibar Heretape, OCT (P-45003) P-9155 (Lot 2238-A) - Nestor Heretape, and OCT (P-42941) P-349 (Lot 1064-A) - Roberto Landero.

4. **ID.; LAND TITLES AND DEEDS; LAND REGISTRATION; TORRENS TITLE; CONCLUSIVE EVIDENCE TO THE OWNERSHIP OF THE LAND DESCRIBED THEREIN, AND OTHER MATTERS WHICH CAN BE LITIGATED AND DECIDED IN LAND REGISTRATION PROCEEDINGS; CASE AT BAR.—**[T]he Torrens title is conclusive evidence with respect to the ownership of the land described therein, and other matters which can be litigated and decided in land registration proceedings. As such, the titleholder is entitled to all the attributes of ownership of the property, including possession. Here, OCT (P-45002) Pls-9154, OCT (P-45003) P-9155, and OCT (P-42941) P-3449 are conclusive

evidence that Lucibar Heretape, Nestor Heretape, and Roberto Landero, in whose names the lots are registered, are indeed the real owners thereof. In contrast, petitioners' single tax declarations and old tax receipts dated 1963 - 1967 are not considered evidence of ownership, hence, the same cannot defeat respondents' certificates of title to the lots in question. More so because the certificates of title issued in the names of LucibarHeretape, Nestor Heretape, and Roberto Landero, came at a much later date than the tax declaration and tax receipts. ***Cureg v. IAC*** states: "*We hold that said tax declaration, being of an earlier date cannot defeat an original certificate of title which is of a later date*."

5. ID.; PROPERTY; OWNERSHIP; EXTRAORDINARY ACQUISITIVE PRESCRIPTION; OPEN, CONTINUOUS, EXCLUSIVE, AND NOTORIOUS POSSESSION AND OCCUPATION OF LAND FOR MORE THAN THIRTY YEARS; NOT ESTABLISHED IN CASE AT BAR.— [P]etitioners assert they had acquired ownership of the lot by reason of prescription. Petitioner Kawasa Magalang testified that he inherited the 10-hectare lot from his grandparents and forefathers, and he had planted coconut, banana, bamboo trees and palay thereon. His daughter Sabpia Magalang Wahalon testified that she and her five siblings had previously lived on their father's 10-hectare lot. In support of their claim of prescription, petitioners also presented Abad Ulama and Sumagayan Datindeg. Abad Ulama said that he had seen petitioner Kawasa Magalang planting coconuts, bananas, and palay on the land. Kawasa's father had also lived there with his family. Meanwhile, Sumagayan Datindeg also said that petitioner Kawasa Magalang was a farmer, who planted coconuts, bananas, and bamboo on his own land. Some of the trees were already tall and were about five years old when he saw these. None of these supposed testimonies has established that petitioners indeed acquired ownership of the lot by prescription. The testimonies, if at all, are mere general statements. They do not at all prove that petitioners and their predecessors-in-interest had been in open, continuous, exclusive, and notorious possession and occupation of the subject land for more than thirty years. As explained in ***Republic v. Alconaba***: **In any case, respondents' bare assertions of possession and occupation by their predecessors-in-interest since 1940 (as**

testified to by Carmencita) or since 1949 (as testified to by Mauricio and declared in respondents' application for registration) are hardly "the well-nigh incontrovertible" evidence required in cases of this nature. Proof of specific acts of ownership must be presented to substantiate their claim. They cannot just offer general statements which are mere conclusions of law than factual evidence of possession. Even granting that the possession by the respondents' parents commenced in 1940, still they failed to prove that their predecessors-in-interest had been in open, continuous, exclusive, and notorious possession and occupation of the subject land under a bona fide claim of acquisition of ownership.

APPEARANCES OF COUNSEL

Adil & Adil, Jr. Law & Notarial Offices for petitioners.
Henry Y. Mudanza for Rogelio Heretape, *et al*.
Landero and Associates Law Office for respondent Roberto Landero.

D E C I S I O N

LAZARO-JAVIER, *J*.:

The Case

This Petition for Review on *Certiorari* assail's the following dispositions of the Court of Appeals in CA-G.R. CV No. 81939 entitled "*Sps. Kawasa Magalang and Mona Wahab v. Sps. Lucibar Heretape and Rosalina Funa, et al.*" for recovery of possession and ownership and/or declaration of nullity of acquisition of property:

1) Decision[1] dated December 30, 2010, disposing, thus:

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[1] Penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Edgardo T. Lloren and Ramon Paul L. Hernando (now a member of this Court), all members of the Twenty-First Division, *rollo*, pp. 25-41.

All told, appellee's evidence does not amount to the clear and convincing evidence that is required to overturn the presumptions arrayed against him.

The Court finds that the lower court erred in giving particular weight to appellants' failure to produce in court Exhibits "2", "3", "4", "5", "8", "10", "11", "12" AND "21." These documents were declared inadmissible for being mere copies. Appellants argue the originals were in the custody of the DENR office in Tacurong, Sultan Kudarat, and that it should have sufficed that Alicia Flores, the custodian of the records, had identified the copies. The Court is not entirely convinced of appellants' contention. But the fact remains that appellants have been able to present OCT (P-45002) Pls-9154, in the name of Lucia Heretape; OCT (P-45003) P-9155, in the name of Nestor Heretape; and OCT (P-42941) P-349 in the name of Roberto Landero. This is enough. In view of appellee's failure to overcome the presumptions in favor of these certificates of title, their validity will be sustained.

WHEREFORE, the appeal is GRANTED. The October 3, 2003 Judgment of the Regional Trial Court (RTC), 12th Judicial Region, Branch 19, Isulan, Sultan Kudarat is REVERSED and case is dismissed for failure to establish cause of action.

SO ORDERED.[2]

2) Resolution[3] dated October 6, 2011, denying petitioners' motion for reconsideration.

Proceedings Before the Trial Court

Petitioners Spouses Kawasa Magalang and Mona Wahab filed the complaint below against respondents Spouses Lucibar Heretape and Rosalina Funa, Roberto Landero, Spouses Nestor Heretape and Rosa Rogador, and Engr. Eusebio Fortinez. The case was raffled to the Regional Trial Court (RTC), Branch 19, Isulan, Sultan Kudarat.

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[2] *Id.* at 39-40.

[3] Penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Edgardo T. Lloren and Carmelita Salandanan Manahan, all members of the Special Former Twenty-First Division, *rollo*, pp. 42-45.

Petitioner's Complaint[4]
dated May 7, 1999

They were the owners of Lot 1064, Pls-397-D, a 10-hectare property located at Salabaca, Ampatuan, Cotabato.[*] On February 4, 1969, Kawasa Magalang and Lucibar Heretape executed a memorandum of agreement authorizing the latter "*to occupy, cultivate and produce in a certain portion of TWO AND A HALF (2½) hectares*" of the lot for a period of one year and four months, for a consideration of ₱1,310.00.[5]

In the early 1970s, Kawasa Magalang and his family were forced to evacuate the lot because of the Ilaga-Blackshirt conflict. Spouses Lucibar Heretape and Rosalina Funa, Spouses Nestor Heretape and Rosa Rogador, and Roberto Landero took advantage of the situation and usurped the whole 10-hectare lot. In connivance with these persons, Geodetic Engineer Eusebio Fortinez caused the subdivision of the lot into three parts: Lot 1064-A, Lot 2238-A, and Lot 2238-B. Then, using falsified free patent applications and fraudulent Bureau of Lands documents and deeds of transfer of rights, Spouses Lucibar Heretape and Rosalina Funa, *et al.* succeeded in obtaining free patent titles to portions of the lot.[6]

Respondent's Answer[7]
dated May 26, 1999

At the time Lucibar Heretape executed subject memorandum of agreement, Kawasa Magalang misrepresented himself as the lot owner. When Kawasa Magalang later abandoned the lot, a certain Pedro Deansin[**] claiming to be the real owner, showed

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[4] RTC Record, pp. 2-9.

[*] Now Daladap, Esperanza, Sultan Kudarat.

[5] RTC Record, p. 3.

[6] *Id*. at 3-4.

[7] *Id*. at 30-36.

[**] or Jansen.

up and demanded that they (respondents) vacate the lot. As proofs of his ownership, Pedro Deansin showed them a Deed of Transfer of Rights executed by a certain Gomongon Batolawan, Resolution dated February 11, 1959 from the Bureau of Lands, and Order dated March 17, 1960 issued by the Secretary of Agriculture and Natural Resources.[8]

Since Kawasa Magalang could no longer be located, Nestor Heretape, Lucibar Heretape's son, opted to buy 5 hectares from Pedro Deansin, corresponding to one-half of the lot. After the purchase, Nestor Heretape gave 2.5 hectares to his father Lucibar Heretape. In 1974, Pedro Deansin sold the remaining 5 hectares to Roberto Landero. Subsequently, they applied for and were awarded certificates of title to their respective lots.[9]

Trial ensued.

Petitioner's Evidence

Petitioner Kawasa Magalang essentially testified that he inherited the 10-hectare lot from his grandparents and forefathers.[10] He had planted coconut, banana, bamboo trees and palay thereon.[11] He mortgaged to Lucibar Heretape, for ₱1,310.00, 2.5 hectares of the lot. The mortgage was for a period of more than one year. For this purpose, he and Lucibar Heretape executed a memorandum of agreement. He subsequently offered to pay back the loan but Lucibar Heretape repeatedly refused it.[12] Roberto Landero, Nestor Heretape, and Rosa Rogador usurped the remaining 2.5 hectares.[13] He did not know Pedro

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[8] RTC Record, pp. 30-31.

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

[10] TSN, July 31, 2000, p. 12.

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

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

[13] *Id*. at 9.

Deansin nor was he aware of any case involving this person with the Bureau of Lands.[14]

Kawasa Magalang's daughter Sabpia Magalang Wahalon testified that she and her five siblings had previously lived on their father's 10-hectare lot. Her father paid taxes on the property as shown by a tax declaration and tax receipts.[15]

They submitted the following documentary evidence: a) official receipts for real property tax payments;[16] b) Memorandum of Agreement[17] dated February 4, 1969; c) Tax Declaration No. 6085[18] dated September 16, 1963; and d) Certificate to File Action,[19] issued by the Barangay Captain of Daladap, Esperanza, Sultan Kudarat. in Barangay Case No. 5, Series of 1986 entitiled "*Lucibar Heretape v. Kawasa Magalang*."

Respondents' Evidence

Nestor Heretape testified that he and his father Lucibar Heretape each owned a 2.5 hectare lot. In 1969, his father worked on a 2.5-hectare lot, which Kawasa Magalang mortgaged to him. In 1970, Pedro Deansin showed up, claiming to be the owner of the lot measuring 10 hectares. He opted to buy 2.5 hectares of the lot, including the 2.5 hectares which Kawasa Magalang mortgage to his father. In the end, he bought 5 hectares of the entire lot. He later sold 2.5 hectares to his father. They were told that since Kawasa Magalang lost the case before the Bureau of Lands, Kawasa Magalang voluntarily demolished his house and left the place.[20]

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

[15] TSN, August 7, 2000, pp. 7-9.

[16] RTC Record, pp. 94-97.

[17] *Id.* at 98.

[18] *Id.* at 99.

[19] *Id*. at 100.

[20] TSN, October 25, 2000, pp. 3-10.

Roberto Landero testified that he bought 5 hectares of the lot from Pedro Deansin through a corresponding deed of sale. Thereafter, he caused the land to be titled. He was never disturbed in his possession of the land. He only came to know of Kawasa Magalang when the instant case was filed against him.[21]

Alicia Flores, Record Officer of CENRO - Tacurong, Sultan Kudarat, testified that she was the custodian of respondents' records or *carpeta* pertaining to Lot 1064. She was also the custodian of the *carpeta* involving the protest of *Kawasa Magalang against Pedro Diansen* involving Lot 1064. She identified photocopies of the following documents in her custody, *viz*: a) Deed of Transfer of Rights between Gomongon Batolawan and Pedro Deansin; b) Decision dated May 28, 1958 of Acting Regional Director Primitivo Papa's, granting Pedro Deansin's application for free patent on the whole of Lot No. 1064; c) Order dated February 11, 1959 of Director Zoilo Castrillo, denying Kawasa Magalang's second motion for reconsideration; d) Order dated March 17, 1960 of Acting Secretary Jose Trinidad, Department of Agriculture and Natural Resources, denying petitioner Kawasa Magalang's appeal; e) Deed of Sale executed by Pedro Deansin and Roberto Landero; f) Deed of Sale executed by Pedro Deansin and Nestor Heretape; g) Deed of Sale executed by Nestor Heretape and Lucibar Heretape; h) Minutes of Investigation of the case involving Kawasa Magalang and Pedro Deansin; and i) Order issued by Bureau of Lands District Land Officer Cipriano Catudan in December 1976 recognizing Pedro Deansin's transfer of his rights to respondent Nestor Heretape on March 7, 1973. She only had in her custody photocopies of these documents.[22]

Respondents offered the following documentary evidence: 1) Deed of Transfer of Rights[23] dated December 21, 1952 executed by Gomongon Batolawan and Pedro Deansin; 2)

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[21] TSN, February 22, 2001, pp. 3-7.

[22] TSN, March 28, 2001, pp. 3-9.

[23] RTC Record, pp. 195-196.

Decision[24] dated May 28, 1958 of Acting Regional Director Primitivo Papa; 3) Order[25] dated February 11, 1959 of Director Zoilo Castrillo; 4) Order[26] dated March 17, 1960 of Acting Secretary Jose Trinidad, Department of Agriculture and Natural Resources; 5) OCT (P-45002) P-9154[27] registered in Lucibar Heretape's name; OCT (P-45003) P-9155[28] registered in Nestor Heretape's name; 6) OCT (P-42941) P-3449[29] registered in Roberto Landero's name; 7) Deed of Transfer of Rights[30] dated May 24, 1976 executed by Nestor Heretape in favor of Lucibar Heretape; 8) Deed of Transfer of Rights[31] dated March 7, 1973 executed by Pedro Deansin in favor of Nestor Heretape; 9) Minutes of Investigation[32] prepared by Investigator Lucas de Guzman; 10) Approval of Application and Issuance of Patent[33] issued by Land Officer Cipriano Catudan; 11) Order[34] dated November 24, 1974 of Land Officer Cipriano Catudan, giving due course to Roberto Landero's application for free patent over Lot 10-64-B; 12) Investigation Report[35] on the application for a free patent of Roberto Landero; 13) Deed of Sale[36] dated May 22, 1974 executed by Pedro Deansin in favor of Roberto Landero; 14) Report[37] dated October 22, 1976 of Land Examiner

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[24] *Id.* at 197-198.

[25] *Id*. at 199.

[26] *Id.* at 200-201.

[27] *Id*. at 202.

[28] *Id.* at 47-48.

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

[30] *Id*. at 204.

[31] *Id*. at 208.

[32] *Id.* at 211-220.

[33] *Id*. at 221.

[34] *Id.* at 222.

[35] *Id*. at 223.

[36] *Id.* at 224.

[37] *Id*. at 225.

Raul Anildes; 15) Order[38] dated December 15, 1976 of District Land Officer Cipriano Catudan, granting Nestor Heretape's application for free patent; 16) Nestor Heretape's application for free patent;[39] 17) Lucibar Heretape's application for free patent; 18) Order[40] in December 1976 of Land Officer Cipriano Catudan; 19) Tax Declaration No. 23023[41] in Pedro Deansin's name; 20) Pedro Deansin's application for free patent;[42] and 21) Notice of Pedro Deansin's application for free patent.[43]

Petitioners' Rebuttal Evidence

Abad Ulama, a former resident of Daladap, Esperanza, Sultan Kudarat, testified that he was born in Daladap and resided on Lot 788. He saw Kawasa Magalang planting coconuts, bananas, and palay on the land where his father lived with his family. He did not know Pedro Deansin, Nestor Heretape, and Roberto Landero. Kawasa Magalang had mortgaged the lot to respondent Lucibar Heretape.[44]

Sumagayan Datindeg, the first *Tiniente del Barrio* of Daladap from 1965 to 1970, testified that he knew Kawasa Magalang, a farmer, who planted coconuts, bananas, and bamboo on his own land. At that time, the trees Kawasa Magalang planted had already grown tall. They were five years old. Kawasa Magalang stayed on the land until he evacuated it.[45]

The Trial Court's Ruling

By Judgment[46] dated October 3, 2003, the trial court ruled in petitioners' favor, thus:

[38] *Id*. at 226.

[39] *Id*. at 227.

[40] *Id.* at 229.

[41] *Id*. at 231.

[42] *Id.* at 232.

[43] *Id*. at 233.

[44] TSN, January 21, 2002, pp. 1-11.

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

[46] RTC Record, pp. 312-362.

WHEREFORE, upon all the foregoing consideration, judgment is hereby rendered:

(a) ordering the defendants, Lucibar Heretape, Nestor Heretape and Roberto Landero, their agents and those who are working and/or acting in their behalves, on any and all subdivided portions of Lot 1064, Pls-397-D, identified as Lot 2238-B, Csd-12-000041; Lot 2238-A, Csd-12-000041; and Lot 1064-A, Csd-11-002316, to vacate immediately said lots and to deliver/surrender the possession thereof to the plaintiffs, and to remove and/or demolish all improvements introduced thereon, at their own expense, without indemnity, for having been introduced on said lots in bad faith, except for defendant Lucibar Heretape whose dispossession shall be subject to the payment to him of the loan of ₱1,310.00 by plaintiff, Kawasa Magalang;

(b) declaring null and void, sham and fictitious, the Deed of Transfer of Rights, dated December 21, 1952, executed in favor of Pedro Deansin by one Gomogon Batolawan; the Deed of Sale dated May 22, 1974, executed by Pedro Deansin in favor of defendant Roberto Landero; the Deed of Transfer of Rights dated March 7, 1973, executed by Pedro Deansin in favor of defendant Nestor Heretape; and the Deed of Transfer of Rights dated May 24, 1976, executed by defendant Nestor Heretape in favor of the defendant Lucibar Heretape, as well as, declaring null and void Original Certificate of Title No. (P-45002) P-9154 in the name of Lucibar Heretape; Original Certificate of Title No. (P-45003) P-9155, in the name of Nestor Heretape; and Original Certificate of Title No. (P-42941) P-349 in the name of Roberto Landero;

(c) directing the defendant, Lucibar Heretape or his duly authorized representative to surrender the owner's duplicate copy of Original Certificate of Title No. (P-45002) P-9154; the defendant Nestor Heretape, to surrender the owner's duplicate copy of Original Certificate of Title No. (P-45003) P-9155; and the defendant Roberto Landero, to surrender the owner's duplicate copy of Original Certificate of Title No. (P-42941) P-349, to the Register of Deeds of Sultan Kudarat, and to reconvey in favor of the plaintiffs the parcels of land covered under their respective Free Patent Titles, within a period of ten (10) days from the finality of this judgment; and

(d) directing the Register of Deeds of Sultan Kudarat:

1. To cause the cancellation of private defendants' respective certificates of title identified in subparagraph (c) hereof, to be entered and/or annotated in the original copies of their certificates of title should the private defendants fail without valid justification to surrender their certificate of title for reconveyance in favor of the plaintiffs within ten (10) days from the finality of this judgment; and

2. To issue individually the corresponding certificates of title for each lot, covering Lot 2238-B, Csd-12-000041; Lot 2238-A, Csd-12-000041; and Lot 1064-A, Csd-11-002316, in the name of plaintiff, Kawasa Magalang married to Mona Wahab.

For lack of merit, the counterclaim of the defendants should be, as it is hereby, DISMISSED.

SO ORDERED.[47]

The trial court gave full credence to petitioners' testimonial evidence and declared inadmissible respondents' documentary evidence for being mere photocopies, *viz*: 1) the Deed of Transfer of Rights between Gomongon Batolawan and Pedro Deansin; 2) Decision dated May 28, 1958 of Acting Regional Director Primitivo Papa; 3) Order dated February 11, 1959 Director Zoi1o Castrillo; 4) Order dated March 17, 1960 of the Acting Secretary Jose Trinidad, Department of Agriculture and Natural Resources; 5) Deed of Sale executed by Pedro Deansin and Roberto Landero; 6) Deed of Sale executed by Pedro Deansin and Nestor Heretape; 7) Deed of Sale executed by Nestor Heretape and Lucibar Heretape; 8) Minutes of Investigation, prepared by Investigator Lucas de Guzman; and 9) and Order issued in December 1976 by Land Officer Cipriano Catudan.

The Proceedings Before the Court of Appeals

Respondents went to the Court of Appeals on two separate appeals. One was pursued by Spouses Lucibar Heretape and Rosalina Funa and Spouses Nestor Heretape and Rosa Rogador; the other, by Roberto Landero.

The first group faulted the trial court for: a) giving credence to the testimonies of Kawasa Magalang and his daughter Sabpia

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[47] *Id.* at 358-362.

Magalang Wahalon, both claiming that they acquired the property through prescription; and b) declaring most of their documentary evidence dubious, hence, inadmissible.

On the other hand, Roberto Landero faulted the trial court for: 1) refusing to rule that petitioners had no cause of action against him; 2) not dismissing the complaint on ground of prescription; 3) allowing petitioners to collaterally attack his title; and 4) imposing on him the burden to show that his title was not acquired through fraud.

By its assailed Decision[48] dated December 30, 2010, the Court of Appeals reversed and dismissed the complaint.

It held that in the action for reconveyance below, petitioners bore the burden of proving, by clear and convincing evidence, that respondents fraudulently secured their respective patents and titles to portions of Lot 1064. They, too, bore the burden of proving their claim of ownership. But as it was, petitioners failed to discharge such burden of proof. In fact, they were even incipiently unable to show that at the time they allegedly occupied the land, the same was already declared alienable. Nor did petitioners show that their alleged possession had been open, continuous, exclusive, and notorious since June 12, 1945, or earlier.[49]

Further, there is no showing, as none was shown, that petitioners acquired the land through acquisitive prescription. There was no express declaration by the State that the property was no longer intended for public service or development.[50] The trial court likewise erred in giving too much emphasis on respondents' failure to produce the original copies of some of the documents they offered in evidence. The fact still remains though that respondents were able to present the original copies of OCT (P-45002) Pls-9154 (Lot 2238-B) in the name of Lucibar

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[48] *Rollo*, pp. 25-45.

[49] *Id.* at 33-36.

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

Heretape, OCT (P-45003) P-9155 (Lot 2238-A) in the name of Nestor Heretape, and OCT (P-42941) P-349 (Lot 1064-A) in Roberto Landero's name. These indefeasible titles prove respondents truly owned the lots and are therefore, entitled to their possession.[51]

Petitioners moved for reconsideration which the Court of Appeals denied through its assailed Resolution dated October 6, 2011.

The Present Petition

Petitioners now invoke the Court's discretionary appellate jurisdiction to review and reverse the Decision dated December 30, 2010 and Resolution dated October 6, 2011 of the Court of Appeals.

Petitioners reiterate that by acquisitive prescription, they became the owners of the whole Lot 1064, now subdivided into Lot 2238-B, in the name of Lucibar Heretape, Lot 2238-A in the name of Nestor Heretape, and Lot 1064-A in the name of Roberto Landera. They assert that respondents were able to acquire titles over portions of Lot 1064 either through fraud(by using falsified free patent applications), and fraudulent Bureau of Lands documents and deeds of transfer of rights.[52]

In response, Lucibar Heretape (substituted by his successors-in-interest John Heretape and Rosalina Funa) counters that he lawfully acquired title to Lot 2238-B.[53]

Respondent Roberto Landero riposted that his title to Lot 1064-A is supported by documents which are over 30 years old, hence, there is no need to prove their authenticity.[54]

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[51] *Id.* at 39-40.

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

[53] *Id.* at 48-54.

[54] *Id.* at 57-59.

Issue

Are petitioners entitled to reconveyance of the entire Lot 1064 or the three subdivided lots 2238-B, Lot 2238-A, and Lot 1064-A?

Ruling

We deny the petition.

The Rules of Court requires that only questions of law should be raised in petitions filed under Rule 45.[55] This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are final, binding, or conclusive on the parties and upon this court[56] when supported by substantial evidence.[57] Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.[58] An exception would be when the findings of the Court of Appeals are contrary to those of the trial court,[59] as in this case. Verily, the Court will have to make its own factual determination for the purpose of resolving the present case.

An action for reconveyance is based on Article 1456 of the New Civil Code of the Philippines, *viz*:

> Article 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

Article 1456 of the Civil Code provides that a person acquiring property through fraud becomes by operation of law, a trustee of an implied trust for the benefit of the real owner of the

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[55] Rules of Court, Rule 45, Sec. 1.

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

[57] *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002).

[58] *Bank of the Philippine Islands v. Leobrera*, 461 Phil. 461, 469.

[59] *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990).

property. If fraud was indeed committed, it gives a complainant the right to seek reconveyance of the property from the registered owner or subsequent buyers.[60]

A complaint for reconveyance is an action which admits the registration of title of another party but claims that such registration was erroneous or wrongful.[61] It seeks the transfer of the title to the rightful and legal owner, or to the party who has a superior right over it, without prejudice to innocent purchasers in good faith.[62] It seeks the transfer of a title issued in a valid proceeding. The relief prayed for may be granted on the basis of intrinsic fraud-fraud committed on the true owner instead of fraud committed on the procedure amounting to lack of jurisdiction.[63]

The party seeking to recover the property must prove, by clear and convincing evidence, that he or she is entitled to the property, and that the adverse party has committed fraud in obtaining his or her title.[64] As to what is clear and convincing evidence, ***Tankeh v. DBP***[65] explains:

> Second, the standard of proof required is clear and convincing evidence. This standard of proof is derived from American common law. It is less than proof beyond reasonable doubt (for criminal cases) but greater than preponderance of evidence (for civil cases). The degree of believability is higher than that of an ordinary civil case. Civil cases only require a preponderance of evidence to meet the required burden of proof. x x x The imputation of fraud in a civil case requires the presentation of clear and convincing evidence. Mere allegations will not suffice to sustain the existence of fraud. The burden

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[60] *Alfredo v. Borras*, 452 Phil. 178, 202-203 (2003).

[61] *Toledo v. Court of Appeals*, 765 Phil. 649, 659 (2015).

[62] *Id.*

[63] *Aboitiz v. Po*, 810 Phil. 123, 137 (2017).

[64] *Id.*

[65] 720 Phil. 641, 675-675 (2013).

of evidence rests on the part of the plaintiff or the party alleging fraud. The quantum of evidence is such that fraud must be clearly and convincingly shown.

Surely, bare allegations of fraud are not enough.[66] "*Intentional acts to deceive and deprive another of his right, or in some manner injure him, must be specifically alleged and proved.*" In the absence of such required proof, the complaint for reconveyance will not proper.[67]

Article 434 of the New Civil Code further provides what complainant must prove in order to recover the property:

> Art. 434. In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim.

In other words, the person who claims a better right of ownership to the property sought to be recovered must prove two things: first, the identity of the land claimed; and second, his title thereto.[68]

As for the first requisite, there is no doubt that the land sought to be reconveyed is Lot 1064, a 10-hectare property located at Salabaca, Ampatuan, Cotabato, which was later subdivided into Lot 1064-A, Lot 2238-A, and Lot 2238-B. As to the second requisite pertaining to ownership, the parties have conflicting claims.

On one hand, petitioners claim to be the real owners of Lot 1064. They presented in evidence tax receipts for years 1963 to 1967 and Tax Declaration No. 6085 dated 1963. These pieces of evidence, however, cannot prevail, let alone, defeat respondents' respective original certificates of title to the lots in question, *viz*: OCT (P-45002) Pls-9154 (Lot 2238-B) - Lucibar

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[66] *Id.* at 58.

[67] *Loyola v. Court of Appeals*, 803 Phil. 143, 161 (2017).

[68] *Ibot v. Tayco*, 757 Phil. 441, 450 (2015).

Heretape, OCT (P-45003) P-9155 (Lot 2238-A) - Nestor Heretape, and OCT (P-42941) P-349 (Lot 1064-A) - Roberto Landero.

For the Torrens title is conclusive evidence with respect to the ownership of the land described therein, and other matters which can be litigated and decided in land registration proceedings.[69] As such, the titleholder is entitled to all the attributes of ownership of the property, including possession.[70] Here, OCT (P-45002) Pls-9154, OCT (P-45003) P-9155, and OCT (P-42941) P-3449 are conclusive evidence that Lucibar Heretape, Nestor Heretape, and Roberto Landero, in whose names the lots are registered, are indeed the real owners thereof.

In contrast, petitioners' single tax declarations and old tax receipts dated 1963-1967 are not considered evidence of ownership, hence, the same cannot defeat respondents' certificates of title to the lots in question. More so because the certificates of title issued in the names of Lucibar Heretape, Nestor Heretape, and Roberto Landero, came at a much later date than the tax declaration and tax receipts. ***Cureg v. IAC***[71] states: "*We hold that said tax declaration, being of an earlier date cannot defeat an original certificate of title which is of a later date.*"

Petitioners also impute fraud on respondents Lucibar Heretape, Roberto Landero, Nestor Heretape, and Rosa Rogador, who allegedly acquired possession and ownership of the land after petitioner Kawasa Magalang and his family were forced to evacuate the lot back in the 70s and refused to return the lots to petitioner Kawasa Magalang despite demand. In support of their allegation of fraud, petitioners only offered self-serving testimonies without anything more. Surely, self-serving testimonies are not evidence, nay clear and convincing evidence.

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[69] *Sampaco v. Lantud*, 669 Phil. 304, 316 (2011).

[70] *Vda. de Aguilar v. Alfaro*, 637 Phil. 131, 142 (2010).

[71] 258 Phil. 104, 111 (1989).

Lastly, petitioners assert they had acquired ownership of the lot by reason of prescription. Petitioner Kawasa Magalang testified that he inherited the 10-hectare lot from his grandparents and forefathers, and he had planted coconut, banana, bamboo trees and palay thereon. His daughter Sabpia Magalang Wahalon testified that she and her five siblings had previously lived on their father's 10-hectare lot.

In support of their claim of prescription, petitioners also presented Abad Ulama and Sumagayan Datindeg. Abad Ulama said that he had seen petitioner Kawasa Magalang planting coconuts, bananas, and palay on the land. Kawasa's father had also lived there with his family. Meanwhile, Sumagayan Datindeg also said that petitioner Kawasa Magalang was a farmer, who planted coconuts, bananas, and bamboo on his own land. Some of the trees were already tall and were about five years old when he saw these.

None of these supposed testimonies has established that petitioners indeed acquired ownership of the lot by prescription. The testimonies, if at all, are mere general statements. They do not at all prove that petitioners and their predecessors-in-interest had been in open, continuous, exclusive, and notorious possession and occupation of the subject land for more than thirty years. As explained in ***Republic v. Alconaba***:[72]

In any case, respondents' bare assertions of possession and occupation by their predecessors-in-interest since 1940 (as testified to by Carmencita) or since 1949 (as testified to by Mauricio and declared in respondents' application for registration) are hardly "the well-nigh incontrovertible" evidence required in cases of this nature. Proof of specific acts of ownership must be presented to substantiate their claim. They cannot just offer general statements which are mere conclusions of law than factual evidence of possession. Even granting that the possession by the respondents' parents commenced in 1940, still they failed to prove that their predecessors-in-interest had been in open, continuous, exclusive, and

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[72] 471 Phil. 607, 620 (2004).

notorious possession and occupation of the subject land under a bona fide claim of acquisition of ownership. (Emphasis supplied)

So must it be.

All told, the Court of Appeals did not err in dismissing petitioners' complaint for recovery of possession and ownership and/or declaration of nullity of acquisition of property.

ACCORDINGLY, the petition is **DENIED**. The assailed Decision dated December 30, 2010 and Resolution dated October 6, 2011 of the Court of Appeals in CA-G.R. CV No. 81939 are **AFFIRMED**.

SO ORDERED.

Caguioa (*Acting Chairperson*), *Reyes, J. Jr.,* and *Zalameda, JJ.,* concur

Carpio, S.A.J. (*Chairperson*), on official leave.

SECOND DIVISION

[G.R. No. 201273. August 14, 2019]

REPUBLIC OF THE PHILIPPINES, represented by DR. RUBINA O. CRESENCIO, OFFICER-IN-CHARGE of the BUREAU OF ANIMAL INDUSTRY and MARILYN V. STA. CATALINA, OFFICER-IN-CHARGE, DEPARTMENT OF AGRICULTURE — REGIONAL FIELD UNIT - CORDILLERA ADMINISTRATIVE REGION (DA RFU-CAR), *petitioners, vs.* **HEIRS OF IKANG PAUS, namely: (1) OLARTE A. PAUS, SR., (2) HEIRS OF DAVID PAUS, represented by PETER PAUS, (3) JOSEPHINE BASIL,**

(4) HEIRS OF MACARIO A. PAUS, SR., represented by NORBERTO D. PAUS, (5) HEIRS OF MONTO PAUS, represented by ELIAS PAUS, SR., and (6) HEIRS OF FORBASCO PAUS, represented by DOLOR PAUS MALLARE; THE REGISTRY OF DEEDS OF BAGUIO CITY, represented by its REGISTRAR, ATTY. JUANITO K. AMPAGUEY; THE NATIONAL COMMISSION ON INDIGENOUS PEOPLES, represented by its CHAIRPERSON, ZENAIDA BRIGIDA HAMADA-PAWID; THE LAND REGISTRATION AUTHORITY, represented by its ADMINISTRATOR, BENEDICTO B. ULEP; and HONORABLE CLETO R. VILLACORTA III, PRESIDING JUDGE, BRANCH 6, REGIONAL TRIAL COURT, BAGUIO CITY, *respondents.*

HEIRS OF MATEO CARIÑO and BAYOSA ORTEGA herein represented by ANDRES CARANTES, RUBY GIRON, JOANNA K. CARIÑO, LEO CAMILO, CECILIA H. CHAN, and RONALD PEREZ, *petitioners-in-intervention.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; NATURE OF AN ACTION AND WHETHER THE TRIBUNAL HAS JURISDICTION OVER SUCH AN ACTION ARE TO BE DETERMINED FROM THE MATERIAL ALLEGATIONS OF THE COMPLAINT, THE LAW IN FORCE AT THE TIME OF THE COMPLAINT IS FILED, AND THE CHARACTER OF THE RELIEF SOUGHT IRRESPECTIVE OF WHETHER THE PLAINTIFF IS ENTITLED TO ALL OR SOME OF THE CLAIMS AVERRED; REGIONAL TRIAL COURT HAS JURISDICTION OVER CASES FOR REVERSION AND CANCELLATION OF CERTIFICATES OF TITLE; CASE AT BAR.— The RTC and the CA both ruled that the RTC had no jurisdiction over the Complaint because it sought a review of Resolution No. 060-2009-AL. This is error.The Court has

held in *Republic v. Roman Catholic Archbishop of Manila* that "[i]t is axiomatic that the nature of an action and whether the tribunal has jurisdiction over such action are to be determined from the material allegations of the complaint, the law in force at the time the complaint is filed, and the character of the relief sought irrespective of whether the plaintiff is entitled to all or some of the claims averred. Jurisdiction is not affected by the pleas or the theories set up by defendant in an answer to the complaint or a motion to dismiss the same." x x x To the mind of the Court, the case is not a review of the NCIP*En Banc* Resolution because a subsequent event occurred that gave rise to a cause of action for reversion and cancellation of a Torrens title, namely, the issuance of OCT No. 0-CALT-37. This is the reason the Republic has impleaded the Register of Deeds of Baguio City and the LRA.In fact, the Republic alleges that OCT No. 0-CALT-37 should not have been issued since it is land of the public domain. This, in turn, requires a factual determination of whether the land is indeed of public domain and whether OCT No. 0-CALT-37 embraces land inside the BSF. This then raises the issue of whether a CALT may be issued over it, and whether an OCT may be issued arising from the CALT. This is therefore a complaint for the reversion of a land to the public domain and the cancellation of a Torrens title covering a public land, both matters being within the exclusive original jurisdiction of the RTC.

2. ID.; ID.; ACTION FOR REVERSION; ATTACK IS DIRECTED NOT AGAINST THE JUDGMENT ORDERING THE ISSUANCE OF TITLE, BUT AGAINST THE TITLE THAT IS BEING SOUGHT TO BE CANCELLED EITHER BECAUSE THE JUDGMENT WAS NOT VALIDLY RENDERED, OR THE TITLE ISSUED DID NOT FAITHFULLY REFLECT THE LAND REFERRED TO IN THE JUDGMENT, OR BECAUSE NO JUDGMENT WAS RENDERED AT ALL; CASE AT BAR.— In *Republic v. Roman Catholic Archbishop of Manila,* the Court held that "[a]ctions for cancellation of title and reversion x x x belong to the class of cases that 'involve the title to, or possession of, real property, or any interest therein' and where the assessed value of the property exceeds ₱20,000.00, fall under the jurisdiction of the RTC."As the Court held in *Malabanan v.*

Republic "[i]n a reversion suit, we should emphasize, the attack is directed not against the judgment ordering the issuance of title, but against the title that is being sought to be cancelled either because the judgment was not validly rendered, or the title issued did not faithfully reflect the land referred to in the judgment, or because no judgment was rendered at all."The allegations of the Republic in the Complaint squarely assert a reversion suit as described above. It is attacking OCT No. 0-CALT-37 because it arose from Resolution No. 060-2009-AL, which the Republic claims was not validly rendered.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; ABUSE MUST BE SO PATENT AND GROSS AS TO AMOUNT TO AN EVASION OF A POSITIVE DUTY OR TO 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 OR HOSTILITY; ESTABLISHED IN CASE AT BAR.— The Court is not unmindful that in ruling on the issue of the validity of OCT No. 0-CALT-37, the Court will necessarily rule on the validity of CALT No. CAR-BAG-0309-000207, and the reconstructed and unapproved survey plan together with the technical description of Lot 1, SWO-14110215703-D-A-NCIP, both of which were issued and approved in Resolution 060-2009-AL.This, however, does not remove the Complaint from the RTC's jurisdiction, and as described above, even confirms it. Again, the cause of action of the Republic is for the reversion to the public domain of the lot covered by OCT No. 0-CALT-37 and the cancellation of the title. In ruling on this issue, the RTC may dwell on the validity of the proceedings of the NCIP, which gave rise to the issuance of the Torrens title. x x x Based on the foregoing, the Court finds that the RTCcommitted grave abuse of discretion when it dismissed the Republic's Complaint for lack of jurisdiction. As the Court ruled in *Heirs of Spouses Reterta v. Spouses Mores and Lopez:* "The term *grave abuse of discretion* connotes whimsical and capricious exercise of judgment as is equivalent to excess, or lack of jurisdiction. The abuse must be so patent and gross as to amount to an evasion of a positive duty or to 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 or hostility." The RTC's dismissal of the Complaint is a refusal to perform its duty enjoined by law as it is the court that has jurisdiction over the Complaint. The CA therefore committed reversible error in affirming the RTC's dismissal of the Complaint.

4. ID.; CIVIL PROCEDURE; JURISDICTION; NATIONAL COMMISSION ON INDIGENOUS PEOPLES (NCIP); NO POWER AND AUTHORITY TO DECIDE CONTROVERSIES INVOLVING NON-INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLES; CASE AT BAR.— As further confirmation that the RTC has jurisdiction over the case is the fact that the NCIP does not have jurisdiction over issues involving non-Indigenous Cultural Communities (ICCs)/Indigenous Peoples (IPs). x x x [T]he Court held in *Lim v. Gamosa* that the NCIP has no power and authority to decide controversies involving non-ICCs/IPs even if it involves rights of ICCs/IPs, as these disputes should be brought before a court of general jurisdiction. x x x Here, although the dispute involves the rights of the Heirs of Ikang Paus, who claim to be members of the Ibaloi tribe, the Complaint involves non-ICCs/IPs such as the Republic, the Register of Deeds of Baguio, and even the LRA. The NCIP cannot rule on the rights of non-ICCs/IPs which should be brought before a court of general jurisdiction. Here, the dispute was validly lodged with the RTC as discussed above.

5. ID.; ID.; INTERVENTION; REQUISITES FOR INTERVENTION OF A NON-PARTY; ABSENT IN CASE AT BAR.— The requisites for intervention of a non-party, as the Court ruled in *Asia's Emerging Dragon Corp. v. Department of Transportation and Communications,* are as follows: 1. Legal interest(a) in the matter in controversy; or (b) in the success of either of the parties; or (c) against both parties; or (d) person is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof; 2. Intervention will not unduly delay or prejudice the adjudication of rights of original parties; 3. Intervenor's rights may not be fully protected in a separate proceeding.The Heirs of Cariño and Ortega failed to prove a legal interest in the controversy. The Petition raises whether the RTC, as affirmed by the CA, ruled correctly in dismissing

the Republic's Complaint for reversion and annulment of judgment. The Heirs of Cariño and Ortega do not claim that they have any interest in the outcome of this case. Instead, they would like the Court to rule on the constitutionality of Section 53 of the IPRA. Based on their own allegations, therefore, intervention is improper.Further, ruling on the constitutionality of Section 53 will delay the adjudication of the issue of whether the RTC has jurisdiction over the Republic's Complaint. More importantly, even if allowed to intervene, the issue on the constitutionality of Section 53 of the IPRA is not the very *lis mota* of this Petition of the Republic.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioners.
Leoncio L. Alangdeo for respondents Heirs of Ikang Paus.
Claver Law Office for petitioners-intervenors.

D E C I S I O N

CAGUIOA,[*] *J.*:

Before the Court is a petition for review on *certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated February 13, 2012 of the Court of Appeals (CA) in C.A. G.R. SP No. 116926. The CA dismissed the petition for *certiorari* assailing the Orders dated August 12, 2010[3] and September 13, 2010[4] of the Regional Trial Court (RTC) of Baguio City, Branch 6 in Civil Case No. 7200-R, which dismissed the Complaint of the Republic of the Philippines (Republic) for

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[*] Designated Acting Chairperson per Special Order No. 2688 dated July 30, 2019.

[1] *Rollo* (Vol. I), pp. 34-96, excluding Annexes.

[2] *Id*. at 97-115. Penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Magdangal M. De Leon and Francisco P. Acosta.

[3] *Id*. at 408-414. Penned by Presiding Judge Cleto R. Villacorta III.

[4] *Id*. at 429-449.

reversion, annulment of documents and cancellation of titles with issuance of temporary restraining order and writ of preliminary injunction for lack of jurisdiction over the subject matter.

Facts

As summarized by the CA, the antecedents are as follows:

> Private respondents, the Heirs of Ikang Paus (private respondents), represented by Elias Paus, filed a petition for identification, delineation and issuance of a Certificate of Ancestral Land Title (CALT) with respondent National Commission [on Indigenous Peoples] (NCIP). They sought confirmation of their right to the ancestral land at Section "J" Baguio City and Witig Suyo, Tuba, Benguet, with an area of 695,737 square meters. The Heirs of Mateo Cariño opposed the petition, and prayed for its dismissal, cancellation and revocation.
>
> After due proceedings, the NCIP issued Resolution No. 060-2009, *viz.*:
>
> > WHEREFORE, in view of the foregoing, this Commission hereby declares and certifies that the parcels of land described herein is an ancestral land belonging to the Heirs of Ikang Pau[s]. Let the two (2) Certificates of Ancestral Land Title (CALT) bearing CALT No. CAR-TUB-0309-000208 located at Barangay Poblacion, Municipality of Tuba, Province of Benguet be issued in the name of the Heirs of Ikang Paus as indicated in plan SWO-141102155703-D-A-NCIP.
> >
> > The protest filed by the Heirs of Mateo Cariño, represented by Jacqueline Cariño and Judith Cariño is hereby dismissed for lack of merit.
> >
> > UNANIMOUSLY APPROVED.
> >
> > Quezon City, March 19, 2009.
>
> Consequently, Original Certificate of Title (OCT) No. 0-CALT-37[5] covering [a] 623,108[-]square meter lot in Baguio City, was issued in the name of private respondents on April 24, 2009.
>
> The Heirs of Mateo Cariño filed a motion for reconsideration, but the NCIP denied it in its Resolution No. 099 dated September 24, 2009.

[5] Appearing as OCT No. O-CALT-37 in some parts of the records.

However, on June 10, 2010, the Republic, through the OSG, questioned OCT No. 0-CALT-37 in the name of private respondents, and filed a suit for *Reversion, Annulment of Documents and Cancellation of Title with Prayer for Issuance of Temporary Restraining Order (TRO) and Writ of Preliminary Injunction*. It pointed out several irregularities in the issuance of the CALT in favor of private respondents. x x x

x x x x x x x x x

Private respondents answered the complaint denying all its material allegations. x x x As special and affirmative defenses, they averred lack of jurisdiction and lack of cause of action. They pointed out that the complaint assailed the CALT and the OCT issued on the basis of the CALT, which under the Indigenous (Peoples] Right[s] Act (IPRA), falls within the jurisdiction of the NCIP, and not of the regular courts. They asserted that the RTC has no jurisdiction over the subject matter of the complaint; hence, the complaint must be dismissed for lack of jurisdiction. x x x

On July 14, 2010, the RTC issued an Order directing the Republic to show cause why the complaint should not be dismissed for lack of jurisdiction.

In its Compliance, the Republic asserted that the RTC had jurisdiction over the complaint. Citing Chapter II of Batas Pambansa (B.P.) Blg. 129, it maintained that the RTC had jurisdiction over all civil actions which involve the title to, or possession of, real property, or any interest therein. The action[s] for reversion, annulment of documents and cancellation of titles are rights of actions or reliefs which are obviously neither within the exclusive nor concurrent jurisdiction of the NCIP. It further asserted that it was never made a party to NCIP En Banc Resolution No. 060-2009-AL (2009). Not being a party to the proceeding, it could not avail of the remedy of filing a petition for review with the CA. The Republic maintained that the CALT and the consequent OCT was null and void. As such, they can be attacked either directly [or] collaterally.

The RTC, however, was not at all persuaded by Republic's arguments and rendered the now challenged Order dismissing the complaint. It sustained private respondents that the RTC has no jurisdiction over the subject matter of the complaint. The RTC explained that the CALT and the corresponding OCT were issued on the basis of the Resolution 060-2009-AL of the NCIP. Thus, any challenge against the CALT

and the OCT necessarily calls for a review of the NCIP Resolution which was made as basis for the issuance of the CALT. However, NCIP is a quasi-judicial body with a rank and stature equal to that of the RTC; hence, it cannot review the Resolution of the NCIP or any document that flows from its proceedings.

The RTC disposed, thus:

> **WHEREFORE**, the instant case is **dismissed without prejudice** for lack of jurisdiction over the subject-matter of the complaint.
>
> **SO ORDERED.**[6]

Petitioner filed a motion for reconsideration but the RTC denied this. Aggrieved, petitioner filed a petition for *certiorari* under Rule 65 with the CA.[7]

CA Decision

On the procedural issue, the CA ruled that petitioner availed itself of the correct remedy when it filed a Rule 65 petition to assail the RTC's dismissal without prejudice of the Complaint.[8] The CA ruled that the Complaint assails the validity of OCT No. 0-CALT-37 as well as NCIP *En Banc* Resolution No. 060-2009-AL, Series of 2009[9] (Resolution No. 060-2009-AL). Given this, the RTC does not have jurisdiction to review the NCIP Resolution as under the Indigenous Peoples Rights Act of 1997[10] (IPRA), its Implementing Rules and Regulations (IRR), and even the NCIP Rules on Pleadings, Practice and Procedure all state that Decisions of the NCIP are reviewable by the CA.[11]

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[6] *Rollo* (Vol. I), pp. 99-104.

[7] *Id*. at 98, 105.

[8] *Id.* at 107-108.

[9] *Id*. at 150-163.

[10] Republic Act No. 8371, entitled "AN ACT TO RECOGNIZE, PROTECT AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLES, CREATING A NATIONAL COMMISSION ON INDIGENOUS PEOPLES, ESTABLISHING IMPLEMENTING MECHANISMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," October 29, 1997.

[11] *Rollo* (Vol. I), pp. 109-111.

For the CA, the NCIP and the RTC are co-equal bodies and the NCIP is therefore beyond the control of the RTC.[12]

The CA also ruled that the record shows that the Republic was aware of Resolution No. 060-2009-AL as early as 2009 but it only filed the petition for *certiorari* on November 25, 2010. The Rules of Court is explicit that a petition under Rule 65 should be filed not later than 60 days from notice. When the Republic filed the petition for *certiorari* on November 25, 2010, the period to file a Rule 65 petition has already expired.[13] The CA also ruled that for it to rule on the propriety of Resolution No. 060-2009-AL and the validity of the Certificate of Ancestral Land Title (CALT) and OCT, it would have to appreciate and calibrate evidence, which is not the function of a petition for *certiorari* under Rule 65.[14] It found that it would be misplaced to attack and rule on the validity of the proceedings of the NCIP and on the CALT and OCT in a petition for *certiorari*.[15] The dispositive portion of the CA Decision states:

WHEREFORE, the appeal is **DISMISSED**. The assailed Orders of the Regional Trial Court of Baguio City in Civil Case No. 7200-R are **AFFIRMED**.

SO ORDERED.[16]

Petitioner did not move for reconsideration; instead, it directly filed this Petition.

Issues

The issues raised in the Petition are as follows:

I

WHETHER THE [RTC], IN THE EXERCISE OF ITS ORIGINAL AND EXCLUSIVE JURISDICTION OVER TITLES TO PROPERTY[,] HAS THE POWER AND AUTHORITY TO

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[12] *Id*. at 111.

[13] *Id*. at 113.

[14] *Id.* at 114.

[15] *Id.*

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

EXAMINE THE DECISION OR RESOLUTION OF A CO-EQUAL BODY SUCH AS THE NCIP TO THE EXTENT THAT THEY ARE PATENTLY NULL AND VOID *AB INITIO* FOR THE PURPOSE OF ANNULLING AN OCT ISSUED BASED ON SAID DECISION OR RESOLUTION.

II

WHETHER THE [RTC], IN THE EXERCISE OF ITS ORIGINAL AND EXCLUSIVE JURISDICTION OVER TITLES TO PROPERTY[,] MAY REFUSE TO RECOGNIZE THE VALIDITY OF A DECISION OR RESOLUTION OF A CO-EQUAL BODY IF IT FINDS THE SAME TO BE PATENTLY NULL AND VOID.

III

WHETHER A PETITION FOR *CERTIORARI* IS THE PROPER REMEDY TO ASSAIL THE NULL AND VOID NCIP RESOLUTION AND WHETHER OR NOT SAID REMEDY IS APPLICABLE IN PETITIONER'S CASE WHERE IT IS NOT A PARTY TO THE PROCEEDINGS OF SAID RESOLUTION.

IV

WHETHER IT IS PROPER FOR [THE] COURT TO DECIDE ON THE SUBSTANTIVE MERITS OF THE NINE (9) CAUSES OF ACTION RAISED BY PETITIONER IN ITS COMPLAINT FILED BEFORE THE [RTC] ASSAILING NCIP *EN BANC* RESOLUTION NO. 060-2009-AL, SERIES OF 2009.[17]

Essentially, the issue for the Court's resolution is whether the RTC has jurisdiction over the Republic's Complaint.

The Court's Ruling

The Petition is partially granted.

RTC has jurisdiction over cases for reversion and cancellation of certificates of title.

The RTC and the CA both ruled that the RTC had no jurisdiction over the Complaint because it sought a review of Resolution No. 060-2009-AL. This is error.

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

The Court has held in *Republic v. Roman Catholic Archbishop of Manila*[18] that "[i]t is axiomatic that the nature of an action and whether the tribunal has jurisdiction over such action are to be determined from the material allegations of the complaint, the law in force at the time the complaint is filed, and the character of the relief sought irrespective of whether the plaintiff is entitled to all or some of the claims averred. Jurisdiction is not affected by the pleas or the theories set up by defendant in an answer to the complaint or a motion to dismiss the same."[19]

The Complaint alleged the following: (a) Baguio Stock Farm (BSF) is an agricultural land of the public domain comprising of Lots 1 and 2 covering 849,721 and 91,622 square meters, respectively, that has been withdrawn from sale or settlement and reserved for animal breeding purposes under the administration of the Bureau of Animal Industry, an agency under the Department of Agriculture, pursuant to Presidential Proclamation No. 603, Series of 1940 (Proclamation No. 603);[20] (b) sometime in June 2009, a person who identified himself as an heir of Ikang Paus delivered to BSF a photocopy of OCT No. 0-CALT-37 and claimed that the said title lies inside BSF;[21] (c) OCT No. 0-CALT-37 was based on CALT No. CAR-BAG-0309-000207 issued by the NCIP to the Heirs of Ikang Paus;[22] (d) the lot covered by OCT No. 0-CALT-37 is inside the property covered by Proclamation No. 603 as plotted by the DENR using the reconstructed and unapproved survey plan together with the technical description of Lot 1, SWO-14110215703-D-A-NCIP;[23] and (e) Resolution No. 060-2009-AL granted CALT No. CAR-BAG-0309-000207 to the Heirs of Ikang Paus.[24]

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[18] 698 Phil. 429 (2012).

[19] *Id*. at 435.

[20] *Rollo* (Vol. I), p. 197.

[21] *Id*. at 198.

[22] *Id.*

[23] *Id*. at 199.

[24] *Id*. at 200.

The Complaint also states nine causes of action, as follows:

1. Resolution No. 060-2009-AL was null and void for failing to implead the Director of Lands following Section 53(f) of the IPRA;[25]
2. the CALT was issued contrary to Section 12 of the IPRA as the application of the Heirs of Ikang Paus was opposed by other members of the Ibaloi tribe;[26]
3. the CALT was patently defective for failure to secure the signature and approval of all the NCIP commissioners;[27]
4. no Torrens title can be issued over BSF, a government reservation, which could only be covered by a Certificate of Ancestral Domain Title (CADT), and not a CALT;[28]
5. BSF is protected from ancestral domain or ancestral land claims following Section 7(g) of the IPRA;[29]
6. the issuance of the OCT/CALT was void because of the NCIP's failure to negotiate with the Republic following the NCIP's Administrative Order No. 1, Series of 1998;[30]
7. the issuance of the CALT was defective because the adjacent owners were not notified;[31]
8. the Heirs of Ikang Paus, even assuming that they may be issued an OCT, failed to prove that they possessed and occupied the property in the concept of owner since

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[25] *Id.* at 203-206.

[26] *Id.* at 206-208.

[27] *Id.* at 208-209.

[28] *Id.* at 209-213.

[29] *Id.* at 213-215.

[30] *Id.* at 215-218.

[31] *Id.* at 218-221.

time immemorial or for a period of not less than 30 years;[32] and

9. no CALT may be issued over the BSF as it is within the Baguio Townsite reservation.[33]

The Complaint thus seeks the nullification and cancellation of (a) OCT No. 0-CALT-37 and any derivative title issued pursuant thereto; (b) CALT No. CAR-BAG-0309-000207; and (c) the reconstructed and unapproved survey plan together with the technical description of Lot 1, SWO-14110215703-D-A-NCIP.[34] Only the last two reliefs emanated from Resolution No. 060-2009-AL. The Complaint also impleaded the Register of Deeds of Baguio City, the NCIP, and the LRA.

To the mind of the Court, the case is not a review of the NCIP *En Banc* Resolution because a subsequent event occurred that gave rise to a cause of action for reversion and cancellation of a Torrens title, namely, the issuance of OCT No. 0-CALT-37. This is the reason the Republic has impleaded the Register of Deeds of Baguio City and the LRA.

In fact, the Republic alleges that OCT No. 0-CALT-37 should not have been issued since it is land of the public domain. This, in turn, requires a factual determination of whether the land is indeed of public domain and whether OCT No. 0-CALT-37 embraces land inside the BSF. This then raises the issue of whether a CALT may be issued over it, and whether an OCT may be issued arising from the CALT. This is therefore a complaint for the reversion of a land to the public domain and the cancellation of a Torrens title covering a public land, both matters being within the exclusive original jurisdiction of the RTC.

Under Batas Pambansa Blg. 129,[35] the RTC has jurisdiction over the following civil cases:

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[32] *Id.* at 221-224.

[33] *Id.* at 224-225.

[34] *Id.* at 227.

[35] THE JUDICIARY REORGANIZATION ACT OF 1980.

SEC. 19. *Jurisdiction in Civil Cases*.— Regional Trial Courts shall exercise exclusive original jurisdiction:

x x x x x x x x x

(2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000.00) or for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (₱50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts;

x x x x x x x x x

(8) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds One hundred thousand pesos (₱100,000.00) or, in such other cases in Metro Manila, where the demand, exclusive of the abovementioned items exceeds Two hundred thousand pesos (₱200,000.00).

In *Republic v. Roman Catholic Archbishop of Manila*,[36] the Court held that "[a]ctions for cancellation of title and reversion x x x belong to the class of cases that 'involve the title to, or possession of, real property, or any interest therein' and where the assessed value of the property exceeds ₱20,000.00, fall under the jurisdiction of the RTC."[37]

As the Court held in *Malabanan v. Republic*[38] "[i]n a reversion suit, we should emphasize, the attack is directed not against the judgment ordering the issuance of title, but against the title that is being sought to be cancelled either because the judgment was not validly rendered, or the title issued did not faithfully reflect the land referred to in the judgment, or because no judgment was rendered at all."[39]

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[36] *Supra* note 18.

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

[38] G.R. No. 201821, September 19, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocsfriendly/1/64605>.

[39] *Id.*

The allegations of the Republic in the Complaint squarely assert a reversion suit as described above. It is attacking OCT No. 0-CALT-37 because it arose from Resolution No. 060-2009-AL, which the Republic claims was not validly rendered.

The Court is not unmindful that in ruling on the issue of the validity of OCT No. 0-CALT-37, the Court will necessarily rule on the validity of CALT No. CAR-BAG-0309-000207, and the reconstructed and unapproved survey plan together with the technical description of Lot 1, SWO-14110215703-D- A-NCIP, both of which were issued and approved in Resolution 060-2009- AL. This, however, does not remove the Complaint from the RTC's jurisdiction, and as described above, even confirms it. Again, the cause of action of the Republic is for the reversion to the public domain of the lot covered by OCT No. 0-CALT-37 and the cancellation of the title. In ruling on this issue, the RTC may dwell on the validity of the proceedings of the NCIP, which gave rise to the issuance of the Torrens title. The Court's ruling in *Republic v. Bacas*[40] (*Bacas*) is instructive:

> The success of the annulment of title does not solely depend on the existence of actual and extrinsic fraud, but also on the fact that a judgment decreeing registration is null and void. In *Collado v. Court of Appeals and the Republic*, the Court declared that any title to an inalienable public land is void *ab initio*. Any procedural infirmities attending the filing of the petition for annulment of judgment are immaterial since the LRC never acquired jurisdiction over the property. All proceedings of the LRC involving the property are null and void and, hence, did not create any legal effect. A judgment by a court without jurisdiction can never attain finality. In *Collado*, the Court made the following citation:
>
> > The **Land Registration Court has no jurisdiction over non-registrable properties**, such as public navigable rivers which are parts of the public domain, and cannot validly adjudge the registration of title in favor of private applicant. Hence, the judgment of the Court of First Instance of Pampanga as regards the Lot No. 2 of certificate of Title No. 15856 in the name of petitioners **may be attacked at any time**, either **directly or**

[40] 721 Phil. 808 (2013).

> **collaterally**, by the State which is **not bound by any prescriptive period** provided for by the Statute of Limitations.[41] (Emphasis in the original)

In *Bacas*, the principal prayer for cancellation of the Torrens title entailed the nullification of a decision of the LRC, a co-equal body of the RTC. Here, similarly, as a result of the prayer for reversion and cancellation of title, the RTC will necessarily have to rule on the validity of Resolution No. 060-2009-AL. The RTC also has to rule on whether the Register of Deeds of Baguio City acted correctly in issuing OCT No. 0-CALT-37 based on CALT No. CAR-BAG-0309-000207.

Based on the foregoing, the Court finds that the RTC committed grave abuse of discretion when it dismissed the Republic's Complaint for lack of jurisdiction. As the Court ruled in *Heirs of Spouses Reterta v. Spouses Mores and Lopez*:[42] "The term *grave abuse of discretion* connotes whimsical and capricious exercise of judgment as is equivalent to excess, or lack of jurisdiction. The abuse must be so patent and gross as to amount to an evasion of a positive duty or to 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 or hostility."[43]

The RTC's dismissal of the Complaint is a refusal to perform its duty enjoined by law as it is the court that has jurisdiction over the Complaint. The CA therefore committed reversible error in affirming the RTC's dismissal of the Complaint.

Nonetheless, the Court finds that the Republic's prayer that the Court rule on its nine causes of action as raised in its Complaint to be premature. A ruling on the nine causes of action requires the presentation and reception of evidence, a function the Court cannot discharge as it is not a trier of facts. There being no trial on the merits yet, it is improper for the Court to rule on the nine causes of action in the Complaint.

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[41] *Id.* at 828-829.

[42] 671 Phil. 346 (2011).

[43] *Id.* at 364.

NCIP does not have jurisdiction over the Republic's Complaint.

As further confirmation that the RTC has jurisdiction over the case is the fact that the NCIP does not have jurisdiction over issues involving non-Indigenous Cultural Communities (ICCs)/Indigenous Peoples (IPs). The NCIP's jurisdiction is defined in Section 66 of the IPRA:

> SEC. 66. *Jurisdiction of the NCIP*. — The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs: *Provided, however*, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

Interpreting this provision, the Court held in *Lim v. Gamosa*[44] that the NCIP has no power and authority to decide controversies involving non-ICCs/IPs even if it involves rights of ICCs/IPs, as these disputes should be brought before a court of general jurisdiction, thus:

> Once again, the primacy of customs and customary law sets the parameters for the NCIP's limited and special jurisdiction and its consequent application in dispute resolution. Demonstrably, the proviso in Section 66 of the IPRA limits the jurisdiction of the NCIP to cases of claims and disputes involving rights of ICCs/IPs where both parties are ICCs/IPs because customs and customary law cannot be made to apply to non-ICCs/IPs within the parameters of the NCIP's limited and special jurisdiction.
>
> Indeed, non-ICCs/IPs cannot be subjected to this special and limited jurisdiction of the NCIP even if the dispute involves rights of ICCs/IPs since the NCIP has no power and authority to decide on a controversy **involving, as well, rights of non-ICCs/IPs which may be brought before a court of general jurisdiction within the legal bounds of rights and remedies**. Even as a practical concern, non-

[44] 774 Phil. 31 (2015).

IPs and non-members of ICCs ought to be excepted from the NCIP's competence since it cannot determine the right-duty correlative, and breach thereof, between opposing parties who are ICCs/IPs and non-ICCs/IPs, **the controversy necessarily contemplating application of other laws, not only customs and customary law of the ICCs/IPs.** In short, the NCIP is only vested with jurisdiction to determine the rights of ICCs/IPs based on customs and customary law in a given controversy against another ICC/IP, but not the applicable law for each and every kind of ICC/IP controversy even against an opposing non-ICC/IP.[45] (Additional emphasis and underscoring supplied)

Here, although the dispute involves the rights of the Heirs of Ikang Paus, who claim to be members of the Ibaloi tribe, the Complaint involves non-ICCs/IPs such as the Republic, the Register of Deeds of Baguio, and even the LRA. The NCIP cannot rule on the rights of non-ICCs/IPs which should be brought before a court of general jurisdiction. Here, the dispute was validly lodged with the RTC as discussed above.

Further, given the special limited jurisdiction of the NCIP, only those cases over which the NCIP has jurisdiction may be a pealed to the CA following Section 67 of the IPRA:

SEC. 67. *Appeals to the Court of Appeals.* — Decisions of the NCIP shall be appealable to the Court of Appeals by way of a petition for review.

It was therefore error for the RTC and the CA to treat the Complaint as an appeal from Resolution No. 060-2009-AL because based on the allegations of the Complaint, the NCIP could not have jurisdiction over it. And in fact, given that NCIP cases are limited to ICCs/IPs, it would even be legally impermissible for a non-ICC/IP to appeal a decision of the NCIP.

This further confirms that the RTC acted with grave abuse of discretion because if the RTC dismissal of the Complaint is not undone, the Republic will be denied any kind of remedy to protect its rights and interest over the property.[46]

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[45] *Id.* at 61-62.

[46] See *Heirs of Spouses Reterta v. Spouses Mores and Lopez*, *supra* note 42, at 364.

Petition-in-intervention lacks basis.

A Petition-in-Intervention[47] was filed by the Heirs of Mateo Cariño and Bayosa Ortega (Heirs of Cariño and Ortega). They admit that they were not parties to Civil Case No. 7200-R,[48] but claim that they have an interest in the property covered by OCT No. 0-CALT-37. In their Petition-in-Intervention, they seek to have Section 53[49] of the IPRA declared as unconstitutional as it failed to provide sufficient standards to guide the assessment and approval of ancestral land claims, which allows an

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[47] *Rollo* (Vol. II), pp. 1078-1111.

[48] *Id.* at 1078.

[49] SEC. 53. *Identification, Delineation and Certification of Ancestral Lands*:

a) The allocation of lands within any ancestral domain to individual or indigenous corporate (family or clan) claimants shall be left to the ICCs/IPs concerned to decide in accordance with customs and traditions;

b) Individual and indigenous corporate claimants of ancestral lands which are not within ancestral domains, may have their claims officially established by filing applications for the identification and delineation of their claims with the Ancestral Domains Office. An individual or recognized head of a family or clan may file such application in his behalf or in behalf of his family or clan, respectively;

c) Proofs of such claims shall accompany the application form which shall include the testimony under oath of elders of the community and other documents directly or indirectly attesting to the possession or occupation of the areas since time immemorial by the individual or corporate claimants in the concept of owners which shall be any of the authentic documents enumerated under Sec. 52(d) of this Act, including tax declarations and proofs of payment of taxes;

d) The Ancestral Domains Office may require from each ancestral claimant the submission of such other documents, Sworn Statements and the like, which in its opinion, may shed light on the veracity of the contents of the application/claim;

e) Upon receipt of the applications for delineation and recognition of ancestral land claims, the Ancestral Domains Office shall cause the publication of the application and a copy of each document submitted including a translation in the native language of the ICCs/IPs concerned in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial, and regional offices of the NCIP and shall be published in a newspaper of general circulation once a week for

overreaching and unwarranted exercise of discretion on the part of the NCIP and the Ancestral Domains Office (ADO).[50]

The intervention lacks basis.

The requisites for intervention of a non-party, as the Court ruled in *Asia's Emerging Dragon Corp. v. Department of Transportation and Communications*,[51] are as follows:

1. Legal interest

   (a) in the matter in controversy; or

   (b) in the success of either of the parties; or

   (c) against both parties; or

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two (2) consecutive weeks to allow other claimants to file opposition thereto within fifteen (15) days from the date of such publication: *Provided*, That in areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute: *Provided, further*, That mere posting shall be deemed sufficient if both newspapers and radio station are not available;

f) Fifteen (15) days after such publication, the Ancestral Domains Office shall investigate and inspect each application, and if found to be meritorious, shall cause a parcellary survey of the area being claimed. The Ancestral Domains Office shall reject any claim that is deemed patently false or fraudulent after inspection and verification. In case of rejection, the Ancestral Domains Office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP. In case of conflicting claims among individual or indigenous corporate claimants, the Ancestral Domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to Sec. 62 of this Act. In all proceedings for the identification or delineation of the ancestral domains as herein provided, the Director of Lands shall represent the interest of the Republic of the Philippines; and

g) The Ancestral Domains Office shall prepare and submit a report on each and every application surveyed and delineated to the NCIP which shall, in turn, evaluate the report submitted. If the NCIP finds such claim meritorious, it shall issue a certificate of ancestral land, declaring and certifying the claim of each individual or corporate (family or clan) claimant over ancestral lands.

[50] *Rollo* (Vol. II), p. 1087.

[51] 572 Phil. 523 (2008).

(d) person is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof;

2. Intervention will not unduly delay or prejudice the adjudication of rights of original parties;

3. Intervenor's rights may not be fully protected in a separate proceeding.[52]

The Heirs of Cariño and Ortega failed to prove a legal interest in the controversy. The Petition raises whether the RTC, as affirmed by the CA, ruled correctly in dismissing the Republic's Complaint for reversion and annulment of judgment. The Heirs of Cariño and Ortega do not claim that they have any interest in the outcome of this case. Instead, they would like the Court to rule on the constitutionality of Section 53 of the IPRA. Based on their own allegations, therefore, intervention is improper.

Further, ruling on the constitutionality of Section 53 will delay the adjudication of the issue of whether the RTC has jurisdiction over the Republic's Complaint. More importantly, even if allowed to intervene, the issue on the constitutionality of Section 53 of the IPRA is not the very *lis mota* of this Petition of the Republic. As the Court held in *Spouses Mirasol v. Court of Appeals*:[53]

Jurisprudence has laid down the following requisites for the exercise of this power: First, there must be before the Court an actual case calling for the exercise of judicial review. Second, the question before the Court must be ripe for adjudication. Third, the person challenging the validity of the act must have standing to challenge. Fourth, the question of constitutionality must have been raised at the earliest opportunity, and lastly, the issue of constitutionality must be the very *lis mota* of the case.

As a rule, the courts will not resolve the constitutionality of a law, if the controversy can be settled on other grounds. The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid, absent a clear and

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[52] *Id.* at 527.

[53] 403 Phil. 760 (2001).

unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the doctrine of separation of powers. This means that the measure had first been carefully studied by the legislative and executive departments and found to be in accord with the Constitution before it was finally enacted and approved.

The present case was instituted primarily for accounting and specific performance. The Court of Appeals correctly ruled that PNB's obligation to render an accounting is an issue, which can be determined, without having to rule on the constitutionality of P.D. No. 579. In fact there is nothing in P.D. No. 579, which is applicable to PNB's intransigence in refusing to give an accounting. The governing law should be the law on agency, it being undisputed that PNB acted as petitioners' agent. In other words, the requisite that the constitutionality of the law in question be the very *lis mota* of the case is absent. Thus we cannot rule on the constitutionality of P.D. No. 579.[54]

Here, it is unnecessary to rule on the constitutionality of Section 53 of the IPRA in order to arrive at the conclusion that the RTC has jurisdiction over the Republic's Complaint.

WHEREFORE, premises considered, the Petition is **PARTLY GRANTED**. The Decision dated February 13, 2012 of the Court of Appeals in C.A. G.R. SP No. 116926 is **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Regional Trial Court of Baguio City, Branch 6 which is directed to proceed with dispatch with the trial on the merits as well as the resolution of Civil Case No. 7200-R.

The Petition-in-Intervention of the Heirs of Mateo Cariño and Bayosa Ortega is **DENIED** for lack of merit.

SO ORDERED.

Reyes, J. Jr., Lazaro-Javier, and *Zalameda, JJ.,* concur.

Carpio, (Chairperson) J., on official leave.

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[54] *Id.* at 773-774.

FIRST DIVISION

[G.R. No. 202039. August 14, 2019]

ANGELITA SIMUNDAC-KEPPEL, *petitioner, vs.* **GEORG KEPPEL,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; MARRIAGE; NATIONALITY PRINCIPLE; THE PHILIPPINE LAW FINDS NO APPLICATION AS FAR AS FAMILY RIGHTS AND OBLIGATIONS OF THE PARTIES WHO ARE FOREIGN NATIONALS; CASE AT BAR.— A fundamental and obvious defect of Angelita's petition for annulment of marriage is that it seeks a relief improper under Philippine law in light of both Georg and Angelita being German citizens, not Filipinos, at the time of the filing thereof. Based on the Nationality Principle, which is followed in this jurisdiction, and pursuant to which laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad, it was the pertinent German law that governed. In short, Philippine law finds no application herein as far as the family rights and obligations of the parties who are foreign nationals are concerned. In *Morisono v. Morisono*, we summarized the treatment of foreign divorce judgments in this jurisdiction, x x x Accordingly, the petition for annulment initiated by Angelita fails scrutiny through the lens of the Nationality Principle. Firstly, what governs the marriage of the parties is German, not Philippine, law, and this rendered it incumbent upon Angelita to allege and prove the applicable German law. We reiterate that our courts do not take judicial notice of foreign laws; hence, the existence and contents of such laws are regarded as questions of fact, and, as such, must be alleged and proved like any other disputed fact. Proof of the relevant German law may consist of any of the following, namely: (1) official publications of the law; or (2) copy attested to by the officer having legal custody of the foreign law. If the official record is not kept in the Philippines, the copy must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed

in the foreign country in which the record is kept; and (b) authenticated by the seal of his office. Angelita did not comply with the requirements for pleading and proof of the relevant German law. And, secondly, Angelita overlooked that German and Philippine laws on annulment of marriage *might not be* the same. In other words, the remedy of annulment of the marriage due to psychological incapacity afforded by Article 36 of the *Family Code* might not be available for her. In the absence of a showing of her right to this remedy in accordance with German law, therefore, the petition should be dismissed.

2. ID.; ID.; ID.; NULLITY OF MARRIAGE; PSYCHOLOGICAL INCAPACITY AS GROUND; THE PSYCHOLOGICAL INCAPACITY UNDER ARTICLE 36 OF THE FAMILY CODE CONTEMPLATES AN INCAPACITY OR INABILITY TO TAKE COGNIZANCE OF AND TO ASSUME MARITAL OBLIGATIONS, AND NOT MERE DIFFICULTY, REFUSAL, OR NEGLECT IN THE PERFORMANCE OF MARITAL OBLIGATIONS OR ILL WILL; REQUISITES.— Jurisprudentially speaking, psychological incapacity under Article 36 of the *Family Code* contemplates an incapacity or inability to take cognizance of and to assume basic marital obligations, and is not merely the difficulty, refusal, or neglect in the performance of marital obligations or ill will. The disorder consists of: *(a)* a true inability to commit oneself to the essentials of marriage; *(b)* the inability must refer to the essential obligations of marriage, that is, the conjugal act, the community of life and love, the rendering of mutual help, and the procreation and education of offspring; and *(c)* the inability must be tantamount to a psychological abnormality. Proving that a spouse did not meet his or her responsibility and duty as a married person is not enough; it is essential that he or she must be shown to be incapable of doing so because of some psychological illness. Psychological incapacity is unlike any other disorder that would invalidate a marriage. It should refer to a mental incapacity that causes a party to be incognitive of the basic marital covenants such as those enumerated in Article 68 of the *Family Code* and must be characterized by gravity, juridical antecedence and incurability.

3. ID.; ID.; ID.; PROPERTY RELATIONS; IN THE ABSENCE OF PROOF OF A FOREIGN LAW, IT IS PRESUMED THAT SUCH FOREIGN LAW IS THE SAME AS THAT

OF THE PHILIPPINES; THE FAMILY CODE DECLARES THAT MARRIAGE SETTLEMENTS AND ANY MODIFICATION THEREOF SHALL BE MADE IN WRITING AND SIGNED BY THE PARTIES PRIOR TO THE CELEBRATION OF THE MARRIAGE; NOT PRESENT IN CASE AT BAR.— Properties accumulated by a married couple may either be real or personal. While the RTC awarded herein all personal properties in favor of Angelita pursuant to the "Matrimonial Property Agreement" executed in Germany, it ignored that such agreement was governed by the national law of the contracting parties; and that the forms and solemnities of contracts, wills, and other public instruments should be governed by the laws of the country in which they are executed. Angelita did not allege and prove the German law that allowed her to enter into and adopt the regime of complete separation of property through the "Matrimonial Property Agreement." In the absence of such allegation and proof, the German law was presumed to be the same as that of the Philippines. In this connection, we further point out Article 77 of the *Family Code* declares that marriage settlements and any modification thereof shall be made in writing and signed by the parties *prior* to the celebration of the marriage. Assuming that the relevant German law was similar to the Philippine law, the "Matrimonial Property Agreement," being entered into by the parties in 1991, or a few years *after* the celebration of their marriage on August 30, 1988, could not be enforced for being in contravention of a mandatory law. Also, with the parties being married on August 30, 1988, the provisions of the *Family Code* should govern. Pursuant to Article 75 of the *Family Code*, the property relations between the spouses were governed by the absolute community of property. This would then entitle Georg to half of the personal properties of the community property.

APPEARANCES OF COUNSEL

A.A. Navarro III Law Offices for petitioner.
Lustre Santos Law Office for respondent.

D E C I S I O N

BERSAMIN, *C.J.*:

The courts do not take judicial notice of foreign laws. To have evidentiary weight in a judicial proceeding, the foreign laws should be alleged and proved like any other material fact.

This Case

By this appeal, the petitioner assails the decision promulgated on September 26, 2011[1] by the Court of Appeals (CA) that reversed the judgment rendered on June 21, 2006[2] by the Regional Trial Court (RTC) in Muntinlupa City in Civil Case No. 96-048.

Antecedents

As summarized by the CA, the factual antecedents are as follows:

> In November 1972, petitioner Angelita Simundac Keppel (**Angelita**) left the Philippines to work in Germany as a nurse. In the hospital where Angelita worked, she met Reynaldo Macaraig (**Reynaldo**), also a nurse and fellow Filipino who had become a naturalized German citizen. They fell in love and got married in Germany on 12 June 1976. Angelita and Reynaldo's union produced a son.
>
> After a few years of marriage, Angelita became attracted to another German nurse and co-employee, Georg Keppel (Georg). Like Angelita, Georg was married to a Filipina nurse, with whom he had two children. Eventually, the attraction between Angelita and Georg developed into an intimate affair. Not long after that, Reynaldo discovered Angelita's infidelity and they separated.
>
> In the meantime, in February 1986, Angelita became a naturalized German citizen. Angelita and her son left Germany to go home to the Philippines, where they planned to start over.

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[1] *Rollo*, pp. 54-69; penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justice Marlene Gonzales-Sison and Associate Justice Danton Q. Bueser.

[2] *Id*. at 339-345; penned by Presiding Judge Alberto L. Lerma.

While in the Philippines, Angelita continued communicating with Georg through letters and telephone calls. In July 1987, Georg's wife divorced him, and so Georg felt free to come to the Philippines to meet Angelita's family in September 1987.

In December 1987, Angelita returned to Germany to file divorce proceedings against Reynaldo, and she obtained the divorce decree she sought in June 1988. Shortly thereafter, Angelita and Georg got married in Germany on 30 August 1988. On 21 November 1989, Angelita gave birth in Germany to a daughter, whom they named Liselotte.

In 1991, Angelita and Georg entered into an agreement for the complete separation of their properties. At that time, Georg resigned from his job. To make matters worse, Georg was diagnosed with early multiple sclerosis and could not work. Since Angelita's income was barely enough to support them all, they decided to return and settle permanently in the Philippines in 1992.

Angelita bought a lot in Muntinlupa on which they had a house built in 1993. She also put up a commercial building – which earned rentals – on another lot in Muntinlupa, which she and her first husband, Reynaldo, previously bought together. The rest of Angelita's savings from Germany went into putting up a school with her other family members and relatives.

Angelita earned a considerable income from her business ventures, which she shared with Georg. However, Angelita stopped giving Georg money in 1994 when she discovered that Georg was having extramarital affairs.

Claiming that Georg was beating her up, Angelita and her two children left their home in March 1996. Being the registered owner of their family home, Angelita sold the same to her sister. Despite said sale, Georg refused to vacate the house.

On 26 March 1996, Angelita filed the instant petition for annulment of marriage on the ground of Georg's alleged psychological incapacity. Georg opposed the petition, insisting that the court should only issue a decree of legal separation with the consequent division of their properties and determination of Liselotte's custody. Angelita countered that there were no properties to divide between them because all the real properties that she acquired in the Philippines belong solely to her as a consequence of the agreement for complete separation of property that they previously executed in Germany in 1991.

During trial, Angelita presented evidence of Georg's psychological incapacity through medical reports and the like, as well as the contract for separation of property. On the other hand, Georg presented evidence of the properties that they acquired during their marriage that he thinks should be divided equally between them.[3]

Judgment of the RTC

On June 21, 2006, the RTC rendered judgment declaring the marriage of Angelita and Georg null and void, to wit:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

a) [T]he marriage between spouses ANGELITA SIMUNDAC and GEORG KEPPEL which was solemnized on August 30, 1988 in Dulsburg, Germany, is hereby declared as null and void in view of the psychological incapacity of defendant to perform the essential marital obligations;

b) [A]ll the real and personal properties including the businesses subject of the instant suit is (sic) hereby declared as forming part of the paraphernal property of petitioner;

c) [T]he spouses are directed to equally support their minor child Lisselotte Angela Keppel;

d) [T]he custody of the minor child is hereby declared as belonging to herein petitioner, the mother, without prejudice to the visitorial rights accorded by law to defendant, unless the said minor child chooses her father's custody, herein defendant.

SO ORDERED.[4]

The RTC found both of the parties psychologically incapacitated but considered Georg's incapacity to be more severe on the basis of the clinical finding that he had manifested an anti-social or psychopathic type of personality that translated to the symptomatic tendency to deceive and injure Angelita. The RTC declared that as to the properties of the parties to be

[3] *Id*. at 12-14.

[4] *Id*. at 345.

distributed after the dissolution of the marriage, the business and personal properties should be allocated to Angelita pursuant to the "Matrimony Property Agreement;" and that the lands should exclusively belong to Angelita inasmuch as Georg, being a German citizen, was absolutely prohibited from owning lands pursuant to Section 7, Article XVII of the Constitution.

Decision of the CA

On September 26, 2011, the CA promulgated its decision on appeal, reversing the RTC's findings, and thereby dismissing the complaint, disposing thusly:

> ***WHEREFORE***, the *Decision*, dated 21 June 2006, of the Regional Trial Court, Branch 256, Muntinlupa City in Civil Case No. 96-048 for Annulment of Marriage and Custody of Minor Child is **REVERSED** and **SET ASIDE**, except for the trial court's declaration that all properties acquired in the Philippines by Angelita Simundac Keppel belong to her alone. The complaint is **DISMISSED**.
>
> ***SO ORDERED***.[5]

The CA observed that Angelita did not prove the allegations in her complaint because she did not present the original of her divorce decree from Reynaldo Macaraig, her first spouse; that she did not also prove the German law that capacitated her to marry Georg; that in the eyes of the court, therefore, there could be no annulment of the marriage between Angelita and Georg to speak of because under Philippine law, Angelita had remained married to Reynaldo; that Angelita's evidence was insufficient to prove that either of the parties herein had been psychologically incapacitated to comply with essential marital obligations inasmuch as anti-social behavior did not equate to psychological incapacity; and that the properties of the couple exclusively belonged to Angelita because Georg could not own lands in the Philippines.

Issues

In this appeal, Angelita posits that the CA erred in not declaring her marriage with Georg null and void inasmuch as

[5] *Id*. at 25.

Georg was suffering from psychological incapacity that rendered him incapable to fulfill his essential marital obligations as borne out by the medical findings; that being then a German citizen, she need not prove the dissolution of her marriage with Reynaldo, or the validity of her marriage with Georg because Philippine law did not apply in both instances; and that as alleged in her petition she had recently re-acquired her Filipino citizenship.[6]

Georg counters that the evidence presented was not sufficient basis to conclude that he was psychologically incapacitated to perform his essential marital obligations; and that the prohibition against land ownership by aliens did not apply because the bulk of the properties of the spouses consisted of personal properties that were not covered by the Constitutional prohibition.

Did the CA err in sustaining the validity of the marriage of the parties? Are the lower courts correct in awarding all the properties of the spouses in favor of Angelita?

Ruling of the Court

The appeal fails to impress.

I.
Under the Nationality Principle, the petitioner cannot invoke Article 36 of the Family Code unless there is a German law that allows her to do so

A fundamental and obvious defect of Angelita's petition for annulment of marriage is that it seeks a relief improper under Philippine law in light of both Georg and Angelita being German citizens, not Filipinos, at the time of the filing thereof. Based on the Nationality Principle, which is followed in this jurisdiction, and pursuant to which laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad,[7] it was the pertinent German law that governed.

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[6] *Id*. at 18.

[7] Article 15, *Civil Code*.

In short, Philippine law finds no application herein as far as the family rights and obligations of the parties who are foreign nationals are concerned.

In *Morisono v. Morisono*,[8] we summarized the treatment of foreign divorce judgments in this jurisdiction, thus:

> The rules on divorce prevailing in this jurisdiction can be summed up as follows: *first*, Philippine laws do not provide for absolute divorce, and hence, the courts cannot grant the same; *second*, consistent with Articles 15 and 17 of the Civil Code, the marital bond between two (2) Filipino citizens cannot be dissolved even by an absolute divorce obtained abroad; *third*, **an absolute divorce obtained abroad by a couple who are both aliens may be recognized in the Philippines, provided it is consistent with their respective national laws;** and *fourth*, in mixed marriages involving a Filipino and a foreigner, the former is allowed to contract a subsequent marriage in case the absolute divorce is validly obtained abroad by the alien spouse capacitating him or her to remarry. [Bold underscoring supplied for emphasis]

Accordingly, the petition for annulment initiated by Angelita fails scrutiny through the lens of the Nationality Principle.

Firstly, what governs the marriage of the parties is German, not Philippine, law, and this rendered it incumbent upon Angelita to allege and prove the applicable German law. We reiterate that our courts do not take judicial notice of foreign laws; hence, the existence and contents of such laws are regarded as questions of fact, and, as such, must be alleged and proved like any other disputed fact.[9] Proof of the relevant German law may consist of any of the following, namely: (1) official publications of the law; or (2) copy attested to by the officer having legal custody of the foreign law. If the official record is not kept in the Philippines, the copy must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept; and (b) authenticated by the seal of

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[8] G.R. No. 226013, July 2, 2018.

[9] *Manufacturers Hanover Trust Co. v. Guerrero*, G.R. No. 136804, February 19, 2003, 397 SCRA 709, 715.

his office.[10] Angelita did not comply with the requirements for pleading and proof of the relevant German law.

And, secondly, Angelita overlooked that German and Philippine laws on annulment of marriage *might not be* the same. In other words, the remedy of annulment of the marriage due to psychological incapacity afforded by Article 36 of the *Family Code* might not be available for her. In the absence of a showing of her right to this remedy in accordance with German law, therefore, the petition should be dismissed.

II.

Assuming the remedy was proper, the petitioner did not prove the respondent's psychological incapacity

Even if we were now to adhere to the concept of processual presumption,[11] and assume that the German law was similar to the Philippine law as to allow the action under Article 36 of the *Family Code* to be brought by one against the other party herein, we would still affirm the CA's dismissal of the petition brought under Article 36 of the *Family Code*.

Notable from the RTC's disquisition is the fact that the psychiatrists found that both parties had suffered from anti-social behavior that became the basis for the trial court's conclusion that they had been both psychologically incapacitated to perform the essential martial obligations. Therein lay the reason why we must affirm the CA.

Jurisprudentially speaking, psychological incapacity under Article 36 of the *Family Code* contemplates an incapacity or inability to take cognizance of and to assume basic marital obligations, and is not merely the difficulty, refusal, or neglect in the performance of marital obligations or ill will. The disorder consists of: *(a)* a true inability to commit oneself to the essentials

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[10] *Juego-Sakai v. Republic*, G.R. No. 224015, July 23, 2018.

[11] Under this doctrine, if the foreign law involved is not properly pleaded and proved, our courts will presume that the foreign law is the same as our local or domestic or internal law (*Del Socorro v. Van Wilsem*, G.R. No. 193707, December 10, 2014, 744 SCRA 516, 528).

of marriage; *(b)* the inability must refer to the essential obligations of marriage, that is, the conjugal act, the community of life and love, the rendering of mutual help, and the procreation and education of offspring; and *(c)* the inability must be tantamount to a psychological abnormality. Proving that a spouse did not meet his or her responsibility and duty as a married person is not enough; it is essential that he or she must be shown to be incapable of doing so because of some psychological illness.[12]

Psychological incapacity is unlike any other disorder that would invalidate a marriage. It should refer to a mental incapacity that causes a party to be incognitive of the basic marital covenants such as those enumerated in Article 68 of the *Family Code* and must be characterized by gravity, juridical antecedence and incurability.[13]

In *Republic v. Court of Appeals*,[14] the Court issued the following guidelines for the interpretation and application of Article 36 of the *Family Code*, to wit:

> (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 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*.

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[12] *Republic v. Court of Appeals (Ninth Division)*, G.R. No. 159594, November 12, 2012, 685 SCRA 33, 41.

[13] *Republic v. Court of Appeals*, G.R. No. 108763, February 13, 1997, 268 SCRA 198, 209-213.

[14] G.R. No. 108763, February 13, 1997, 268 SCRA 198.

(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 characterological 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.

Here, however, the petitioner presented no evidence to show that the anti-social behavior manifested by both parties had been grave, and had existed at the time of the celebration of the marriage as to render the parties incapable of performing all the essential marital obligations provided by law. As the records bear out, the medical experts merely concluded that the behavior was grave enough as to incapacitate the parties from the performance of their essential marital relationship because the parties exhibited symptoms of an anti-social personality disorder. Also, the incapacity was not established to have existed at the time of the celebration of the marriage. In short, the conclusion about the parties being psychologically incapacitated was not founded on sufficient evidence.

III.
Former Filipinos have the limited right to own public agricultural lands in the Philippines

We next deal with the ownership of lands by aliens.

Properties accumulated by a married couple may either be real or personal. While the RTC awarded herein all personal properties in favor of Angelita pursuant to the "Matrimonial Property Agreement" executed in Germany, it ignored that such agreement was governed by the national law of the contracting parties; and that the forms and solemnities of contracts, wills, and other public instruments should be governed by the laws of the country in which they are executed.[15]

Angelita did not allege and prove the German law that allowed her to enter into and adopt the regime of complete separation of property through the "Matrimonial Property Agreement."

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[15] Article 17, *Civil Code*.

In the absence of such allegation and proof, the German law was presumed to be the same as that of the Philippines.

In this connection, we further point out Article 77 of the *Family Code* declares that marriage settlements and any modification thereof shall be made in writing and signed by the parties *prior* to the celebration of the marriage. Assuming that the relevant German law was similar to the Philippine law, the "Matrimonial Property Agreement," being entered into by the parties in 1991, or a few years *after* the celebration of their marriage on August 30, 1988, could not be enforced for being in contravention of a mandatory law.[16]

Also, with the parties being married on August 30, 1988, the provisions of the *Family Code* should govern. Pursuant to Article 75 of the *Family Code*, the property relations between the spouses were governed by the absolute community of property. This would then entitle Georg to half of the personal properties of the community property.

As to the real properties of the parties, several factual considerations were apparently overlooked, or were not established.

Section 7, Article XII of the 1987 Constitution states that: "Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain." It seems clear, however, that the lower courts were too quick to pronounce that Georg, being a German citizen, was automatically disqualified from owning lands in the Philippines. Without disputing the inherent validity of the pronouncement, we nonetheless opine that the lower courts missed to take note of the fact that Angelita, in view of her having admitted that she herself had been a German citizen, suffered the same disqualification as Georg. Consequently, the lower courts' pronouncement awarding all real properties in favor of Angelita could be devoid of legal basis as to her.

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[16] Article 5, *Civil Code*.

At best, an alien could have enjoyed a limited right to own lands. Section 8, Article XII of the Constitution provides: "Notwithstanding the provisions of Section 7 of this Article, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law." Section 5 of Republic Act No. 8179 (*An Act Amending the Foreign Investments Act of 1991*) also states:

> Sec. 10. *Other Rights of Natural Born Citizen Pursuant to the Provisions of Article XII, Section 8 of the Constitution*. — Any natural born citizen who has lost his Philippine citizenship and who has the legal capacity to enter into a contract under Philippine laws may be a transferee of a private land up to a maximum area of five thousand (5,000) square meters in the case of urban land or three (3) hectares in the case of rural land to be used by him for business or other purposes. In the case of married couples, one of them may avail of the privilege herein granted: *Provided*, That if both shall avail of the same, the total area acquired shall not exceed the maximum herein fixed.
>
> In case the transferee already owns urban or rural land for business or other purposes, he shall still be entitled to be a transferee of additional urban or rural land for business or other purposes which when added to those already owned by him shall not exceed the maximum areas herein authorized.
>
> A transferee under this Act may acquire not more than two (2) lots which should be situated in different municipalities or cities anywhere in the Philippines: *Provided*, That the total land area thereof shall not exceed five thousand (5,000) square meters in the case of urban land or three (3) hectares in the case of rural land for use by him for business or other purposes. A transferee who has already acquired urban land shall be disqualified from acquiring rural land area and vice versa.

As the foregoing indicates, Angelita did not have any unlimited right to own lands. On the other hand, the records were not clear on whether or not she had owned real property as allowed by law. It was imperative for the lower courts to determine so. Hence, remand for further proceedings is called for.

It is true that Angelita stated in her petition that she had meanwhile re-acquired Filipino citizenship.[17] This statement remained unsubstantiated, but the impact thereof would be far reaching if the statement was true, for there would then be no need to determine whether or not Angelita had complied with Section 5 of R.A. No. 8179. Thus, the remand of the case will enable the parties to adduce evidence on this aspect of the case, particularly to provide factual basis to determine whether or not Angelita had validly re-acquired her Filipino citizenship; and, if she had, to ascertain what would be the extent of her ownership of the real assets pertaining to the marriage. If the remand should establish that she had remained a foreigner, it must next be determined whether or not she complied with the limits defined or set by R.A. No. 8179 regarding her land ownership. The trial court shall award her the real property that complied with the limits of the law, and inform the Office of the Solicitor General for purposes of a proper disposition of any excess land whose ownership violated the law.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on September 26, 2011 by the Court of Appeals in CA-G.R. CV No. 89297 subject to the **MODIFICATION** that the personal properties of the parties are to be equally divided between them; and **REMANDS** the case to the court of origin for the determination of the issues deriving from the petitioner's re-acquisition of her Filipino citizenship as far as the ownership of the land pertaining to the parties is concerned consistent with this decision.

No pronouncement on costs of suit.

SO ORDERED.

Perlas-Bernabe, Jardeleza, Gesmundo, and *Carandang, JJ.*, concur.

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[17] *Rollo,* p. 48.

SECOND DIVISION

[G.R. No. 207039. August 14, 2019]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **INTERPUBLIC GROUP OF COMPANIES, INC.,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION CODE; SECTION 133 OF THE CORPORATION CODE BARS A FOREIGN CORPORATION, TRANSACTING BUSINESS IN THE PHILIPPINES WITHOUT A LICENSE, ACCESS TO OUR COURTS; EXPLAINED.— [Section 133 of the Corporation Code] bars a foreign corporation "transacting business" in the Philippines without a license access to our courts. Thus, in order for a foreign corporation to sue in Philippine courts, a license is necessary only if it is "transacting or doing business" in the country. Conversely, if an unlicensed foreign corporation is not transacting or doing business in the Philippines, it can be permitted to bring an action even without such license. x x x Apparently, it is not the absence of the prescribed license, but the "doing of business" in the Philippines without such license which debars the foreign corporation from access to our courts. The operative phrase is "transacting or doing business."

2. TAXATION; CLAIM FOR TAX REFUND; MERE INVESTMENT AS A SHAREHOLDER BY A FOREIGN CORPORATION IN A DULY REGISTERED DOMESTIC CORPORATION SHALL NOT BE DEEMED DOING BUSINESS IN THE PHILIPPINES, HENCE, SUCH FOREIGN CORPORATION NEED NOT BE REQUIRED TO SECURE A LICENSE BEFORE IT CAN FILE A CLAIM FOR TAX REFUND; CASE AT BAR.— In the old case of *The Mentholatum Co. v. Mangaliman*, the Court discussed the test to determine whether a foreign company is "doing business" in the Philippines, x x x The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive

prosecution of, the purpose and object of its organization. x x x The foregoing definition found its way in Republic Act (R.A.) No. 7042, otherwise known as the Foreign Investments Act of 1991, which repealed Articles 44-56, Book II of the Omnibus Investments Code of 1987. Said law enumerated not only the acts or activities which constitute "doing business," but also those activities which are not deemed "doing business." x x x *Provided, however*, That the phrase "doing business" shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account[.] x x x Inferring from the aforecited provision, mere investment as a shareholder by a foreign corporation in a duly registered domestic corporation shall not be deemed "doing business" in the Philippines. It is clear then that the IGC's act of subscribing shares of stocks from McCann, a duly registered domestic corporation, maintaining investments therein, and deriving dividend income therefrom, does not qualify as "doing business" contemplated under R.A. No. 7042. Hence, the IGC is not required to secure a license before it can file a claim for tax refund.

3. ID.; ID.; A NON-RESIDENT FOREIGN CORPORATION IS QUALIFIED TO AVAIL OF THE 15% PREFERENTIAL RATE ON DIVIDENDS IT EARNED FROM THE PHILIPPINES IF IT IS PROVEN THAT THE COUNTRY WHICH IT IS DOMICILED GRANT SIMILAR TAX RELIEF/CREDIT AGAINST THE TAX DUE UPON THE DIVIDENDS EARNED FROM SOURCES WITHIN THE PHILIPPINES, SUSTAINED; APPLICATION IN CASE AT BAR.— The tax treatment of dividends earned by a foreign corporation, not engaged in trade of business in the Philippines, from Philippine sources is provided under Section 28(B)(1) of the Tax Code, x x x However, the ordinary 35% tax rate applicable to dividend remittances to non-resident corporate stockholders of a Philippine corporation, goes down to 15% if the country of domicile of the foreign stockholder corporation "shall allow" such foreign corporation a tax credit for "taxes deemed paid in the Philippines," applicable against the tax payable to the

domiciliary country by the foreign stockholder corporation. Thus, Section 28(B)(5)(b) of the Tax Code, which is the very basis of respondent's claim for refund of its overpaid FWT on dividends, x x x As it is recognized, the application of the provisions of the National Internal Revenue Code (NIRC) must be subject to the provisions of tax treaties entered into by the Philippines with foreign countries. It remains only to note that under the Philippines-US Convention "With Respect to Taxes on Income," the Philippines, *by a treaty commitment,* reduced the regular rate of dividend tax to a maximum of 20% of the gross amount of dividends paid to US parent corporations. Thus, the RP-US Tax Treaty which applies on income derived or which accrued beginning January 1, 1983 x x x The foregoing RP-US Tax Treaty, at the same time, created a treaty obligation on the part of the US that it "shall allow" to a US parent corporation receiving dividends from its Philippine subsidiary "a tax credit for the appropriate amount of taxes paid or accrued to the Philippines by the said Philippine subsidiary. The US allowed a "deemed paid" tax credit to US corporations on dividends received from foreign corporation. Thus, Section 902 of the US Internal Revenue Code, x x x For this reason, it was established on the part of the Philippines a deliberate undertaking to reduce the regular dividend tax rate of 35%. This goes to show that the IGC, being a non-resident US corporation is qualified to avail of the aforesaid 15% preferential tax rate on the dividends it earned from the Philippines. It was proven that the country which it was domiciled shall grant similar tax relief/credit against the tax due upon the dividends earned from sources within the Philippines. Clearly, the IGC has made an overpayment of its tax due of FWT by using the 35% tax rate.

4. ID.; ID.; RMO NO. 1-2000 REQUIRES THE FILING OF TAX TREATY RELIEF APPLICATION (TTRA) WITH THE INTERNATIONAL TAX AFFAIRS DIVISION (ITAD) OF THE BUREAU OF INTERNAL REVENUE (BIR) BEFORE A PARTY'S AVAILMENT OF THE PREFERENTIAL RATE UNDER THE TAX TREATY; OBJECTIVE, EXPLAINED; NOT APPLICABLE IN CASE AT BAR.— The objective of RMO No. 1-2000 in requiring the application for treaty relief with the ITAD before a party's availment of the preferential rate under a tax treaty is to avert the consequences of any erroneous interpretation and/or application of treaty

provisions, such as claims for refund/credit for overpayment of taxes, or deficiency tax liabilities for underpayment. This apparent conflict between which should prevail was settled in the case of *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue,* where the Court lengthily discussed that the obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000, x x x Since the RP-US Tax Treaty does not provide for any other prerequisite for the availment of the benefits under the said treaty, to impose additional requirements would negate the availment of the reliefs provided for under international agreements. At any rate, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief. This is only applicable to taxes paid on the basis of international agreements and treaties. Once it was settled that the taxpayer is entitled to the relief under the tax treaty, then by all means it could pay its tax liabilities using the tax relief provided by the treaty. In other words, the requirements under RMO No. 1-2000 applies only to a taxpayer who is about to pay their taxes on the basis of tax reliefs provided by international agreements and treaties and to confirm its entitlement to the said reliefs. The application for tax treaty relief is not applicable on claims for tax refund. x x x In the same manner, it would be illogical for the IGC to comply with the prior requirement under RMO No. 1-2000 before it paid the FWT on the dividends earned. At the time of the payment transaction, the IGC was not availing of the 15% preferential tax rate as prescribed pursuant to the treaty, but it was applying the 35% regular tax rate. RMO No. 1-2000 is clear that application must be filed 15 days before the transaction (time of payment). It appears then that the prior application requirement under RMO No. 1-2000 is no longer a condition precedent to refund an erroneously paid tax on the basis of the regular tax rate under the Tax Code.

5. ID.; ID.; THE TAXPAYER MUST BE ABLE TO ESTABLISH THE FACT OF PAYMENT OF THE TAX SOUGHT TO BE REFUNDED AND THAT THE FILING OF SUCH CLAIM WAS MADE WITHIN THE REGLEMENTARY PERIOD PROVIDED FOR UNDER THE PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) FOR THE ADMINISTRATIVE CLAIM FOR REFUND AND FOR THE JUDICIAL CLAIMS FOR REFUND; CASE AT

BAR.— To be granted a refund, the IGC, in addition to being able to point out the specific provision of law creating such right, the taxpayer must be able to establish the fact of payment of the tax sought to be refunded and that the filing of the claim for refund was made within the reglementary period provided for under Section 204 of the NIRC for its administrative claims for refund and Section 229 for its judicial claims for refund. The well-settled doctrine is that factual findings of the CTA are binding upon this court and can only be disturbed on appeal if not supported by substantial evidence. The fact of payment of the tax sought to be refunded is essentially a factual finding of the CTA and as such, the same must be accorded weight and respect especially if supported by substantial evidence. Here, it was proven that on June 13, 2006, McCann withheld FWT on the dividends earned by the IGC at the rate of 35% in the amount of ₱21,593,111.93 and remitted the same on June 15, 2006. To prove this, the IGC submitted the Monthly Remittance Return of the Final Income Taxes Withheld of McCann and the accompanying payment transaction. As to the timeliness of the claim for refund, both in the administrative and judicial level, we again concur with the factual findings of the CTA that both were done within the reglementary period provided by law. Indeed, it was found out that McCann withheld and paid to the BIR, in behalf of the IGC, the amount of ₱21,593,111.93 on June 15, 2006. The IGC filed its administrative claim for refund on March 5, 2008. The inaction of the CIR on IGC's claim for refund prompted the latter to file a judicial claim for refund with the CTA on June 16, 2008. Indeed, the IGC may, within the statutory period of two years, proceed with its suit without waiting for the decision of the CIR. The reason is that both the claim for refund with the BIR and with the CTA must be filed within the two-year period. These are mandatory requirements and non-compliance therewith is fatal to the action for refund or tax credit. It bears stressing that tax refunds are in the nature of tax exemptions. As such they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption in his favor and he must be able to justify his claim by the clearest grant of organic or statute law. The IGC was able to discharge such burden of proof required by law.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Salvador & Associates for respondent.

D E C I S I O N

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

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks to reverse and set aside the October 23, 2012 Decision[1] of the Court of Tax Appeals (CTA) *En Banc* and its April 15, 2013 Resolution,[2] affirming the Decision of the CTA Third Division and denying petitioner's Motion for Reconsideration, in CTA EB No. 791.

Respondent Interpublic Group of Companies, Inc. (IGC) is a non-resident foreign corporation duly organized and existing under and by virtue of the laws of the State of Delaware, United States of America.

The IGC owns 2,999,998 shares or 30% of the total outstanding and voting capital stock of McCann Worldgroup Philippines, Inc. (McCann), a domestic corporation duly organized and existing under the laws of the Philippines engaged in the general advertising business.

In 2006, McCann's Board of Directors declared cash dividends in the total amount of ₱205,648,685.02 in favor of its stockholders of record, as follows:

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[1] Penned by Associate Justice Juanito C. Castañeda, Jr., with Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Caesar A. Casanova, Olga Palanca-Enriquez and Cielito N. Mindaro-Grulla, concurring. Associate Justices Erlinda P. Uy and Esperanza R. Fabon-Victorino, both on leave; *rollo*, pp. 40-57.

[2] *Id.* at 58-60.

Shareholder	Percentage of Shares	Amount of Dividend
Fintec Holdings, Inc.	70%	₱143,954,079.51
Interpublic Group of Companies, Inc.	30%	61,694,605.51
T O T A L		₱205,648,685.02

The IGC received cash dividends from McCann in the amount of ₱61,694,605.51. On June 15, 2006, McCann withheld a Final Withholding Tax (FWT) at the rate of 35% on IGC's cash dividends and remitted the payment of the FWT in the amount of ₱21,593,111.93 to petitioner Commissioner of Internal Revenue (CIR).

On September 27, 2007, the IGC established a Regional Headquarters (RHQ) in the Philippines. On April 30, 2008, the RHQ was converted into its Regional Operating Headquarters (ROHQ).

On March 5, 2008, the IGC filed an administrative claim for refund or issuance of tax credit certificate (TCC) in the amount of ₱12,338,921.00, representing the alleged overpaid FWT on dividends paid by McCann to IGC. In the said administrative claim, the IGC averred that as a non-resident foreign corporation, it may avail of the preferential FWT rate of 15% on dividends received from a domestic corporation under Section 28(B)(5)(b) of the Tax Code.

On May 29, 2008, the IGC submitted to CIR additional documents in support of its administrative claim for refund or issuance of TCC. The CIR failed to act on IGC's claim for refund or issuance of TCC. This prompted the IGC to file a petition for review with the CTA on June 16, 2008.

On February 21, 2011, the CTA Third Division granted the IGC's petition for review. Accordingly, the CIR was ordered to refund or to issue a TCC in favor of IGC in the amount of

₱12,338,921.00, representing the overpaid FWT on cash dividends for taxable year 2006.[3]

On March 14, 2011, the CIR filed a Motion for Reconsideration of the Decision dated February 21, 2011. Said motion was denied for lack of merit on May 31, 2011.

After being granted an extension, the CIR filed a Petition for Review with the CTA *En Banc* on July 7, 2011. On January 11, 2012, the case was submitted for decision.

In the Decision dated October 23, 2012, the CTA *En Banc* denied the CIR's Petition for Review and accordingly affirmed the February 21, 2011 Decision and the May 31, 2011 Resolution of the CTA Third Division.

The CIR filed a motion for reconsideration and the same was denied by the CTA *En Banc* for lack of merit in a Resolution dated April 15, 2013.

Dissatisfied, the CIR filed the instant Petition with this Court on the lone ground of –

THE [CTA] ERRED IN RULING THAT IGC IS ENTITLED TO A TAX REFUND OR TAX CREDIT CERTIFICATE FOR THE ALLEGED OVERPAID FINAL WITHHOLDING TAX ON ITS CASH DIVIDENDS FOR TAXABLE YEAR 2006.[4]

To support its contention, the CIR argued that: (1) the IGC failed to file a Tax Treaty Relief Application (TTRA) with the International Tax Affairs Division (ITAD) of the Bureau of Internal Revenue (BIR) 15 days before it paid the tax on dividends, in accordance with Revenue Memorandum Order (RMO) No. 1-2000; (2) the IGC, being an unlicensed corporation, has no capacity to sue in Philippine courts in accordance with the Corporation Code; and (3) claim for refund shall be construed *strictissimi juris* against the taxpayer and is subject to administrative investigation/examination to ascertain the veracity of the claimant's allegations.

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[3] *Id*. at 78-79.

[4] *Id*. at 24.

I.

We resolve first the issue of whether or not the IGC has the capacity to sue in Philippine courts. Otherwise stated, can a non-resident foreign corporation which collects dividends from the Philippines sue here to claim tax refund?

We agree with the CTA that the issue is not one of first impression.

Section 133 of the Corporation Code provides:

> SEC. 133. *Doing business without a license.* — No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

The aforementioned provision bars a foreign corporation "transacting business" in the Philippines without a license access to our courts. Thus, in order for a foreign corporation to sue in Philippine courts, a license is necessary only if it is "transacting or doing business" in the country.[5] Conversely, if an unlicensed foreign corporation is not transacting or doing business in the Philippines, it can be permitted to bring an action even without such license.

In the case of *B. Van Zuiden Bros., Ltd. v. GTVL Manufacturing Industries, Inc.*,[6] the court categorically explained:

> The law is clear. An unlicensed foreign corporation doing business in the Philippines cannot sue before Philippine courts. On the other hand, an unlicensed foreign corporation **not** doing business in the Philippines can sue before Philippine courts.

Explaining the rationale for this rule, the Court held:

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[5] *Eriks Pte. Ltd. v. Court of Appeals*, 335 Phil. 229, 235-236 (1997).

[6] 551 Phil. 231, 236 (2007).

The purpose of the law in requiring that foreign corporations doing business in the country be licensed to do so, is to subject the foreign corporations doing business in the Philippines to the jurisdiction of the courts, otherwise, a foreign corporation illegally doing business here because of its refusal or neglect to obtain the required license and authority to do business may successfully though unfairly plead such neglect or illegal act so as to avoid service and thereby impugn the jurisdiction of the local courts.

The same danger does not exist among foreign corporations that are indubitably not doing business in the Philippines. Indeed, if a foreign corporation does not do business here, there would be no reason for it to be subject to the State's regulation. As we observed, in so far as the State is concerned, such foreign corporation has no legal existence. Therefore, to subject such corporation to the courts' jurisdiction would violate the essence of sovereignty.[7]

Apparently, it is not the absence of the prescribed license, but the "doing of business" in the Philippines without such license which debars the foreign corporation from access to our courts.[8] The operative phrase is "transacting or doing business."

The threshold question therefore is whether the IGC was doing business in the Philippines when it collected dividend earnings from sources within the Philippines. The Corporation Code provides no definition for the phrase "doing business."[9]

In the old case of *The Mentholatum Co. v. Mangaliman*,[10] the Court discussed the test to determine whether a foreign company is "doing business" in the Philippines, thus:

No general rule or governing principle can be laid down as to what constitutes "doing" or "engaging in" or "transacting" business. Indeed, each case must be judged in the light of its peculiar environmental circumstances. The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether

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[7] *Avon Insurance PLC v. Court of Appeals*, 343 Phil. 849, 861 (1997).

[8] *MR Holdings, Ltd. v. Bajar,* 430 Phil. 443, 461 (2002).

[9] *Cargill, Inc. v. Intra Strata Assurance Corp.*, 629 Phil. 320, 329 (2010).

[10] 72 Phil. 524 (1941).

it has substantially retired from it and turned it over to another. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization.[11] (Citations omitted)

The foregoing definition found its way in Republic Act (R.A.) No. 7042, otherwise known as the Foreign Investments Act of 1991, which repealed Articles 44-56, Book II of the Omnibus Investments Code of 1987. Said law enumerated not only the acts or activities which constitute "doing business," but also those activities which are not deemed "doing business." Thus, Section 3(d) of R.A. No. 7042 provides:

SEC. 3. *Definitions*. – x x x

x x x x x x x x x

d) The phrase "doing business" shall include soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: *Provided, however*, That the phrase "doing business" shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account[.] (Underscoring supplied)

Inferring from the aforecited provision, mere investment as a shareholder by a foreign corporation in a duly registered

[11] *Id.* at 528-529.

domestic corporation shall not be deemed "doing business" in the Philippines. It is clear then that the IGC's act of subscribing shares of stocks from McCann, a duly registered domestic corporation, maintaining investments therein, and deriving dividend income therefrom, does not qualify as "doing business" contemplated under R.A. No. 7042. Hence, the IGC is not required to secure a license before it can file a claim for tax refund.

The CIR argues that since IGC was already maintaining an RHQ in the Philippines, which was subsequently converted into an ROHQ, said headquarters should be the proper claimant of the tax refund. The IGC explained that the ROHQ had no involvement, whatsoever, in IGC's investments in McCann. It was only the IGC that is entitled to receive dividend income arising from such investment.

True, the alleged overpayment of FWT were incurred from the dividend income earned by IGC, which is a separate and distinct income taxpayer from their ROHQ in the Philippines. As explained by IGC, the ROHQ has a sole purpose of servicing IGC's affiliates, subsidiaries, branches and markets in the Asia-Pacific Region, but certainly not of investing in McCann. It can be concluded then that the investment in McCann was made for purposes peculiarly germane to the conduct of IGC's corporate affairs and the same was not shown to be coursed through the ROHQ. Having made an independent investment, then it is the ICG that should face the tax consequence and avail of tax reliefs (*i.e.*, refund, credit, preferential tax rate) appurtenant to such investment. Thus:

> The general rule that a foreign corporation is the same juridical entity as its branch office in the Philippines cannot apply here. This rule is based on the premise that the business of the foreign corporation is conducted through its branch office, following the principal-agent relationship theory. It is understood that the branch becomes its agent here. So that when the foreign corporation transacts business in the Philippines independently of its branch, the principal-agent relationship is set aside. The transaction becomes one of the foreign corporation, not of the branch. Consequently, the taxpayer is the foreign corporation, not the branch or the resident foreign corporation.

Corollarily, if the business transaction is conducted through the branch office, the latter becomes the taxpayer, and not the foreign corporation.[12]

II.

The tax treatment of dividends earned by a foreign corporation, not engaged in trade of business in the Philippines, from Philippine sources is provided under Section 28(B)(1) of the Tax Code,[13] as follows:

SEC. 28. *Rates of Income Tax on Foreign Corporations*. –

x x x x x x x x x

(B) *Tax on [Non-resident] Foreign Corporation*. —

(1) *In General*. — Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraphs 5(c) and (d): *Provided*, That effective January 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); and, effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%).

However, the ordinary 35% tax rate applicable to dividend remittances to non-resident corporate stockholders of a Philippine corporation, goes down to 15% if the country of domicile of the foreign stockholder corporation "shall allow" such foreign corporation a tax credit for "taxes deemed paid in the Philippines," applicable against the tax payable to the domiciliary country by the foreign stockholder corporation.[14] Thus, Section 28(B)(5)(b)

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[12] *Marubeni Corp. v. Commissioner of Internal Revenue*, 258 Phil. 295, 304 (1989).

[13] Republic Act No. 8424, Tax Reform Act of 1997, December 11, 1997.

[14] *Commissioner of Internal Revenue v. Procter & Gamble Philippines Manufacturing Corp.*, 281 Phil. 425, 444-445 (1991).

of the Tax Code,[15] which is the very basis of respondent's claim for refund of its overpaid FWT on dividends, provides:

> SEC. 28. – x x x
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> x x x x x x x x x
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> (5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation*. —
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> x x x x x x x x x
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> (b) *Intercorporate Dividends*. — A final withholding tax at the rate of fifteen percent (15%) is hereby imposed on the amount of cash and/or property dividends received from a domestic corporation, which shall be collected and paid as provided in Section 57(A) of this Code, subject to the condition that the country in which the [non-resident] foreign corporation is domiciled, shall allow a credit against the tax due from the [non-resident] foreign corporation taxes deemed to have been paid in the Philippines equivalent to twenty percent (20%) for 1997, nineteen percent (19%) for 1998, eighteen percent (18%) for 1999, and seventeen percent (17%) thereafter, which represents the difference between the regular income tax of thirty-five percent (35%) in 1997, thirty-four percent (34%) in 1998, thirty-three percent (33%) in 1999, and thirty-two percent (32%) thereafter on corporations and the fifteen percent (15%) tax on dividends as provided in this subparagraph[.]

As it is recognized, the application of the provisions of the National Internal Revenue Code (NIRC) must be subject to the provisions of tax treaties entered into by the Philippines with foreign countries.[16] It remains only to note that under the Philippines-US Convention "With Respect to Taxes on Income," the Philippines, *by a treaty commitment*, reduced the regular rate of dividend tax to a maximum of 20% of the gross amount of dividends paid to US parent corporations.[17] Thus, the RP-

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[15] *Supra* note 13.

[16] *Air Canada v. Commissioner of Internal Revenue*, 776 Phil. 119, 138 (2016).

[17] *Commissioner of Internal Revenue v. Procter & Gamble Philippines Manufacturing Corp., supra* note 14, at 445.

US Tax Treaty which applies on income derived or which accrued beginning January 1, 1983 provides:

Article 11
DIVIDENDS

x x x x x x x x x

(2) The rate of tax imposed by one of the Contracting States on dividends derived from sources within that Contracting State by a resident of the other Contracting State shall not exceed —

(a) 25 percent of the gross amount of the dividend; or

(b) *When the recipient is a corporation, 20 percent of the gross amount of the dividend if* during the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), *at least 10 percent of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation*.[18] (Italics supplied)

The foregoing RP-US Tax Treaty, at the same time, created a treaty obligation on the part of the US that it "shall allow" to a US parent corporation receiving dividends from its Philippine subsidiary "a tax credit for the appropriate amount of taxes paid or accrued to the Philippines by the said Philippine subsidiary. The US allowed a "deemed paid" tax credit to US corporations on dividends received from foreign corporation. Thus, Section 902 of the US Internal Revenue Code, as amended, provides:

SEC. 902 — CREDIT FOR CORPORATE STOCKHOLDERS IN FOREIGN CORPORATION.

(A) ***Treatment of Taxes Paid by Foreign Corporation*** — For purposes of this subject, a domestic corporation which owns at least 10 percent of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall —

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[18] Convention Between the Government of the Republic of the Philippines and the Government of the United States of America with Respect to Taxes on Income <https://www.bir.gov.ph/images/bir_files/international_tax_affairs/United States treaty.pdf> (visited August 9, 2019).

> (1) to the extent such dividends are paid by such foreign corporation out of accumulated profits [as defined in subsection (c) (1) (a)] of a year for which such foreign corporation is not a less developed country corporation***, be deemed to have paid the same proportion*** of any income, war profits, or excess profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States on or with respect to such accumulated profits, which the amount of such dividends (determined without regard to Section 78) bears to the amount of such accumulated profits in excess of such income, war profits, and excess profits taxes (other than those deemed paid); and
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> (2) ***to the extent such dividends are paid by such foreign corporation out of accumulated profits*** [as defined in subsection (c) (1) (b)] of a year for which such foreign corporation is a less developed country corporation, be deemed to have paid the same proportion of any income, war profits, or excess profits *taxes paid* or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States ***on or with respect to such accumulated profits, which the amount of such dividends bears to the amount of such accumulated profits***.[19]

For this reason, it was established on the part of the Philippines a deliberate undertaking to reduce the regular dividend tax rate of 35%.[20]

This goes to show that the IGC, being a non-resident US corporation is qualified to avail of the aforesaid 15% preferential tax rate on the dividends it earned from the Philippines. It was proven that the country which it was domiciled shall grant similar tax relief/credit against the tax due upon the dividends earned from sources within the Philippines. Clearly, the IGC has made an overpayment of its tax due of FWT by using the 35% tax rate.

The question now is whether the IGC, by failing to file a TTRA with the ITAD of the BIR pursuant to RMO No. 1-2000,

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[19] *Commissioner of Internal Revenue v. Procter & Gamble Philippines Manufacturing Corp., supra* note 14, at 446.

[20] *Id.* at 460.

was effectively deprived of its right to claim a tax refund based on the said overpayment. The issue is not of first impression.

In the case of *CBK Power Company Ltd. v. Commissioner of Internal Revenue*,[21] the Court emphasized the binding effect of international treaty which we entered into, thus:

> The Philippine Constitution provides for adherence to the general principles of international law as part of the law of the land. The time-honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. In this jurisdiction, treaties have the force and effect of law.[22]

Specifically, the RP-US Tax Treaty is just one of a number of bilateral treaties which the Philippines has entered into and to which we are expected to observe compliance therewith in good faith. As explained by the Court, the purpose of these international agreements is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions.[23] More precisely, the tax conventions are drafted with a view towards the elimination of *international juridical double taxation*, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods.[24]

On the other hand, the mandatory wording of RMO No. 1-2000, reads:

> III. Policies:
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> x x x x x x x x x
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> 2. Any availment of the tax treaty relief shall be preceded by an application by filing BIR Form No. 0901 (Application for Relief from

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[21] 750 Phil. 748 (2015).

[22] *Id.* at 759.

[23] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.*, 368 Phil. 388, 404 (1999).

[24] *Id.*

Double Taxation) with ITAD at least 15 days before the transaction *i.e.*, payment of dividends, royalties, *etc.*, accompanied by supporting documents justifying the relief. x x x

The objective of RMO No. 1-2000 in requiring the application for treaty relief with the ITAD before a party's availment of the preferential rate under a tax treaty is to avert the consequences of any erroneous interpretation and/or application of treaty provisions, such as claims for refund/credit for overpayment of taxes, or deficiency tax liabilities for underpayment.

This apparent conflict between which should prevail was settled in the case of *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*,[25] where the Court lengthily discussed that the obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000, thus:

> x x x We recognize the clear intention of the BIR in implementing RMO No. 1-2000, but the CTA's outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is **not in harmony** with the objectives of the contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations.
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> Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 **should not operate to divest entitlement to the relief** as it would constitute a **violation of the duty** required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would **impair the value** of the tax treaty. At most, the application for a tax treaty relief from the BIR should **merely operate to confirm** the entitlement of the taxpayer to the relief.
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> **The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000**. Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, *e.g.*, the imposition of a fine or penalty. **But we cannot**

[25] 716 Phil. 676 (2013).

totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief.[26] (Emphases supplied)

Since the RP-US Tax Treaty does not provide for any other prerequisite for the availment of the benefits under the said treaty, to impose additional requirements would negate the availment of the reliefs provided for under international agreements.[27]

At any rate, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief.[28] This is only applicable to taxes paid on the basis of international agreements and treaties. Once it was settled that the taxpayer is entitled to the relief under the tax treaty, then by all means it could pay its tax liabilities using the tax relief provided by the treaty. In other words, the requirements under RMO No. 1-2000 applies only to a taxpayer who is about to pay their taxes on the basis of tax reliefs provided by international agreements and treaties and to confirm its entitlement to the said reliefs.

The application for tax treaty relief is not applicable on claims for tax refund. As explained by the Court:

> However, as pointed out in *Deutsche Bank*, the underlying principle of prior application with the BIR becomes **moot in refund cases** — as in the present case — where the very basis of the claim is **erroneous or there is excessive payment** arising from the non-availment of a tax treaty relief at the first instance. Just as Deutsche Bank was not faulted by the Court for not complying with RMO No. 1-2000 prior to the transaction, so should CBK Power. In parallel, CBK Power could not have applied for a tax treaty relief 15 days prior to its payment of the final withholding tax on the interest paid to its lenders **precisely because it erroneously paid said tax** on the basis of the

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[26] *Id.* at 689-690.

[27] *CBK Power Company Ltd. v. Commissioner of Internal Revenue*, *supra* note 21, at 761.

[28] *Id*. at 760.

regular rate as prescribed by the NIRC, and not on the preferential tax rate provided under the different treaties. As stressed by the Court, the prior application requirement under RMO No. 1-2000 then becomes illogical.[29]

In the same manner, it would be illogical for the IGC to comply with the prior requirement under RMO No. 1-2000 before it paid the FWT on the dividends earned. At the time of the payment transaction, the IGC was not availing of the 15% preferential tax rate as prescribed pursuant to the treaty, but it was applying the 35% regular tax rate. RMO No. 1-2000 is clear that application must be filed 15 days before the transaction (time of payment). It appears then that the prior application requirement under RMO No. 1-2000 is no longer a condition precedent to refund an erroneously paid tax on the basis of the regular tax rate under the Tax Code.

Finally, we agree with the CTA that the IGC was able to comply with all the requisites in order for its claim for refund to be granted. To be granted a refund, the IGC, in addition to being able to point out the specific provision of law creating such right, the taxpayer must be able to establish the fact of payment of the tax sought to be refunded and that the filing of the claim for refund was made within the reglementary period provided for under Section 204[30] of the NIRC for its

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[29] *Id.* at 760-761.

[30] Sec. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —

x x x x x x x x x

(c) Credit or refund taxes **erroneously** or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction.

No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund. (Emphases supplied)

administrative claims for refund and Section 229[31] for its judicial claims for refund.

The well-settled doctrine is that factual findings of the CTA are binding upon this court and can only be disturbed on appeal if not supported by substantial evidence.[32]

The fact of payment of the tax sought to be refunded is essentially a factual finding of the CTA and as such, the same must be accorded weight and respect especially if supported by substantial evidence. Here, it was proven that on June 13, 2006, McCann withheld FWT on the dividends earned by the IGC at the rate of 35% in the amount of ₱21,593,111.93 and remitted the same on June 15, 2006. To prove this, the IGC submitted the Monthly Remittance Return of the Final Income Taxes Withheld of McCann and the accompanying payment transaction.[33]

As to the timeliness of the claim for refund, both in the administrative and judicial level, we again concur with the factual findings of the CTA that both were done within the reglementary period provided by law. Indeed, it was found out that McCann withheld and paid to the BIR, in behalf of the IGC, the amount

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[31] Sec. 229. *Recovery of Tax Erroneously or Illegally Collected.* — **No suit or proceeding shall be maintained in any court** for the recovery of any national internal revenue tax hereafter alleged to have been **erroneously** or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment[.] x x x. (Emphases supplied)

[32] *Commissioner of Internal Revenue v. Tours Specialists, Inc.*, 262 Phil. 437, 442 (1990).

[33] *Rollo,* p. 74.

of ₱21,593,111.93 on June 15, 2006. The IGC filed its administrative claim for refund on March 5, 2008.[34] The inaction of the CIR on IGC's claim for refund prompted the latter to file a judicial claim for refund with the CTA on June 16, 2008.[35] Indeed, the IGC may, within the statutory period of two years, proceed with its suit without waiting for the decision of the CIR.[36] The reason is that both the claim for refund with the BIR and with the CTA must be filed within the two-year period. These are mandatory requirements and non-compliance therewith is fatal to the action for refund or tax credit.

It bears stressing that tax refunds are in the nature of tax exemptions. As such they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption.[37] The burden of proof is upon him who claims the exemption in his favor and he must be able to justify his claim by the clearest grant of organic or statute law.[38] The IGC was able to discharge such burden of proof required by law.

WHEREFORE, the Petition is **DENIED**. The October 23, 2012 Decision and the April 15, 2013 Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 791 are **AFFIRMED**.

SO ORDERED.

Caguioa (Acting Chairperson),[*] *Lazaro-Javier,* and *Zalameda, JJ.,* concur.

Carpio, S.A.J. (Chairperson), on official leave.

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[34] *Id.* at 78.

[35] *Id.*

[36] *Commissioner of Customs v. Court of Tax Appeals,* 253 Phil. 339, 343 (1989).

[37] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., supra* note 23, at 411.

[38] *Id.*

[*] Per Special Order No. 2688 dated July 30, 2019.

SECOND DIVISION

[G.R. No. 210738. August 14, 2019]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **SPOUSES GUILLERMO ALONSO[*] AND INOCENCIA BRITANICO-ALONSO,** *respondents.*

SYLLABUS

CIVIL LAW; LAND TITLES AND DEEDS; PRESIDENTIAL DECREE NO. 1529 (LAND REGISTRATION ACT); LAND REGISTRATION; ELEMENTS; THAT THE LAND FORMS PART OF THE ALIENABLE AND DISPOSABLE LAND OF THE PUBLIC DOMAIN, NOT ESTABLISHED IN CASE AT BAR.— Presidential Decree No. 1529 explicitly provides for the requirements in an application for registration of land. x x x (a) Under Section 14 (1), it is necessary that: (a) the land or property forms part of the alienable and disposable lands of the public domain; (b) the applicant and his predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the same; and (c) it is under a bona fide claim of ownership since June 12, 1945, or earlier. x x x In this case, it must be noted that the RTC and the CA did not exhaustively discuss whether the subject property is classified as alienable and disposable as the focal point of their rulings was the determination of spouses Alonso's compliance with the occupation and possession requirement. On this note, this Court accentuates that in an application for registration, the foremost consideration is the nature and classification of the land in question. This is based on the presumption that all lands of the public domain belong to the State or the Regalian doctrine. Thus, without the determination of which, all other requirements necessary for registration are purposeless and futile. Thus, in a land registration proceeding, the applicant bears the burden of overcoming the presumption of State ownership. The records of the case reveal that the only basis for the RTC in considering the subject lot as alienable and disposable is the testimony of Henry Belmones as the Chief of Land Evaluation Party of the

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

DENR, who merely relied on Control Map No. 18, which was not offered and presented in evidence and a survey plan. Notably, the pieces of evidence are deficient to prove the nature of the property as alienable and disposable. Spouses Alonso failed to submit a CENRO or PENRO certification and an issuance by the DENR Secretary signifying his approval for the release of the subject land of the public domain as alienable and disposable. Ergo, spouses Alonso fail to discharge the burden of proof. As the first element is clearly lacking, the occupation and possession of the subject land by spouses Alonso, no matter how long, cannot ripen into ownership. Consequently, a title cannot be issued in their favor.

CAGUIOA, *J.*, *separate opinion*:

1. CIVIL LAW; LAND TITLES AND DEEDS; PRESIDENTIAL DECREE NO. 1529 (LAND REGISTRATION ACT); LAND REGISTRATION; REQUIREMENTS UNDER *REPUBLIC V. T.A.N. PROPERTIES*; ALIENABILITY AND DISPOSABILITY OF LAND, NOT PROVEN BY FAILURE TO SUBMIT A COMMUNITY ENVIRONMENT AND NATURAL RESOURCES OFFICE (CENRO) OR PROVINCIAL ENVIRONMENT AND NATURAL RESOURCES OFFICE (PENRO) CERTIFICATE OF LAND CLASSIFICATION STATUS.—On the basis of *Republic v. T.A.N. Properties* (*T.A.N.*), which requires the presentation of **(i)** a certificate of land classification status issued by the Community Environment and Natural Resources Office (CENRO) or Provincial Environment and Natural Resources Office (PENRO) of the Department of Environment and Natural Resources (DENR); **and (ii)** a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records, the *ponencia* holds that respondents failed to prove that the subject property was part of the alienable and disposable lands of the public domain. I concur with the *ponencia* that the present petition should be granted because respondents here failed to submit a CENRO or PENRO certification, *i.e.*, the first requirement of *T.A.N.*

2. ID.; ID.; ID.; ID.; REQUIREMENT OF PRESENTING A COPY OF THE ORIGINAL CLASSIFICATION APPROVED BY

THE DENR SECRETARY AND CERTIFIED TRUE COPY BY THE LEGAL CUSTODIAN OF OFFICIAL RECORDS, RENDERED SUPERFLUOUS AND UNNECESSARY AFTER ISSUANCE OF DENR ADMINISTRATIVE ORDER NO. 2012-9 ON NOVEMBER 14, 2012, WHICH DELEGATED TO THE CENRO, PENRO AND THE NCR REGIONAL EXECUTIVE DIRECTOR (RED-NCR) OF THE AUTHORITY TO ISSUE NOT ONLY CERTIFICATIONS ON LAND CLASSIFICATION STATUS BUT ALSO CERTIFIED TRUE COPIES OF APPROVED LAND CLASSIFICATION MAPS.—For clarification, however, I submit, as I did in my Concurring and Dissenting Opinion in *Dumo v. Republic of the Philippines* (*Dumo*), that the **second requirement established in *T.A.N.* has been rendered superfluous and unnecessary after the issuance of DENR Administrative Order No. (AO) 2012-9 on November 14, 2012**, which delegated unto the CENRO, PENRO and the National Capital Region (NCR) Regional Executive Director (RED-NCR) the authority to issue not only **certifications** on land classification status, but also **certified true copies of approved land classification (LC) maps** with respect to lands falling within their respective jurisdictions. x x x Since the certification in question in *T.A.N.* was issued prior to DENR AO 2012-9, *i.e.*, in 1997, the Court's decision therein was correctly premised upon the lack of authority on the part of CENRO to issue certified true copies of approved LC maps or to serve as repository for said copies. The same may be said of the CENRO certifications presented in *Republic v. Lualhati* (*Lualhati*) and *Republic v. Nicolas*, (*Nicolas*) which correctly applied *T.A.N.* Notably however, this lack of authority no longer holds true under the regime of DENR AO 2012-9. On this score, it is my view that pursuant to DENR AO 2012-9, certifications of land classification status issued by the CENRO, PENRO and the RED-NCR should be deemed sufficient for purposes of proving the alienable and disposable character of property subject of land registration proceedings, ***provided only*** that these certifications expressly bear references to: (i) the LC map; and (ii) the document through which the original classification had been effected, such as a Bureau of Forest Development Administrative Order (BFDAO) issued and signed by the DENR Secretary.

3. REMEDIAL LAW; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; CENRO, PENRO OR RED-NCR CERTIFICATES ARE PRIVATE DOCUMENTS THE AUTHENTICITY OF WHICH AND VERACITY OF ITS CONTENTS MUST BE PROVED.—To note, CENRO, PENRO or RED-NCR certificates do not fall within the class of public documents which, under Section 23, Rule 132,of the Rules of Court constitute *prima facie* evidence of their contents. Like private documents, the authenticity of these certificates and the veracity of their contents remain subject to proof in the manner set forth under Section 20, Rule 132.

4. ID.; ID.; BURDEN OF PROOF; ONCE THE CENRO, PENRO OR RED-NCR CERTIFICATES ARE AUTHENTICATED AND VERIFIED BY THE PROPER OFFICER, THE BURDEN OF PROOF TO ESTABLISH THAT THE LAND SUBJECT OF THE PROCEEDING IS UNREGISTRABLE THEN SHIFTS, AS IT SHOULD, TO THE STATE.— Necessarily, the submission of a CENRO, PENRO or RED-NCR certificate as evidence of registrability entails the presentation of the testimony of the proper issuing officer before the trial court for the purpose of authentication and verification. **This exercise renders the presentation of the original classification and LC map *in addition to* the CENRO, PENRO or RED-NCR certificate redundant, inasmuch as the matters to which the original classification and LC map pertain may already be threshed out during the direct and cross-examination of the CENRO, PENRO or RED-NCR officer concerned.** Once the certification in question is authenticated and verified by the proper officer, I submit that the burden of proof to establish that the land subject of the proceeding is unregistrable then shifts, as it should, to the State. I am of the belief that the observance of the proper authentication and verification procedures and the State's participation (through the Office of the Solicitor General [OSG]) in the trial process are sufficient safeguards against the grant of registration on the basis of falsified or inaccurate certifications. To allow the applicant to still carry the burden of proof to establish registrability despite presentation of duly authenticated and verified documents showing the same unduly tips the scale in favor of the State, and compromises the efficiency and accessibility of public service.

5. POLITICAL LAW; ADMINISTRATIVE LAW; DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR); MANDATED TO EXERCISE SUPERVISION AND CONTROL OVER FOREST LANDS AND ALIENABLE AND DISPOSABLE LANDS; TO CARRY OUT ITS MANDATE, DENR SECRETARY IS VESTED WITH POWER TO PROMULGATE RULES, REGULATIONS AND OTHER ISSUANCES NECESSARY TO CARRY OUT DENR'S MANDATE.—It bears noting that under Executive Order No. 192, series of 1987 (EO 192), the DENR is mandated to exercise supervision and control over forest lands and alienable and disposable lands. To carry out this mandate, EO 192 vests the DENR Secretary with the power to "[e]stablish policies and standards for the efficient and effective operations of the [DENR] in accordance with the programs of the government;" [p]romulgate rules, regulations and other issuances necessary in carrying out the [DENR]'s mandate, objectives, policies, plans, programs and projects; and "[d]elegate authority for the performance of any administrative or substantive function to subordinate officials of the [DENR]." One such policy is DENR AO 2012-9.

6. CIVIL LAW; LAND TITLES AND DEEDS; PRESIDENTIAL DECREE NO. 1529 (LAND REGISTRATION ACT); LAND REGISTRATION; REQUIREMENTS UNDER *REPUBLIC V. T.A.N. PROPERTIES*; LIMITED TO CENRO CERTIFICATIONS ISSUED PRIOR TO THE EFFECTIVITY OF DENR AO 2012-9.—Contrary to the majority opinion in *Dumo*, I maintain that the simplification of the requirements set forth in *T.A.N.*neither sanctions the amendment of judicial precedent, nor does it place primacy on administrative issuances. **This simplification merely aligns with the specific thrust of government underlying the issuance of DENR AO 2012-9, that is, to make public service more accessible to the public.** It is but a recognition of the DENR Secretary's powers under EO 192 to promulgate rules, regulations and other issuances necessary in carrying out the DENR's mandate, objectives, policies, plans, programs and projects; and delegate authority for the performance of any administrative or substantive function to subordinate officials of the DENR, which issuances, in turn, carry the same force and effect of law. In this regard, I maintain that the scope and application

of *T.A.N* should now be limited to CENRO certifications issued **prior** to the effectivity of DENR AO 2012-9.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Britanico Britanico & Associates for respondents.

D E C I S I O N

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

This is a Petition for Review on *Certiorari* filed by the Republic of the Philippines (Republic), represented by the Office of the Solicitor General (OSG) assailing the Decision[1] dated May 31, 2013, and Resolution[2] dated December 12, 2013, of the Court of Appeals-Cebu City (CA) in CA-G.R. CV No. 03510 which ordered the registration of Lot 2209, Cad. 24, Iloilo Cadastre, AP-06-005399.

The Relevant Antecedents

A petition for registration of Lot 2209 (subject land), Cad. 24, Iloilo Cadastre, AP-06-005399, situated in Poblacion, Oton, Iloilo, with an area of approximately 724 square meters, was filed by spouses Guillermo Alonso and Inocencia Britanico-Alonso (spouses Alonso).[3]

In their petition, spouses Alonso claimed that the subject land being an alienable and disposable land of public domain, was previously owned and possessed by spouses Rafael C. Montalvo and Manuel a Garnica (spouses Montalvo) way back in 1945. After the latter's death, their heirs executed an Extrajudicial Settlement Among Heirs with Waiver of Hereditary

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[1] Penned by Executive Justice Pampio A. Abarintos, with Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap, concurring; *rollo*, pp. 59-66.

[2] *Id.* at 68-69.

[3] *Id.* at 60.

Shares[4] and sold the subject land in their favor evidenced by a Deed of Sale[5] dated January 27, 1998. As such, spouses Alonso asserted that tacking their possession with that of their predecessors-in-interest, they have been in open, continuous, exclusive, and notorious possession of the subject land under a bona fide claim of ownership since time immemorial, thereby warranting the registration of the property in their names.[6]

In an Order[7] dated December 29, 2009, the Regional Trial Court of Iloilo City, Branch 22 (RTC), dismissed the petition. The RTC ruled that spouses Alonso failed to prove that their and their predecessors-in-interest's possession has been open, continuous, exclusive, and notorious since time immemorial or earlier than 1945, thus:

> All told, the instant petition for registration is hereby dismissed for failure of the petitioners to substantiate their claim by preponderance of evidence.
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> SO ORDERED.

Aggrieved, spouses Alonso filed a Motion for Reconsideration, which was denied in an Order[8] dated April 26, 2010.

Spouses Alonso elevated the matter before the CA *via* appeal. In sum, they insisted that their and their predecessors-in-interest's possession of the subject lot since time immemorial has been proven.[9]

Disputing the allegations of spouses Alonso, the Republic, through the OSG, countered that spouses Alonso's bare assertion of their ownership over the property does not suffice as it was not proven that they exercised acts of possession over the same.[10]

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

[5] *Id*. at 97-99.

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

[7] Penned by Judge Guilljie D. Delfin-Lim; *id*. at 308-320.

[8] *Id*. at 331-332.

[9] *Id*. at 346.

[10] *Id*. at 367.

In the assailed Decision[11] dated May 31, 2013, the CA granted the appeal and approved the registration of the subject land. The CA found that the open, continuous, exclusive, and notorious possession requirement was met for the registration of the subject land, thus:

> **WHEREFORE**, premises considered, the appeal is **GRANTED**. The assailed Order dated 29 December 2009 of the Regional Trial Court, Branch 22, Iloilo City, in Cadastral Case No. 19 is **REVERSED and SET ASIDE**. A new judgment is hereby rendered granting and approving the registration of Lot 2209, Cad. 24, Iloilo Cadastre, AP-06-005399, situated in Poblacion, Oton, Iloilo, in the names of spouses Guillermo Alonso and Inocencia Britanico-Alonso. Upon finality of this decision, let a corresponding decree of registration be issued in petitioners-appellants' favor.
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> **SO ORDERED.**[12]

Similarly, the Resolution[13] dated December 12, 2013, denied the assertions of the Republic in their Motion for Reconsideration.

Seeking recourse to this Court, the Republic, through the OSG, filed this instant petition, contending that aside from their failure to prove the possession requirement, spouses Alonso likewise failed to prove that the subject land is alienable and disposable.[14]

The Issue

Whether or not the registration of the subject land is proper.

The Court's Ruling

Presidential Decree No. 1529[15] explicitly provides for the requirements in an application for registration of land, to wit:

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[11] *Supra* note 1.

[12] *Id.* at 65.

[13] *Supra* note 2.

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

[15] AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES. Approved June 11, 1978.

Section 14. Who may apply. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in- interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier. (Emphasis supplied)

(2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.

(3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.

(4) Those who have acquired ownership of land in any other manner provided for by law.

Under Section 14 (1), it is necessary that: (a) the land or property forms part of the alienable and disposable lands of the public domain; (b) the applicant and his predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the same; and (c) it is under a bona fide claim of ownership since June 12, 1945, or earlier.[16]

Anent the first element, jurisprudence is replete with cases which emphasize that a positive act of the Executive Department, specifically certifications from the Community Environment and Natural Resources (CENRO) or Provincial Environment and Natural Resources Office (PENRO), and the Department of Environment and Natural Resources (DENR) Secretary, is indispensable for the determination of the nature of land as alienable and disposable, to wit:

To prove that the property subject of an application for original registration is part of the alienable and disposable lands of the public domain, applicants must identify a positive act of the government,

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[16] *Dumo v. Republic of the Philippines*, G.R. No. 218269, June 6, 2018.

such as an official proclamation, declassifying inalienable public land into disposable land for agricultural or other purposes. To sufficiently establish this positive act, they must submit (1) a certification from the CENRO or the Provincial Environment and Natural Resources Office (PENRO); and (2) a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.[17] (Citations omitted)

The import of the concurrence of these requirements was belabored in the case of *Republic of the Philippines v. Spouses Go*,[18] citing, *Republic of the Philippines v. T.A.N. Properties, Inc.*,[19] to wit:

> The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable.

In this case, it must be noted that the RTC and the CA did not exhaustively discuss whether the subject property is classified as alienable and disposable as the focal point of their rulings was the determination of spouses Alonso's compliance with the occupation and possession requirement.

On this note, this Court accentuates that in an application for registration, the foremost consideration is the nature and classification of the land in question. This is based on the presumption that all lands of the public domain belong to the State or the Regalian doctrine. Thus, without the determination

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[17] *Republic v. Nicolas*, G.R. No. 181435, October 2, 2017, 841 SCRA 328, 345.

[18] 815 Phil. 306, 325 (2017).

[19] 578 Phil. 441, 452-453 (2008).

of which, all other requirements necessary for registration are purposeless and futile.

Thus, in a land registration proceeding, the applicant bears the burden of overcoming the presumption of State ownership.

The records of the case reveal that the only basis for the RTC in considering the subject lot as alienable and disposable is the testimony of Henry Belmones as the Chief of Land Evaluation Party of the DENR, who merely relied on Control Map No. 18, which was not offered and presented in evidence and a survey plan. Notably, the pieces of evidence are deficient to prove the nature of the property as alienable and disposable. Spouses Alonso failed to submit a CENRO or PENRO certification and an issuance by the DENR Secretary signifying his approval for the release of the subject land of the public domain as alienable and disposable. Ergo, spouses Alonso fail to discharge the burden of proof.

As the first element is clearly lacking, the occupation and possession of the subject land by spouses Alonso, no matter how long, cannot ripen into ownership. Consequently, a title cannot be issued in their favor.[20]

WHEREFORE, premises considered, the petition is hereby **GRANTED**. Accordingly, the Decision dated May 31, 2013, and the Resolution dated December 12, 2013 of the Court of Appeals-Cebu City in CA-G.R. CV No. 03510 are **REVERSED and SET ASIDE**. The petition for registration of Lot 2209, Cadastral No. 24, Iloilo Cadastre, AP-06-005399 filed by respondents spouses Guillermo Alonso and Inocencia Britanico-Alonso is hereby **DENIED**.

SO ORDERED.

Lazaro-Javier and *Zalameda, JJ.*, concur.

Caguioa (Acting Chairperson), J., see separate opinion.

Carpio, S.A.J. (Chairperson), on official leave.

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[20] *Republic v. Heirs of Maxima Lachica*, 730 Phil. 414, 423 (2014).

SEPARATE OPINION

CAGUIOA, *J.*:

On the basis of *Republic v. T.A.N. Properties*[1] (*T.A.N.*), which requires the presentation of **(i)** a certificate of land classification status issued by the Community Environment and Natural Resources Office (CENRO) or Provincial Environment and Natural Resources Office (PENRO) of the Department of Environment and Natural Resources (DENR); **and (ii)** a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records,[2] the *ponencia* holds that respondents failed to prove that the subject property was part of the alienable and disposable lands of the public domain.

I concur with the *ponencia* that the present petition should be granted because respondents here failed to submit a CENRO or PENRO certification, *i.e.*, the first requirement of *T.A.N.*

For clarification, however, I submit, as I did in my Concurring and Dissenting Opinion in *Dumo v. Republic of the Philippines*[3] (*Dumo*), that the **second requirement established in *T.A.N.* has been rendered superfluous and unnecessary after the issuance of DENR Administrative Order No. (AO) 2012-9 on November 14, 2012**, which delegated unto the CENRO, PENRO and the National Capital Region (NCR) Regional Executive Director (RED-NCR) the authority to issue not only **certifications** on land classification status, but also **certified true copies of approved land classification (LC) maps**[4] with respect to lands falling within their respective jurisdictions.

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[1] 578 Phil. 441 (2008).

[2] *Id*. at 452-453.

[3] G.R. No. 218269, June 6, 2018, accessed at <http://elibrary. judiciary. gov.ph/thebookshelf/showdocs/1/64234>.

[4] Under the *Guidelines for the Assessment and Delineation of Boundaries Between Forestlands, National Parks and Agricultural Lands* [DENR AO

DENR AO 2012-9 pertinently provides:

In view of the thrust of the government to [make] public service more accessible to the public, the authority to sign and/or issue the following documents is hereby delegated to the [CENROs], except in the National Capital Region (NCR) where the same shall be vested upon the [RED-NCR]:

1. **Certification on land classification status** regardless of area based on existing approved [LC maps]; and
2. **Certified true copy of the approved [LC maps] used as basis in the issuance of the certification on the land classification status of a particular parcel of land**. (Emphasis supplied.)

Since the certification in question in *T.A.N.* was issued prior to DENR AO 2012-9, *i.e.*, in 1997, the Court's decision therein was correctly premised upon the lack of authority on the part of CENRO to issue certified true copies of approved LC maps or to serve as repository for said copies. The same may be said of the CENRO certifications presented in *Republic v. Lualhati*[5] (*Lualhati*) and *Republic v. Nicolas*,[6] (*Nicolas*) which correctly applied *T.A.N.*

2008-24, December 8, 2008], land classification maps are defined as those which show "the classification of lands of the public domain based on the land classification system undertaken by the then Department of Agriculture and Natural Resources, through the Bureau of Forestry, the Ministry of Natural Resources, through the Bureau of Forest Development, and the [DENR]."

[5] 757 Phil. 119 (2015). While the date of the CENRO certificate considered in *Lualhati* cannot be ascertained from the Court's decision, the fact that the same had been issued prior to the effectivity of DENR AO 2012-9 can be inferred from the date of the RTC and CA rulings assailed therein, that is, October 4, 2005 and March 31, 2008, respectively.

[6] G.R. No. 181435, October 2, 2017, 841 SCRA 328. While the date of the CENRO certificate considered in *Nicolas* cannot be ascertained from the Court's decision, the fact that the same had been issued prior to the effectivity of DENR AO 2012-9 can be inferred from the date of the RTC and CA rulings assailed therein, that is, July 31, 2002 and August 23, 2007, respectively.

Notably however, this lack of authority no longer holds true under the regime of DENR AO 2012-9. On this score, it is my view that pursuant to DENR AO 2012-9, certifications of land classification status issued by the CENRO, PENRO and the RED-NCR should be deemed sufficient for purposes of proving the alienable and disposable character of property subject of land registration proceedings, ***provided only*** that these certifications expressly bear references to: (i) the LC map; and (ii) the document through which the original classification had been effected, such as a Bureau of Forest Development Administrative Order[7] (BFDAO) issued and signed by the DENR Secretary.[8]

To note, CENRO, PENRO or RED-NCR certificates do not fall within the class of public documents which, under Section 23, Rule 132,[9] of the Rules of Court constitute *prima facie* evidence of their contents. Like private documents, the authenticity of these certificates and the veracity of their contents remain subject to proof in the manner set forth under Section 20, Rule 132:

Section 20. *Proof of private document*. — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

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[7] BFDAOs declaring portions of the public forest as alienable and disposable are issued under the signature of the Secretary of Natural Resources upon the recommendation of the Director of the Bureau of Forest.

[8] The BFDAO usually contains the following language:

x x x Pursuant to Section 13 of PD 705, otherwise known as the Revised Forestry Code of the Philippines, as amended, I hereby declare an aggregate area of [x x x] hectares, more or less, as alienable or disposable for cropland and other purposes and place the same under the control and management of the Bureau of Lands, for disposition pursuant to the provisions the Public Land Act, located in [x x x], shown and described in BFD Map [x x x], which is attached hereto and forms an integral part of this Order x x x[.]

[9] RULES OF COURT, Rule 132, Sec. 23 states:

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

(a) By anyone who saw the document executed or written; or

(b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be.

Necessarily, the submission of a CENRO, PENRO or RED-NCR certificate as evidence of registrability entails the presentation of the testimony of the proper issuing officer before the trial court for the purpose of authentication and verification. **This exercise renders the presentation of the original classification and LC map *in addition to* the CENRO, PENRO or RED-NCR certificate redundant, inasmuch as the matters to which the original classification and LC map pertain may already be threshed out during the direct and cross-examination of the CENRO, PENRO or RED-NCR officer concerned.** Once the certification in question is authenticated and verified by the proper officer, I submit that the burden of proof to establish that the land subject of the proceeding is unregistrable then shifts, as it should, to the State.

I am of the belief that the observance of the proper authentication and verification procedures and the State's participation (through the Office of the Solicitor General [OSG]) in the trial process are sufficient safeguards against the grant of registration on the basis of falsified or inaccurate certifications.[10] To allow the applicant to still carry the burden

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[10] In fact, in *Victoria v. Republic*, 666 Phil. 519 (2011), the Court ordered the OSG to directly undertake the verification and authentication of documentary evidence belatedly presented by the petitioner in the interest of justice. In *Victoria*, a certain Natividad Sta. Ana Victoria (Natividad) applied for the original registration of a 1,729-square meter lot in Bambang, Taguig City before the Metropolitan Trial Court (MeTC). The MeTC granted Natividad's application, prompting the Republic to file an appeal. When Natividad filed her Appellee's Brief, she attached thereto a **Certification dated November 6, 2006 issued by the DENR** certifying that the Bambang lot formed part of the alienable and disposable land of the public domain.

The CA held that Natividad failed to prove that the Bambang lot was alienable and disposable, and thus, granted the Republic's appeal. The CA

of proof to establish registrability despite presentation of duly authenticated and verified documents showing the same unduly tips the scale in favor of the State, and compromises the efficiency and accessibility of public service.

It bears noting that under Executive Order No. 192,[11] series of 1987 (EO 192), the DENR is mandated to exercise supervision and control over forest lands and alienable and disposable lands.[12] To carry out this mandate, EO 192 vests the DENR Secretary with the power to "[e]stablish policies and standards for the efficient and effective operations of the [DENR] in accordance with the programs of the government;"[13] [p]romulgate rules, regulations and other issuances necessary in carrying out the

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held that it could not take cognizance of the DENR Certification since Natividad failed to offer it in evidence during the hearing before the MeTC.

Aggrieved, Natividad filed a petition for review before the Court. Resolving Natividad's petition, the Court observed that "the only reason the CA gave in reversing the decision of the MeTC is that [Natividad] failed to submit the [DENR Certification] x x x during the hearing x x x." **Accordingly, the Court issued a resolution "requiring the OSG to verify from the DENR whether the Senior Forest Management Specialist of its National Capital Region, Office of the Regional Technical Director for Forest Management Services, who issued the [DENR Certification], is authorized to issue certifications on the status of public lands as alienable and disposable, and to submit a copy of the administrative order or proclamation that declares as alienable and disposable the area where the property involved in this case is located, if any there be."**

In compliance, the OSG submitted: (i) a certification confirming the Senior Forest Management Specialist's authority to issue said DENR Certification; and (ii) a certified true copy of Forestry Administrative Order 4-1141 dated January 3, 1968, signed by then Secretary of Agriculture and Natural Resources Arturo R. Tanco, Jr., which declared portions of the public domain covered by Bureau of Forestry Map LC-2623, as alienable and disposable. Considering that LC-2623 covered the Bambang lot, the Court granted the petition for review, and in turn, granted Natividad's application for registration.

[11] Providing for the Reorganization of the Department of Environment, Energy and Natural Resources, Renaming It as the Department of Environment and Natural Resources, and For Other Purposes, dated June 10, 1987.

[12] See *id*. at Sec. 5 (d).

[13] See *id*. at Sec. 7 (b).

[DENR]'s mandate, objectives, policies, plans, programs and projects;"[14] and "[d]elegate authority for the performance of any administrative or substantive function to subordinate officials of the [DENR]."[15] One such policy is DENR AO 2012-9.

Contrary to the majority opinion in *Dumo*, I maintain that the simplification of the requirements set forth in *T.A.N.* neither sanctions the amendment of judicial precedent, nor does it place primacy on administrative issuances. **This simplification merely aligns with the specific thrust of government underlying the issuance of DENR AO 2012-9, that is, to make public service more accessible to the public.** It is but a recognition of the DENR Secretary's powers under EO 192 to promulgate rules, regulations and other issuances necessary in carrying out the DENR's mandate, objectives, policies, plans, programs and projects; and delegate authority for the performance of any administrative or substantive function to subordinate officials of the DENR, which issuances, in turn, carry the same force and effect of law.[16]

In this regard, I maintain that the scope and application of *T.A.N* should now be limited to CENRO certifications issued **prior** to the effectivity of DENR AO 2012-9.

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[14] See *id*. at Sec. 7 (c).

[15] See *id*. at Sec. 7 (e).

[16] EO 192 was issued by then President Corazon Aquino pursuant to her law-making powers prior to the convention of Congress on July 27, 1987. See generally *Philippine Association of Service Exporters, Inc. v. Torres*, 296-A Phil. 427 (1993).

FIRST DIVISION

[G.R. No. 210955. August 14, 2019]

DANILO A. LERONA, *petitioner, vs.* **SEA POWER SHIPPING ENTERPRISES, INC. and/or NEDA MARITIME AGENCY CO., LTD., and/or MS. ANTONETTE A. GUERRERO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; THE SUPREME COURT'S POWER OF REVIEW IS LIMITED TO RESOLVING MATTERS PERTAINING TO PERCEIVED LEGAL ERRORS THAT THE COURT OF APPEALS MAY HAVE COMMITTED IN ISSUING THE ASSAILED DECISION; AN EXCEPTION IS WHEN THE RULINGS OF THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION CONFLICT WITH THAT OF THE COURT OF APPEALS.—[T]he Court's power of review in a Rule 45 petition is limited to resolving matters pertaining to perceived legal errors that the CA may have committed in issuing the assailed decision. Hence, We generally do not review factual issues. Nevertheless, the Court will proceed to probe and resolve factual issues when exceptional circumstances are present. The conflicting rulings of the LA and NLRC on one hand, and of the CA on the other, in this case is one such exception to the general rule. It is thus imperative to review the records to determine which finding is more conformable to the evidentiary facts.

2. LABOR AND SOCIAL LEGISLATION; 2000 POEA STANDARD EMPLOYMENT CONTRACT (POEA-SEC); DELIBERATE CONCEALMENT BY A SEAFARER OF A PRE-EXISTING MEDICAL CONDITION IN HIS/HER PRE-EMPLOYMENT MEDICAL EXAMINATION (PEME) CONSTITUTES FRAUDULENT MISREPRESENTATION WHICH SHALL DISQUALIFY HIM/HER FROM ANY DISABILITY COMPENSATION AND BENEFITS.— Petitioner cannot claim disability benefits because he committed fraudulent misrepresentation. The contract of employment

between the parties is subject to the terms and conditions of the 2000 POEA-SEC, Section 20(E) of which provides that deliberate concealment by a seafarer of a pre-existing medical condition in his PEME constitutes fraudulent misrepresentation which shall disqualify him from any disability compensation and benefits. x x x As correctly observed by the CA, petitioner did not indicate in the appropriate box in his PEME form that he has hypertension, although he had been taking Norvasc as maintenance medicine for two years. He only disclosed his pre-existing medical condition after he was repatriated to the Philippines. Petitioner claims that he did not reveal his hypertension during his PEME out of an honest belief that it had been "resolved." However, this is not persuasive. That petitioner continues to take maintenance medicine indicates that his condition is not yet resolved. Additionally, within the two years that petitioner had been taking maintenance medication for his hypertension, he had boarded respondents' ships four times. Since PEME is mandatory before a seafarer is able to board a ship, it goes to show that petitioner concealed his hypertension no less than four times as well. This circumstance negates any suggestion of good faith that petitioner makes in defense of his misdeed. The Court had on many occasions disqualified seafarers from claiming disability benefits on account of fraudulent misrepresentation arising from their concealment of a pre-existing medical condition. This case is not an exception. For knowingly concealing his hypertension during the PEME, petitioner committed fraudulent misrepresentation which unconditionally bars his right to receive any disability compensation from respondents.

3. ID.; ID.; REQUIREMENTS BEFORE HYPERTENSION MAY BE CONSIDERED A COMPENSABLE OCCUPATIONAL DISEASE; NOT ESTABLISHED IN CASE AT BAR.— Even if We disregard petitioner's misrepresentation, his claim for disability benefits would still fail. Section 32(A)(20) of the 2000 POEA-SEC provides for certain requirements before hypertension may be considered a compensable occupational disease. Thus: 20. Essential Hypertension.Hypertension classified as primary or essential is considered compensable if it causes impairment of function of body organs like kidneys, heart, eyes and brain, resulting in permanent disability; *Provided*, that the following documents substantiate it: (a) chest x-ray report, (b) ECG report, (c) blood chemistry report, (d) funduscopy (*sic*) report, and (f)

(*sic*) C-T scan. Here, there is no showing that petitioner's hypertension impaired the functioning of any of his vital organs, resulting in permanent disability. Moreover, petitioner did not submit any of the enumerated medical test results. Petitioner's physician, Dr. Vicaldo, did not subject him to any tests. He concluded that petitioner was permanently unfit to resume work as a seaman in any capacity, without stating the basis for his prognosis other than an elevated blood pressure. On the contrary, petitioner's ECG tracing showed no significant findings and his coronary angiogram gave negative results for vessel abnormalities.Having failed to satisfy the requisites under Section 32(A)(20) of the 2000 POEA-SEC, petitioner's hypertension is not compensable.

4. ID.; ID.; A "FIT TO WORK" DECLARATION IN THE PEME IS NOT A CONCLUSIVE PROOF THAT A SEAFARER IS FREE FROM ANY DISEASE PRIOR TO HIS/HER DEPLOYMENT; CASE AT BAR.—We reject petitioner's argument that respondents are estopped from denying him disability benefits because he passed his PEME. A "fit to work" declaration in the PEME is not a conclusive proof that a seafarer is free from any disease prior to his/her deployment. *Status Maritime Corporation v. Spouses Delalamon* is instructive, *viz.*: **The fact that Margarito passed his PEME cannot excuse his willful concealment nor can it preclude the petitioners from rejecting his disability claims. PEME is not exploratory and does not allow the employer to discover any and all pre-existing medical condition with which the seafarer is suffering and for which he may be presently taking medication.** The PEME is nothing more than a summary examination of the seafarer's physiological condition; it merely determines whether one is "fit to work" at sea or "fit for sea service" and it does not state the real state of health of an applicant. The "fit to work" declaration in the PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment.

5. ID.; ID.; FAILURE OF A SEAFARER TO COMPLETE HIS/HER TREATMENT BEFORE THE LAPSE OF THE 240-DAY PERIOD CONSTITUTES MEDICAL ABANDONMENT WHICH PREVENTS THE COMPANY PHYSICIAN FROM DECLARING HIM/HER FIT TO WORK OR ASSESSING HIS/HER DISABILITY; WITHOUT ANY FINAL

ASSESSMENT FROM THE COMPANY-DESIGNATED PHYSICIAN, A SEAFARER'S CLAIM FOR PERMANENT TOTAL DISABILITY BENEFITS MUST FAIL; CASE AT BAR.—Petitioner also cannot claim disability benefits because he committed medical abandonment. In *C.F. Sharp Crew Management, Inc. v. Orbeta*,We held that a seafarer commits medical abandonment when he fails to complete his treatment before the lapse of the 240-day period, which prevents the company physician from declaring him fit to work or assessing his disability.Section 20(D) of the 2000 POEA-SEC provides that "[n]o compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or **intentional breach of his duties**. x x x" A seafarer is duty-bound to complete his medical treatment until declared fit to work or assessed with a permanent disability rating by the company-designated physician. In this case, after undergoing several tests, petitioner was placed under observation. Dr. Gonzales advised him to return for his medical clearance on October 23, 2009, or 71 days from his repatriation, but petitioner did not do so. He argues that he could still feel the symptoms of his ailment despite having been cleared by respondents' cardiologist from coronary arterial disease on October 15, 2009. Hence, he was prompted to consult another doctor. However, while indeed a seafarer has the right to seek the opinion of other doctors under Section 20(B)(3) of the 2000 POEA-SEC, this is on the presumption that the company-designated physician had already issued a certification on his fitness or disability and he finds this disagreeable. As case law holds, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or to determine his disability within a period of 120 or 240 days from repatriation. The 120-day period applies if the duration of the seafarer's treatment does not exceed 120 days. On the other hand, the 240-day period applies in case the seafarer requires further medical treatment after the lapse of the initial 120-day period. In case the company-designated doctor failed to issue a declaration within the given periods, the seafarer is deemed totally and permanently disabled. When petitioner chose not to show up at the appointed date of consultation, effectively preventing Dr. Gonzales from making a fitness or disability assessment, he breached his duty under the 2000 POEA-SEC.

> Without any final assessment from the company-designated physician, petitioner's claim for permanent total disability benefits must fail. Indeed, when petitioner filed his complaint before the LA on January 14, 2010, or 154 days after his repatriation, he had no cause of action against respondents because Dr. Gonzales has not yet issued an assessment on his fitness or unfitness for sea duty. The 240-day maximum period for treatment has not yet lapsed. We cannot subscribe to petitioner's theory that the company-designated physician only had 120 days from repatriation to issue a disability assessment. Case law teaches that the 120-day rule applies only when the complaint was filed prior to October 6, 2008. However, if the complaint was filed from October 6, 2008 onwards, as in this case, the 240-day rule applies. It was thus error on the part of petitioner to reckon his entitlement to permanent and total disability benefits based on the 120-day rule.

APPEARANCES OF COUNSEL

Valmores & Valmores Law Offices for petitioner.
Alton C. Durban for respondents.

D E C I S I O N

JARDELEZA, *J.*:

We deny the seafarer's claim for disability benefits due to fraudulent misrepresentation and medical abandonment, as provided under the 2000 Philippine Overseas Employment Administration Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (2000 POEA-SEC).

On February 27, 2009, respondent Sea Power Shipping Enterprises, Inc. employed petitioner Danilo A. Lerona on behalf of respondent Neda Maritime Agency Co., Ltd. to work as a fitter on board M/V Penelope (the vessel) with a monthly salary of US$550.00. Petitioner's contract was for a period of three months, extendible for one month upon mutual consent of the

parties.[1] Prior to his deployment, petitioner underwent pre-employment medical examination (PEME) where he was declared "FIT TO WORK AS SEAMAN." He boarded the vessel on March 6, 2009.[2] On August 1, 2009, he felt severe chest pains and dizziness, which prompted him to request for a medical checkup. He was brought to a hospital in China, but the doctor who examined him did not prescribe any medication or recommend hospitalization or repatriation.[3] Notwithstanding this, petitioner was repatriated to the Philippines on August 13, 2009. He was confined at the De Los Santos Medical Center the following day, and examined by respondents' team of accredited physicians.[4] In his initial medical report, Dr. Jose Emmanuel F. Gonzales (Dr. Gonzales), respondents' company-designated physician, stated that petitioner's chief complaint was body weakness. Petitioner disclosed that he had been hypertensive and is taking Norvasc tablet for two years. In consultation with a cardiologist, Dr. Gonzales declared that petitioner might have Coronary Arterial Disease for which pertinent laboratory and diagnostic examinations should be conducted.[5]

Petitioner's laboratory tests showed that he had a high level of triglycerides, although his electrocardiogram (ECG) tracing had no significant findings. The cardiologist requested for petitioner to undergo Stress-Thallium Test to confirm the status and function of his heart's blood vessels before he can be given medical clearance.[6] The test revealed that petitioner has a mild reversible defect in the apical to basal inferior wall of his heart's blood vessels. His blood pressure was also 130/80. Consequently, he was given additional maintenance drugs on top of his previous

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[1] *Rollo*, p. 47.

[2] *Id.* at 361, 428.

[3] *Id.* at 361, 431.

[4] *Id.* at 361.

[5] *Id.* at 361, 432-433.

[6] *Id.* at 361, 434.

oral anti-hypertensive medication. Thereafter, the cardiologist suggested a coronary angiogram to verify the findings of the Stress-Thallium Test.[7] Results showed that petitioner was negative for any vessel abnormality. He did not need any surgical intervention, just medical treatment and modification of his lifestyle to address his hypertension.[8]

Significantly, in his Medical Report dated October 15, 2009, Dr. Gonzales stated that the cardiologist cleared petitioner of Coronary Arterial Disease. Nevertheless, petitioner was referred to an ear, nose and throat specialist because he was complaining of dizziness. He later underwent Pure Tone Audiometry with Tympanometry, the result of which revealed that he has mild sensori-neural hearing loss on both ears. No surgical procedure was required but he was prescribed to take Vitamin B complex regularly. Petitioner was placed under observation for another week prior to the issuance of a medical clearance. He was required to come back for a follow-up checkup on October 23, 2009.[9] However, he did not show up. Consequently, Dr. Gonzales declared him to have absconded.[10]

Unknown to respondents, petitioner consulted an independent physician on December 17, 2009. Dr. Efren R. Vicaldo (Dr. Vicaldo) of the Philippine Heart Center gave petitioner the following diagnosis: Hypertensive Cardiovascular Disease, Angina Pectoris, Impediment Grade VII (41.80%).[11] Dr. Vicaldo declared, among others, that: (1) petitioner is permanently unfit to resume work as a seaman in any capacity; (2) his illness is considered work aggravated/related; and (3) he is not expected to land gainful employment given his medical background.[12]

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[7] *Id.* at 435.

[8] *Id.* at 362, 436.

[9] *Id.* at 362, 437.

[10] *Id.* at 362, 438.

[11] *Id.* at 55, 363.

[12] *Id.* at 56.

On January 14, 2010, petitioner filed a complaint for recovery of disability benefits, reimbursement of medical expenses and attorney's fees against respondents. During the mandatory conference before the labor arbiter (LA), respondents manifested that petitioner failed to report back to their company-designated physician for final assessment. Thus, upon respondents' insistence, petitioner went back to Dr. Gonzales on April 21, 2010, at which time he was declared "Fit to Resume Sea Duties."[13]

In his position paper, petitioner claimed that he is entitled to total and permanent disability benefits because he was unable to work for more than 120 days as a result of his illness.[14] For their part, respondents claimed that petitioner was declared fit for sea duty by their company-designated physician, hence, he is not entitled to any disability benefit. Further, petitioner failed to disclose that he has hypertension during his PEME. The concealment of his pre-existing condition disqualifies him from any compensation and benefit under Section 20(E) of the 2000 POEA-SEC. Also, the findings of Dr. Gonzales should prevail over the declarations of Dr. Vicaldo, who only examined petitioner once.[15]

On August 2, 2010, the LA rendered a Decision[16] ordering respondents to jointly and severally pay petitioner permanent and total disability benefits in the amount of US$60,000.00 and attorney's fees equivalent to 10% of the total monetary award.[17] The LA held that Dr. Gonzales did not issue any disability rating/grading to petitioner within the mandatory 120-day period. He declared petitioner "fit to resume sea duties" on April 21, 2010, long after Dr. Vicaldo pronounced him "unfit to resume sea duties in any capacity" on December 17, 2009.[18]

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[13] *Id.* at 363-364, 443.

[14] *Id.* at 66, 364.

[15] *Id.* at 364.

[16] *Id.* at 144-153; penned by Labor Arbiter Felipe P. Pati.

[17] *Id.* at 152-153.

[18] *Id.* at 149.

Furthermore, if it were true that petitioner had already become fit to work, then why was he not re-engaged by respondents?[19] The LA also ruled that petitioner's pre-existing hypertension does not disqualify him from claiming disability benefits. Respondents were estopped from denying that in all of petitioner's six previous contracts with them, including the last one, the company doctors always declared him fit to work after his PEME. Finally, respondents' defense that petitioner absconded from his checkup does not avail since respondents could have easily issued the result to petitioner and told him to report for duty.[20]

On appeal, the National Labor Relations Commission (NLRC) reversed the LA through its February 8, 2011 Decision.[21] It held that the medical examination of respondents' accredited doctors, Dr. Gonzales and Dr. Ana Ma. Luisa D. Javier, the internist-cardiologist, was more extensive than the examination made by Dr. Vicaldo on petitioner. The latter's findings were not supported by laboratory results or diagnostic examinations. No proof was presented to show that petitioner has a cardiovascular disease that was acquired during the term of his employment.[22] Moreover, the doctors on both sides of the case had the same medical findings as regards petitioner's hypertension. Under Section 32(A)(20) of the 2000 POEA-SEC, hypertension is compensable if it causes impairment of functions of body organs like kidneys, heart, eyes and brain, resulting to permanent disability as substantiated by certain documents. However, petitioner's ECG tracing revealed no significant findings. His coronary angiogram was also negative for any vessel abnormalities.[23] Finally, the NLRC held that petitioner

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[19] *Id.* at 150.

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

[21] *Id.* at 203-218; penned by Commissioner Angelo Ang Palana with Presiding Commissioner Herminio V. Suelo and Commissioner Numeriano D. Villena, concurring.

[22] *Id.* at 215.

[23] *Id.* at 216.

failed to observe the third doctor referral rule under the 2000 POEA-SEC. Consequently, his claim for disability compensation must be denied.[24]

Acting on petitioner's motion for reconsideration, the NLRC reversed itself and reinstated the ruling of the LA. In its June 24, 2011 Resolution,[25] it held that the 2000 POEA-SEC does not require the parties to at all times assign a third doctor to assess the seafarer's disability. Hence, a seafarer is not precluded from filing a complaint before the NLRC even if the parties failed to secure the opinion of the third doctor. More, the record is bereft of showing that petitioner's health condition was restored to its *status quo* so as to enable him to return to his former work as a fitter. The fact that petitioner did not need to undergo any surgical procedure or intervention does not conclusively show that he is already fit to work.[26] The NLRC held that at the time petitioner filed the case on January 14, 2010, five months after his repatriation, he is still unable to return to his work as a fitter for respondents. His inability to perform his customary work for more than 120 days constitutes total and permanent disability.[27]

Respondents filed a motion for reconsideration, but the NLRC denied it through its Resolution[28] dated October 24, 2011.

Undaunted, respondents filed a petition for *certiorari* with the Court of Appeals (CA), docketed as CA-G.R. SP No. 122984. In its assailed Decision[29] dated October 2, 2013, the CA set aside the NLRC Resolution for having been issued with grave

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[24] *Id.* at 217.

[25] *Id.* at 238-246.

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

[27] *Id.* at 244.

[28] *Id.* at 247-248.

[29] *Id.* at 360-371; penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Andres B. Reyes, Jr. and Rodil V. Zalameda (both now Members of this Court), concurring.

abuse of discretion and reinstated its initial decision to dismiss petitioner's complaint. It ruled that the findings of the LA, as affirmed by the NLRC, are not supported by substantial evidence.[30] It is undisputed that petitioner's hypertension was a pre-existing condition, yet, he did not indicate it in his PEME form. Thus, petitioner committed misrepresentation which disqualifies him from recovering any disability benefits under Section 20(E) of the 2000 POEA-SEC.[31]

Even assuming that petitioner did not conceal his condition, the CA held that a seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered illness is not a magic wand that would automatically warrant the grant of total and permanent disability benefits. None of the instances when a seafarer may be allowed to pursue an action to claim total and permanent disability exists. Dr. Gonzales pronounced petitioner fit to work on April 10, 2010, or approximately 200 days after his repatriation. The delay was solely attributable to petitioner since he failed to report after his 5th medical examination. The fit to work certification could have been issued earlier had he not absconded.[32]

Moreover, the CA held that there is no reason to depart from the settled rule that it is the company-designated physician who is entrusted with the task of assessing the seafarer's disability. The medical finding of petitioner's doctor of choice was made on the same day that petitioner consulted him. Petitioner was not required to undergo medical tests to confirm the doctor's diagnosis. On the other hand, the findings of the company-designated physician were made after petitioner underwent laboratory examinations.[33] Finally, the CA noted that petitioner did not follow the third doctor-referral rule under the 2000 POEA-SEC.[34]

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[30] *Id.* at 367.

[31] *Id.* at 367-368.

[32] *Id.* at 368-369.

[33] *Id.* at 370-371.

[34] *Id.* at 370.

Petitioner moved for reconsideration,[35] but the CA denied it through the assailed January 22, 2014 Resolution.[36] Hence, this petition.

The issue for consideration is whether petitioner is entitled to total and permanent disability benefits.

We hold that he is not.

Preliminarily, the Court's power of review in a Rule 45 petition is limited to resolving matters pertaining to perceived legal errors that the CA may have committed in issuing the assailed decision. Hence, We generally do not review factual issues.[37] Nevertheless, the Court will proceed to probe and resolve factual issues when exceptional circumstances are present. The conflicting rulings of the LA and NLRC on one hand, and of the CA on the other, in this case is one such exception to the general rule. It is thus imperative to review the records to determine which finding is more conformable to the evidentiary facts.[38]

I.

Petitioner cannot claim disability benefits because he committed fraudulent misrepresentation.

The contract of employment between the parties is subject to the terms and conditions of the 2000 POEA-SEC,[39] Section 20(E) of which provides that deliberate concealment by a seafarer of a pre-existing medical condition in his PEME constitutes

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[35] *Id.* at 372-382.

[36] *Id.* at 384.

[37] *Philman Marine Agency, Inc. (now DOHLE-PHILMAN Manning Agency, Inc.) v. Cabanban*, G.R. No. 186509, July 29, 2013, 702 SCRA 467, 481-482.

[38] *Status Maritime Corporation v. Spouses Delalamon*, G.R. No. 198097, July 30, 2014, 731 SCRA 390, 401.

[39] See the parties' Contract of Employment dated February 27, 2009, *rollo*, p. 427.

fraudulent misrepresentation which shall disqualify him from any disability compensation and benefits. Thus:

> E. A seafarer who knowingly conceals and does not disclose past medical condition, disability and history in the pre-employment medical examination constitutes fraudulent misrepresentation and shall disqualify him from any compensation and benefits. This may also be a valid ground for termination of employment and imposition of the appropriate administrative and legal sanctions.

As correctly observed by the CA, petitioner did not indicate in the appropriate box in his PEME form that he has hypertension, although he had been taking Norvasc as maintenance medicine for two years. He only disclosed his pre-existing medical condition after he was repatriated to the Philippines. Petitioner claims that he did not reveal his hypertension during his PEME out of an honest belief that it had been "resolved."[40] However, this is not persuasive. That petitioner continues to take maintenance medicine indicates that his condition is not yet resolved. Additionally, within the two years that petitioner had been taking maintenance medication for his hypertension, he had boarded respondents' ships four times.[41] Since PEME is mandatory before a seafarer is able to board a ship, it goes to show that petitioner concealed his hypertension no less than four times as well. This circumstance negates any suggestion of good faith that petitioner makes in defense of his misdeed.

The Court had on many occasions[42] disqualified seafarers from claiming disability benefits on account of fraudulent misrepresentation arising from their concealment of a pre-existing medical condition. This case is not an exception. For knowingly concealing his hypertension during the PEME, petitioner committed fraudulent misrepresentation which

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[40] *Id.* at 31.

[41] *Id.* at 48.

[42] *Ayungo v. Beamko Shipmanagement Corporation*, G.R. No. 203161, February 26, 2014, 717 SCRA 538; *Philman Marine Agency, Inc. (now DOHLE-PHILMAN Manning Agency, Inc.) v. Cabanban, supra* note 37; *Status Maritime Corp. v. Spouses Delalamon, supra* note 38.

unconditionally bars his right to receive any disability compensation from respondents.

Even if We disregard petitioner's misrepresentation, his claim for disability benefits would still fail. Section 32(A)(20) of the 2000 POEA-SEC provides for certain requirements before hypertension may be considered a compensable occupational disease. Thus:

> 20. Essential Hypertension.
>
> Hypertension classified as primary or essential is considered compensable if it causes impairment of function of body organs like kidneys, heart, eyes and brain, resulting in permanent disability; *Provided*, that the following documents substantiate it: (a) chest x-ray report, (b) ECG report, (c) blood chemistry report, (d) funduscopy (*sic*) report, and (f) (*sic*) C-T scan.

Here, there is no showing that petitioner's hypertension impaired the functioning of any of his vital organs, resulting in permanent disability. Moreover, petitioner did not submit any of the enumerated medical test results. Petitioner's physician, Dr. Vicaldo, did not subject him to any tests. He concluded that petitioner was permanently unfit to resume work as a seaman in any capacity, without stating the basis for his prognosis other than an elevated blood pressure.

On the contrary, petitioner's ECG tracing showed no significant findings[43] and his coronary angiogram gave negative results for vessel abnormalities.[44] Having failed to satisfy the requisites under Section 32(A)(20) of the 2000 POEA-SEC, petitioner's hypertension is not compensable.

Finally, We reject petitioner's argument that respondents are estopped from denying him disability benefits because he passed his PEME. A "fit to work" declaration in the PEME is not a conclusive proof that a seafarer is free from any disease prior to his/her deployment. *Status Maritime Corporation v. Spouses Delalamon*[45] is instructive, *viz.*:

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[43] See Medical Report dated August 17, 2009, *rollo*, p. 434.

[44] See Medical Report dated September 29, 2009, *id.* at 436.

[45] *Supra* note 38.

The fact that Margarito passed his PEME cannot excuse his willful concealment nor can it preclude the petitioners from rejecting his disability claims. PEME is not exploratory and does not allow the employer to discover any and all pre-existing medical condition with which the seafarer is suffering and for which he may be presently taking medication. The PEME is nothing more than a summary examination of the seafarer's physiological condition; it merely determines whether one is "fit to work" at sea or "fit for sea service" and it does not state the real state of health of an applicant. The "fit to work" declaration in the PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment.[46] (Citations omitted; emphasis supplied.)

II.

Petitioner also cannot claim disability benefits because he committed medical abandonment.

In *C.F. Sharp Crew Management, Inc. v. Orbeta*,[47] We held that a seafarer commits medical abandonment when he fails to complete his treatment before the lapse of the 240-day period, which prevents the company physician from declaring him fit to work or assessing his disability.[48] Section 20(D) of the 2000 POEA-SEC provides that "[n]o compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or **intentional breach of his duties**. x x x"[49] A seafarer is duty-bound to complete his medical treatment until declared fit to work or assessed with a permanent disability rating by the company-designated physician.[50]

In this case, after undergoing several tests, petitioner was placed under observation. Dr. Gonzales advised him to return

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[46] *Id.* at 407.

[47] G.R. No. 211111, September 25, 2017, 840 SCRA 483.

[48] *Id.* at 501. Citation omitted.

[49] Emphasis supplied.

[50] See *New Filipino Maritime Agencies, Inc. v. Despabeladeras*, G.R. No. 209201, November 19, 2014, 741 SCRA 375, 391.

for his medical clearance on October 23, 2009, or 71 days from his repatriation, but petitioner did not do so. He argues that he could still feel the symptoms of his ailment despite having been cleared by respondents' cardiologist from coronary arterial disease on October 15, 2009. Hence, he was prompted to consult another doctor. However, while indeed a seafarer has the right to seek the opinion of other doctors under Section 20(B)(3) of the 2000 POEA-SEC, this is on the presumption that the company-designated physician had already issued a certification on his fitness or disability and he finds this disagreeable.[51] As case law holds, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or to determine his disability within a period of 120 or 240 days from repatriation. The 120-day period applies if the duration of the seafarer's treatment does not exceed 120 days. On the other hand, the 240-day period applies in case the seafarer requires further medical treatment after the lapse of the initial 120-day period. In case the company-designated doctor failed to issue a declaration within the given periods, the seafarer is deemed totally and permanently disabled.[52] When petitioner chose not to show up at the appointed date of consultation, effectively preventing Dr. Gonzales from making a fitness or disability assessment, he breached his duty under the 2000 POEA-SEC. Without any final assessment from the company-designated physician, petitioner's claim for permanent total disability benefits must fail.

Indeed, when petitioner filed his complaint before the LA on January 14, 2010, or 154 days after his repatriation, he had no cause of action against respondents because Dr. Gonzales has not yet issued an assessment on his fitness or unfitness for sea duty. The 240-day maximum period for treatment has not yet lapsed. We cannot subscribe to petitioner's theory that the

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[51] *C.F. Sharp Crew Management, Inc. v. Taok*, G.R. No. 193679, July 18, 2012, 677 SCRA 296, 316.

[52] *Magsaysay Maritime Corp. v. Cruz*, G.R. No. 204769, June 6, 2016, 792 SCRA 344, 356.

company-designated physician only had 120 days from repatriation to issue a disability assessment. Case law teaches that the 120-day rule applies only when the complaint was filed prior to October 6, 2008. However, if the complaint was filed from October 6, 2008 onwards, as in this case, the 240-day rule applies.[53] It was thus error on the part of petitioner to reckon his entitlement to permanent and total disability benefits based on the 120-day rule.

All told, the CA did not err in reversing the rulings of the LA and the NLRC. Petitioner cannot claim total and permanent disability benefits against respondents because he committed fraudulent misrepresentation and medical abandonment, both of which disqualify a seafarer from any disability compensation.

WHEREFORE, the petition is **DENIED** for lack of merit. The October 2, 2013 Decision and January 22, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 122984 are hereby **AFFIRMED**.

SO ORDERED.

Bersamin, C.J. (Chairperson), Perlas-Bernabe (*Working Chairperson*), *Gesmundo,* and *Carandang, JJ.*, concur.

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[53] *Wallem Maritime Services, Inc. v. Quillao*, G.R. No. 202885, January 20, 2016, 781 SCRA 477, 488, citing *C.F. Sharp Crew Management, Inc. v. Obligado*, G.R. No. 192389, September 23, 2015, 771 SCRA 369.

FIRST DIVISION

[G.R. No. 213389. August 14, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EBO PLACIENTE *y* TEJERO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 AS AMENDED (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE/POSSESSION OF DANGEROUS DRUGS; THE STATE BEARS THE BURDEN OF PROVING THE ELEMENTS OF THE OFFENSE COMMITTED IN VIOLATION OF R.A. NO. 9165, WHICH INDISPENSABLY INCLUDES THE PROOF OF *CORPUS DELICTI*, WHICH IS THE DANGEROUS DRUG ITSELF.—** Section 21 of R.A. No. 9165, as amended, states the procedural safeguards to be observed in relation to the seizure, custody and disposition of the confiscated drug, x x x The Implementing Rules and Regulations of Section 21 of R.A. No. 9165 (IRR) reiterates the statutory safeguards, x x x The State bears the burden of proving the elements of the offense committed in violation of R.A. No. 9165, which indispensably includes the proof the *corpus delicti,* or the body of the crime. *Corpus delicti* has been defined as the body or substance of the crime and refers, in its primary sense, to the fact that a crime was actually committed. In criminal prosecution of alleged violations of R.A. No. 9165, like the offense charged herein, the *corpus delicti* is no other than the dangerous drug itself. Hence, the State must be able to present the seized drug, along with proof that there were no substantial gaps in the chain of custody thereof from the time of its confiscation until its presentation during the trial as to raise any doubts about its authenticity as evidence of guilt when presented in court. The State and its agents are mandated to faithfully observe the safeguards in their drug-related operations and prosecutions.

2. **ID.; ID.; ID.; TO ESTABLISH THE *CORPUS DELICTI*, THE PROPER HANDLING OF THE CONFISCATED DRUG IS PARAMOUNT IN ORDER TO ENSURE THE UNBROKEN CHAIN OF CUSTODY, A PROCESS ESSENTIAL TO**

PRESERVING THE INTEGRITY OF THE EVIDENCE OF THE *CORPUS DELICTI*; NOT PRESENT IN CASE AT BAR.— To establish the *corpus delicti*, the proper handling of the confiscated drug is paramount in order to ensure the unbroken chain of custody, a process essential to preserving the integrity of the evidence of the *corpus delicti*. For this purpose, the State needs only to show a rational basis from which to conclude that the evidence being presented to establish criminal guilt is what the State claims it to be, that is, the drug that was confiscated at the time of the buy-bust or other operation to arrest the violator. Indeed, the courts require a more stringent foundation for the chain of custody of the item with sufficient completeness to render it improbable that the original item has either been changed with another or tampered with. We have noted with alarm that the apprehending officers did not follow the procedural safeguards of the law. For one, they did not do the marking and the inventory of the evidence seized immediately at the place of arrest despite the law itself directing such acts to be done then and there. To excuse their lapse, PO2 Reas openly declared that "*... the area is critical and we have to leave the place immediately and we do not have time to make the inventory there.*" Such declaration was hardly plausible, however, because outside of the officer's self-serving claim, the Prosecution adduced no evidence that would have substantiated the "critical" conditions then obtaining that had prevented compliance with the statutory safeguards. The lawmen ought not to trifle so easily with such safeguards that were erected by our lawmakers precisely for the protection of the rights and freedoms of our citizens from unreasonable intrusions by our law enforcers.

3. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; THE OBLIGATION IMPOSED BY SECTION 21 OF RA 9165 TO TENDER THE CREDIBLE EXPLANATION FOR ANY NON-COMPLIANCE WITH THE AFFIRMATIVE SAFEGUARDS FIRMLY RESTED ON THE STATE AND ITS AGENTS; NOT ESTABLISHED IN CASE AT BAR.— [T]he absence of the elected public official and representative of the DOJ or the media specifically required to witness the physical inventory and photographing of the evidence seized, and that no photograph was taken to document the seizure of drugs were also undeniable. PO2 Reas justified the lack of the photographs by merely asserting that the station had not been issued any camera. In our view, such justification for the failure

to take photographs was ridiculous because the statutory requirement like the photographing of the seized articles, being very crucial to the preservation of the chain of custody, was of substantive significance and should not be so slightingly or lightly regarded by every worthy anti-drug law enforcer. We take this view with grave concern for in this time of technological advances practically all cellular phones, which we presume the officers themselves were carrying, were already equipped with cameras. Anent the inventory, the document being represented for that purpose was not even signed by PO2 Reas, or by any of the witnesses specifically required to sign it under R.A. No. 9165. There was even no showing that the marking of the seized items and the inventory had been accomplished in the presence of the accused-appellant or of his designated representative. Lastly, the arresting officers did not render explanation why they did not secure the presence of the witnesses required under the rules. The obligation imposed by Section 21 of R.A. No. 9165 to tender the credible explanation for any non-compliance with the affirmative safeguards firmly rested on the State and its agents, and on no other. The Court has stressed the importance of the Prosecution's obligation to justify their non-compliance with the safeguards in *People v. Lim*, x x x Under the circumstances, the arresting officers must prove that they had exerted efforts to comply with the mandated procedure, and that their actions were reasonable under the obtaining circumstances. If the State and its agents did not discharge such obligation, then the evidence of guilt necessarily becomes suspect. Among the consequences of the non-discharge of the obligation is to deprive the apprehending officers of the presumption in their favor of the regularity in the performance of their official duties. They must then prove the regularity of their performance. Without such proof of regularity, the identification and authentication of the evidence of guilt are nearly impossible. In this case, therefore, the various lapses engendered the possibility of evidence substitution or tampering, and necessarily negated the reliability of the incrimination of the accused-appellant.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *C.J.*:

This appeal assails the decision promulgated on December 18, 2013,[1] whereby the Court of Appeals (CA) affirmed the conviction of accused-appellant Ebo Placiente y Tejero handed down by the Regional Trial Court (RTC) in Quezon City for illegal sale of *shabu* in violation of Section 5 and for illegal possession of *shabu* in violation of Section 11, both of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act*).

Antecedents

The accused-appellant was charged in the RTC under the following informations, to wit:

Criminal Case No. Q-05-132073

That on or about the 24th day of January, 2005, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, wilfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, Zero point zero five (0.05 grams) containing white crystalline substance (Methylamphetamine Hydrochloride) a dangerous drug.

CONTRARY TO LAW.[2]

Criminal Case No. Q-05-132074

That on or about the 24th day of January, 2005, in Quezon City, Philippines, the said accused, not being authorized by law to possess any dangerous drug, did, then and there, wilfully, unlawfully and knowingly have in his/her/their possession and control, Zero point zero four (0.04 grams) containing white crystalline substance (Methylamphetamine Hydrochloride) a dangerous drug.

CONTRARY TO LAW.[3]

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[1] *Rollo*, pp. 2-23; penned by Associate Justice Noel G. Tijam (later a Member of this Court but since retired), and concurred in by Associate Justice Priscilla J. Baltazar-Padilla and Associate Justice Agnes Reyes-Carpio.

[2] Records, p. 2.

[3] *Id.* at 4.

The cases were consolidated for arraignment and trial. At arraignment, the accused-appellant pleaded *not guilty* to the charges.[4]

The CA summarized the factual and procedural antecedents in the following manner:

THE PROSECUTION'S EVIDENCE:

Gathered from the testimonies of PO2 Balbino Reas and PO3 Noel Magcalayo, the following were established:

PO2 Reas and PO3 Magcalayo are members of the Philippine National Police (PNP) assigned at the Police Station 6, Batasan Hills, Quezon City.

On January 24, 2005, at around 3:30PM., a police informant arrived at Police Station 6 to report about the alleged peddling of illegal drugs by the accused-appellant in his place in Kaunlaran Street, Brgy. Commonwealth, Quezon City. Immediately, a police team, composed of SPO1 Amor Guiang, who acted as the team leader, PO2 Reas, who acted as the poseur[-]buyer of drugs, and PO3 Magcalayao, who acted as back-up was formed to confirm the veracity of the informant's report and conduct a buy-bust operation. Before dispatching the team, SPO1 Amor Guiang briefed them and gave their specific tasks. A Pre-Operation Report and Coordination Sheet were prepared and submitted to the Philippine Drug Enforcement Agency (PDEA). PO2 Reas also prepared the marked money consisting of 2 pieces of ₱100.00 each of which was marked with his initials, "BR".

At about 5 PM, the team proceeded to the target area along Kaunlaran Street in Brgy. Commonwealth, Quezon City.

Upon seeing accused-appellant in front of his house, PO2 Reas and the informant approached him. The informant introduced PO2 Reas to accused-appellant and told him that PO2 Reas wanted to buy shabu.

PO2 Reas told the accused-appellant that he only wanted to buy ₱200.00 worth of shabu. Accused-appellant first demanded for the payment. When PO2 Reas gave him the ₱200.00 marked money, accused-appellant handed him 1 small plastic sachet of suspected

[4] *Rollo,* p. 4.

shabu. At that instance, PO2 Reas raised his right hand as a pre-arranged signal that the drug deal was consummated.

Upon seeing the pre-arranged signal, PO3 Magcalayo rushed towards the direction of PO2 Reas and accused-appellant. He then introduced himself to accused-appellant as police officer (sic).

After accused-appellant was apprised of his constitutional rights, PO3 [Magcalayo} did a bodily search on him and found another plastic sachet of suspected shabu inside the right pocket of his pants. PO3 Magcalayo recovered the buy-bust money, and a 9 mm pistol from accused-appellant's possession. Thereafter, the accused-appellant was handcuffed and arrested.

The police officers then brought accused-appellant to Police Station 6. There, PO2 Reas marked the 2 plastic sachets recovered from accused-appellant with his and accused-appellant's initials "BR-EP". When the 2 plastic sachets were submitted for laboratory examination, they yielded a positive result to the test for Methylamphetamine Hydrochloride, a dangerous drug.

The prosecution and the defense stipulated on the proposed testimony of Engr. Leonard Jabonillo as follows: "(1) That he received the request for laboratory examination dated 24 January 2005; (2) That he conducted the examination on the specimen; (3) That he reduced his findings into writing, which is Chemistry Report No. D-056-2005; (4) That he found the specimen to be positive for methylamphetamine hydrochloride, a dangerous drug; and (5) That he has no personal knowledge as to the facts and the circumstances surrounding the arrest of the accused."

Likewise, the prosecution and the defense stipulated on the proposed testimony of PO1 Darwin Ferre as follows: "(1) That he conducted the investigation on the accused when he was arrested; and (2) That he mechanically prepared the referral letter; the joint affidavit and the inventory and the inventory of seized items."

On cross-examination, PO2 Reas testified that the inventory of the seized articles from accused-appellant was done at Police Station 6 and not in the crime scene because the area was critical. On re-direct examination, he said that no photograph of the contraband was taken as their office was not issued with a camera. He also said that they had no more time to call on the media when the inventory of the seized articles took place.

The prosecution offered as documentary evidence, the following: (1) Request for Laboratory Examination of the 2 heat-sealed transparent plastic sachets containing white crystalline substances of suspected shabu marked as "BR/EP-1 and BR/EP-2" signed by Police Chief Inspector Arnold E. Abad; and (2) Chemistry Report No. D-056-2005 prepared by Engr. Leonard M. Jabonillo, Chemist II, Forensic Analyst of the PNP Crime Laboratory. The Report contains the following entries:

"SPECIMEN SUBMITTED:

Two (2) heat-sealed transparent plastic sachets each containing white crystalline substance having the following markings and recorded net weights:

A (BR/EP-1) = 0.05 gm & B (BR/EP-2) = 0.04 gm.

FINDINGS:

Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the test for Methylamphetamine Hydrochloride, a dangerous drug. xxx

CONCLUSION:

Specimen A and B are Methylamphetamine Hydrochloride, a dangerous drug. xxx"

THE DEFENSE EVIDENCE:

Accused-appellant and a certain Diosa Soria were presented as defense witnesses.

Accused-appellant testified that, on January 24, 2005, at around 2:30 PM, while he was taking a bath at his residence in 458 Kaunlaran Street, Brgy. Commonwealth, Quezon City, a barangay official named Jun Mitra, a.k.a. Ben and 14 other men arrived. Jun Mitra allegedly pointed a gun at him and ordered the other men to arrest him. PO2 Reas and a barangay official then held him on his shoulders, pushed him and brought him to Police Station 6, Batasan Hills, Quezon City.

When they reached the police station, a certain Lt. Aquino allegedly talked to him and asked him if he can produce ₱50,000.00. Since he did not have the money, the police officers detained him.

During cross-examination, accused-appellant testified that he did not have any argument with PO2 Reas and PO3 Magcalayo prior to

his arrest. He said that he was arrested because when the barangay officials arrived at their place, he was the only one left in the area; the other men scampered away. He said his father filed a case before the Ombudsman against the police officers and barangay officials who arrested him. The case, however, was dismissed because the subpoena was not properly served.

Diosa Soria, a candy vendor along Kaunlaran Street, testified that she was selling her merchandise in the same compound where accused-appellant lives. On June 24, 2005, she noticed several armed men in civilian attire, about 15 in number, search about 20 houses in the compound where accused-appellant lives. From where she was situated, about 3 to 4 meters away, she heard one of the armed men ask the accused-appellant if he knew of a person named Boboy. Accused-appellant replied that he does not know of a person named Boboy. Thereafter, one of the armed men showed a gun and said "arrest that man, this is the evidence against him". Accused-appellant was then ordered to sit down along the alley; he was handcuffed and brought to Police Station 6.[5]

Judgment of the RTC

On March 2, 2011, the RTC rendered judgment convicting the accused-appellant of the crimes charged, decreeing thusly:

ACCORDINGLY, judgment is rendered finding the accused EBO PLACIENTE Y TEJERO GUILTY beyond reasonable doubt of the two (2) offenses he was charged in this Court, namely, for violation of Section 5 of R.A. 9165 (for selling shabu, a dangerous drug) and for violation of Section 11 of R.A. 9165 (for unlawful possession of shabu) and consequently, the accused is hereby sentenced as follows:

In Q-05-132073, to a jail term of LIFE IMPRISONMENT and payment of a fine of ₱500,000.00, and (2) [i]n Q-05-132074, to a jail term of Twelve (12) Years and One (1) day, as minimum and Fourteen (14) Years as maximum and payment of a fine of ₱300,000.00.

The two (2) sachets of [methylamphetamine] hydrochloride (shabu) involved in these two (2) cases are ordered transmitted to PDEA thru DDB for disposal pursuant to R.A. 9165.

SO ORDERED.[6]

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

[6] CA *rollo,* pp. 21-22.

The RTC opined that the buy-bust operation mounted against the accused-appellant was legitimate; that the accused-appellant and his witness, Diosa Soria had incurred in inconsistencies; that the evidentiary value of the items seized from the accused-appellant had been preserved; that the police officers had made the inventory at the police station because it had become dangerous for them to remain and make the inventory at the place of arrest; that the situation at the time had justified the departure from the prescribed procedure; and that the inventory had been nonetheless done immediately following the arrest in a manner as to avoid the suspicion that the police officers had switched the items seized from the accused-appellant.[7]

Decision of the CA

As earlier stated, the CA affirmed the conviction of the accused-appellant through the appealed decision,[8] *viz.*:

WHEREFORE, the appeal is **DENIED.** The Decision of the RTC of Quezon City, Branch 79, in Crim. Case No. Q-05-132073 and Crim. Case No. Q-05-132074, are hereby **AFFIRMED**.

SO ORDERED.[9]

The CA pointed out that the identity of the accused-appellant as the person who had sold the *shabu* to PO2 Balbino Reas was established; that the Prosecution had delineated how the sale of the *shabu* had actually taken place, and how the accused-appellant had also possessed another plastic sachet of suspected *shabu*; that the chain of custody of the seized dangerous drugs had not been compromised; and that the integrity and evidentiary value of the evidence seized were presumed to be preserved absent any showing of bad faith and ill will on the part of the arresting officers, or absent proof showing that the same had been tampered with.[10]

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

[8] *Supra* note 1.

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

[10] *Id.* at 10-22.

Issues

In his appeal, the accused-appellant reiterates the arguments contained in his appellant's brief filed in the CA. He argues that the Prosecution did not prove his guilt beyond reasonable doubt because the apprehending officers had not complied with the statutory requirements imposed by R.A. No. 9165; that gaps regarding the whereabouts and condition of the seized drugs from the time they had come into the possession of the apprehending officers until they had been tested in the laboratory existed; that the such gaps had allowed the possibility of the seized drugs being exposed to alteration, tampering, contamination and even substitution, thereby placing the integrity and evidentiary value of the seized items in question; that the failure of the police officers to comply with the procedure for the custody of the seized drugs raised doubts as to their origin, and negated the presumption of regularity in the performance of their official duties accorded to the apprehending police officers; that there had been no representatives from the media and from the Department of Justice (DOJ), or any elected public official in attendance despite such persons being required to participate in the operation and despite such individuals being required to sign the inventory of seized items; that the excuse given by the apprehending officers for their non-compliance with the statutory requirements necessary for the preservation of the chain of custody had not been justifiable; and that the lapses committed by the apprehending officers had cast doubt on whether the items allegedly confiscated were the same items submitted for the examination at the laboratory and later presented as evidence of guilt during the trial.[11]

The OSG counters that the accused-appellant's guilt for the illegal sale and for the illegal possession of the dangerous drugs had been proved beyond reasonable doubt because all the elements of the crimes charged had been shown to be present; that the integrity and evidentiary value of the two seized sachets of *shabu* had been preserved; that the procedure under Section

[11] CA *rollo,* pp. 45-53.

21 of R.A. No. 9165 prescribed for the custody and handling of the seized dangerous drugs was not stringent in application for as long as the integrity and evidentiary value of the seized items were shown to have been preserved; that the failure to make the inventory of the seized items at the place of arrest could be excused because their continued stay in the area of the arrest would have endangered their safety; that there was no showing of any break in the chain of custody that would cast doubt on the identity and integrity of the two sachets of illegal drugs; and that absent any showing of bad faith or ill will on the part of the arresting officers, the integrity and evidentiary value of the seized drugs were presumed to be preserved; and that the testimony of defense witness Diosa Soria on the events did not bolster the version of the accused-appellant.[12]

Ruling of the Court

We reverse the conviction of the accused-appellant on the ground of reasonable doubt.

Section 21 of R.A. No. 9165, as amended, states the procedural safeguards to be observed in relation to the seizure, custody and disposition of the confiscated drug, 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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment **shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and**

[12] *Id.* at 69-96.

> **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. (Emphasis supplied)

x x x x x x x x x

The Implementing Rules and Regulations of Section 21 of R.A. No. 9165 (IRR) reiterates the statutory safeguards, *viz*.:

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

x x x x x x x x x

The State bears the burden of proving the elements of the offense committed in violation of R.A. No. 9165, which indispensably includes the proof the *corpus delicti,* or the body of the crime. *Corpus delicti* has been defined as the body or substance of the crime and refers, in its primary sense, to the fact that a crime was actually committed. In criminal prosecution of alleged violations of R.A. No. 9165, like the offense charged herein, the *corpus delicti* is no other than the dangerous drug itself. Hence, the State must be able to present the seized drug, along with proof that there were no substantial gaps in the chain of custody thereof from the time of its confiscation until its presentation during the trial as to raise any doubts about its authenticity as evidence of guilt when presented in court. The State and its agents are mandated to faithfully observe the safeguards in their drug-related operations and prosecutions.[13]

To establish the *corpus delicti,* the proper handling of the confiscated drug is paramount in order to ensure the unbroken chain of custody, a process essential to preserving the integrity of the evidence of the *corpus delicti*. For this purpose, the State needs only to show a rational basis from which to conclude that the evidence being presented to establish criminal guilt is what the State claims it to be, that is, the drug that was confiscated at the time of the buy-bust or other operation to arrest the violator. Indeed, the courts require a more stringent foundation for the chain of custody of the item with sufficient completeness to render it improbable that the original item has either been changed with another or tampered with.[14]

We have noted with alarm that the apprehending officers did not follow the procedural safeguards of the law. For one, they did not do the marking and the inventory of the evidence seized immediately at the place of arrest despite the law itself directing such acts to be done then and there. To excuse their lapse, PO2 Reas openly declared that "… *the area is critical*

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[13] *People v. Calates,* G.R. No. 214759, April 4, 2018.

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

and we have to leave the place immediately and we do not have time to make the inventory there."[15] Such declaration was hardly plausible, however, because outside of the officer's self-serving claim, the Prosecution adduced no evidence that would have substantiated the "critical" conditions then obtaining that had prevented compliance with the statutory safeguards.[16] The lawmen ought not to trifle so easily with such safeguards that were erected by our lawmakers precisely for the protection of the rights and freedoms of our citizens from unreasonable intrusions by our law enforcers.

As if compounding the lapses already noted, the absence of the elected public official and representative of the DOJ or the media specifically required to witness the physical inventory and photographing of the evidence seized, and that no photograph was taken to document the seizure of drugs were also undeniable. PO2 Reas justified the lack of the photographs by merely asserting that the station had not been issued any camera. In our view, such justification for the failure to take photographs was ridiculous because the statutory requirement like the photographing of the seized articles, being very crucial to the preservation of the chain of custody, was of substantive significance and should not be so slightingly or lightly regarded by every worthy anti-drug law enforcer. We take this view with grave concern for in this time of technological advances practically all cellular phones, which we presume the officers themselves were carrying, were already equipped with cameras. Anent the inventory, the document being represented for that purpose was not even signed by PO2 Reas, or by any of the witnesses specifically required to sign it under R.A. No. 9165.[17] There was even no showing that the marking of the seized items and the inventory had been accomplished in the presence of the accused-appellant or of his designated representative. Lastly,

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[15] TSN, May 12, 2008, p. 23.

[16] *People v. Mola*, G.R. No. 226481, April 18, 2018.

[17] TSN, May 12, 2008, pp. 23-24.

the arresting officers did not render explanation why they did not secure the presence of the witnesses required under the rules.[18]

The obligation imposed by Section 21 of R.A. No. 9165 to tender the credible explanation for any non-compliance with the affirmative safeguards firmly rested on the State and its agents, and on no other. The Court has stressed the importance of the Prosecution's obligation to justify their non-compliance with the safeguards in *People v. Lim*,[19] pronouncing therein that:

> The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 or R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.

Under the circumstances, the arresting officers must prove that they had exerted efforts to comply with the mandated procedure, and that their actions were reasonable under the obtaining circumstances.[20] If the State and its agents did not discharge such obligation, then the evidence of guilt necessarily becomes suspect.[21] Among the consequences of the non-

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[18] *Id.* at 25, 27-28.

[19] G.R. No. 231989, September 4, 2018; also, *People v. Sipin*,G.R. No. 224290, June 11, 2018.

[20] *People v. Angeles,* G.R. No. 218947, June 20, 2018.

[21] *Casona v. People,* G.R. No. 179757, September 13, 2017, 839 SCRA 448, 463.

discharge of the obligation is to deprive the apprehending officers of the presumption in their favor of the regularity in the performance of their official duties. They must then prove the regularity of their performance. Without such proof of regularity, the identification and authentication of the evidence of guilt are nearly impossible. In this case, therefore, the various lapses engendered the possibility of evidence substitution or tampering, and necessarily negated the reliability of the incrimination of the accused-appellant.

On the other hand, the accused-appellant's defense of not having been the original target of the buy-bust operation mounted by the police officers in the area because he had earlier encountered them that same evening without them accosting him for the crime he was ultimately charged with should be given sympathetic consideration. In fact, the defense was substantiated by the pre-operation report/coordinated sheet[22] that the arresting officers had accomplished and submitted. Therein, they detailed the summary information on their operation "TO CONDUCT NARCOTICS OPN. AGAINST VIOLATORS OF RA 9165 AKA IRENE OF BRGY. OLD BALARA G.C. AND OTHER TARGET PERSONALITIES," which was a self-explanatory reference to a different target. We should not also ignore that the accused-appellant's witness Diosa Soria recalled that after the arresting officers could not extract information from her on the whereabouts of alias Boboy, one of them had then produced a gun and said: *Arrest that man* [pointing to the accused-appellant], *this is the evidence against him*. These circumstances were strong corroboration of the version of the accused-appellant that they had apprehended him then because he had been the only person left in the area.

In fine, the Court acquits the accused-appellant for failure of the Prosecution to prove the elements of the crimes charged beyond reasonable doubt.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on December 18, 2013; **ACQUITS**

[22] Records, p. 10.

accused-appellant **EBO PLACIENTE *y* TEJERO** on the ground that his guilt was not established beyond reasonable doubt; and **ORDERS** his immediate release from confinement at the Bureau of Corrections, New Bilibid Prison, Muntinlupa City unless there are other lawful causes warranting his continuing confinement thereat.

The Court **DIRECTS** the Director of the Bureau of Corrections, New Bilibid Prison, Muntinlupa City to implement the immediate release of accused-appellant **EBO PLACIENTE *y* TEJERO**, and to report his compliance herewith within 10 days from receipt.

No pronouncement on costs of suit.

SO ORDERED.

Perlas-Bernabe, Gesmundo, Carandang, and *Inting,*[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 214315. August 14, 2019]

HEIRS OF BENIGNO SUMAGANG, represented by JESUS S. ABELLANOSA, MARINA BELLITA, RESURRECION CAVAN, ALEX MAPAIT and TEODORICO SUMAGANG, *petitioners, vs.* **AZNAR ENTERPRISES, INC., AZNAR BROTHERS REALTY COMPANY, STA. LUCIA REALTY AND DEVELOPMENT, INC., (Co-defendants and Cross-claim Defendants), HEIRS OF PERFECTA LABAYA, with Attorney-in-Fact in the person of FRANCIS R. PESTAÑO (Complainants), TERESITA DELA**

[*] Designated as Additional Member vice Justice Francis H. Jardeleza per Raffle dated August 7, 2019.

CALZADA-REYES,[*] *et al.* (1st Complainants-intervenors), and CELSO DEIPARINE[**] (2nd Complainants-intervenors), *respondents.*

SYLLABUS

1. CIVIL LAW; PRESIDENTIAL DECREE NO. 1529 (PROPERTY REGISTRATION DECREE); A CERTIFICATE OF TITLE CANNOT BE THE SUBJECT OF A COLLATERAL ATTACK; THE COURT RULED THAT A COUNTERCLAIM MAY BE CONSIDERED AS A COMPLAINT OR AN INDEPENDENT ACTION CAN BE CONSIDERED A DIRECT ATTACK ON THE TITLE; CASE AT BAR.— As a holder of a Torrens certificate of title, the law protects ABRC from a collateral attack on the same. Section 48 of Presidential Decree (P.D.) No. 1529, otherwise known as the Property Registration Decree, provides that a certificate of title cannot be the subject of a collateral attack. x x x The attack is considered direct when the object of an action is to annul or set aside such proceeding, or enjoin its enforcement. Conversely, an attack is indirect or collateral when, in an action to obtain a different relief, an attack on the proceeding is nevertheless made as an incident thereof. Although what is involved in the case at bar is a cross-claim, jurisprudence declaring that a counterclaim can be treated as a direct attack on the title is applicable considering that a cross-claim, like a counterclaim, may be considered a complaint. In a cross-claim, however, the other defendant becomes the plaintiff. In *Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago,* the Court declared that a counterclaim may be considered as a complaint or an independent action and can be considered a direct attack on the title, x x x In their cross-claim, the heirs of Sumagang averred that ABRC, through force and intimidation, was able to register the subject property in its name. They prayed that the certificate of title issued in ABRC's name be declared null and void. It is, thus, clear that the cross-claim was a direct attack on ABRC's certificate of title.

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[*] Also referred to as "Teresita de la Calzada-Reyes" in some parts of the *rollo.*

[**] Also referred to as "Celso Dieparine" in some parts of the *rollo.*

2. ID.; ID.; TITLE TO THE PROPERTY COVERED BY A TORRENS CERTIFICATE BECOMES INDEFEASIBLE AFTER THE EXPIRATION OF ONE YEAR FROM THE ENTRY OF THE DECREE OF REGISTRATION; CASE AT BAR.— Under Section 32 of P.D. No. 1529, title to the property covered by a Torrens certificate becomes indefeasible after the expiration of one year from the entry of the decree of registration. Such decree of registration is incontrovertible and becomes binding on all persons whether or not they were notified of, or participated in, the *in rem* registration process. x x x ABRC's certificate of title was issued on June 17, 1971, while the cross-claim was filed by the heirs of Sumagang only in 1998, which is clearly beyond the one-year prescriptive period.

3. ID.; ID.; PROPERTY; AN ACTION FOR RECONVEYANCE BASED ON IMPLIED OR CONSTRUCTIVE TRUST PRESCRIBES IN TEN (10) YEARS FROM THE ALLEGED FRAUDULENT REGISTRATION OR DATE OF ISSUANCE OF THE CERTIFICATE OF TITLE OVER THE PROPERTY; CASE AT BAR.— Further, even an action for reconveyance is already barred by prescription. In *Spouses Aboitiz v. Spouses Po,* the Court held that an action for reconveyance based on implied or constructive trust prescribes in 10 years from the alleged fraudulent registration or date of issuance of the certificate of title over the property, x x x To reiterate, ABRC's title was registered on June 17, 1971, but the heirs of Sumagang filed their cross-claim only in 1998. As early as 1963, they were aware that ABRC had applied for registration over some parcels of land in Barangay Pardo, Cebu City where the subject property is situated. They knew that Alta Vista Golf and Country Club was built on a tract of land which included the subject property. Yet, they asserted their right only in a cross-claim filed in 1998. Unfortunately, the heirs of Sumagang slept on their rights and allowed 27 years to lapse before attempting to assert their right. Hence, they must suffer the consequence of their inaction.

APPEARANCES OF COUNSEL

Maderazo Law Office for petitioners.

Sunita G. Doolani and *Kaven B. Tablada* for respondents Aznar Enterprises, Inc. and Aznar Brothers Realty Co.

Peter B. Cañamo for respondent Sta. Lucia.

Ismael S. Trinidad, Jr. for Teresita dela Calzada-Reyes, *et al.*

Zosa & Quijano Law Offices for respondents heirs of Celso Deiparine.

D E C I S I O N

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

Assailed in this Petition for Review on *Certiorari* are the June 22, 2011 Decision[1] and the July 30, 2014 Resolution[2] of the Court of Appeals-Cebu City (CA) in CA-G.R. CEB-CV No. 00381 which affirmed the March 8, 2004 Decision[3] of the Regional Trial Court, Cebu City, Branch 5 (RTC) in Civil Case No. CEB-21695.

The Antecedents

Respondent Aznar Brothers Realty Company (ABRC) is the owner of a parcel of land (subject property), situated in Barangay Pardo, Cebu City and covered by Original Certificate of Title (OCT) No. 251. The subject property forms part of a tract of land which had been developed by respondent Sta. Lucia Realty Development Corporation (Sta. Lucia Realty) into what is now known as the Alta Vista Golf and Country Club, Inc.[4]

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[1] Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Edgardo L. Delos Santos and Ramon Paul L. Hernando (now a Member of the Court), concurring; *rollo*, pp. 54-66.

[2] Penned by Associate Justice Edgardo L. Delos Santos, with Associate Justices Ramon Paul L. Hernando and Renato C. Francisco, concurring; *id*. at 50-53.

[3] The RTC Decision was not attached.

[4] *Id*. at 55.

On March 4, 1998, the heirs of Perfecta Labaya (heirs of Perfecta) instituted an action for recovery of ownership and possession of real property, annulment of title, reconveyance and damages with prayer for a writ of preliminary injunction against ABRC, Sta. Lucia Realty and the heirs of Benigno Sumagang (heirs of Sumagang). The heirs of Perfecta alleged that they were the forced and legal heirs of the late Gregorio Labaya (Gregorio) who died intestate in 1932. The deceased left certain properties including a parcel of land situated in Kadoldolan, Pardo, Cebu City which has a total area of 11 hectares, more or less, and declared in his name for taxation purposes. The said parcel of land is now a portion of the subject property. Gregorio, during his lifetime, and his successors-in-interest, had been in actual, open, continuous, adverse and peaceful possession, in the concept of an owner of the subject property until 1992 when Sta. Lucia Realty entered and developed the area into a golf course and constructed buildings thereon for and on behalf of ABRC. It was only then that they came to know that ABRC had caused the titling of the property in their name.[5]

Further, the heirs of Perfecta averred that the heirs of Sumagang were not tenants of the subject property, but they had filed a petition for operation land transfer with the Department of Agrarian Reform, which was eventually granted.[6]

While the case was pending with the RTC, Teresita dela Calzada-Reyes (Teresita), the first intervenor, filed a motion for leave to intervene in the case which was given due course by the RTC in its Order dated April 21, 1998. She claimed that she is also a legal heir of the late Gregorio as she is related to Perfecta, Gregorio's daughter. She further alleged that OCT No. 251 in the name of ABRC was fraudulently secured.[7]

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[5] *Id*.

[6] *Id*. at 56.

[7] *Id*.

On February 9, 1999, a second complaint-in-intervention was filed by Celso Deiparine (Celso), alleging that the late Gregorio conveyed the subject property to his legitimate daughter, Fortunata Labaya (Fortunata). Thereafter, Fortunata sold the land to a certain Dolores Gerolaga, who, in turn, sold the land to Celso.[8]

For their part, ABRC and Aznar Enterprises, Inc. asserted that OCT No. 251 was issued on June 17, 1971, but it was only on March 4, 1998 that the plaintiffs filed their complaint for recovery of ownership of the property. Thus, the plaintiffs' cause of action was already extinguished by prescription.[9]

On the other hand, the heirs of Sumagang countered that it was the late Benigno and his successors-in-interest who were in actual, open and peaceful possession of the subject property. In a cross-claim against ABRC, the heirs of Sumagang averred that it was only recently that they learned of the existence of OCT No. 251 issued in the name of ABRC. They assailed the inclusion of the subject property in the title claiming that neither the late Benigno nor his heirs sold the land to ABRC. They contended that sometime in July 1963, ABRC applied for registration over some parcels of land in the vicinity of the hilly portion of Barangay Pardo, Cebu City. Through violence, force and intimidation, ABRC was able to occupy all of the parcels of land in that location. After that, all the parcels of land in the area, including those owned by Benigno were covered by new lot numbers, Lot Nos. 1, 2, 3, 4, and 5, in a consolidation survey. It was Lot No. 4, which was issued a separate title (OCT No. 251) that appeared to be identical with the property of Benigno.[10]

The RTC Ruling

In a Decision dated March 8, 2004, the trial court declared ABRC as the lawful owner of the subject property. The *fallo* reads:

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[8] *Id*.

[9] *Id.* at 57.

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

WHEREFORE, judgment is hereby rendered against plaintiffs, the intervenors and the defendants and cross-claimants heirs of Benigno Sumagang and in favor of defendants Aznar Brothers Realty Company and Aznar Development Corporation, declaring them the lawful registered owners of Lot 4, as amended, plan Psu-192448, LR Case No. N-524, LRC Record No. N-25474, containing an area of 154,689 square meters, located at Pardo, Cebu City and upholding the validity of Original Certificate of Title No. 251 issued on June 17, 1971 in the name of defendants Aznar.

However, the counterclaims of defendants Aznar are denied for want of proof.

No pronouncement as to costs.

IT IS SO ORDERED.[11]

Aggrieved, the heirs of Perfecta, first intervenor Teresita, second intervenors heirs of Celso, and the heirs of Sumagang filed their separate notices of appeal.

The CA Ruling

The appeal of the heirs of Perfecta, as well as that of first intervenor Teresita, was dismissed for failure to file their appeal briefs within the required period.

In a Decision dated June 22, 2011, the CA denied the appeal of the heirs of Celso. It held that except for their claim of the alleged sale transaction involving the subject property, the second intervenors were unable to prove that OCT No. 251, issued by a registration court in favor of ABRC, was tainted with fraud or misrepresentation.

As regards the heirs of Sumagang, the CA ruled that they only assailed the validity of OCT No. 251 through a cross-claim against their co-defendant, ABRC. It opined that the cross-claim is a collateral attack on the validity of the title which is not allowed. The dispositive portion reads:

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[11] *Id.* at 58-59.

WHEREFORE, in view of the foregoing, the instant appeal is hereby DISMISSED.

SO ORDERED.[12]

The heirs of Sumagang and the heirs of Celso moved for reconsideration, but the same was denied by the CA on July 30, 2014. Hence, this Petition for Review on *Certiorari* filed by the heirs of Sumagang.

The Issue

The heirs of Sumagang raise the sole issue of whether the CA erred in sustaining the trial court's Decision declaring ABRC as the rightful owner and possessor of the subject property.

The heirs of Sumagang argue that their cross-claim is an affirmative relief and a direct attack on OCT No. 251. They further contend that OCT No. 251 should be declared null and void as the issuance thereof was attended by fraud.

The Court's Ruling

The Petition lacks merit.

I.

As a holder of a Torrens certificate of title, the law protects ABRC from a collateral attack on the same. Section 48 of Presidential Decree (P.D.) No. 1529, otherwise known as the Property Registration Decree, provides that a certificate of title cannot be the subject of a collateral attack. Thus:

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 canceled except in a direct proceeding in accordance with law.

The attack is considered direct when the object of an action is to annul or set aside such proceeding, or enjoin its enforcement. Conversely, an attack is indirect or collateral when, in an action

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

to obtain a different relief, an attack on the proceeding is nevertheless made as an incident thereof.[13]

Although what is involved in the case at bar is a cross-claim, jurisprudence declaring that a counterclaim can be treated as a direct attack on the title is applicable considering that a cross-claim, like a counterclaim, may be considered a complaint. In a cross-claim, however, the other defendant becomes the plaintiff.[14]

In *Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago,*[15] the Court declared that a counterclaim may be considered as a complaint or an independent action and can be considered a direct attack on the title, *viz.*:

> Section 48 of P.D. 1529, the Property Registration Decree, provides that a certificate of title shall not be subject to collateral attack and cannot be altered, modified, or canceled **except in a direct proceeding. An action is an attack on a title when the object of the action is to nullify the title, and thus challenge the judgment or proceeding pursuant to which the title was decreed. The attack is direct when the object of an action is to annul or set aside such judgment, or enjoin its enforcement.** On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment or proceeding is nevertheless made as an incident thereof.
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> **x x x A counterclaim can be considered a direct attack on the title.** In *Development Bank of the Philippines v. Court Appeals,* we ruled on the validity of a certificate of title despite the fact that the nullity thereof was raised only as a counterclaim. **It was held that a counterclaim is considered a complaint, only this time, it is the**

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[13] *Arangote v. Spouses Maglunob,* 599 Phil. 91, 111 (2009).

[14] RULES OF COURT, Rule 6, Section 8. *Cross-claim.* — A cross-claim is any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

[15] *Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago,* 452 Phil. 238 (2003).

original defendant who becomes the plaintiff. It stands on the same footing and is to be tested by the same rules as if it were an independent action.[16] x x x (Citation omitted; emphases supplied)

Likewise, in *Leyson v. Bontuyan:*[17]

While Section 47 of Act No. 496 provides that a certificate of title shall not be subject to collateral attack, the rule is that an action is an attack on a title if its object is to nullify the same, and thus challenge the proceeding pursuant to which the title was decreed. The attack is considered direct when the object of an action is to annul or set aside such proceeding, or enjoin its enforcement. On the other hand, an attack is indirect or collateral when, in an action to obtain a different relief, an attack on the proceeding is nevertheless made as an incident thereof. Such action to attack a certificate of title may be an original action or a counterclaim in which a certificate of title is assailed as void. A counterclaim is considered a new suit in which the defendant is the plaintiff and the plaintiff in the complaint becomes the defendant. It stands on the same footing and is to be tested by the same rules as if it were an independent action. Furthermore, since all the essential facts of the case for the determination of the title's validity are now before the Court, to require the party to institute cancellation proceedings would be pointlessly circuitous and against the best interest of justice.

In their cross-claim, the heirs of Sumagang averred that ABRC, through force and intimidation, was able to register the subject property in its name. They prayed that the certificate of title issued in ABRC's name be declared null and void. It is, thus, clear that the cross-claim was a direct attack on ABRC's certificate of title.

II.

Under Section 32 of P.D. No. 1529, title to the property covered by a Torrens certificate becomes indefeasible after the expiration of one year from the entry of the decree of registration. Such decree of registration is incontrovertible and

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[16] *Id.* at 252-253.

[17] *Leyson v. Bontuyan,* 492 Phil. 238, 257 (2005).

becomes binding on all persons whether or not they were notified of, or participated in, the *in rem* registration process.

SEC. 32. *Review of decree of registration; Innocent purchaser for value.* The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.

Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other persons responsible for the fraud.

ABRC's certificate of title was issued on June 17, 1971, while the cross-claim was filed by the heirs of Sumagang only in 1998, which is clearly beyond the one-year prescriptive period.

III.

Further, even an action for reconveyance is already barred by prescription. In *Spouses Aboitiz v. Spouses Po*,[18] the Court held that an action for reconveyance based on implied or constructive trust prescribes in 10 years from the alleged fraudulent registration or date of issuance of the certificate of title over the property, *viz.*:

"[A]n action for reconveyance [x x x] prescribes in [10] years from the issuance of the Torrens title over the property." The

[18] *Spouses Aboitiz v. Spouses Po*, 810 Phil. 123 (2017).

basis for this is Section 53, Paragraph 3 of Presidential Decree No. 1529 in relation to Articles 1456 and 1144(2) of the Civil Code.

Under Presidential Decree No. 1529 (Property Registration Decree), the owner of a property may avail of legal remedies against a registration procured by fraud:

> SECTION 53. *Presentation of Owner's Duplicate Upon Entry of New Certificate.* — [x x x]
>
> In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder for value of a certificate of title[. x x x]

Article 1456 of the Civil Code provides that a person acquiring a property through fraud becomes an implied trustee of the property's true and lawful owner.

An implied trust is based on equity and is either (i) a constructive trust, or (ii) a resulting trust. A resulting trust is created by implication of law and is presumed as intended by the parties. A constructive trust is created by force of law such as when a title is registered in favor of a person other than the true owner.

The implied trustee only acquires the right "to the beneficial enjoyment of [the] property." The legal title remains with the true owner. In *Crisostomo v. Garcia, Jr.:*

> Art. 1456 of the Civil Code provides:
>
> Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.
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> Thus, it was held that when a party uses fraud or concealment to obtain a certificate of title of property, a constructive trust is created in favor of the defrauded party.
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> Constructive trusts are "created by the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment. They arise contrary to intention against one who, by fraud, duress or abuse of confidence, obtains or holds the

legal right to property which he ought not, in equity and good conscience, to hold."

When property is registered in another's name, an implied or constructive trust is created by law in favor of the true owner. The action for reconveyance of the title to the rightful owner prescribes in 10 years from the issuance of the title.

Thus, the law creates a trust in favor of the property's true owner.

The prescriptive period to enforce this trust is 10 years from the time the right of action accrues. Article 1144 of the Civil Code provides:

Article 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.

In an action for reconveyance, the right of action accrues from the time the property is registered.

In *Crisostomo*, the petitioners were able to transfer the property under their names without knowledge of the respondent. The respondent filed an action for reconveyance. In arguing that the action for reconveyance had prescribed, the petitioners claimed that the cause of action of the respondent should be based on the latter's Deed of Sale and thus the respondent's right of action should have accrued from its execution. This Court, however, ruled that the right of action accrued from the time the property was registered because registration is the act that signifies that the adverse party repudiates the implied trust:

In the case at bar, respondent's action which is for Reconveyance and Cancellation of Title is based on an implied trust under Art. 1456 of the Civil Code since he averred in his complaint that through fraud petitioners were able to obtain a Certificate of Title over the property. He does not seek the annulment of a voidable contract whereby Articles 1390 and 1391 of the Civil Code would find application such that the cause of action would prescribe in four years.

[x x x x x x x x x]

> An action for reconveyance based on implied or constructive trust prescribes in ten years from the alleged fraudulent registration or date of issuance of the certificate of title over the property.
>
> It is now well-settled that the prescriptive period to recover property obtained by fraud or mistake, giving rise to an implied trust under Art. 1456 of the Civil Code, is 10 years pursuant to Art. 1144. **This ten-year prescriptive period begins to run from the date the adverse party repudiates the implied trust, which repudiation takes place when the adverse party registers the land.**
>
> Likewise, in *Duque v. Domingo:*
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> The registration of an instrument in the Office of the Register of Deeds constitutes constructive notice to the whole world, and, therefore, discovery of the fraud is deemed to have taken place at the time of registration. Such registration is deemed to be a constructive notice that the alleged fiduciary or trust relationship has been repudiated. It is now settled that an action on an implied or constructive trust prescribes in ten (10) years from the date the right of action accrued. The issuance of Transfer Certificate of Title No. 7501 in 1931 to Mariano Duque commenced the effective assertion of adverse title for the purpose of the statute of limitations. x x x

Registration of the property is a "constructive notice to the whole world." Thus, in registering the property, the adverse party repudiates the implied trust. Necessarily, the cause of action accrues upon registration.

An action for reconveyance and annulment of title does not seek to question the contract which allowed the adverse party to obtain the title to the property. What is put on issue in an action for reconveyance and cancellation of title is the ownership of the property and its registration. It does not question any fraudulent contract. Should that be the case, the applicable provisions are Articles 1390 and 1391 of the Civil Code.

Thus, an action for reconveyance and cancellation of title prescribes in 10 years from the time of the issuance of the Torrens title over the property.[19] (Citations omitted; emphases supplied)

To reiterate, ABRC's title was registered on June 17, 1971, but the heirs of Sumagang filed their cross-claim only in 1998. As early as 1963, they were aware that ABRC had applied for registration over some parcels of land in Barangay Pardo, Cebu City where the subject property is situated. They knew that Alta Vista Golf and Country Club was built on a tract of land which included the subject property. Yet, they asserted their right only in a cross-claim filed in 1998. Unfortunately, the heirs of Sumagang slept on their rights and allowed 27 years to lapse before attempting to assert their right. Hence, they must suffer the consequence of their inaction.

WHEREFORE, premises considered, the instant Petition is **DENIED** for lack of merit. The assailed Decision dated June 22, 2011 and the Resolution dated July 30, 2014 of the Court of Appeals-Cebu City in CA-G.R. CEB-CV No. 00381 are **AFFIRMED.**

SO ORDERED.

Caguioa (Acting Chairperson),[***] *Lazaro-Javier,* and *Zalameda, JJ.,* concur.

Carpio, S.A.J. (Chairperson), on official leave.

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[19] *Id.* at 142-147.

[***] Per Special Order No. 2688 dated July 30, 2019.

SPECIAL FIRST DIVISION

[G.R. No. 217031. August 14, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WENDALINO ANDES *y* CAS *a.k.a.* WINDALINO ANDES *y* CAS,** *accused-appellant.*

SYLLABUS

CRIMINAL LAW; REVISED PENAL CODE; EXTINCTION OF CRIMINAL LIABILITY; UPON ACCUSED-APPELLANT'S DEATH PENDING APPEAL OF HIS CONVICTION, THE CRIMINAL ACTION IS EXTINGUISHED INASMUCH AS THERE IS NO LONGER A DEFENDANT TO STAND AS THE ACCUSED. THE CIVIL ACTION INSTITUTED THEREIN FOR THE RECOVERY OF THE CIVIL LIABILITY *EX DELICTO* IS *IPSO FACTO* EXTINGUISHED, GROUNDED AS IT IS ON THE CRIMINAL ACTION.— Under prevailing law and jurisprudence, accused-appellant's death prior to his final conviction by the Court renders dismissible the criminal cases 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 therefore is extinguished only when the death of the offender occurs before final judgment[.] x x x. Thus, upon accused-appellant's death pending appeal of his conviction, the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused; the civil action instituted therein for the recovery of the civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal action. However, it is well to clarify that accused-appellant's civil liability in connection with his acts against the victim, AAA, may be based on sources other than delicts; in which case, AAA may file a separate civil action against the estate of accused-appellant, as may be warranted by law and procedural rules.

APPEARANCES OF COUNSEL

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 November 10, 2015, the Court adopted the Decision[2] dated September 9, 2014 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06046 finding accused-appellant Wendalino Andes *y* Cas a.k.a. Windalino Andes *y* Cas (accused-appellant) guilty beyond reasonable doubt of the crime of Qualified Rape, the pertinent portion of which reads:

WHEREFORE, the Court **ADOPTS** the findings of fact and conclusions of law in the September 9, 2014 Decision of the CA in CA-G.R. CR-HC No. 06046 and **AFFIRMS** with **MODIFICATION** said Decision finding accused-appellant Wendalino Andes *y* Cas a.k.a. Windalino Andes y Cas **GUILTY** beyond reasonable doubt of three (3) counts of Qualified Rape. Accordingly, he is sentenced to suffer the penalty of *reclusion perpetua* for each count, without eligibility for parole, and ordered to pay AAA[3] the following amounts for each

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[1] *Rollo*, pp. 31-33.

[2] *Id*. at 2-12. Penned by Associate Justice Stephen C. Cruz with Associate Justices Magdangal M. De Leon and Carmelita Salandanan Manahan concurring.

[3] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to RA 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342

count: (*a*) ₱100,000.00 as civil indemnity; (*b*) ₱100,000.00 as moral damages; (*c*) ₱100,000.00 as exemplary damages; and (*d*) the costs of suit, without subsidiary imprisonment in case of insolvency. In addition, all monetary awards shall earn legal interest at the rate of six percent (6%) per annum from the date of finality of this Resolution until full payment.[4]

Accused-appellant moved for consideration,[5] which was denied with finality in a Resolution[6] dated June 20, 2016. However, before an Entry of Judgment could be issued in this case, the Court received a Letter[7] dated December 13, 2016 from the Bureau of Corrections informing the Court of accused-appellant's death on March 17, 2016, as evidenced by the Certificate of Death[8] attached thereto.

As will be explained hereunder, there is a need to reconsider and set aside the Resolutions dated November 10, 2015 and June 20, 2016 and enter a new one dismissing the criminal case against accused-appellant.

Under prevailing law and jurisprudence, accused-appellant's death prior to his final conviction by the Court renders dismissible the criminal cases 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:

[2013]. See also Amended Administrative Circular No. 83-2015, entitled "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017.) See further *People v. Ejercito*, G.R. No. 229861, July 2, 2018. To note, the unmodified CA Decision was not attached to the records to verify the real name of the victim.

[4] *Rollo*, p. 32.

[5] See Motion for Reconsideration dated March 30, 2016; *id*. at 34-39.

[6] *Id*. at 41.

[7] *Id*. at 42. Signed by Superintendent, New Bilibid Prison, P/Supt. I Roberto R. Rabo.

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

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 therefore is extinguished only when the death of the offender occurs before final judgment[.]

In *People v. Culas*,[9] the Court thoroughly explained the effects of the death of an accused pending appeal on his liabilities, as follows:

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.

4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases

[9] 810 Phil. 205 (2017).

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.[10]

Thus, upon accused-appellant's death pending appeal of his conviction, the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused; the civil action instituted therein for the recovery of the civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal action. However, it is well to clarify that accused-appellant's civil liability in connection with his acts against the victim, AAA, may be based on sources other than delicts; in which case, AAA may file a separate civil action against the estate of accused-appellant, as may be warranted by law and procedural rules.[11]

WHEREFORE, the Court resolves to: (*a*) **SET ASIDE** the Court's Resolutions dated November 10, 2015 and June 20, 2016 in connection with this case;· (*b*) **DISMISS** Criminal Case Nos. FC-00-958, FC-00-959, and FC-00-960 before the Regional Trial Court ofLegazpi City, Albay, Branch 9 by reason of the death of accused-appellant Wendalino Andes *y* Cas *a.k.a.* Windalino Andes *y* Cas; and (*c*) **DECLARE** the instant case **CLOSED** and **TERMINATED**. No costs.

SO ORDERED.

Bersamin, C.J. (Chairperson), Hernando, Carandang, and *Lazaro-Javier, JJ.,* concur.

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[10] *Id*. at 208-209, citing *People v. Layag*, 797 Phil. 386, 390-391 (2016).

[11] *Id*. at 209; citations omitted.

SECOND DIVISION

[G.R. No. 217365. August 14, 2019]

HEIRS OF SATRAMDAS V. SADHWANI and KISHNIBAI S. SADHWANI, represented by RAMCHAND S. SADHWANI and RAJAN S. SADHWANI, *petitioners, vs.* **GOP S. SADHWANI and KANTA G. SADHWANI, UNION BANK OF THE PHILIPPINES, PHILIPPINE SAVINGS BANK, and REGISTER OF DEEDS OF MAKATI,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RULE 41, SECTION 1 EXPRESSLY STATES THAT NO APPEAL MAY BE TAKEN FROM AN ORDER DISMISSING AN ACTION WITHOUT PREJUDICE; DISMISSAL WITH PREJUDICE DISTINGUISHED FROM DISMISSAL WITHOUT PREJUDICE.— Rule 41, Section 1 expressly states that no appeal may be taken from an order dismissing an action without prejudice. In such cases, the remedy available to the aggrieved party is to file an appropriate special civil action under Rule 65 of the Rules of Court. In *Strongworld Construction Corp. v. Perello,* the Court explained: [W]ith the advent of the 1997 Revised Rules of Civil Procedure, an order of dismissal without prejudice is no longer appealable, as expressly provided by Section 1(h), Rule 41 thereof. x x x Verily, Section 1, Rule 41 of the 1997 Revised Rules of Civil Procedure recites the instances when appeal may not be taken, specifically, in case of an order dismissing an action *without* prejudice, in which case, the remedy available to the aggrieved party is Rule 65. x x x We distinguish a dismissal *with* prejudice from a dismissal *without* prejudice. The former disallows and bars the refiling of the complaint; whereas, the same cannot be said of a dismissal without prejudice. Likewise, where the law permits, a dismissal with prejudice is subject to the right of appeal.

2. ID.; ID.; GROUNDS FOR DISMISSAL WHICH BAR THE REFILING OF THE SAME ACTION OR CLAIM, ENUMERATED; NOT PRESENT IN CASE AT BAR.—

Briefly stated, dismissals that are based on the following grounds, to wit: (1) that the cause of action is barred by a prior judgment or by the statute of limitations; (2) that the claim or demand set forth in the plaintiffs pleading has been paid, waived, abandoned or otherwise extinguished; and (3) that the claim on which the action is founded is unenforceable under the provisions of the statute of frauds, bar the refiling of the same action or claim. Logically, the nature of the dismissal founded on any of the preceding grounds is "with prejudice" because the dismissal prevents the refiling of the same action or claim. Ergo, dismissals based on the rest of the grounds enumerated are without prejudice because they do not preclude the refiling of the same action. x x x A perusal of the Assailed Resolution unequivocally shows that the action was dismissed without prejudice. Although respondents claimed in their motions to dismiss that the action had prescribed and was unenforceable under Rule 16, Sections 1(f) and l(i) respectively, the RTC's dismissal was premised on the finding that petitioners were suing as heirs of the Sps. Sadhwani who, being Indian nationals, were prohibited from owning the subject properties and therefore could not transmit rights over the same through succession. In other words, the dismissal was based on Rule 16, Section 1(g), *i.e.*, that the Complaint states no cause of action. As the dismissal was without prejudice (not having been premised on Sections 1(f), (h) or (i) of Rule 16), the remedy of appeal was not available. Instead, petitioners should have simply refiled the complaint.

3. ID.; ID.; FAILURE TO STATE A CAUSE OF ACTION DISTINGUISHED FROM LACK OF CAUSE OF ACTION; WHEN NO STIPULATIONS, ADMISSIONS OR EVIDENCE HAVE YET BEEN PRESENTED, AS IN CASE AT BAR, LACK OF CAUSE OF ACTION COULD NOT HAVE BEEN THE BASIS FOR DISMISSAL.— Notably, the RTC also grounded the dismissal on petitioners' alleged lack of cause of action. In *Westmont Bank v. Funai Phils., Corp.*, the Court distinguished failure to state a cause of action and lack of cause of action in this wise: "Failure to state a cause of action and lack of cause of action are distinct grounds to dismiss a particular action. The former refers to the insufficiency of the allegations in the pleading, while the latter to the insufficiency of the factual basis for the action. Dismissal for failure to state a cause of action may be raised at the earliest stages of the

proceedings through a motion to dismiss under Rule 16 of the Rules of Court, while dismissal for lack of cause of action may be raised any time after the questions of fact have been resolved on the basis of stipulations, admissions or evidence presented by the plaintiff." x x x As applied to the instant case, lack of cause of action could not have been the basis for the dismissal of the instant action considering that no stipulations, admissions or evidence have yet been presented. The RTC's inaccurate pronouncement, however, should have been challenged through a Rule 65 petition for *certiorari* and not through an appeal, as expressly provided in Rule 41, Section 1. Moreover, the challenge should have been brought to the Court of Appeals instead of filing the same directly with the Court, in accordance with the rule on hierarchy of courts. In view of the foregoing, the instant Petition must be dismissed as petitioners availed themselves of the wrong remedy and violated the hierarchy of courts.

4. **ID.; CIVIL PROCEDURE; CAUSE OF ACTION; CAUSE OF ACTION IS DEFINED AS AN ACT OR OMISSION BY WHICH A PARTY VIOLATES A RIGHT OF ANOTHER; ELEMENTS.—** In *Philippine National Bank v. Spouses Rivera*, the Court explained: Section 2, Rule 2 of the Revised Rules of Civil Procedure defines a cause of action as the act or omission by which a party violates a right of another. Its elements are as follows: 1) A right in favor of the plaintiff by whatever means and under whatever law it arises or is created; 2) An obligation on the part of the named defendant to respect or not to violate such right; and 3) Act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief. x x x If the allegations of the complaint do not state the concurrence of the above elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action which is the proper remedy under Section 1 (g) of Rule 16 of the Revised Rules of Civil Procedure.

5. **ID.; ID.; ID.; THE ELEMENTARY TEST FOR FAILURE TO STATE A CAUSE OF ACTION IS WHETHER THE COMPLAINT ALLEGES FACTS WHICH IF TRUE WOULD JUSTIFY THE RELIEF DEMANDED; CASE AT BAR.—** The case of *Hongkong and Shanghai Banking*

Corporation Limited v. Catalan laid down the test to determine the sufficiency of the facts alleged in the complaint, to wit: The elementary test for failure to state a cause of action is whether the complaint alleges facts which if true would justify the relief demanded. Stated otherwise, may the court render a valid judgment upon the facts alleged therein? The inquiry is into the sufficiency, not the veracity of the material allegations. If the allegations in the complaint furnish sufficient basis on which it can be maintained, it should not be dismissed regardless of the defense that may be presented by the defendants. By filing a Motion to Dismiss, a defendant hypothetically admits the truth of the material allegations of the ultimate facts contained in the plaintiffs complaint. When a motion to dismiss is grounded on the failure to state a cause of action, a ruling thereon should, as a rule, be based only on the facts alleged in the complaint. Based on the foregoing, the Court agrees with the RTC that petitioners failed to state a cause of action because they premised their claim of ownership over the subject properties as *heirs* of the Sps. Sadhwani who were unquestionably Indian nationals.

6. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; ALIENS ARE ABSOLUTELY PROHIBITED FROM ACQUIRING PUBLIC OR PRIVATE LANDS IN THE PHILIPPINES, SAVE ONLY IN CONSTITUTIONALLY RECOGNIZED EXCEPTIONS; CASE AT BAR.— In *Matthews v. Taylor* (*Matthews*) the Court exhaustively explained the constitutional prohibition against foreign ownership of public and private lands, *viz*.: Section 7, Article XII of the 1987 Constitution x x x In sum, aliens are absolutely prohibited from acquiring public or private lands in the Philippines, save only in constitutionally recognized exceptions In *Ang v. So*., the Court further stated that "[t]he prohibition against aliens owning lands in the Philippines is subject only to limited constitutional exceptions, and not even an implied trust can be permitted on equity considerations." After a judicious examination of the allegations in the complaint, the Court finds that petitioners failed to sufficiently allege the basis for their purported right over the subject properties. Since the Sps. Sadhwani were prohibited from owning land in the instant case, they were likewise prohibited from transmitting any right over the same through succession. x x x As the Sps. Sadhwani were Indian nationals, the laws of succession under

the Civil Code do not apply. Therefore, the complaint should have alleged, at the very least, that petitioners were legal heirs of their parents and were entitled to inherit the Ritz Condominium Unit under the laws of the Republic of India. In view of the foregoing provision, the Court holds that petitioner cannot sidestep their burden of sufficiently pleading and eventually proving a cause of action under foreign law even when claiming under Philippine law may be more favorable or expedient. As they failed to sufficiently allege the basis for their right under the national law of their parents, petitioners failed to state a cause of action over the condominium unit. x x x Even assuming that the facts alleged in the complaint (and amended complaint) were true, petitioners would not be entitled to the reliefs demanded because: 1) petitioners premised their right over the subject properties as heirs of aliens who may not own land or transmit rights over the same by succession, and 2) petitioners failed to allege that they were in fact heirs of the Sps. Sadhwani under the laws of the Republic of India. In other words, the allegations of the complaint failed to sufficiently state the concurrence of the three elements for a cause of action, particularly, the legal right to the relief demanded. In view of the foregoing, the complaint must be dismissed for failure to state a cause of action. In any event, the dismissal of the complaint for failure to state a cause of action under Rule 16, Section 1(g) is a dismissal without prejudice. Hence, petitioners are not barred from refiling the same. Having passed upon the propriety of the dismissal, the Court finds no more reason to rule upon the other issues raised in the Petition.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon and San Jose for petitioners.

Villanueva Gabionza & Dy for respondents Gop and Kanta Sadhwani.

Office of the General Counsel for respondent Unionbank.

Manuel Rivera Levosada Sison and Associates for respondent PSBANK.

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 January 6, 2015[2] (Assailed Resolution) and March 18, 2015[3] Resolutions of the Regional Trial Court (RTC) of Makati City, Branch 59, which granted respondents' motions to dismiss on the grounds of lack of legal capacity to sue, failure to plead a cause of action, and lack of cause of action.[4]

The Facts and Antecedent Proceedings

The instant dispute involves conflicting claims of ownership over: 1) a parcel of land located at 58 Aries St., Bel Air, Makati (Bel Air Property), and 2) condominium unit 602-A at the Ritz Tower, Ayala Avenue, Makati City (Ritz Condominium Unit) (together, subject properties).[5] The subject properties were allegedly purchased by the Spouses Satramdas and Kishnibai Sadhwani[6] (Sps. Sadhwani) and the titles thereof were allegedly placed in the name of their son, herein respondent Gop S. Sadhwani (respondent Gop), in trust for his parents and siblings.[7]

On November 13, 2013, the other legitimate children of the Sps. Sadhwani (petitioners) filed a *Complaint for Reconveyance, Partition, Accounting, Declaration of Nullity of Documents, Injunction and Damages with Prayer for Issuance of Writ of Preliminary Injunction & Temporary Restraining Order*[8]

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[*] Designated Acting Chairperson per Special Order No. 2688 dated July 30, 2019.

[1] *Rollo*, pp. 8-43.

[2] *Id.* at 44-53. Penned by Judge Winlove M. Dumayas.

[3] *Id.* at 54-55.

[4] *Id.* at 53.

[5] *Id.* at 130.

[6] *Id.*

[7] *Id.* at 131.

[8] *Id.* at 128-143.

(Complaint) against their brother Gop, his wife Kanta (respondent Kanta), Union Bank of the Philippines (respondent Union Bank), Philippine Savings Bank (respondent PSB), and the Register of Deeds of Makati City, praying that they likewise be declared lawful owners of the subject properties as heirs and legitimate children of the Sps. Sadhwani,[9] in accordance with a purported express trust[10] agreement and the provisions of the Civil Code on succession.[11] Respondents Union Bank and PSB were impleaded because respondent Gop purportedly obtained various loans secured by real estate mortgages over the subject property.[12]

On November 27, 2013, respondents Gop and Kanta, filed a motion to dismiss,[13] alleging, among others, that: 1) the action had prescribed and was unenforceable;[14] 2) that petitioners had no capacity to sue;[15] and that 3) the complaint failed to state a cause of action.[16] Respondent Union Bank likewise filed a motion to dismiss while respondent PSB filed an answer.[17]

On March 11, 2014, petitioners filed an amended complaint in view of the sale of the Bel Air Property to Sefuel Siy Yap.[18]

In the Assailed Resolution, the RTC granted respondents' motions to dismiss on the grounds of lack of legal capacity to sue, failure to state a cause of action, and lack of cause of action.[19]

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

[10] *Id*. at 136.

[11] *Id*. at 141.

[12] *Id*. at 136.

[13] *Id.* at 148-175.

[14] *Id.* at 148-153.

[15] *Id*. at 153.

[16] *Id.* at 161-162.

[17] *Id.* at 19.

[18] *Id*.

[19] *Id.* at 53.

The RTC held, among others, that based on the death certificates attached to the Complaint, the Sps. Sadhwani were Indian nationals.[20] Hence, the Sps. Sadhwani were prohibited under Article XII, Section 7[21] of the 1987 Constitution from owning the subject properties or transmitting any rights over the same to their children upon their deaths.[22] A perusal of the Assailed Resolution suggests that the Complaint was dismissed for failure to state a cause of action as petitioners premised their action for reconveyance on their purported rights as heirs of their parents.[23]

Petitioners filed a motion for reconsideration, which was denied by the RTC in its March 18, 2015 Order.[24]

Petitioners thus filed the instant Petition[25] under Rule 45 of the Rules of Court (Rules), alleging, among others, that the RTC erred in holding: 1) that petitioners failed to plead a cause of action;[26] 2) that petitioners had no personality to sue;[27] and 3) that petitioners lacked a cause of action.[28] Contrary to the findings of the RTC, petitioners now claim that they are asserting rights as beneficiaries of the *resulting trust* to the proceeds from the sale of the subject properties.[29]

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[20] *Id.* at 46.

[21] *Id*. at 46-47, citing CONSTITUTION, Art. XII, Sec. 7, which states "Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain."

[22] *Id.* at 46.

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

[24] *Id.* at 55.

[25] *Id.* at 8-43.

[26] *Id.* at 25.

[27] *Id.* at 36.

[28] *Id.* at 37.

[29] *Id.* at 32.

In their Comment,[30] respondents Gop and Kanta argue that: 1) the Petition should be dismissed for being the wrong mode of appeal considering that questions of fact were raised;[31] 2) the Complaint failed to state a cause of action;[32] 3) petitioners have no personality to sue; 4) petitioners cannot deviate from their theory of the case in the Complaint; and 5) Republic Act No. (RA) 4726 prohibits aliens from owning condominium units.[33]

Respondent Union Bank likewise claims[34] that: 1) the Petition failed to conform to the requirements of Rule 45 for it was not based on questions of law;[35] 2) in resolving a *Motion to Dismiss* based on failure to state a cause of action, the RTC may consider the documents attached to the complaint;[36] 3) petitioners have no personality to sue;[37] 4) the implied trust was a circumvention of the constitutional prohibition on acquisition by foreigners of private land;[38] and 5) it should be dropped as a respondent as the real estate mortgage constituted in its favor has been extinguished.[39]

Respondent PSB similarly argues[40] that petitioners have no personality and legal capacity to sue.[41] As the Sps. Sadhwani were forbidden to own the subject properties, petitioners may not invoke any interest over the same as heirs of said spouses.[42]

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[30] *Id.* at 560-593.

[31] *Id.* at 561-566.

[32] *Id.* at 566-575.

[33] *Id.* at 575-584.

[34] *Id.* at 639-654.

[35] *Id.* at 640-643.

[36] *Id.* at 643-644.

[37] *Id*. at 645.

[38] *Id*. at 646.

[39] *Id.* at 647.

[40] *Id.* at 655-662.

[41] *Id*. at 655.

[42] *Id*. at 658.

Issue

The issues pending before the Court may be summarized as follows: 1) whether petitioners availed of the correct remedy to challenge the dismissal of the Complaint; and 2) whether the Complaint was correctly dismissed.

The Court's Ruling

The Petition lacks merit.

Petitioners availed of the wrong remedy and disregarded the hierarchy of courts

Rule 41, Section 1 expressly states that no appeal may be taken from an order dismissing an action without prejudice.[43] In such cases, the remedy available to the aggrieved party is to file an appropriate special civil action under Rule 65 of the Rules of Court.[44] In *Strongworld Construction Corp. v. Perello*,[45] the Court explained:

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[43] 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.

No appeal may be taken from:
(a) An order denying a motion for new trial or reconsideration;
(b) An order denying a petition for relief or any similar motion seeking relief from judgment;
(c) An interlocutory order;
(d) An order disallowing or dismissing an appeal;
(e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
(f) An order of execution;
(g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and;
(h) An order dismissing an action without prejudice.

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65. (Underscoring supplied)

[44] *Id*.

[45] 528 Phil. 1080 (2006).

[W]ith the advent of the 1997 Revised Rules of Civil Procedure, an order of dismissal without prejudice is no longer appealable, as expressly provided by Section 1(h), Rule 41 thereof. In *Philippine Export and Foreign Loan Guarantee Corporation v. Philippine Infrastructures, Inc.*, this Court had the opportunity to resolve whether an order dismissing a petition without prejudice should be appealed by way of ordinary appeal, petition for review on *certiorari* or a petition for *certiorari*. The Court said that, indeed, prior to the 1997 Revised Rules of Civil Procedure, an order dismissing an action may be appealed by ordinary appeal. Verily, Section 1, Rule 41 of the 1997 Revised Rules of Civil Procedure recites the instances when appeal may not be taken, specifically, in case of an order dismissing an action *without* prejudice, in which case, the remedy available to the aggrieved party is Rule 65.

x x x x x x x x x

We distinguish a dismissal *with* prejudice from a dismissal *without* prejudice. The former disallows and bars the refiling of the complaint; whereas, the same cannot be said of a dismissal without prejudice. Likewise, where the law permits, a dismissal with prejudice is subject to the right of appeal.

x x x x x x x x x

Section 1, Rule 16 of the 1997 Revised Rules of Civil Procedure enumerates the grounds for which a Motion to Dismiss may be filed, *viz.*:

> 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:
>
> (a) That the court has no jurisdiction over the person of the defending party;
> (b) That the court has no jurisdiction over the subject matter of the claim;
> (c) That venue is improperly laid;
> (d) That the plaintiff has no legal capacity to sue;
> (e) That there is another action pending between the same parties for the same cause;
> (f) That the cause of action is barred by a prior judgment or by the statute of limitations;
> (g) That the pleading asserting the claim states no cause of action;

(h) That the claim or demand set forth in the plaintiffs pleading has been paid, waived, abandoned, or otherwise extinguished;
(i) That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds; and
(j) That a condition precedent for filing the claim has not been complied with.

Section 5 of the same Rule, recites the effect of a dismissal under Sections 1(f), (h), and (i), thereof, thus:

> SEC. 5. *Effect of dismissal*. — Subject to the right of appeal, an order granting a motion to dismiss based on paragraphs (f), (h), and (i) of section 1 hereof shall bar the refiling of the same action or claim.

Briefly stated, dismissals that are based on the following grounds, to wit: (1) that the cause of action is barred by a prior judgment or by the statute of limitations; (2) that the claim or demand set forth in the plaintiffs pleading has been paid, waived, abandoned or otherwise extinguished; and (3) that the claim on which the action is founded is unenforceable under the provisions of the statute of frauds, bar the refiling of the same action or claim. Logically, the nature of the dismissal founded on any of the preceding grounds is "with prejudice" because the dismissal prevents the refiling of the same action or claim. Ergo, dismissals based on the rest of the grounds enumerated are without prejudice because they do not preclude the refiling of the same action.

Verily, the dismissal of petitioners' Complaint by the court *a quo* was not based on any of the grounds specified in Section 5, Rule 16 of the 1997 Revised Rules of Civil Procedure; rather, it was grounded on what was encapsulated in Section 1(g), Rule 16 of the 1997 Revised Rules of Civil Procedure. As the trial court ratiocinated in its 9 January 1998 Order, the Complaint is not prosecuted by the proper party in interest. Considering the heretofore discussion, we can say that the order of dismissal was based on the ground that the Complaint states no cause of action. For this reason, the dismissal of petitioners' Complaint cannot be said to be a dismissal with prejudice which bars the refiling of the same action.[46] (Underscoring supplied)

[46] *Id.* at 1093-1097.

A perusal of the Assailed Resolution unequivocally shows that the action was dismissed without prejudice. Although respondents claimed in their motions to dismiss that the action had prescribed and was unenforceable[47] under Rule 16, Sections 1(f) and l(i) respectively, the RTC's dismissal was premised on the finding that petitioners were suing as heirs of the Sps. Sadhwani who, being Indian nationals, were prohibited from owning the subject properties and therefore could not transmit rights over the same through succession.[48] In other words, the dismissal was based on Rule 16, Section 1(g), *i.e.*, that the Complaint states no cause of action.

As the dismissal was without prejudice (not having been premised on Sections 1(f), (h) or (i) of Rule 16), the remedy of appeal was not available. Instead, petitioners should have simply refiled the complaint.

Notably, the RTC also grounded the dismissal on petitioners' alleged lack of cause of action.[49] In *Westmont Bank v. Funai Phils., Corp.*,[50] the Court distinguished failure to state a cause of action and lack of cause of action in this wise:

> "Failure to state a cause of action and lack of cause of action are distinct grounds to dismiss a particular action. The former refers to the insufficiency of the allegations in the pleading, while the latter to the insufficiency of the factual basis for the action. Dismissal for failure to state a cause of action may be raised at the earliest stages of the proceedings through a motion to dismiss under Rule 16 of the Rules of Court, while dismissal for lack of cause of action may be raised any time after the questions of fact have been resolved on the basis of stipulations, admissions or evidence presented by the plaintiff."

Considering that, in this case, no stipulations, admissions, or evidence have yet been presented, it is perceptibly impossible to assess the insufficiency of the factual basis on which Sheriff Cachero asserts

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[47] *Rollo*, pp. 148-183.

[48] *Id.* at 46-47.

[49] *Id.* at 53.

[50] 763 Phil. 245 (2015).

his cause of action. Hence, the ground of lack of cause of action could not have been the basis for the dismissal of this action.[51]

As applied to the instant case, lack of cause of action could not have been the basis for the dismissal of the instant action considering that no stipulations, admissions or evidence have yet been presented. The RTC's inaccurate pronouncement, however, should have been challenged through a Rule 65 petition for *certiorari* and not through an appeal, as expressly provided in Rule 41, Section 1. Moreover, the challenge should have been brought to the Court of Appeals instead of filing the same directly with the Court, in accordance with the rule on hierarchy of courts.[52]

In view of the foregoing, the instant Petition must be dismissed as petitioners availed themselves of the wrong remedy and violated the hierarchy of courts.

The complaint failed to state a cause of action.

In *Philippine National Bank v. Spouses Rivera*,[53] the Court explained:

> Section 2, Rule 2 of the Revised Rules of Civil Procedure defines a cause of action as the act or omission by which a party violates a right of another. Its elements are as follows:
>
> 1) A right in favor of the plaintiff by whatever means and under whatever law it arises or is created;
>
> 2) An obligation on the part of the named defendant to respect or not to violate such right; and
>
> 3) Act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.

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[51] *Id*. at 259. Citations omitted.

[52] See *Kalipunan ng Damayang Mahihirap, Inc. v. Robredo*, 739 Phil. 283, 291-292 (2014).

[53] 785 Phil. 450 (2016).

x x x x x x x x x

If the allegations of the complaint do not state the concurrence of the above elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action which is the proper remedy under Section 1 (g) of Rule 16 of the Revised Rules of Civil Procedure, which provides:

> 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:
>
> x x x x x x x x x
>
> (g) That the pleading asserting the claim states no cause of action; x x x

The case of *Hongkong and Shanghai Banking Corporation Limited v. Catalan* laid down the test to determine the sufficiency of the facts alleged in the complaint, to wit:

> The elementary test for failure to state a cause of action is whether the complaint alleges facts which if true would justify the relief demanded. Stated otherwise, may the court render a valid judgment upon the facts alleged therein? The inquiry is into the sufficiency, not the veracity of the material allegations. If the allegations in the complaint furnish sufficient basis on which it can be maintained, it should not be dismissed regardless of the defense that may be presented by the defendants.

By filing a Motion to Dismiss, a defendant hypothetically admits the truth of the material allegations of the ultimate facts contained in the plaintiffs complaint. When a motion to dismiss is grounded on the failure to state a cause of action, a ruling thereon should, as a rule, be based only on the facts alleged in the complaint.[54] (Underscoring supplied)

Based on the foregoing, the Court agrees with the RTC that petitioners failed to state a cause of action because they premised their claim of ownership over the subject properties as *heirs* of the Sps. Sadhwani who were unquestionably Indian nationals.[55]

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[54] *Id.* at 457-459.

[55] *Rollo*, p. 46.

In *Matthews v. Taylor*[56] (*Matthews*) the Court exhaustively explained the constitutional prohibition against foreign ownership of public and private lands, *viz.*:

Section 7, Article XII of the 1987 Constitution states:

> Section 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

Aliens, whether individuals or corporations, have been disqualified from acquiring lands of the public domain. Hence, by virtue of the aforecited constitutional provision, they are also disqualified from acquiring private lands. The primary purpose of this constitutional provision is the conservation of the national patrimony. Our fundamental law cannot be any clearer. The right to acquire lands of the public domain is reserved only to Filipino citizens or corporations at least sixty percent of the capital of which is owned by Filipinos.

In *Krivenko v. Register of Deeds*, cited in *Muller v. Muller*, we had the occasion to explain the constitutional prohibition:

> Under Section 1 of Article XIII of the Constitution, "natural resources, with the exception of public agricultural land, shall not be alienated," and with respect to public agricultural lands, their alienation is limited to Filipino citizens. But this constitutional purpose conserving agricultural resources in the hands of Filipino citizens may easily be defeated by the Filipino citizens themselves who may alienate their agricultural lands in favor of aliens. It is partly to prevent this result that Section 5 is included in Article XIII, and it reads as follows:
>
> > Section 5. Save in cases of hereditary succession, no private agricultural land will be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines.
>
> This constitutional provision closes the only remaining avenue through which agricultural resources may leak into [aliens'] hands. It would certainly be futile to prohibit the alienation of public agricultural lands to aliens if, after all, they may be freely

[56] 608 Phil. 193 (2009).

so alienated upon their becoming private agricultural lands in the hands of Filipino citizens x x x.

x x x x x x x x x

If the term "private agricultural lands" is to be construed as not including residential lots or lands not strictly agricultural, the result would be that "aliens may freely acquire and possess not only residential lots and houses for themselves but entire subdivisions, and whole towns and cities," and that "they may validly buy and hold in their names lands of any area for building homes, factories, industrial plants, fisheries, hatcheries, schools, health and vacation resorts, markets, golf courses, playgrounds, airfields, and a host of other uses and purposes that are not, in appellant's words, strictly agricultural." (Solicitor General's Brief, p. 6) That this is obnoxious to the conservative spirit of the Constitution is beyond question.

The rule is clear and inflexible: aliens are absolutely not allowed to acquire public or private lands in the Philippines, save only in constitutionally recognized exceptions. There is no rule more settled than this constitutional prohibition, as more and more aliens attempt to circumvent the provision by trying to own lands through another. In a long line of cases, we have settled issues that directly or indirectly involve the above constitutional provision. We had cases where aliens wanted that a particular property be declared as part of their father's estate; that they be reimbursed the funds used in purchasing a property titled in the name of another; that an implied trust be declared in their (aliens') favor; and that a contract of sale be nullified for their lack of consent.

In *Ting Ho, Jr. v. Teng Gui*, Felix Ting Ho, a Chinese citizen, acquired a parcel of land, together with the improvements thereon. Upon his death, his heirs (the petitioners therein) claimed the properties as part of the estate of their deceased father, and sought the partition of said properties among themselves. We, however, excluded the land and improvements thereon from the estate of Felix Ting Ho, precisely because he never became the owner thereof in light of the above-mentioned constitutional prohibition.

In *Muller v. Muller*, petitioner Elena Buenaventura Muller and respondent Helmut Muller were married in Germany. During the subsistence of their marriage, respondent purchased a parcel of land in Antipolo City and constructed a house thereon. The Antipolo property was registered in the name of the petitioner. They eventually separated,

prompting the respondent to file a petition for separation of property. Specifically, respondent prayed for reimbursement of the funds he paid for the acquisition of said property. In deciding the case in favor of the petitioner, the Court held that respondent was aware that as an alien, he was prohibited from owning a parcel of land situated in the Philippines. He had, in fact, declared that when the spouses acquired the Antipolo property, he had it titled in the name of the petitioner because of said prohibition. Hence, we denied his attempt at subsequently asserting a right to the said property in the form of a claim for reimbursement. Neither did the Court declare that an implied trust was created by operation of law in view of petitioner's marriage to respondent. We said that to rule otherwise would permit circumvention of the constitutional prohibition.

In *Frenzel v. Catito*, petitioner, an Australian citizen, was married to Teresita Santos; while respondent, a Filipina, was married to Klaus Muller. Petitioner and respondent met and later cohabited in a common-law relationship, during which petitioner acquired real properties; and since he was disqualified from owning lands in the Philippines, respondent's name appeared as the vendee in the deeds of sale. When their relationship turned sour, petitioner filed an action for the recovery of the real properties registered in the name of respondent, claiming that he was the real owner. Again, as in the other cases, the Court refused to declare petitioner as the owner mainly because of the constitutional prohibition. The Court added that being a party to an illegal contract, he could not come to court and ask to have his illegal objective carried out. One who loses his money or property by knowingly engaging in an illegal contract may not maintain an action for his losses.

Finally, in *Cheesman v. Intermediate Appellate Court*, petitioner (an American citizen) and Criselda Cheesman acquired a parcel of land that was later registered in the latter's name. Criselda subsequently sold the land to a third person without the knowledge of the petitioner. The petitioner then sought the nullification of the sale as he did not give his consent thereto. The Court held that assuming that it was his (petitioner's) intention that the lot in question be purchased by him and his wife, he acquired no right whatever over the property by virtue of that purchase; and in attempting to acquire a right or interest in land, vicariously and clandestinely, he knowingly violated the Constitution; thus, the sale as to him was null and void.

In light of the foregoing jurisprudence, we find and so hold that Benjamin has no right to nullify the Agreement of Lease between

Joselyn and petitioner. Benjamin, being an alien, is absolutely prohibited from acquiring private and public lands in the Philippines. Considering that Joselyn appeared to be the designated "vendee" in the Deed of Sale of said property, she acquired sole ownership thereto. This is true even if we sustain Benjamin's claim that he provided the funds for such acquisition. By entering into such contract knowing that it was illegal no implied trust was created in his favor; no reimbursement for his expenses can be allowed; and no declaration can be made that the subject property was part of the conjugal/community property of the spouses. In any event, he had and has no capacity or personality to question the subsequent lease of the Boracay property by his wife on the theory that in so doing, he was merely exercising the prerogative of a husband in respect of conjugal property. To sustain such a theory would countenance indirect controversion of the constitutional prohibition. If the property were to be declared conjugal, this would accord the alien husband a substantial interest and right over the land, as he would then have a decisive vote as to its transfer or disposition. This is a right that the Constitution does not permit him to have.[57] (Underscoring supplied)

In sum, aliens are absolutely prohibited from acquiring public or private lands in the Philippines, save only in constitutionally recognized exceptions.[58] In *Ang v. So*,[59] the Court further stated that "[t]he prohibition against aliens owning lands in the Philippines is subject only to limited constitutional exceptions, and not even an implied trust can be permitted on equity considerations."[60]

After a judicious examination of the allegations in the complaint, the Court finds that petitioners failed to sufficiently allege the basis for their purported right over the subject properties. Since the Sps. Sadhwani were prohibited from owning land in the instant case, they were likewise prohibited from transmitting any right over the same through succession. The complaint, however, was replete with allegations that the Sps.

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[57] *Id.* at 200-205.

[58] *Id*. at 202.

[59] 792 Phil. 264 (2016).

[60] *Id*. at 275.

Sadhwani were the true owners of the subject properties and that petitioners were suing respondent Gop, as heirs of their parents. Relevant portions of the complaint stated:

5. Plaintiffs and Defendant Gop upon the death of their parents inherited and became the lawful and absolute owners of [the subject properties] x x x.

x x x x x x x x x

10. Before the purchase of the said properties, Plaintiffs and Defendant with their parents [the Sps. Sadhwani,] agreed that the house and lot located at #58 Aries St., Bel Air II Village, Makati City shall be devoted solely as [the Sps. Sadhwani's] residence while the condominium unit shall be rented and the monthly rentals collected for their benefits during their [lifetime]. However, the titles shall be [registered] in the name of Defendant Gop in trust, with the understanding that upon their death, said properties shall be sold and the proceeds thereof distributed among all their siblings in equal parts.

11. Defendant Gop obligated himself that even if the titles of properties are [registered] in his name, he hold[s] them in trust for his parents and his brothers and sisters benefits (*sic*) during his parents lifetime until their death where it will be sold and the proceeds thereof divided equally among all the siblings.

x x x x x x x x x

13. Defendant Gop after the sale of said properties never exercised any attributes of ownership over the same, for he recognized that he is holding the properties only in name for the benefit of his trustors who since 1983 until their deaths were in actual and physical possession of the properties in the concept of owners. x x x

x x x x x x x x x

18. Defendant Gop, sometime in November 2006, without the knowledge and consent of his parents' (trustors', true owner of the properties) and in bad faith, maliciously and fraudulently filed a petition for replacement of a los[t] duplicate owner certificate of title x x x and los[t] certificate of Condominium title x x x.

x x x x x x x x x

30. Plaintiffs have acquired legal and equitable titles or interest in the two real properties subject of this complaint on account that as

heirs they are entitled to equal share to the properties of their parents.[61] (Underscoring supplied)

Although petitioners inconsistently claimed that the supposed express trust was likewise constituted for their benefit, the relief prayed for unmistakably showed that petitioners anchored their purported rights over the subject properties on the laws of succession, *viz*.:

PRAYER

WHEREFORE, it is most respectfully prayed of this Honorable Court that after due hearing judgment be rendered in favor of the plaintiffs and against the defendants, as follows:

a) Declaring Plaintiffs as lawful and true owners of the [subject properties], and approving the distribution in equal shares of the shares of the heirs on the properties abovementioned in accordance with the trust agreement and the provision of the Civil Code on succession in favor of: RAMCHAND S. SADHWANI, DRUPATI P. SADHWANI-MIRPURI, HARESH S. SADHWANI, GOP S. SADHWANI, RAJAN S. SADHWANI, as heir[s] being the legitimate children of deceased SATRAMDAS V. SADHWANI AND KISHNIBAI SADHWANI.[62] (Underscoring supplied)

The allegations in petitioners' amended complaint are even more telling:

7. The subject properties x x x were merely placed in trust in the name of Gop Sadhwani. Upon the death of Satramdas and Kishnibai S. Sadhwani, ownership of these properties was automatically transmitted to the Heirs of Spouses Sadhwani.

x x x x x x x x x

37. Worse, Defendants Gop and Kanta Sadhwani illegally sold the Bel Air Property (TCT No. 120446) to defendant Sefuel T. Siy Yap for the outrageous amount of Php20,000,000.00. The sale is *void ab initio* because the Bel Air Property was titled in the name of Gop married to Kanta Sadhwani by virtue of a legal trust reposed unto them by the late ["Sps. Sadhwani] who were the actual and beneficial

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[61] *Rollo*, pp. 130-137.

[62] *Id.* at 140-142.

owners of the subject properties as it was they who funded the purchase of said properties.[63] (Underscoring supplied)

It is undisputed that the Sps. Sadhwani were Indian nationals. Hence, they were absolutely disqualified: 1) from owning lands in the Philippines, whether actually or beneficially, or 2) from transmitting any right[64] over the same to herein petitioners by succession. As petitioners claim ownership over the Bel Air Property as purported heirs of their parents, they failed to sufficiently allege the first element of a cause of action, *i.e.*, a "right in favor of the plaintiff by whatever means and under whatever law it arises or is created."[65] Even assuming therefore that respondent Gop committed the acts or omissions complained of, said acts could not be considered a violation of a right which, as alleged in the complaint, did not exist.

Although the absolute prohibition against foreign ownership of lands does not necessarily apply to foreign ownership of condominium units, the Court finds that petitioners likewise failed to state a cause of action over the Ritz Condominium Unit.

As already discussed, petitioners premised their alleged right over the subject properties as heirs of the Sps. Sadhwani under the Civil Code. Under Philippine law, however, successional rights are governed by the national law of the decedent. Article 16 of the Civil Code pertinently provides:

Article 16. Real property as well as personal property is subject to the law of the country where it is stipulated.

However, intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under

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[63] *Id.* at 229-235.

[64] See *Matthews v. Taylor, supra* note 56 and *Strategic Alliance Development Corp. v. Radstock Securities Ltd.*, 622 Phil. 431 (2009).

[65] *Supra* note 53 at 457.

consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found. (Underscoring supplied)

As the Sps. Sadhwani were Indian nationals, the laws of succession under the Civil Code do not apply. Therefore, the complaint should have alleged, at the very least, that petitioners were legal heirs of their parents and were entitled to inherit the Ritz Condominium Unit under the laws of the Republic of India. In view of the foregoing provision, the Court holds that petitioner cannot sidestep their burden of sufficiently pleading and eventually proving a cause of action under foreign law even when claiming under Philippine law may be more favorable or expedient. As they failed to sufficiently allege the basis for their right under the national law of their parents, petitioners failed to state a cause of action over the condominium unit.

To reiterate, "[t]he elementary test for failure to state a cause of action is whether the complaint alleges facts which if true would justify the relief demanded."[66] The complaint miserably failed this test. Even assuming that the facts alleged in the complaint (and amended complaint) were true, petitioners would not be entitled to the reliefs demanded because: 1) petitioners premised their right over the subject properties as heirs of aliens who may not own land or transmit rights over the same by succession, and 2) petitioners failed to allege that they were in fact heirs of the Sps. Sadhwani under the laws of the Republic of India. In other words, the allegations of the complaint failed to sufficiently state the concurrence of the three elements for a cause of action, particularly, the legal right to the relief demanded. In view of the foregoing, the complaint must be dismissed for failure to state a cause of action.

In any event, the dismissal of the complaint for failure to state a cause of action under Rule 16, Section 1(g) is a dismissal without prejudice. Hence, petitioners are not barred from refiling the same. Having passed upon the propriety of the dismissal,

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[66] *Id*. at 458.

the Court finds no more reason to rule upon the other issues raised in the Petition.

WHEREFORE, the Petition is **DISMISSED**. The Resolutions dated January 6, 2015 and March 18, 2015 of the Regional Trial Court of Makati City, Branch 59 in Civil Case No. 13-1320 are hereby **AFFIRMED**.

SO ORDERED.

Reyes, J. Jr., *Lazaro-Javier*, and *Zalameda, JJ.*, concur.

Carpio, S.A.J. (*Chairperson*), on official leave.

SECOND DIVISION

[G.R. No. 219157. August 14, 2019]

ZENAIDA E. SILVER and NELSON SALCEDO, *petitioners, vs.* **JUDGE MARIVIC TRABAJO DARAY, in her capacity as Judge Designate, Regional Trial Court, 11th Judicial Region, Branch 11, Davao City, PEOPLE OF THE PHILIPPINES, LORETO HAO, KENNETH HAO, ATTY. AMADO L. CANTOS, ZENAIDA TALATTAD and MAUREEN ELLA M. MACASINDIL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE FOR THE PURPOSE OF ISSUANCE OF WARRANT OF ARREST, DEFINED.— Probable cause for the purpose of issuing a warrant of arrest pertains to facts and circumstances which would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought

to be arrested. In determining probable cause, the average person weighs facts and circumstances without resorting to the calibration of our technical rules of evidence of which his or her knowledge may be nil. Rather, the person relies on the calculus of common sense of which all reasonable persons have an abundance. Thus, the standard used for issuance of a warrant of arrest is less stringent than that used for establishing the guilt of the accused. So long as the evidence presented shows a *prima facie* case against the accused, the trial court judge has sufficient ground to issue a warrant of arrest against him or her.

2. ID.; ID.; ID.; THREE OPTIONS GRANTED TO THE TRIAL COURT UPON THE FILING OF THE CRIMINAL COMPLAINT OR INFORMATION.— Section 5(a) of Rule 112 of the Revised Rules on Criminal Procedure grants the trial court three (3) options upon the filing of the criminal complaint or Information. It may: a) dismiss the case if the evidence on record clearly failed to establish probable cause; b) issue a warrant of arrest if it finds probable cause; or c) order the prosecutor to present additional evidence within five days from notice in case of doubt on the existence of probable cause.

3. ID.; ID.; ID.; DETERMINATION OF PROBABLE CAUSE IN THE ISSUANCE OF WARRANT OF ARREST; CASE AT BAR.— If the trial court decides to issue a warrant of arrest, such warrant must have been issued after compliance with the requirement that probable cause be personally determined by the judge. At this stage, the judge is tasked to merely determine the probability, not the certainty, of guilt of the accused. In doing so, the judge need not conduct a de novo hearing; he or she only needs to personally review the prosecutor's initial determination and see if it is supported by substantial evidence. x x x In sum, the judge must (1) personally evaluate the report and supporting documents submitted by the prosecutor regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause. Note that supporting documents include but are not limited to affidavits, the transcripts of stenographic notes (if any), and all other supporting documents behind the prosecutor's certification which are material in assisting the judge to make his determination

of probable cause. x x x Verily, both Judges Belo and Daray personally examined the eight (8) Informations filed by the prosecution, the relevant DOJ resolutions on the existence of probable cause against petitioners *et al*., the previous order of RTC-Branch 14, Davao City issuing warrants of arrest on petitioners *et al*., the prosecution's ex-parte manifestation for issuance of warrants of arrest and petitioners *et al.*'s opposition thereto, petitioners' motion for reconsideration of Order dated April 28, 2011, the prosecution's opposition, petitioners' reply, private respondents' rejoinder, and the parties' respective position papers. Based thereon, they independently concluded that there was probable cause to issue warrants of arrest on petitioners *et al*., in compliance with the directive of Section 6(a), Rule 112 of the Revised Rules of Criminal Procedure.

4. CRIMINAL LAW; REPUBLIC ACT NO. 6539 (ANTI-CARNAPPING ACT OF 1972); CARNAPPING; ELEMENTS; CASE AT BAR.— Section 2 of RA 6539, as amended defines "carnapping" as "the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things." The elements of carnapping are thus: (1) the taking of a motor vehicle which belongs to another; (2) the taking is without the consent of the owner or by means of violence against or intimidation of persons or by using force upon things; and (3) the taking is done with intent to gain. As found by the Court of Appeals and the Department of Justice, the vehicles subject of Criminal Case Nos. 66,237-09 to 66,244-09 are registered with the LTO under the names of private respondents. A certificate of registration of a motor vehicle creates a strong presumption of ownership in favor of one in whose name it is issued, unless proven otherwise. Evidently, petitioners *et al*. took away the eight (8) vehicles which Sheriff Andres parked inside a compound on Diversion Road, Buhangin, Davao City. They did so without permission from the court which itself decreed the eight (8) vehicles to be placed under *custodia legis*. Nor did private respondents, in whose names the vehicles were registered, consent to petitioners *et al*.'s act of moving the eight (8) vehicles from the compound in question. In fine, probable cause here exists for the purpose of issuing warrants of arrest on petitioners, *et al*.

5. REMEDIAL LAW; EVIDENCE; AS A RULE, THE SUPREME COURT DOES NOT REVIEW FACTUAL FINDINGS OF THE TRIAL COURT, INCLUDING THE DETERMINATION OF PROBABLE CAUSE FOR THE ISSUANCE OF A WARRANT OF ARREST.— As a rule, the Court does not review the factual findings of the trial court, including the determination of probable cause for issuance of a warrant of arrest. It is only in exceptional cases where the Court sets aside such factual conclusions, when it is necessary to prevent the misuse of the strong arm of the law or to ensure the orderly administration of justice. The facts here do not warrant a departure from the general rule.

6. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; RULE THAT TRIAL COURT MUST MAKE A CATEGORICAL FINDING *"THAT THERE IS A NECESSITY OF PLACING THE RESPONDENT UNDER IMMEDIATE CUSTODY IN ORDER NOT TO FRUSTRATE THE ENDS OF JUSTICE"* APPLIES ONLY TO WARRANTS OF ARREST ISSUED BY FIRST-LEVEL COURTS.— [T]he rule that the trial court must make a categorical finding "*that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice*" applies only to warrants of arrest issued by first-level courts (municipal trial courts), not by second-level courts (regional trial courts).

APPEARANCES OF COUNSEL

R.L. Salcedo Acol and Partners for petitioners.
Office of the Solicitor General for public respondents.
Jose Edgar J. Ilagan for private respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review assails the following issuances of the Court of Appeals in CA-G.R. SP No. 05161-MIN entitled "*Zenaida E. Silver and Nelson Salcedo v. Hon. Judge Marivic*

Trabajo Daray, in her capacity as Judge Designate, Regional Trial Court, Branch 11, Davao City, People of the Philippines, Loreto Hao, Kenneth Hao, Atty. Amado L. Cantos, Zenaida Talattad and Maureen Ella M. Macasindil":

1) Decision[1] dated August 14, 2014, sustaining the trial court's finding of probable cause for violation of RA 6539[2] or the "*Anti-Carnapping Act of 1972*" against petitioners Zenaida Silver and Nelson Salcedo; and

2) Resolution[3] dated June 2, 2015, denying petitioners' motion for reconsideration.

Antecedents

Zenaida Silver's Affidavit-Complaint dated May 10, 2005

Petitioner Zenaida Silver was engaged in "buy and sell" of motor vehicles under the business name "ZSH Commercial." On February 10, 2005, she participated in the auction sale of several units of vehicles and assorted surplus parts and accessories held at the Bureau of Customs (BOC), General Santos City. She entered a bid of ₱5,790,100.00 and ended up as the winning bidder for all the items. She loaned the amount from private respondent Loreto Hao.[4]

The terms and conditions of the loan were embodied in heir Memorandum of Agreement dated February 4, 2005 in which they essentially stipulated: a) By reason of the loan, Zenaida Silver agreed to execute a deed of sale in Loreto Hao's favor indicating the purchase price of ₱7,527,100.00; b) five percent

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[1] Penned by Associate Justice Pablito A. Perez with the concurrence of Associate Justices Edgardo A. Camello and Henri Jean Paul B. Inting (now a member of this Court), all members of the Twenty-Second Division, *rollo*, pp. 221-233.

[2] AN ACT PREVENTING AND PENALIZING CARNAPPING.

[3] *Rollo*, pp. 242-243.

[4] *Id.* at 37.

(5%) of the profits to be earned from the resale of the vehicles will go to Loreto Hao as loan payment; c) after full payment of the loan, whatever succeeding proceeds may be earned from the property they hall divide at 70-30 in Zenaida Silver's favor; d) loan payment shall be based on the parties' diminishing balance arrangement; e) Zenaida Silver shall furnish Loreto Hao a detailed pricelist of the units; f) all expenses relative to the transport, lot rentals, and other necessary expenses shall be on the account of Loreto Hao, albeit the same may be advanced by Zenaida Silver.[5]

As agreed, she executed the deed of absolute sale, but Loreto Hao did not make good his end of the bargain. The latter did not release the loan in question. The deed of absolute sale was intended to ensure that she pays back said loan. As it was, Loreto Hao went directly to the BOC and paid there the bid price. The corresponding receipt was issued in the name of her company, ZSH Commercial. Ninety-five (95) units of motor vehicles and various parts and accessories were released by the BOC to her company. Since most of the units needed repairs and rehabilitation, she agreed with Loreto Hao's suggestion to have them transferred to the Honasan Compound in Panacan, Davao City.[6]

She also agreed to give Loreto Hao access to the Honasan compound where the vehicles were parked. For this purpose, she authorized Loreto Hao's nephew, private respondent Kenneth Hao, to sell the items and act as her liaison officer. This authority was covered by a corresponding special power of attorney. Then, things went wrong between Zenaida Silver and Kenneth Hao. Zenaida Silver claimed Kenneth Hao allegedly disposed of sixty-four (64) items without her knowledge or any accounting coming from Kenneth Hao's end. The total sales had already reached ₱10,094,000.00 or more than the amount she owed Loreto Hao, including interest. Further complicating things, Loreto Hao and Kenneth Hao had caused several motor vehicles to be registered

[5] *Id.* at 37-38.

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

in the names of third persons,[7] inch ding private respondents Zenaida Talattad and Maureen Ella Macasindil.[8]

She later on confronted them about these things and thereafter rescinded the SPA she issued in Kenneth Hao's favor. But Loreto Hao and Kenneth Hao and their cohorts continued to pull out, and dispose of, the remaining motor vehicles. By reason thereof, private respondents and their cohorts committed grave coercion, qualified theft, and carnapping.[9]

Loreto Hao's
Counter-Affidavit and Counter-Charges
dated June 23, 2005

The Memorandum of Agreement dated February 4, 2005 referred to Zenaida Silver's bid at the BOC's auction sale held on January 26, 2005. Zenaida Silver's bid, however, was invalidated because she failed to pay the full bid price within forty-eight (48) hours after she entered her bid. As it was, an auction sale was scheduled the following week for the same items. He offered to participate in the next auction but was told he was disqualified.[10]

Zenaida Silver convinced him to finance the enterprise. She suggested that he take advantage of her business permit and accreditation. He would pay for the auction price. To ensure that he gets back his money and given a share in the profits, she would execute a deed of absolute sale in his favor. The next auction was held on February 10, 2005 and Zenaida Silver entered the winning bid on his behalf. He gave her two manager's checks for ₱5,212,530.00 and ₱579,130.00, respectively. As part of their agreement, Zenaida Silver executed a Deed of Absolute Sale and Assignment of Rights dated February 12, 2005 in his favor pertaining to the vehicles and spare parts in question.[11]

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[7] *Id.* at 39-40.

[8] *Id.* at 222-223.

[9] *Id.* at 40-42.

[10] *Id.* at 44.

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

He took possession of these items and hauled them away via several container vans. He asked Zenaida Silver to liquidate the expenses by selling the items to her claimed "sure buyers" of the eighty-five (85) units. Zenaida Silver suggested the vehicles be repaired first so they could command a higher price. He agreed subject to the condition Zenaida Silver would shoulder the repair expenses. A few days later, the BOC informed him that twelve (12) vehicles and two (2) container vans carrying spare parts would not be released because Zenaida Silver had an unpaid balance.[12]

Zenaida Silver was able to withdraw from the BOC the two (2) container vans which carried the spare parts. She informed him that she was able to do so because of her right connections. She was thereafter able to sell the spare parts for ₱120,960.00 and she gave him a check for ₱114,912.00, representing his share in the profits.[13]

He wrote the BOC that Zenaida Silver had sold all the vehicles and spare parts to him. Consequently, the BOC released to him the Certificates of Payment over the ninety-five (95) vehicles. He followed-up with Zenaida Silver about the "sure buyers" for the eighty-five (85) and the money he entrusted her. Later on suspecting that he was being deceived, he called Zenaida Silver to a conference. He told her he would sell the merchandise to other buyers so he could recoup his investment. They also revoked the Memorandum of Agreement dated February 4, 2005. She further got a discount of ₱20,000.00 for every vehicle she sold. They also agreed that he would have sole ownership over the vehicles and the spare parts. They executed and signed an Agreement dated March 17, 2005. To facilitate. the complete withdrawal of the vehicles and spare parts from the BOC, she also executed an irrevocable Special Power of Attorney dated March 17, 2005 in favor of Kenneth Hao.[14]

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[12] *Id.* at 46-47.

[13] *Id.* at 47-48.

[14] *Id.* at 48.

He decided to move the units to his compound at Obrero, Davao City to save on storage costs. He subsequently received letters from Zenaida Silver cancelling the documents she had executed, including the SPA she issued to Kenneth Hao. He informed her that she cannot unilaterally do so. On April 19, 2005, he received reports from his security guards that Zenaida Silver, her companions, and two (2) policemen had forcibly entered the compound and was attempting to retrieve the vehicles. He and his associates were able to stop her by locking the gate. He also showed his papers to the police officers, who respected the same.[15]

He countercharged Zenaida Silver with perjury, falsification, estafa, qualified theft, and carnapping. The carnapping charge arose from Zenaida Silver's alleged withdrawal of eleven (11) vehicles from the BOC without his knowledge and consent.[16]

Zenaida Silver's complaints for replevin and other charges of carnapping

Petitioner Zenaida Silver filed before different branches of the Regional Trial Court in Davao City complaints for recovery of possession of the vehicles. One such complaint was raffled to RTC-Branch 16, which issued Order[17] dated October 17, 2005, commanding Sheriff Abe Andres to seize twenty-two (22) motor vehicles subject of the complaint and place them under *custodia legis*. Sheriff Andres was able to seize nine (9) motor vehicles from several individuals. He moved them to a compound at Diversion Road, Buhangin, Davao City. Zenaida Silver, and companions, however, later on caused eight (8) vehicles to be moved out of the compound, sans permission from the court.[18]

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[15] *Id.* at 49.

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

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

[18] *Id.* at 223.

For what Zenaida Silver, *et al*. did, Loreto Hao once again filed countercharges of carnapping against Zenaida Silver, Sheriff Andres, and five (5) others, including co-petitioner SPO4 Nelson Salcedo. SPO4 Salcedo was among the police officers who accompanied Sheriff Andres in moving out the motor vehicles from the Buhangin compound. Loreto Hao asserted he was the real owner of the vehicles by virtue of a deed of absolute sale and assignment of rights, which Zenaida Silver allegedly executed, in his favor.[19]

Proceedings before the Office of the City Prosecutor and the DOJ

By Joint Resolution[20] dated November 17, 2005, the Office of the City Prosecutor of Davao City dismissed the complaints.

The parties then went up to the Department of Justice (DOJ) via their respective petitions for review.

Through Joint Resolution[21] dated June 27, 2007, the DOJ modified. It affirmed the dismissal of the complaints against Loreto Hao, Kenneth Hao, Atty. Amado Cantos and others, but found probable cause against Zenaida Silver, SPO4 Nelson Salcedo, and six (6) others for violation of RA 6539,[22] thus:

WHEREFORE, the assailed resolutions are MODIFIED. The City Prosecutor of Davao City is hereby directed to file the corresponding

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[19] *Id.*

[20] *Id.* at 80-89.

[21] This resolution resolved the petitions for review of the resolutions of the City Prosecutor of Davao City in: (1) I.S. No. 05-K-6388 suspending the preliminary investigation or the complaint filed by Loreto Hao, Kenneth Hao, and Atty. Amado Cantos against respondents Zenaida Silver, Sheriff Abe C. Andres, Atty. Oswaldo Macadangdang, SPO4 Nelson Salcedo, Paul Henson Egca, Edward Salcedo, Robert Gloria, Richard Ramos and Rodrigo Tampos for carnapping under R.A. No. 6539, and (2) I.S. Nos. 05-L-7463 and 05-L-7464 dismissing the complaint for carnapping and theft filed by Zenaida Talattad and Maureen Ella M. Macasindil, also against the above-named respondents, including Nonoy Abelardo, *rollo*, pp. 97-106.

[22] Paul Henson Egca, Edward Salcedo, Robert Gloria, Richard Ramos, Rodrigo Tampos, and Sheriff Abe C. Andres.

criminal informations (8 counts) against respondents Zenaida Silver, Nelson, Salcedo, Paul Henson Egca, Edward Salcedo, Robert Gloria, Richard Ramos, Rodrigo Tampos, and Sheriff Abe C. Andres for violation of Republic Act No. 6539 before the Regional Trial Court of Davao City, and to report to this Office the action taken therein within five (5) days from receipt hereof.

SO ORDERED.[23]

The eight (8) Informations were raffled to RTC-Branch 14, Davao City and warrants of arrest were issued. The prosecution, though, subsequently withdrew the Informations in view of its subsequent findings on reinvestigation that no probable cause existed against the accused. Branch 14 granted the motion to withdraw and dismissed the case.[24]

On Loreto Hao *et al.*'s petition for review, the DOJ, by Resolution[25] dated July 10, 2009, directed the City Prosecutor of Davao City to reinstate the Informations.

Proceedings before the Trial Court

The eight (8) Informations were raffled to RTC-Branch 11, Davao City, and respectively docketed Crim. Case Nos. 66,237-09 to 66,244-09. After due proceedings, Branch 11, under Order[26] dated April 28, 2011, directed warrants of arrest to be issued on the accused except Sheriff Abe Andres, thus:

WHEREFORE, in view of all the foregoing, and it appearing from the investigation conducted that the crime of Violation of Section 2 of R.A. 6539, otherwise known as Anti-Carnapping Act of 1972, has been committed and that there is probability that accused ZENAIDA SILVER, SPO4 NELSON SALCEDO, ROBERTO BOBONG GLORIA, EDWARD SALCEDO, RICHARD RAMOS, RODRIGO TAMPOS and PAUL HENSON EGCA alias NONOY have committed the same, let warrant for their arrest be issued. As to accused ABE C. ANDRES the Prosecution is directed to submit additional evidence

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[23] *Rollo*, p. 105.

[24] *Id.* at 224.

[25] *Id.* at 129-134.

[26] *Id.* at 151-154.

which will establish probable cause for the arrest of the accused or evidence that will engender a well-founded belief that said accused conspired with the other accused in committing the offense charged.

SO ORDERED.[27]

Petitioners Zenaida Silver and SPO4 Nelson Salcedo sought to reconsider but it was denied under Joint Order[28] dated September 14, 2012.

Proceedings Before the Court of Appeals and its Rulings

Petitioners sought relief from the Court of Appeals via a special civil action for *certiorari*. They essentially argued that Judge Danilo Belo who issued the warrants of arrest, and Judge Marivic Trabajo Daray who denied their subsequent motion for reconsideration — did not personally determine the existence of probable cause to justify warrants of arrest issued on them.[29]

By its assailed Decision dated August 14, 2014, the Court of Appeals dismissed the petition because there was no showing that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding probable cause against petitioners, *et al*. It keenly noted that Judge Belo examined the prosecutor's report, the supporting documents, evidence, and pleadings on record. He, too, conducted a hearing for the purpose of determining probable cause during which the parties were given the opportunity to present their respective evidence.[30]

Further, both judges were justified in issuing the warrants of arrest because Land Transportation Office (LTO) certificates of registration on record showed that private respondents owned eight (8) vehicles. When petitioners moved these cars from the compound, there was taking in the concept of violation of RA 6539 or carnapping.[31]

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

[28] *Id.* at 176-178.

[29] *Id.* at 229.

[30] *Id.* at 232.

[31] *Id.*

Petitioners' motion for reconsideration[32] was denied per Resolution dated June 2, 2015.

The Present Petition

Petitioners now fault the Court of Appeals for sustaining the warrants of arrest issued on them. They assert that the questionable ownership over the eight (8) vehicles subject of the replevin cases, negates the commission of the alleged carnapping. Further, the trial court did not make an explicit finding that it was necessary for them to be placed under arrest. The purported existence of probable cause alone does not suffice to issue a warrant of arrest.[33]

On the other hand, private respondents riposte: the vehicles were under *custodia legis*, thus, petitioners' act of taking them amounted to violation of RA 6539 or carnapping. Intent to gain on petitioners' part was established by the act itself. By virtue of the Deed of Absolute Sale and Assignment of Rights dated February 12, 2005, Zenaida Silver had already ceded to Loreto Hao ownership of subject vehicles and spare parts. Zenaida Silver was in fact merely Loreto Hao's agent per their Agreement dated March 17, 2005, stipulating that Zenaida Silver would have a ₱20,000.00 commission or discount for every vehicle she sold.[34]

Petitioners' reply essentially repeats the arguments in the petition.[35]

The Office of the Solicitor General (OSG), through Solicitor General Florin Hilbay, State Solicitor Donalita Lazo, and Assistant Solicitor Ron Winston Reyes, submits that the trial court's orders directing the issuance of warrants of arrest on petitioners, *et al*., on their face reflected that the judges concerned

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[32] *Id.* at 234-239.

[33] *Id.* at 5-32.

[34] *Id.* at 319-336.

[35] *Id.* at 393-402.

personally examined the evidence on record before concluding that there was probable cause.[36]

Issue

Did the Court of Appeals err in sustaining the trial court's finding of probable cause against petitioners for violation of RA 6539?

Ruling

The petition utterly lacks merit.

Section 5(a), Rule 112 of the Revised Rules of Criminal Procedure provides:

> Sec. 5. When warrant of arrest may issue. — (a) By the Regional Trial Court. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, he judge may order the prosecutor to present additional evidence within five (5) days from notice and the issuance must be resolved by the court wit in thirty (30) days from the filing of the complaint or information.
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> x x x x x x x x x

Probable cause for the purpose of issuing a Warrant of arrest pertains to facts and circumstances which would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested. In determining probable cause, the average person weighs facts and circumstances without resorting to the calibration of our technical rules of evidence of which his or her knowledge may be nil. Rather, the person relies on the calculus of common

[36] *Id.* at 292-307.

sense of which all reasonable persons have an abundance. Thus, the standard used for issuance of a warrant of arrest is less stringent than that used for establishing the guilt of the accused. So long as the evidence presented shows a *prima facie* case against the accused, the trial court judge has sufficient ground to issue a warrant of arrest against him or her.[37]

Section 5(a) of Rule 112 of the Revised Rules on Criminal Procedure grants the trial court three (3) options upon the filing of the criminal complaint or Information. It may: a) dismiss the case if the evidence on record clearly failed to establish probable cause; b) issue a warrant of arrest if it finds probable cause; or c) order the prosecutor to present additional evidence within five days from notice in case of doubt on the existence of probable cause.[38]

If the trial court decides to issue a warrant of arrest, such warrant must have been issued after compliance with the requirement that probable cause be personally determined by the judge. At this stage, the judge is tasked to merely determine the probability, not the certainty of guilt of the accused. In doing so, the judge need not conduct a de novo hearing; he or she only needs to personally review the prosecutor's initial determination and see if it is supported by substantial evidence.[39] ***Roberts, Jr. v. Court of Appeals***[40] expounded on how trial courts should determine probable cause:

> Section 2, Article III of the present Constitution provides that no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce.
>
> Under existing laws, warrants of arrest may be issued (1) by the Metropolitan Trial Courts (MeTCs) except those in the National Capital

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[37] *De Joya v. Marquez*, 516 Phil. 717, 721 (2016).

[38] *Fenix v. Court of Appeals*, 789 Phil. 391, 405 (2016).

[39] *Hao v. People*, 743 Phil. 204, 213 (2014).

[40] 324 Phil. 568, 602-609 (1996).

Region, Municipal Trial Courts (MTCs), and Municipal Circuit Trial Courts (MCTCs) in cases falling within their exclusive original jurisdiction; in cases covered by the rule on summary procedure where the accused fails to appear when required; and in cases filed with them which are cognizable by the Regional Trial Courts (RTCs); and **(2) by the Metropolitan Trial Courts in the National Capital Region (MeTCs-NCR) and the RTCs in cases filed with them after appropriate preliminary investigations conducted by officers authorized to do so other than judges of MeTCs, MTCs and MCTCs**.

As to the first, a warrant can issue only if the judge is satisfied after an examination in writing and under oath of the complainant and the witnesses, in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice.

As to the second, this Court held in *Soliven vs. Makasiar* that the judge is not required to personally examine the complainant and the witnesses, but

> **[f]ollowing established doctrine and procedure, he shall: (1) personally evaluate the report and supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.**

Sound policy supports this procedure, "otherwise judges would be unduly laden with the preliminary examination and investigation of criminal complaints instead of concentrating on hearing and deciding cases filed before their courts." It must be emphasized that judges must not rely solely on the report or resolution of the fiscal (now prosecutor); they must evaluate the report and the supporting documents. In this sense, the aforementioned requirement has modified paragraph 4(a) of Circular No. 12 issued by this Court on 30 June 1987 prescribing the Guidelines on Issuance of Warrants of Arrest under Section 2, Article III of the 1987 Constitution, which provided in part as follows:

> 4. In satisfying himself of the existence of a probable cause for the issuance of a warrant of arrest, the judge, following established doctrine and procedure, may either:
>
> (a) Rely upon the fiscal's certification of the existence of probable cause whether or not the case is cognizable only by the Regional Trial Court and on the basis thereof, issue a warrant of arrest.
> x x x

This requirement of evaluation not only of the report or certification of the fiscal but also of the supporting documents was further explained in *People vs. Inting*, where this Court specified what the documents may consist of, *viz.*, the affidavits, the transcripts of stenographic notes (if any), and all other supporting documents behind the Prosecutor's certification which are material in assisting the Judge to make his determination of probable cause. Thus:

> We emphasize the important features of the constitutional mandate that "x x x no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge x x x" (Article III, Section 2, Constitution).
>
> First, the determination of probable cause is a function of the Judge. It is not for the Provincial Fiscal or Prosecutor nor the Election Supervisor to ascertain. Only the Judge and the Judge alone makes this determination.
>
> **Second, the preliminary inquiry made by a Prosecutor does not bind the Judge. It merely assists him to male the determination of probable cause. The Judge does not have to follow what the Prosecutor presents to him. By itself, the Prosecutor's certification of probable cause is ineffectual. It is the report, the affidavits, the transcripts of stenographic notes (if any), and all other supporting documents behind the Prosecutor's certificate on which are material in assisting the Judge to make his determination.**

In adverting to a statement in *People vs. Delgado* that the judge may rely on the resolution of the Commission on Elections (COMELEC) to file the information by the same token that it may rely on the certification made by the prosecutor who conducted the preliminary investigation in the issuance of the warrant of arrest, this Court stressed in *Lim vs. Felix* that

> Reliance on the COMELEC resolution or the Prosecutor's certification presupposes that the records of either the COMELEC or the Prosecutor have been submitted to the Judge and he relies on the certification or resolution because the records of the investigation sustain the recommendation. The warrant issues not on the strength of the certification standing alone but because of the records which sustain it.

And noting that judges still suffer from the inertia of decisions and practice under the 1935 and 1973 Constitutions, this Court found it necessary to restate the rule "in greater detail and hopefully clearer terms." It then proceeded to do so, thus:

> We reiterate the ruling in Soliven vs. Makasiar that the Judge does not have to personally examine the complainant and his witnesses. The Prosecutor can perform the same functions as it commissioner for the taking of the evidence. However, there should be a report and necessary documents supporting the Fiscal's bare certification. All of these should be before the Judge.
>
> **The extent of the Judge's personal examination of the report and its annexes depends on the circumstances of, each case. We cannot determine beforehand how cursory or exhaustive the Judge's examination should be. The Judge has to exercise sound discretion for, after all, the personal determination is vested in the Judge by the Constitution. It can be as brief as or detailed as the circumstances of each case require. To be sure, the Judge must go beyond the Prosecutor's certification and investigation report whenever, necessary. He should call for the complainant and witnesses themselves to answer the court's probing questions when the circumstances of the case so require.**

This Court then set aside for being null and void the challenged order of respondent Judge Felix directing the issuance of the warrants of arrest against petitioners Lim, et al., solely on the basis of the prosecutor's certification in the informations that there existed probable cause "without having before him any other basis for his personal determination of the existence of a probable cause."

In *Allado vs. Diokno*, this Court also ruled that "before issuing a warrant of arrest, the judge must satisfy himself that based on the evidence submitted there is sufficient proof that a crime has been committed and that the person to be arrested is probably guilty thereof."

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The teachings then of *Soliven, Inting, Lim, Allado*, and *Webb* reject the proposition that the investigating prosecutor's certification in an information or his resolution which is made the basis for the filing of the information, or both, would suffice in the judicial determination of probable cause for the issuance of a warrant of arrest. In Webb, this Court assumed that since the respondent Judges had before them not only the 26-page resolution of the investigating panel but also the affidavits of the prosecution witnesses and <u>even the counter-affidavits</u> of the respondents, they (judges) <u>made personal evaluation of the evidence attached to the records of the case</u>. (Emphasis supplied)

In sum, the judge must (1) personally evaluate the report and supporting documents submitted by the prosecutor regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause. Note that supporting documents include but are not limited to affidavits, the transcripts of stenographic notes (if any), and all other supporting documents behind the prosecutor's certification which are material in assisting the judge to make his determination of probable cause.

The trial court's Order dated April 28, 2011 on its face shows that it took into account the history of the case, the eight (8) Informations filed by the prosecution, the relevant DOJ resolutions on the existence of probable cause against petitioners *et al.*, the previous order of RTC-Branch 14, Davao City issuing warrants of arrest on petitioners *et al.*, and the prosecution's *ex- parte* manifestation for issuance of warrants of arrest and petitioners *et al.*'s opposition thereto. As noted by the Court of Appeals, Judge Belo even held a clarificatory hearing on the matter of probable cause. And on the basis of these documents and the information he gathered during the hearing, Judge Belo undeniably had made a personal assessment of the existence of probable cause.

As for Judge Daray, through her Joint Order dated September 14, 2012, she evaluated petitioners' motion for reconsideration, the prosecution's opposition, petitioners' reply, private respondents' rejoinder, and the parties' respective position papers. She aptly observed:

> A careful reading of the motion for reconsideration and the opposition filed against it leads this court to conclude that the matters raised in the instant motion are clearly defenses which the accused need to prove in the course of the trial. As it is, the court still needs to conduct a thorough hearing in order to be convinced that indeed the matters raised are true and would really exculpate the accused in this case. The documents found on record and which were submitted with the motion for reconsideration need to be properly testified to, identified and offered as evidence so that this Court can make a definitive finding as to its truthfulness and as to whether such facts will really support the claim of the accused that they could not be held liable for the instant charges of carnapping.[41]

Verily, both Judges Belo and Daray personally examined the eight (8) Informations filed by the prosecution, the relevant DOJ resolutions on the existence of probable cause against petitioners *et al.*, the previous order of RTC-Branch 14, Davao City issuing warrants of arrest on petitioners, *et al.*, the prosecution's *ex-parte* manifestation for issuance of warrants of arrest and petitioners *et al.*'s opposition thereto, petitioners' motion for reconsideration of Order dated April 28, 2011, the prosecution's opposition, petitioners' reply, private respondents' rejoinder, and the parties' respective position papers. Based thereon, they independently concluded that there was probable cause to issue warrants of arrest on petitioners, *et al.*, in compliance with the directive of Section 6(a), Rule 112 of the Revised Rules of Criminal Procedure. On this score, the Court of Appeals correctly ruled:

> A close examination of the assailed Orders shows that Judge Belo made a personal determination of the existence of the probable cause by examining not only the prosecutor's report but also the supporting

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[41] *Rollo,* p. 177.

evidence, documents and pleadings attached thereto. Notably, prior to the issuance of the April 28, 2011 Order by Judge Belo, the court a quo conducted a hearing specifically for determination of probable cause to issue warrant of arrest against Silver, Salcedo and their companions. In the said hearing, the parties were given opportunity to present their respective evidence and supporting documents. Thereafter, the parties were required to submit their respective pleadings in support of their positions.

Similarly in the September 14, 2012 Joint Order of respondent Judge Daray, she also mentioned that she carefully evaluated the pleadings of the parties consisting of the motion for reconsideration, the opposition to motion for reconsideration, Reply, Rejoinder, and the respective position papers in issuing the assailed Order. Clearly, the assailed Orders were arrived at after an independent assessment and careful scrutiny of all the documents, pleadings and affidavits submitted by the parties.[42]

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Records show that the ownership of the said, motor vehicles remains dubious. While Silver anchored her ownership or the basis of the award given to her by the BOC where she emerged as the highest bidder, respondents on the other hand are asserting owner hip thereof pursuant to a certificate of registration issued by the Land Transportation Authority (LTO) (sic) in their names. In *Amante v. Serwelas*, the Supreme Court has held that between one who is armed with a certificate of registration clearly establishing his ownership and another whose claims is supported only by unconvincing allegations, we do not hesitate to rule for the former.

Hence, respondent Judge and Judge Belo before her, cannot be faulted in finding probable cause for the issuance of the warrant of arrest of petitioners as it took into consideration the observation of the DOJ that certificate of registration covering the subject vehicles are issued by the LTO in the name of respondents, there is, therefore, a strong presumption of ownership in their favor vis-a-vis petitioner Silver. We note further that the motor vehicles were subject of a replevin case at the time they were taken out by the petitioners from the premises where they were kept for safekeeping. Hence, at that time, the ownership of the vehicles is yet to be determined by the

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[42] *Id.* at 230-231.

court. We therefore find no error in the observation of respondent Judge Daray that the arguments raised by petitioners in the pleadings are defenses which need to be proved in the course of the trial. As it is, the court still needs to conduct a thorough hearing in order to be convinced that indeed the matters raised are true and would really exculpate the petitioners for the offense charged.[43]

Section 2 of RA 6539, as amended defines "carnapping" as "the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things." The elements of carnapping are thus: (1) the taking of a motor vehicle which belongs to another; (2) the taking is without the consent of the owner or by means of violence against or intimidation of persons or by using force upon things; and (3) the taking is done with intent to gain.[44]

As found by the Court of Appeals and the Department of Justice, the vehicles subject of Criminal Case Nos. 66,237-09 to 66,244-09 are registered with the LTO under the names of private respondents.[45] A certificate of registration of a motor vehicle creates a strong presumption of ownership in favor of one in whose name it is issued, unless proven otherwise.[46] Evidently, petitioners, *et al*. took away the eight (8) vehicles which Sheriff Andres parked inside a compound on Diversion Road, Buhangin, Davao City. They did so without permission from the court which itself decreed the eight (8) vehicles to be placed under *custodia legis*. Nor did private respondents, in whose names the vehicles were registered, consent to petitioners, *et al*.'s act of moving the eight (8) vehicles from the compound in question. In fine, probable cause here exists for the purpose of issuing warrants of arrest on petitioners, *et al*.

As a rule, the Court does not review the factual findings of the trial court, including the determination of probable cause

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[43] *Id.* at 232.

[44] *People v. Bustinera*, 475 Phil. 190, 203 (2004).

[45] *Rollo*, p. 132.

[46] *Amante v. Serwelas*, 508 Phil. 344, 349 (2005).

for issuance of a warrant of arrest. It is only in exceptional cases where the Court sets aside such factual conclusions, when it is necessary to prevent the misuse of the strong arm of the law or to ensure the orderly administration of justice.[47] The facts here do not warrant a departure from the general rule.

Lastly, the rule that the trial court must make a categorical finding "*that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice*" applies' only to warrants of arrest issued by first-level courts (municipal trial courts), not by second-level courts (regional trial courts). Section 6(b), Rule 112 of the Revised Rules of Criminal Procedure states:

> (b) By the Municipal Trial Court. — When required pursuant to the second paragraph of section 1 of this Rule, the preliminary investigation of cases falling under the original jurisdiction of the Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court may be conducted by either the judge or the prosecutor. When conducted by the prosecutor, the procedure for the issuance of a warrant or arrest by the judge shall be governed by paragraph (a) of this section. When the investigation is conducted by the judge himself, he shall follow the procedure provided in section 3 of this Rule; If the findings and recommendations are affirmed by the provincial or city prosecutor, or by the Ombudsman or his deputy, and the corresponding information is filed, he shall issue a warrant of arrest. **However, without waiting for the conclusion of the investigation, the judge may issue a warrant of arrest if he finds after an examination in writing and under oath of the complainant and his witnesses in the form of searching question and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice.** (emphasis supplied)

So must it be.

ACCORDINGLY, the petition is **DENIED** and the assailed Decision dated August 14, 2014 and Resolution dated June 2, 2015 of the Court of Appeals in CA-G.R. SP No. 05161-MIN, **AFFIRMED**.

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[47] *De Joya v. Marquez*, 516 Phil. 717, 722 (2006).

SO ORDERED.

Caguioa (*Acting Chairperson*), *Reyes, J. Jr.,* and *Zalameda, JJ.,* concur.

Carpio, S.A.J. (*Chairperson*), on official leave.

FIRST DIVISION

[G.R. No. 220635. August 14, 2019]

PHILIPPINE TRANSMARINE CARRIERS, INC., and/or FURTRANS DENIZCILIK TICARET VE SANAYI AS, *petitioners, vs.* **RAYMOND F. BERNARDO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; 2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (2000 POEA-SEC); PRESUMPTION OF WORK-RELATEDNESS; ILLNESSES NOT LISTED IN SECTION 32 THEREOF ARE DISPUTABLY PRESUMED AS WORK-RELATED; PRESUMPTION MAY BE OVERTURNED BY SUBSTANTIAL EVIDENCE; CASE AT BAR.— Section 20(A)(4) of the POEA-SEC provides that even those illnesses not listed in Section 32 are still disputably presumed as work-related. Not having been listed in Section 32, post infectious arthritis: gouty arthritis, which respondent was diagnosed to be suffering from, is presumed to be work-related. x x x In labor cases, a party in whose favor the legal presumption exists may rely on and invoke such legal presumption to establish a fact in issue. However, when substantial evidence of greater weight is presented to overcome the *prima facie* case, it will be decided in favor of the one who has presented the evidence against the presumption. The following circumstances namely: (1) relatively

young age of respondent; (2) the fact that it was only his second year as a seafarer; (3) that it was only his first employment contract with petitioners; (4) the certifications by Dr. Lim and Dr. Cruz-Balbon that respondent's illness is not work-related; and (5) the list of food provisions for the vessel consisting of fresh and frozen foods, when taken together, sufficiently overcome the disputable presumption that gouty arthritis is work-related. Hence, respondent's illness is not compensable under the POEA-SEC.

2. ID.; ID.; ID.; PRESUMPTION DOES NOT EXTEND TO COMPENSABILITY; CONDITIONS FOR AN OCCUPATIONAL DISEASE AND NON-LISTED ILLNESS TO BE COMPENSABLE; SUBSTANTIAL EVIDENCE MUST BE PRESENTED THAT A SEAFARER'S WORK CONDITIONS CAUSED OR AT LEAST INCREASED THE RISK OF CONTRACTING THE DISEASE AND ONLY A REASONABLE PROOF OF WORK CONNECTION, NOT DIRECT CAUSAL RELATION IS REQUIRED; CASE AT BAR.— While the law disputably presumes an illness to be work-related, nevertheless, there is no similar presumption of compensability accorded to a seafarer. Section 32-A of the POEA-SEC enumerates the conditions for an occupational disease (and non-listed illness) to be compensable, namely: (1) the seafarer's work must involve the risks described herein; (2) the disease was contracted as a result of the seafarer's exposure to the described risks; (3) the disease was contracted within a period of exposure and under such other factors necessary to contract it; and (4) there was no notorious negligence on the part of the seafarer. The disputable presumption that a seafarer's sickness is work-related does not mean that he would only sit idly while waiting for the employer to dispute the presumption. For compensability, the seafarer is still burdened to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease and only a reasonable proof of work connection, not direct causal relation is required. In this case, respondent relied on the certifications issued by Dr. Lim, a medical specialist, and Dr. Cruz-Balbon, company-designated physician, that the cause of gouty arthritis could be one's high purine diet, genetic predisposition and under excretion of urate. It must be emphasized here that such certifications came from the doctors employed by petitioners. To establish a

causal connection between gouty arthritis and respondent's work, it was claimed that the meals onboard the ship might have caused, or at least aggravated respondent's illness. However, petitioners countered that the provisions of food for the vessel at the time respondent was onboard thereto actually consisted of a combination of fresh and frozen foods, including vegetables and fruits. In addition thereto, the company-designated physician categorically stated that respondent's condition is not work-related. It should be noted that the findings of company-designated physicians are accorded great weight and credence.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
V.N.M. Taggueg and Associates Law Office for respondent.

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 May 26, 2015 and Resolution[3] dated September 16, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 133415 filed by Philippine Transmarine Carriers, Inc. and Furtrans Denizcilik Ticaret Ve Sanayi As (collectively, petitioners).

Facts of the Case

On January 4, 2012, Raymond F. Bernardo (respondent), then 37 years old, was hired as a messboy by petitioners covered by an Employment Contract duly approved by the Philippine Overseas Employment Administration (POEA) for a period of

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[1] *Rollo*, pp. 75-96.

[2] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Remedios A. Salazar-Fernando and Ramon A. Cruz, concurring; *id*. at 105-116.

[3] *Id*. at 117-125.

nine months.[4] Respondent was a seaman since 2010 and it was his first contract with petitioners.[5]

On February 25, 2012, respondent commenced serving his contract and while working onboard the vessel, he experienced ankle joint pain.[6] Since his condition did not improve after self-medication, respondent was brought to a portside medical facility in Morocco and was diagnosed with "Artitis eotosa".[7]

On May 22, 2012, respondent was medically repatriated and was referred to the company-designated physician in Metropolitan Medical Center. His initial diagnosis was for gouty arthritis. On June 29, 2012, Dr. Mylene Cruz-Balbon (Dr. Cruz-Balbon), a company-designated physician, issued a document explaining the diagnosis as a metabolic disorder secondary to defect in purine metabolism and/or high purine diet that is not work-related.[8] Later, Dr. Cruz-Balbon certified that the respondent's illness is "Post Infectious Arthritis: Gouty Arthritis."[9]

From May 25, 2012 to December 17, 2012, respondent was under the medical care and supervision of and rehabilitation therapy by the company-designated physician.[10] Respondent claimed that petitioners stopped the treatment despite the fact that his gouty arthritis has not been fully treated.[11]

Because of this, respondent consulted Dr. Ramon Antonio Sarmiento and Dr. Renato P. Runas (Dr. Runas), an orthopedic specialist. Dr. Runas opined that respondent is "permanently

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[4] CA *rollo*, pp. 20, 159. See also Contract of Employment; *id*. at 47.

[5] *Id*. at 159.

[6] *Id*. at 20, 179.

[7] *Id*. at 157, 159. "Artritis Gotosa" or "Arthritis Gotosa" in some parts of the records.

[8] *Id*. at 20.

[9] *Id*. at 103.

[10] *Id.* at 20.

[11] *Id.* at 41.

unfit to return to duty as a seafarer in whatever capacity with a permanent disability."[12]

On February 5, 2013, respondent filed a case against petitioners. He alleged that he is entitled to permanent total disability benefits under the POEA Standard Employment Contract (POEA-SEC).

Petitioners, on the other hand, claimed that gouty arthritis is not a work-related condition. Hence, respondent is not entitled to the disability benefits under the POEA-SEC.[13] In addition to the certification made by the company-designated physician, petitioners also presented an affidavit[14] from a medical specialist, Dr. Vedasto Lim (Dr. Lim), who opined that, "[b]ased on medical references, [respondent's] condition is caused by too much uric acid in the blood which crystallizes in a person's joints thereby causing inflammation. The known causes of gouty arthritis are one's diet, genetic disposition, or under excretion of urate, the salts of uric acid."[15] He also opined that gouty arthritis is not related to respondent's seafaring duties.[16]

On June 13, 2013, the Labor Arbiter (LA) rendered a decision[17] in favor of respondent holding that respondent's meals while onboard the ship was the source or at least contributed to the occurrence of gouty arthritis, hence, it is a work-related illness.[18]

The LA then awarded respondent US$60,000.00 pursuant to Section 32 of the POEA-SEC, considering that he is unfit to work as a seafarer and 10% of the award as attorney's fees.[19]

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

[13] *Id*. at 148.

[14] *Id*. at 162.

[15] *Id*.

[16] *Id*.

[17] Penned by Labor Arbiter Marcial Galahad T. Makasiar; *id*. at 179-185.

[18] *Id*. at 183.

[19] *Id*. at 185.

Aggrieved, petitioners elevated the case to the National Labor Relations Commission (NLRC).

The NLRC reversed[20] the decision of the LA and ruled that petitioners were able to dispute the presumption of compensability with the express declaration of Dr. Lim who certified under oath that respondent's gouty arthritis is not work-related.[21]

It was also found by the NLRC that while respondent submitted a generalized averment that his diet onboard the vessel contributed to his illness, the petitioners' submission of a list of ship provisions at the time the respondent was aboard the vessel readily belie his claim of dietary factors affecting his illness. It was shown that the list of provisions consists of a balance between fresh and frozen foods and other ingredients and condiments used in the preparation of the meals.[22]

Also, it was held that the procedure under the POEA-SEC for the joint appointment by the parties of a third doctor in case the seafarer's personal doctor disagrees with the company-designated physician's assessment was not followed.[23]

Aggrieved, respondent filed a Petition for *Certiorari*[24] with the CA.

On May 26, 2015, the CA rendered its Decision[25] reversing the decision of the NLRC and granting respondent's claim for permanent and total disability benefits.[26]

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[20] See NLRC Decision dated August 30, 2013. Penned by Commissioner Dolores M. Peralta-Beley, with Commissioner Mercedes R. Posada-Lacap, concurring; *id*. at 19-33.

[21] *Id*. at 28.

[22] *Id*. at 31.

[23] *Id*. at 31-32

[24] *Id*. at 3-15.

[25] *Rollo*, pp. 105-116.

[26] *Id*. at 115.

It was held by the CA that the second medical findings of the company-designated physician found that respondent is suffering from post-infectious arthritis: gouty arthritis. It is highly probable that such infection was acquired while onboard the ship as he was given a clean bill of health prior to boarding.[27]

Further, such gouty arthritis was caused by high purine diet and it was shown that the foods onboard the ship is rich in purine. Hence, it is plausible that his gouty arthritis became worse because of such diet onboard the ship.[28]

Because of the granting of respondent's claim, petitioners filed this Petition for Review on *Certiorari*, assailing the CA's decision and resolution granting respondent's claim.

The Issue

The sole issue in this case is whether gouty arthritis is a work-related condition and is therefore compensable.

The Ruling of the Court

Section 20(A)(4) of the POEA-SEC provides that even those illnesses not listed in Section 32 are still disputably presumed as work-related. Not having been listed in Section 32, post infectious arthritis: gouty arthritis, which respondent was diagnosed to be suffering from, is presumed to be work-related.

While the law disputably presumes an illness to be work-related, nevertheless, there is no similar presumption of compensability accorded to a seafarer. Section 32-A of the POEA-SEC enumerates the conditions for an occupational disease (and non-listed illness) to be compensable, namely: (1) the seafarer's work must involve the risks described herein; (2) the disease was contracted as a result of the seafarer's exposure to the described risks; (3) the disease was contracted within a period of exposure and under such other factors necessary to contract it; and (4) there was no notorious negligence on the part of the seafarer.

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[27] *Id.* at 111.

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

The disputable presumption that a seafarer's sickness is work-related does not mean that he would only sit idly while waiting for the employer to dispute the presumption. For compensability, the seafarer is still burdened to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease and only a reasonable proof of work connection, not direct causal relation is required.[29]

In this case, respondent relied on the certifications issued by Dr. Lim, a medical specialist, and Dr. Cruz-Balbon, company-designated physician, that the cause of gouty arthritis could be one's high purine diet, genetic predisposition and under excretion of urate. It must be emphasized here that such certifications came from the doctors employed by petitioners.

To establish a causal connection between gouty arthritis and respondent's work, it was claimed that the meals onboard the ship might have caused, or at least aggravated respondent's illness. However, petitioners countered that the provisions of food for the vessel at the time respondent was onboard thereto actually consisted of a combination of fresh and frozen foods, including vegetables and fruits.

In addition thereto, the company-designated physician categorically stated that respondent's condition is not work-related. It should be noted that the findings of company-designated physicians are accorded great weight and credence.[30]

Moreover, it was an established fact that respondent was only 37 years old when he was diagnosed with gouty arthritis. It was only his second year of being a seafarer and his first contract with petitioners when such diagnosis was given.

According to statistics, gout is more prevalent in older men.[31] Considering respondent's age at the time of diagnosis and the

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[29] *Licayan v. Seacrest Maritime Management, Inc.*, 775 Phil. 648 (2015), as cited in *Atienza v. Orophil Shipping*, G.R. No. 191049, August 7, 2017.

[30] *Montierro v. Rickmers*, 750 Phil. 937, 947 (2015).

[31] C. Eustice, Arthritis Prevalence and Statistics, *Verywellhealth*, 2018, <https://www.verywellhealth.com/arthritis-prevalence-and-statistics-189356> (last visited on August 5, 2019).

fact that he was only in his second year of being a seafarer, it is less probable that his condition was work-related.

In labor cases, a party in whose favor the legal presumption exists may rely on and invoke such legal presumption to establish a fact in issue. However, when substantial evidence of greater weight is presented to overcome the *prima facie* case, it will be decided in favor of the one who has presented the evidence against the presumption.

The following circumstances namely: (1) relatively young age of respondent; (2) the fact that it was only his second year as a seafarer; (3) that it was only his first employment contract with petitioners; (4) the certifications by Dr. Lim and Dr. Cruz-Balbon that respondent's illness is not work-related; and (5) the list of food provisions for the vessel consisting of fresh and frozen foods, when taken together, sufficiently overcome the disputable presumption that gouty arthritis is work-related.

Hence, respondent's illness is not compensable under the POEA-SEC.

WHEREFORE, the instant petition is **GRANTED**. The Decision dated May 26, 2015 and Resolution dated September 16, 2015 of the Court of Appeals in CA-G.R. SP No. 133415 are hereby **REVERSED** and **SET ASIDE**. The Decision dated August 30, 2013 of the National Labor Relations Commission in NLRC NCR Case No. (M) 02-01860-13 and NLRC LAC No. (OFW-M) 07-000681-13 is **REINSTATED**.

SO ORDERED.

Bersamin, C.J. (Chairperson), Perlas-Bernabe, Jardeleza, and *Gesmundo, JJ.*, concur.

SECOND DIVISION

[G.R. No. 220741. August 14, 2019]

ANGELINA A. BAYAN* **and JAIME A. BAYAN herein rep. by their Attorney-in-Fact MARIA FLORA A. FALCON,** *petitioners, vs.* **CELIA A. BAYAN (deceased), EDWARD DY, MA. LUISA B. TANGHAL, and the REGISTER OF DEEDS OF QUEZON CITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; NO QUESTION WILL BE CONSIDERED ON APPEAL MUCH MORE IN THE MOTION FOR RECONSIDERATION WITH THE APPELLATE COURT, WHEN IT WAS NOT RAISED IN THE COURT BELOW; APPLICATION IN CASE AT BAR.— The issue of right of legal redemption was neither raised in the RTC nor was even mentioned in the proceedings before the CA. As mentioned, it was raised for the very first time only in petitioners' Motion for Partial Reconsideration with the CA. We agree with the CA that this is not allowed. No question will be considered on appeal much more in the motion for reconsideration with the appellate court, when it was not raised in the court below. Otherwise, the court will be forced to make a judgment that goes beyond the issues and will adjudicate something in which the court did not hear the parties. As held by this Court: The rule is well-settled that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal, much more in a motion for reconsideration as in this case, because this would be offensive to the basic rules of fair play, justice and due process. This last ditch effort to shift to a new theory and raise a new matter in the hope of a favorable result is a pernicious practice that has consistently been rejected.

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* Now deceased, as per Notice of Death dated September 20, 2018, *rollo*, pp. 227-229.

2. CIVIL LAW; SPECIAL CONTRACTS; LEGAL REDEMPTION; IN LEGAL PRE-EMPTION OR REDEMPTION, WRITTEN NOTICE OF THE SALE TO ALL POSSIBLE REDEMPTIONERS IS INDISPENSABLE; SUSTAINED.— Petitioners' right of redemption accrued the moment they have written notice of the foreclosure sale. In legal pre-emption or redemption under the Civil Code of the Philippines, written notice of the sale to all possible redemptioners is indispensable. x x x Thus, in the old case of *Butte vs. Manuel Uy and Sons, Inc.*, the Court ruled that Art. 1623 of the Civil Code clearly and expressly prescribes that the 30 days for making the pre-emption or redemption are to be counted from notice in writing by the vendor. The reason for this is because the vendor of an undivided interest is in the best position to know who are his co-owners, who under the law must be notified of the sale. x x x Keeping in mind the rationale behind the written notice of sale by the vendor/s (co-owner/mortgagor) to the redemptioners, the Court in the case of *Etcuban v. Court of Appeals* has clarified that even if it was not sent by the vendor as long as the redemptioners were notified in writing, the same is sufficient for their right to redeem to accrue x x x In the case of *Francisco v. Boiser*, the Court has adopted the rule that any written notice is sufficient such that it ruled that the receipt by petitioner of summons in a civil case amounted to actual knowledge of the sale on the basis of which petitioner may now exercise his right of redemption. Justifying its ruling, the Court cited an instance where a vendor can delay or even effectively prevent the meaningful exercise of the right of redemption by not immediately notifying the co-owner of the sale, thereby causing serious prejudice to a redemptioner's right of legal redemption. To avoid this, the Court ruled that any written notice of sale (even if not sent by the vendor) is sufficient in order for the right of legal redemption of a co-owner to accrue. x x x The bottomline is that petitioners need not wait for the Court to make a definitive ruling on the validity or invalidity of the mortgage made by their co-owner. They should have known that any co-owner can mortgage their undivided share in the co-owned property in accordance with Article 493 of the Civil Code. Upon notice of the foreclosure sale or receipt of any written notice of the fact of sale, petitioners' right of legal redemption had already accrued such that they should have included said issue at the very onset in their complaint. Not

having raised the same with the lower court, it cannot be entertained for the first time in the Motion for Reconsideration with the appellate court.

APPEARANCES OF COUNSEL

Falcon Law Offices for petitioners.
Constante V. Brilliantes, Jr. for respondent Edward Dy.
Ching, Mendoza, Biolena, Delas Alas & Partners Law Firm for respondent Ma. Luisa B. Tanghal.

D E C I S I O N

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

Before us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court which seeks to reverse and set side the January 5, 2015 Decision[2] and the September 22, 2015 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 96204.

The case arose from a Complaint for Annulment of Mortgage with Damages filed by petitioners Angelina A. Bayan (Angelina) and Jaime A. Bayan (Jaime), as represented by their Attorney-in-Fact Lolita T. Alcaraz against respondents Celia A. Bayan (Celia, now deceased), Edward Dy (Dy) and Ma. Luisa Tanghal (Tanghal) and defendant Register of Deeds of Quezon City.

Petitioners, together with respondent Celia, are the registered co-owners of three parcels of residential and commercial land located in Cubao, Quezon City with Transfer Certificate of Title (TCT) Nos. N-140606, N-140607 and N-140608.

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[1] *Rollo*, pp. 3-19.

[2] Penned by then CA Associate Justice Noel G. Tijam (now retired SC Justice), with Associate Justices Priscilla J. Baltazar-Padilla and Agnes Reyes-Carpio, concurring; *id*. at 48-63.

[3] *Id*. at 27-30.

In 2005, Celia, acting for herself and as alleged Attorney-in-Fact of Angelina and Jaime, was able to obtain loans on three different occasions from her co-respondents Tanghal and Dy in the total amount of ₱4,500,000.00 plus interest and penalties in the event of default or delay in payment.

To secure the payment of her loans, Celia executed a fraudulent Special Powers of Attorney (SPAs) which supposedly embodied her authority to act on behalf of her frail mother Angelina and her brother, Jaime, who was permanently living in the United States. With such spurious authority, Celia executed in favor of Dy and Tanghal a Deed of Real Estate Mortgage dated February 23, 2005 covering the three parcels of land which she co-owned with Angelina and Jaime. Celia executed another Deed of Real Estate Mortgage dated August 24, 2005 to secure her second loan which she obtained from Dy and Tanghal. And thereafter, she executed an Amendment of the Deed of Real Estate Mortgage dated September 9, 2005, also covering the same properties.

Angelina and Jaime insisted that all the transactions made by Celia were without their knowledge and consent and their signatures embodied in the SPA were forged. This prompted them to file the instant action. However, during the pendency of the case, Dy and Tanghal proceeded to foreclose the mortgage.

After trial, the Regional Trial Court (RTC), Branch 81, Quezon City, in a Decision[4] dated September 15, 2010 ruled in favor of the petitioners declaring as null and void the following documents, to wit: (a) the two SPAs; (b) the Deed of Real Estate Mortgage Contract dated February 23, 2005; (c) the Deed of Real Estate Mortgage dated August 24, 2005; (d) and the Amendment of the Deed of Real Estate Mortgage dated September 9, 2005, and declaring as inefficacious and of no legal force and effect the following: (a) the extra-judicial foreclosure proceedings; (b) the public auction sale; (c) and the Sheriff's Sale. Accordingly, the RTC ordered the Register of Deeds of Quezon City to cancel all the Deeds of Real Estate

[4] *Id*. at 31-46.

Mortgage annotated on TCT Nos. N-140606, N-140607 and N-140608 and the Certificates of Sale inscribed on the said TCTs. It also ordered respondents to pay petitioners moral damages, attorney's fees and appearance fees per hearing. Respondents' cross-claim against Celia was likewise dismissed.

Respondents filed an appeal with the CA. Meanwhile, Celia died.

On January 5, 2015, the CA issued the now appealed Decision partially granting the appeal. The dispositive portion of the Decision reads:

WHEREFORE, the Appeal is **partially granted**. The Decision dated September 15, 2010 rendered by the Regional Trial Court of Quezon City, Branch 81 in Civil Case No. Q-06-57416 is hereby **AFFIRMED with MODIFICATIONS**, as follows:

1. The Deed of Real Estate Mortgage Contract dated February 23, 2005, Deed of Real Estate Mortgage dated August 24, 2005, and the Amendment of the Deed of Real Estate Mortgage dated September 9, 2005 are declared null and void only in so far as the interests of Plaintiffs-Appellees Angelina Bayan and Jaime Bayan are concerned;

2. The extra-judicial foreclosure proceedings, public auction sale and Sheriff's Sale conducted by Assisting Deputy Sheriff Rolando G. Acal of the office of the Clerk of Court, Regional Trial Court, Quezon City, are hereby inefficacious and have no legal force and effect only in so far as the interests of Plaintiffs-Appellees Angelina Bayan and Jaime Bayan are concerned;

3. The case is remanded to the Regional Trial Court of Quezon City: (a) determine the exact extent of the respective rights, interests, shares, and participation of Defendants-Appellants Tanghal and Dy and the Plaintiffs-Appellees over the subject properties, and (b) thereafter, to effect a final division, adjudication, and partition in accordance with law.

4. The Register of Deeds of Quezon City is hereby ordered to cancel the Certificates of Sale inscribed on Transfer Certificate of Title Nos. N-140606, N-140607 and N-140608 in favor of defendants Ma. Luisa Tanghal and

> Edward Dy and issue new ones in accordance with the determination of the RTC.
>
> The RTC's pronouncements on moral damages and attorney's fees are affirmed *in toto*.
>
> **SO ORDERED.**[5]

From the above Decision of the CA, all the parties (Dy, Tanghal and Petitioners) filed their respective Motions for Partial Reconsideration/Partial Motions for Reconsideration.[6] Notable is the Motion[7] filed by petitioners wherein they prayed that the CA partially reconsider its Decision by granting their right of legal redemption over the one-third (1/3) share of Celia through the payment of one-third of the mortgage debt, without interest, to be exercised within a reasonable period to be set by the trial court.

On September 22, 2015, the CA issued a Resolution denying all the parties' Motions for Partial Reconsideration for lack of merit. As to petitioners' relief being prayed for, the CA specifically ruled as follows:

> Considering Plaintiffs-Appellees Angelina and Jaime Bayan are raising the issue of their right of legal redemption only now in their motion for reconsideration, We are constrained to deny their Motion for Partial Reconsideration. The right of redemption was not prayed for much less alleged in the Complaint, hence, We cannot now include a determination of the same in Our resolution.[8] (Citations omitted)

Dissatisfied with the resolution of the CA, petitioners filed the instant Petition with this Court, anchored on the following issues:

I.

Whether or not the Honorable Court of Appeals erred in ruling that the petitioners cannot raise their right of legal redemption for the

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[5] *Id*. at 61-62.

[6] *Id*. at 64-83.

[7] *Id*. at 76-83.

[8] *Id*. at 30.

first time on appeal even though it was not relevant to raise the same before the trial court's level.

II.

Whether or not the Honorable Court of Appeals erred in not considering the fact that the mortgagees are not mortgagees-in-good-faith in denying petitioners the right of legal redemption.[9]

In their Motions for Partial Reconsideration/Partial Motions for Reconsideration, petitioners as co-owners of mortgagor Celia in the subject parcel of land, intended to exercise their right to legal redemption pursuant to Article 1620 of the Civil Code. The issue of right of legal redemption was neither raised in the RTC nor was even mentioned in the proceedings before the CA. As mentioned, it was raised for the very first time only in petitioners' Motion for Partial Reconsideration with the CA. We agree with the CA that this is not allowed. No question will be considered on appeal much more in the motion for reconsideration with the appellate court, when it was not raised in the court below. Otherwise, the court will be forced to make a judgment that goes beyond the issues and will adjudicate something in which the court did not hear the parties. As held by this Court:

The rule is well-settled that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal, much more in a motion for reconsideration as in this case, because this would be offensive to the basic rules of fair play, justice and due process. This last ditch effort to shift to at new theory and raise a new matter in the hope of a favorable result is a pernicious practice that has consistently been rejected.[10] (Citation omitted; underlining supplied)

Petitioners argued that they belatedly raised the issue of their right of legal redemption because it was only on appeal that

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[9] *Id*. at 8.

[10] *Rizal Commercial Banking Corp. v. Commissioner of Internal Revenue*, G.R. No. 168498 (Resolution), 550 Phil. 316, 326 (2007).

the partial validity of the mortgage was entertained by the CA and that the latter had ruled that Celia had the right to sell or even mortgage her undivided interest in the property pursuant to Article 493[11] of the Civil Code.

We do not subscribe to petitioners' argument.

Petitioners' right of redemption accrued the moment they have written notice of the foreclosure sale. In legal pre-emption or redemption under the Civil Code of the Philippines, written notice of the sale to all possible redemptioners is indispensable.[12] Article 1623 of the Civil Code provides:

> Art. 1623. The right of legal pre-emption redemption shall not be exercised except within thirty days from the notice in writing by the prospective vendor, or by the vendor, as the case maybe. The deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners.
>
> The right of redemption of co-owners excludes that of adjoining owners.

Thus, in the old case of *Butte vs. Manuel Uy and Sons, Inc.*,[13] the Court ruled that Art. 1623 of the Civil Code clearly and expressly prescribes that the 30 days for making the pre-emption or redemption are to be counted from notice in writing by the vendor. The reason for this is because the vendor of an undivided interest is in the best position to know who are his co-owners, who under the law must be notified of the sale.[14] As held in one case:

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[11] Art. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

[12] *De Conejero v. Court of Appeals*, 123 Phil. 605, 610 (1966).

[13] 114 Phil. 443, 451 (1962).

[14] *Id*. at 452.

It is likewise the notification from the seller, not from anyone else, which can remove all doubts as to the fact of the sale, its perfection, and its validity, for in a contract of sale, the seller is in the best position to confirm whether consent to the essential obligation of selling the property and transferring ownership thereof to the vendee has been given.[15]

Keeping in mind the rationale behind the written notice of sale by the vendor/s (co-owner/mortgagor) to the redemptioners, the Court in the case of *Etcuban v. Court of Appeals*[16] has clarified that even if it was not sent by the vendor as long as the redemptioners were notified in writing, the same is sufficient for their right to redeem to accrue, thus:

> While it is true that written notice is required by the law (Art. 1623), it is equally true that the same Art. 1623 does not prescribe any particular form of notice, nor any distinctive method for notifying the redemptioner. So long, therefore, as the latter is informed in writing of the sale and the particulars thereof, the 30 days for redemption start running, and the redemptioner has no real cause to complain. In the *Conejero* case, we ruled that the furnishing of a copy of the disputed deed of sale to the redemptioner was equivalent to the giving of written notice required by law in "a more authentic manner than any other writing could have done," and that We cannot adopt a stand of having to sacrifice substance to technicality.[17] x x x (Citations omitted)

In the case of *Francisco v. Boiser*,[18] the Court has adopted the rule that any written notice is sufficient such that it ruled that the receipt by petitioner of summons in a civil case amounted to actual knowledge of the sale on the basis of which petitioner may now exercise his right of redemption. Justifying its ruling, the Court cited an instance where a vendor can delay or even effectively prevent the meaningful exercise of the right of redemption by not immediately notifying the co-owner of the sale, thereby causing serious prejudice to a redemptioner's right

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[15] *Francisco v. Boiser*, 388 Phil. 596, 605 (2000).

[16] 232 Phil. 471 (1987).

[17] *Id.* at 475.

[18] *Supra* note 15.

of legal redemption.[19] To avoid this, the Court ruled that any written notice of sale (even if not sent by the vendor) is sufficient in order for the right of legal redemption of a co-owner to accrue.

In the instant case, the fact that petitioners alleged in their complaint about the foreclosure sale of the mortgage, the Sheriffs Certificate of Sale and their annotation/inscription on TCT. Nos. N-140606, N-140607 and N-140608 conclusively shows that petitioners were notified of the sale and were furnished said documents, and is tantamount to an actual knowledge of such fact of sale. No other notice is needed because the Sheriffs Certificate of Sale itself confirms the fact of sale, its perfection and its due execution.

The bottomline is that petitioners need not wait for the Court to make a definitive ruling on the validity or invalidity of the mortgage made by their co-owner. They should have known that any co-owner can mortgage their undivided share in the co-owned property in accordance with Article 493[20] of the Civil Code. Upon notice of the foreclosure sale or receipt of any written notice of the fact of sale, petitioners' right of legal redemption had already accrued such that they should have included said issue at the very onset in their complaint. Not having raised the same with the lower court, it cannot be entertained for the first time in the Motion for Reconsideration with the appellate court.

WHEREFORE, the instant Petition is **DENIED**. The appealed Decision dated January 5, 2015 and the Resolution dated September 22, 2015 of the Court of Appeals in CA-GR. CV No. 96204 are **AFFIRMED**.

SO ORDERED.

Caguioa (*Acting Chairperson*), *Lazaro-Javier*, and *Zalameda, JJ.*, concur.

Carpio, S.A.J. (*Chairperson*), on official leave.

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[19] *Id*. at 606.

[20] *Supra* note 11.

SECOND DIVISION

[G.R. No. 221836. August 14, 2019]

ESTHER ABALOS *y* PUROC, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ESTAFA; ELEMENTS; ESTABLISHED IN CASE AT BAR.— As can be inferred from the records, petitioner was convicted of estafa under Article 315, paragraph 2(d) of the RPC, x x x This kind of estafa is committed by any person who shall defraud another by false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud. The elements are: (1) postdating or issuing a check in payment of an obligation contracted at the time the check was issued; (2) lack of sufficient funds to cover the check; (3) knowledge on the part of the offender of such circumstances; and (4) damage to the complainant. x x x What sets apart the crime of estafa from the other offense of this nature *(i.e.*, Batas Pambansa Bilang 22) is the element of deceit. Deceit has been defined as "the false representation of a matter of fact, whether by words or conduct by false or misleading allegations or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury." In *Juaquico v. People,* the Court reiterated that in the crime of estafa by postdating or issuing a bad check, deceit and damage are essential elements of the offense and have to be established with satisfactory proof to warrant conviction. To constitute estafa, deceit must be the efficient cause of the defraudation, such that the issuance of the check should be the means to obtain money or property from the payer resulting to the latter's damage. In other words, the issuance of the check must have been the inducement for the surrender by the party deceived of his money or property. x x x Evidently, petitioner's act of issuing a worthless check belonging to another who appears to have sufficient means is the efficient cause of the deceit and defraudation. Were it not for the said circumstance, Sembrano would not have parted with her money. At any rate a *prima facie* presumption of deceit arises when the drawer of

the dishonored check is unable to pay the amount of the check within three days from receipt of the notice of dishonor. x x x While it is true that no criminal liability under the RPC arises from the mere issuance of postdated checks as a guarantee of repayment, this is not true in the instant case where the element of deceit is attendant in the issuance of the said checks. The liability therefore is not merely civil, but criminal.

2. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; DISCREPANCY IN THE AFFIDAVIT OF THE WITNESS AND IN THE TESTIMONY IN OPEN COURT; FOR A DISCREPANCY TO SERVE AS BASIS FOR ACQUITTAL, THE SAME MUST REFER TO SIGNIFICANT FACTS VITAL TO THE GUILT OR INNOCENCE OF THE ACCUSED; NOT PRESENT IN CASE BAR.— In its last ditch effort to enfeeble the case against her, petitioner pointed out the inconsistency in the evidence of the prosecution specifically with the testimonies of Sembrano herself. In her affidavit, Sembrano stated that the checks were offered to her for rediscounting, while her testimony in open court, she admitted that the checks were used for collaterals. For a discrepancy to serve as basis for acquittal, it must refer to significant facts vital to the guilt or innocence of the accused. An inconsistency, which has nothing to do with the elements of the crime, cannot be a ground to reverse a conviction. The inconsistency referred to in this case does not attach upon the very element of the crime of estafa. While it was indeed admitted by Sembrano that the checks were collaterals, this only lends credence to the fact that the said checks were the reason why Sembrano parted with her money. Sembrano was assured that the loan contracted was secured by the checks issued. Notwithstanding that the said checks were merely used to guarantee a loan, the fact remains that petitioner committed deceit when she failed to make known to Sembrano that the checks she issued were not hers and they were not sufficiently funded. Sembrano will not accede to an arrangement of issuing unfunded checks to secure the loan. It is against ordinary human behavior and experience for a person to accept a check, even as a mere guaranty for a supposed loan or obligation, if one knew beforehand that the account against which the check was drawn was already closed. The check would not even serve its purpose of guaranty because it can no longer be encashed.

3. CRIMINAL LAW; ESTAFA; IMPOSABLE PENALTY, EXPLAINED.— As to the penalty imposed, we take into consideration the amendment embodied in R.A. No. 10951 which modifies the penalty in swindling and estafa cases. Section 100 of the said law, however, provides that it shall have retroactive effect only insofar as it is favorable to the accused. This necessitates a comparison of the corresponding penalties imposable under the RPC and R.A. No. 10951. The penalty imposed by the RPC in estafa committed under Section 315, paragraph 2(d) x x x Applying the Indeterminate Sentence Law, the minimum term should be within the penalty next lower in degree of the penalty prescribed, which is, *prision correccional* in its minimum and medium periods or anywhere from six months and one day to four years and two months. If only to be beneficial to the accused, the lowest term possible that can be imposed is six months and one day. Hence, under the RPC, the penalty of estafa (of the amount of ₱232,500.00) ranged from six months and one day as minimum to 20 years as maximum. x x x On the other hand, R.A. No. 10951 x x x Applying the Indeterminate Sentence Law (ISL), the minimum term, which is left to the sound discretion of the court, should be within the range of the penalty next lower than the aforementioned penalty, which is left to the sound discretion of the court. Thus, the minimum penalty should be one degree lower from the prescribed penalty of *prision mayor* in its medium period, or *prision mayor* in its minimum period. The minimum term of the indeterminate sentence should be anywhere from six years and one day to 10 years. Under R.A. No. 10951, therefore, the petitioner is liable to suffer the indeterminate penalty of imprisonment ranging from six years and one day of *prision mayor*, as minimum, to eight years, eight months and one day of *prision mayor*, as maximum. It appears, however, that the imposable penalty under the RPC, which is six months and one day to 20 years, presents a lower minimum period, but a higher maximum period of imprisonment compared to that imposable under R.A. No. 10951, which is six years and one day to eight years, eight months and one day. x x x It is clear, therefore, that if R.A. No. 10951 would be given retroactive effect, the same will prejudice petitioner. The penalty under the RPC, insofar as it benefits the petitioner must prevail. Hence, the penalty imposed by the RTC and the CA, which is four years and two months of *prision correccional* as

minimum to 20 years of *reclusion temporal* as maximum, is correct as it is within the proper penalty imposed by law.

APPEARANCES OF COUNSEL

Kilaan Managtag & Magalgalit Law Office for petitioner.
Donaal and Arciaga & Associates, co-counsel for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

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

The Case

Petitioner Esther P. Abalos (petitioner) comes to this Court appealing[1] her conviction for the crime of Estafa rendered by the Court of Appeals (CA) in its Decision dated May 20, 2015,[2] in CA-G.R. CR No. 35633, which affirmed the indeterminate penalty of four years and two months of *prision correccional* as minimum to 20 years of *reclusion temporal* as maximum and actual damages of ₱232,500.00 imposed by the Regional Trial Court (RTC), but modified the legal interest at 6% per annum from finality of the decision until fully paid.

The Version of the Prosecution

In April 2011, petitioner, who introduced herself as "Vicenta Abalos," accompanied by Christine Molina (Molina), went to the office of private complainant Elaine D. Sembrano (Sembrano) at Manulife, Baguio City and offered to her two EastWest Bank checks for rediscounting.[3] The checks were signed by petitioner in Sembrano's office, as follows:

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[1] By way of Petition for Review on *Certiorari* under Rule 45, *rollo,* pp. 7-25.

[2] Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Isaias P. Dicdican and Elihu A. Ybañez, concurring: *id*. at 55-69.

[3] *Id*. at 58.

Check No.	Dated	Amount
0370031	May 31, 2011	₱ 17,500.00
0370032	June 1, 2011	250,000.00
		₱ 267,500.00[4]

Sembrano agreed to rediscount the checks upon assurance of petitioner and her companion, Molina, that they were good checks.[5] Sembrano gave the amount of ₱250,000.00 less 7% as interest. Sometime later, she learned from friends that petitioner's name was Esther and not "Vicenta."[6] When Sembrano presented the checks for payment on due dates, the checks were dishonored.[7] Sembrano then engaged the services of Benguet Credit Collectors to collect from petitioner. Petitioner failed to make good the checks such that a demand letter was sent to petitioner which she received on October 23, 2011.[8] Despite the said demand, petitioner made a promise to pay, but up to this date, nothing was received by Sembrano.[9] For failure to pay her loans, a complaint for estafa under Article 315 of the Revised Penal Code (RPC) was filed against petitioner.

The Version of the Defense

Petitioner denied the accusations. She claimed that the checks were issued only as a collateral for a loan together with the title to a property in the name of "Vicenta Abalos."[10] She stated that she did not personally transact with Sembrano[11] and that it was Molina who transacted with her and she merely accompanied Molina to Sembrano's office in April 2011.[12] As

[4] *Id*. at 56.

[5] *Id*. at 27.

[6] *Id*. at 58.

[7] *Id*.

[8] *Id*. at 59.

[9] *Supra* note 5.

[10] *Supra* note 8.

[11] *Supra* note 5.

[12] *Supra* note 8.

a requirement for the release of the loan, petitioner was asked to present as collateral an original certificate of title and a check, which she agreed.[13] When she was informed that the loan was ready, she together with Molina proceeded to the office of Sembrano purposely to receive the money.[14] Before taking the money from Sembrano, petitioner was asked to sign a real estate mortgage offering the title as a collateral to the loan.[15] After she and Molina received the money from Sembrano, they went to a convenience store where Molina gave petitioner ₱100,000.00 and petitioner handed back to Molina ₱20,000.00 as commission.[16] Petitioner insists that the checks she issued were merely to serve as collateral for the loan and not for the purpose of rediscounting the same.[17]

The Ruling of the RTC

On November 29, 2012, the RTC rendered a Decision[18] finding petitioner guilty, *viz.*:

> WHEREFORE, all premises duly considered, the [c]ourt finds the accused, GUILTY as charged. Applying the provisions of the Indeterminate Sentence Law, there being no aggravating and mitigating circumstance, the accused is hereby sentenced to suffer the penalty of imprisonment of four (4) years and two (2) months of *prision correctional* as minimum to twenty (20) years of *reclusion temporal* as maximum.
>
> The accused is likewise found to be civilly liable to pay the private complainant the amount of Php232,500.00 as and by way of actual damages, with legal interest thereon to be computed from the date of the filing of this case, until the same is fully paid.
>
> SO ORDERED.[19]

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[13] *Supra* note 5.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] Penned by Judge Edilberto T. Claravall; *id.* at 26-30.

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

The Ruling of the CA

On appeal, the CA affirmed the conviction, but fixed the rate of interest at 6% per annum, thus:

> **WHEREFORE,** premises considered, the appeal is **DISMISSED**. The Decision dated November 29, 2012 of the Regional Trial Court, Branch 60, Baguio City, in Criminal Case No. 32571-R, finding [appellant] guilty of [Estafa] is **AFFIRMED with MODIFICATION** that appellant is directed to pay private complainant the amount of ₱232,500.00 as and by way of actual damages, with legal interest **at six percent (6%) per annum from finality of this Decision until fully paid.**
>
> SO ORDERED.[20]

The CA is convinced that the false pretense of petitioner is apparent when she, together with her companion knowingly and intelligently misrepresented herself as "Vicenta Abalos" by showing to Sembrano a Transfer Certificate of Title in the name of Vicenta Abalos, a BIR ID Card, a Community Tax Certificate all bearing the name of Vicenta Abalos, and by signing the subject checks as "Vicenta Abalos." These pieces of evidence assured Sembrano that petitioner can make good the checks she issued as she has the means to do so prompting her to part with her money. The CA likewise ruled that mere issuance of a check and its subsequent non-payment is a *prima facie* evidence of deceit.

Dissatisfied, petitioner filed the instant appeal.

The Issue

Petitioner submits for the Court's consideration the lone issue that —

> **THE [CA] ERRED IN FINDING THAT PETITIONER IS GUILTY OF ESTAFA CONSIDERING THAT THE REAL TRANSACTION BETWEEN THE PARTIES, AS DEFINED BY LAW, IS NOT CRIMINAL IN NATURE, BUT CIVIL ONLY.**[21]

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[20] *Id.* at 68.

[21] *Id.* at 15.

Petitioner insists that not all elements of estafa were established. The element of deceit and/or false pretenses are lacking because the issuance of the checks was not the factor that induced private complainant to grant the loan, but the intercession made by Molina and the interest to be earned on the money lent.[22] It was Molina who maneuvered the transaction with private complainant by assuring the latter that petitioner will pay the loan.[23]

Petitioner also zeroed-in on the irreconcilable conflict between Sembrano's affidavit and her testimony in open court. In her affidavit, Sembrano stated that the checks were offered to her for rediscounting, while her testimony in open court, she admitted that the checks were used for collaterals.[24] This inconsistency put doubt on the testimony of Sembrano, but strengthened petitioner's claim that the checks were meant to be collaterals of the loan which are supposed to be encashed only upon non-payment.[25]

The Ruling of the Court

As can be inferred from the records, petitioner was convicted of estafa under Article 315, paragraph 2(d) of the RPC,[26] which provides:

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[22] *Id.* at 18.

[23] *Id.* at 19.

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

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

[26] *Id.* at 56-57; Information dated December 6, 2011, reads:

That sometime in the month of April 2011, prior and/or subsequent thereto, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of deceit, committed prior to or simultaneous with the commission of fraud, did then and there willfully, unlawfully and feloniously defraud ELAINE D. SEMBRANO, in the following manner, to wit: the said accused induced the complainant to have the following EastWest Bank Baguio Branch

Check No.	Dated (sic)	Amount
0370031	May 31, 2011	₱ 17,500.00
0370032	June 1, 2011	250,000.00
		₱ 267,500.00

ART. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x x x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

x x x x x x x x x

(d) By [postdating] a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act. (As amended by R.A. [No.] 4885, approved June 17, 1967.)

This kind of estafa is committed by any person who shall defraud another by false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud. The elements are: (1) postdating or issuing a check in payment of an obligation contracted at the time the check was issued; (2) lack of sufficient funds to cover the check; (3) knowledge on the part of the offender of such circumstances; and (4) damage to the complainant.[27]

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be rediscounted although knowing fully well that said checks are not good or backed up with sufficient funds and the offended party believing and relying on the false pretenses and misrepresentation of the accused, delivered the total amount of ₱267,500.00 to the accused, but when the checks were presented for payment with the drawee bank on the due dates or soon thereafter, the same were dishonored for having been drawn against "Account Closed" and despite demands for her to pay the value of the aforesaid checks, the accused failed or refused to do so. Thereby misapplying, misappropriating and converting to her own personal use and benefit the amount of Php267,500.00, to the damage and prejudice of the offended party in the aforementioned amount of TWO HUNDRED SIXTY SEVEN THOUSAND FIVE HUNDRED (₱267,500.00) PESOS, Philippine Currency. CONTRARY TO LAW.

[27] *People v. Dimalanta,* 483 Phil. 56, 64 (2004).

The prosecution was able to establish beyond reasonable doubt all the aforesaid elements of estafa.

There is no question that petitioner issued two checks in the total amount of ₱267,500.00 in payment for an obligation. The issued checks have insufficient funds as proven by the fact that they were dishonored for the reason "account closed." Because petitioner knew too well that she was not the owner of the check, petitioner had no knowledge whether the checks were sufficiently funded to cover the amount drawn against the checks. Petitioner did not inform Sembrano about the insufficiency/lack of funds of the checks. Thus, upon presentment for payment, the checks were eventually dishonored causing damages to Sembrano in the total amount of ₱267,500.00,[28] as what was reflected in the issued checks.

What sets apart the crime of estafa from the other offense of this nature *(i.e.*, Batas Pambansa Bilang 22) is the element of deceit. Deceit has been defined as "the false representation of a matter of fact, whether by words or conduct by false or misleading allegations or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury."[29]

In *Juaquico v.People*[30] the Court reiterated that in the crime of estafa by postdating or issuing a bad check, deceit and damage are essential elements of the offense and have to be established with satisfactory proof to warrant conviction. To constitute estafa, deceit must be the efficient cause of the defraudation, such that the issuance of the check should be the means to obtain money or property from the payer[31] resulting to the latter's damage. In other words, the issuance of the check must have been the inducement for the surrender by the party deceived of his money or property.[32]

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[28] TSN, July 10, 2012, p. 6.

[29] *Batac v. People,* G.R. No. 191622, June 6, 2018.

[30] G.R. No. 223998, March 5, 2018.

[31] *Ilagan v. People,* 550 Phil. 791, 801 (2007).

[32] *People v. Cuyugan,* 440 Phil. 637, 647 (2002).

The element of deceit was established from the very beginning when petitioner misrepresented herself as Vicenta Abalos, the owner of the check. To fortify the misrepresentation, petitioner issued and signed the checks in front of Sembrano[33] presumably to show good faith on her part. Petitioner also showed Sembrano documents such as an Identification Card and Community Tax Certificate to prove that she is Vicenta Abalos. And lastly, she showed a transfer certificate of title of a land registered under the name of "Vicenta Abalos" presumably guaranteeing her capability to pay. As observed by the RTC, at the outset, petitioner's fraudulent scheme was already evident.

The misrepresentation of petitioner assured Sembrano that she is indeed dealing with Vicenta Abalos who has sufficient means and property, and the capacity to make good the issued checks. It is safe to say that Sembrano was induced to release the money to petitioner relying on the latter's false pretense and fraudulent act. Evidently, petitioner's act of issuing a worthless check belonging to another who appears to have sufficient means is the efficient cause of the deceit and defraudation. Were it not for the said circumstance, Sembrano would not have parted with her money. At any rate a *prima facie* presumption of deceit arises when the drawer of the dishonored check is unable to pay the amount of the check within three days from receipt of the notice of dishonor.[34]

In its last ditch effort to enfeeble the case against her, petitioner pointed out the inconsistency in the evidence of the prosecution specifically with the testimonies of Sembrano herself. In her affidavit, Sembrano stated that the checks were offered to her for rediscounting, while her testimony in open court, she admitted that the checks were used for collaterals.[35] For a discrepancy to serve as basis for acquittal, it must refer to significant facts vital to the guilt or innocence of the accused. An inconsistency, which has nothing to do with the elements of the crime, cannot

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[33] *Rollo,* p. 122.

[34] *Hisoler v. People*, G.R. No. 237337, June 6, 2018 (Unsigned Resolution).

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

be a ground to reverse a conviction.[36] The inconsistency referred to in this case does not attach upon the very element of the crime of estafa.

While it was indeed admitted by Sembrano that the checks were collaterals, this only lends credence to the fact that the said checks were the reason why Sembrano parted with her money. Sembrano was assured that the loan contracted was secured by the checks issued. Notwithstanding that the said checks were merely used to guarantee a loan, the fact remains that petitioner committed deceit when she failed to make known to Sembrano that the checks she issued were not hers and they were not sufficiently funded. Sembrano will not accede to an arrangement of issuing unfunded checks to secure the loan. It is against ordinary human behavior and experience for a person to accept a check, even as a mere guaranty for a supposed loan or obligation, if one knew beforehand that the account against which the check was drawn was already closed.[37] The check would not even serve its purpose of guaranty because it can no longer be encashed.[38]

While it is true that no criminal liability under the RPC arises from the mere issuance of postdated checks as a guarantee of repayment,[39] this is not true in the instant case where the element of deceit is attendant in the issuance of the said checks. The liability therefore is not merely civil, but criminal.

As to the penalty imposed, we take into consideration the amendment embodied in R.A. No. 10951[40] which modifies the penalty in swindling and estafa cases. Section 100 of the said law, however, provides that it shall have retroactive effect only

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[36] *People v. Almazan,* 417 Phil. 697, 705 (2001).

[37] *Hisoler v. People, supra* note 34.

[38] *Id.*

[39] See *People v. Cuyugan, supra* note 31, at 648.

[40] Republic Act No. 10951, An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based, and the Fines Imposed Under the Revised Penal Code, approved on August 29, 2017.

insofar as it is favorable to the accused. This necessitates a comparison of the corresponding penalties imposable under the RPC and R.A. No. 10951.

The penalty imposed by the RPC in estafa committed under Section 315, paragraph 2(d) are as follows:

> ART. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned herein below shall be punished by:
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> 1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

Considering that the penalty prescribed by law is composed only of two periods, pursuant to Article 65 of the RPC, the same must be divided into three equal portions of time included in the penalty prescribed, forming one period for each of the three portions,[41] to wit:

> Maximum — 6 years, 8 months, 21 days to 8 years;
> Medium — 5 years, 5 months, 11 days to 6 years, 8 months, 20 days; and
> Minimum — 4 years, 2 months, 1 day to 5 years, 5 months, 10 days.[42]

Since the amount involved in this case is ₱232,500.00[43] which is beyond the ₱22,000.00 ceiling set by law, the penalty to be imposed upon the petitioner should be taken within the maximum period of the penalty prescribed which is eight years; and from there should be added the incremental penalty of 21 years

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[41] *Hisoler v. People, supra* note 34.

[42] *Id.*

[43] Actual amount handed to petitioner.

(₱232,500.00 less ₱22,000.00 divided by 10). However, the law only provides the highest allowable duration which is 20 years. Therefore, the maximum period of indeterminate penalty is 20 years.

Applying the Indeterminate Sentence Law, the minimum term should be within the penalty next lower in degree of the penalty prescribed, which is, *prision correccional* in its minimum and medium periods or anywhere from six months and one day to four years and two months. If only to be beneficial to the accused, the lowest term possible that can be imposed is six months and one day.

Hence, under the RPC, the penalty of estafa (of the amount of ₱232,500.00) ranged from six months and one day as minimum to 20 years as maximum.

On the other hand, R.A. No. 10951 provides:

> SEC. 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:
>
> ART. 315. *Swindling (estafa).* — x x x
>
> x x x x x x x x x
>
> Any person who shall defraud another by means of false pretenses or fraudulent acts as defined in paragraph 2(d) hereof shall be punished by:
>
> **4th. The penalty of *prision mayor* in its medium period, if such amount is over Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).**

Considering that the actual amount involved in this case is ₱232,500.00, the proper imposable penalty is *prision mayor* in its medium period. Since the penalty prescribed by law is a penalty composed of only one period, Article 65 of the RPC requires the division of the time included in the penalty into three portions, thus:

Maximum: 9 years, 4 months and 1 day to 10 years
Medium: 8 years, 8 months and 1 day to 9 years and 4 months
Minimum: 8 years and 1 day to 8 years and 8 months[44]

Under Article 64 of the RPC, the penalty prescribed shall be imposed in its medium period when there are neither aggravating nor mitigating circumstances. Considering the absence of any modifying circumstance in this case, the maximum penalty should be anywhere within the medium period of eight years, eight months and one day to nine years and four months.

Applying the Indeterminate Sentence Law (ISL), the minimum term, which is left to the sound discretion of the court, should be within the range of the penalty next lower than the aforementioned penalty, which is left to the sound discretion of the court.[45] Thus, the minimum penalty should be one degree lower from the prescribed penalty of *prision mayor* in its medium period, or *prision mayor* in its minimum period.[46] The minimum term of the indeterminate sentence should be anywhere from six years and one day to 10 years.

Under R.A. No. 10951, therefore, the petitioner is liable to suffer the indeterminate penalty of imprisonment ranging from six years and one day of *prision mayor,* as minimum, to eight years, eight months and one day of *prision mayor,* as maximum.[47]

It appears, however, that the imposable penalty under the RPC, which is six months and one day to 20 years, presents a lower minimum period, but a higher maximum period of imprisonment compared to that imposable under R.A. No. 10951, which is six years and one day to eight years, eight months and one day. In the case of *Hisoler v. People*,[48] the Court has

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[44] *Hisoler v. People, supra* note 34.

[45] *Batac v. People, supra* note 29.

[46] *Hisoler v. People, supra*.

[47] *Id.*

[48] *Id.*

ruled that since the penalty under the RPC is more beneficial to the accused, thus, it is the proper penalty to be imposed. It ratiocinated as follows:

> At any rate, even if the maximum period imposable upon the petitioner under the RPC in this case is higher than that under R.A. No. 10951, the Court finds that the benefits that would accrue to the petitioner with the imposition of a lower minimum sentence outweighs the longer prison sentence and is more in keeping with the spirit of the Indeterminate Sentence Law.
>
> In fixing the indeterminate penalty imposable upon the accused, the Court should be mindful that the basic purpose of the Indeterminate Sentence Law is to "uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness." Simply, an indeterminate sentence is imposed to give the accused the opportunity to shorten the term of imprisonment depending upon his or her demeanor, and physical, mental, and moral record as a prisoner. The goal of the law is to encourage reformation and good behavior, and reduce the incidence of recidivism. While the grant of parole after service of the minimum sentence is still conditional, the flexibility granted upon the petitioner to immediately avail of the benefits of parole considering the much shorter minimum sentence under the RPC should inspire the petitioner into achieving the underlying purpose behind the Indeterminate Sentence Law.[49]

It is clear, therefore, that if R.A. No. 10951 would be given retroactive effect, the same will prejudice petitioner. The penalty under the RPC, insofar as it benefits the petitioner must prevail. Hence, the penalty imposed by the RTC and the CA, which is four years and two months of *prision correccional* as minimum to 20 years of *reclusion temporal* as maximum, is correct as it is within the proper penalty imposed by law.

The legal rate of interest of 6% per annum on the monetary award of ₱232,500.00 (the actual damage sustained by Sembrano), from the date of finality of this Decision until fully paid, as imposed by the CA, is modified as follows: the monetary award shall earn interest at the rate at the rate of 12% per annum

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[49] *Id.*

from the filing of the Information until June 30, 2013 and 6 % per annum from July 1, 2013 until the finality of the decision. The total amount of the foregoing shall, in turn, earn interest at the rate of 6% per annum from the finality of the decision until full payment of the same.[50]

WHEREFORE, the Decision dated May 20, 2015 of the Court of Appeals in CA-G.R. CR No. 35633 sentencing petitioner to four (4) years and two (2) months of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum is **AFFIRMED** with **MODIFICATION** in that the monetary award of ₱232,500.00 shall be subject to interest rate of 12% per annum from the filing of the Information until June 30, 2013 and 6% per annum from July 1, 2013 until the finality of the decision, and the total amount of the foregoing shall, in turn, earn interest at the rate of 6% per annum from the finality of the decision until full payment thereof.

SO ORDERED.

Caguioa (Acting Chairman), Lazaro-Javier, and *Zalameda, JJ.,* concur.

Carpio, S.A.J. (*Chairperson*), on official leave.

SECOND DIVISION

[G.R. No. 221869. August 14, 2019]

ANTHONY U. UNCIANO, *petitioner, vs.* **FEDERICO U. GOROSPE and LEONA TIMOTEA U. GOROSPE,** *respondents.*

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[50] See Resolution dated October 3, 2018 of the Second Division.

SYLLABUS

1. **CIVIL LAW; PROPERTY; OWNERSHIP; WHAT DIVESTS THE GOVERNMENT OF ITS TITLE TO THE LAND IS THE ISSUANCE OF THE PATENT AND ITS SUBSEQUENT REGISTRATION IN THE OFFICE OF THE REGISTER OF DEEDS.—** The proscription against the sale or encumbrance of property subject of a pending free patent application is not pointedly found [under Section 118 of C.A. No. 141]. Rather, it is embodied in the regalian doctrine enshrined in the Constitution, which declares all lands of the public domain as belonging to the State, and are beyond the commerce of man and not susceptible of private appropriation and acquisitive prescription. What divests the Government of its title to the land is the issuance of the patent and its subsequent registration in the Office of the Register of Deeds. Such registration is the operative act that would bind the land and convey its ownership to the applicant. It is then that the land is segregated from the mass of public domain, converting it into private property.

2. **ID.; ID.; ID.; A SELLER MAY SELL ONLY WHAT HE OR SHE OWNS, OR THAT WHICH HE DOES NOT OWN BUT HAS THE AUTHORITY TO TRANSFER AND A BUYER CAN ACQUIRE ONLY WHAT THE SELLER CAN LEGALLY TRANSFER.—** In property law, fundamental is the principle that no one can give what he does not have. In other words, a seller may sell only what he or she owns, or that which he does not own but has authority to transfer, and a buyer can acquire only what the seller can legally transfer. In fact, the Civil Code states that in a contract of sale, the seller binds himself to transfer the ownership of the thing sold, and to do so, he must have the right to convey ownership of the thing at the time it is delivered. The thing must be licit.

3. **ID.; ID.; ID.; *ACCION REINVINDICATORIA*; THE ACTION DOES NOT SEEK TO REOPEN THE REGISTRATION PROCEEDINGS AND TO SET ASIDE THE DECREE OF REGISTRATION BUT ONLY PURPORTS TO SHOW THAT THE PERSON WHO SECURED THE REGISTRATION OF THE PROPERTY IN CONTROVERSY IS NOT THE REAL OWNER THEREOF.—** *Accion reinvindicatoria*, or an action for reconveyance, is a legal and equitable remedy granted to the

rightful owner of a land which has been wrongfully or erroneously registered in the name of another for the purpose of compelling the latter to transfer or reconvey the land to him. The action does not seek to reopen the registration proceedings and to set aside the decree of registration but only purports to show that the person who secured the registration of the property in controversy is not the real owner thereof. In this action, the decree of registration is respected as incontrovertible, but what is sought instead is the transfer of the property, wrongfully or erroneously registered, in another's name, to its rightful owner or to one with a better right.

4. ID.; ID.; ID.; PROPERTY REGISTRATION DECREE (PRESIDENTIAL DECREE NO. 1529); CERTIFICATE OF TITLE IS NOT SUBJECT TO COLLATERAL ATTACK; ACTION TO ATTACK ON THE CERTIFICATE OF TITLE MAY BE AN ORIGINAL ACTION OR A COUNTERCLAIM, IN WHICH A CERTIFICATE OF TITLE IS ASSAILED AS VOID; APPLICATION IN CASE AT BAR.— Indeed, Section 48 of Presidential Decree No. 1529 bars a collateral attack to a certificate of title and allows only a direct attack. An attack is direct when the object of the action is to annul or set aside such proceeding or enjoin its enforcement. Conversely, an attack is indirect or collateral when, in an action to obtain a different relief, an attack on the proceeding is nevertheless made as an incident thereof. Such action to attack a certificate of title may be an original action or a counterclaim, in which a certificate of title is assailed as void. There is no obstacle to the determination of the validity of petitioner's TCT in the instant case. While the indefeasibility of a Torrens title may not be collaterally attacked, it bears to stress that the underlying complaint originated from the MTC as an action for reconveyance filed by petitioner against herein respondents, and not an original action filed by the latter to question the validity of the TCT on which petitioner anchors her claim. Thus, although a ruling on the validity of the title may constitute a collateral attack, it must be emphasized that respondents, in their answer to the complaint, have put forth a counterclaim of ownership over the subject property along with a claim for damages. The Court of Appeals, therefore, may competently rule – as in fact it did – on the validity of petitioner's title for the counterclaim to be considered a direct attack on the same. This is based on the well-settled principle that a counterclaim

is essentially a complaint filed by the defendant against the plaintiff and stands on the same footing as an independent action. As plaintiffs in their own counterclaim, respondents are entitled to an opportunity to prove their cause of action and establish their rights like the petitioner in the original complaint.

APPEARANCES OF COUNSEL

ECA Law Office for petitioner.
Catral Catral and Urani Law Offices for respondents.

D E C I S I O N

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

Before us is a Petition for Review[1] seeking reversal of the October 23, 2015 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 135946.[3] The assailed decision reversed and set aside the April 21, 2014 Decision[4] of the Regional Trial Court (RTC)[5] of Aparri, Cagayan, which, in turn, affirmed *in toto* the judgment[6] rendered by the Municipal Trial Court (MTC) of Buguey, Cagayan, in an *action reinvindicatoria* instituted by petitioner Anthony U. Unciano against respondents Federico U. Gorospe and Leona Timotea U. Gorospe.

The Facts

Enrique Unciano, Sr., petitioner's father, had filed a free patent application over a parcel of land located in Barangay

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[1] RULES OF COURT, Rule 45.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Priscilla J. Baltazar-Padilla and Socorro B. Inting, concurring; *rollo,* pp. 17-37.

[3] Entitled *Federico U. Gorospe and Leona Timotea U. Gorospe v. Anthony U. Unciano.*

[4] Signed by Judge Pablo M. Agustin; *id*. at 85-87.

[5] Branch 10.

[6] Signed by Judge Clifford L.C. Sobrevilla; *rollo,* pp. 71-84.

Leron, Buguey, Cagayan.[7] During the pendency of the application, he advertised the property for sale because he needed financial assistance. He sold it to his daughter, herein petitioner, for ₱70,000.00,[8] after signing a waiver by which he expressly relinquished in favor of petitioner his rights as a free patent applicant.[9] Later on, he executed a Deed of Absolute Sale,[10] followed by a Deed of Confirmation of Sale.[11]

Following approval of the application, the corresponding Original Certificate of Title (OCT) No. P-80515 was issued in the name of Enrique Sr.[12] He immediately executed a Deed of Reconveyance in favor petitioner.[13] The OCT does not contain an annotation of the previous transactions affecting the property.[14] Thereafter, Transfer Certificate of Title (TCT) No. T-134942 was issued in the name of petitioner,[15] and she commenced paying realty taxes on the property.[16]

It appeared that respondents Federico Gorospe and Leona Timotea Gorospe, petitioner's sister, have been cultivating the land when the underlying transactions were entered into by petitioner and Enrique, Sr. Controversy arose when, after Enrique's death, respondents refused to surrender the property to petitioner. Although the parties entered into mediation before the *Lupong Tagapamayapa,* they failed to settle amicably.[17]

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[7] Free Patent Application No. H-6720-A, filed with the Department of Environment and Natural Resources Community Environment and Natural Resources in Aparri Cagayan; *id*. at 18, 72 and 85.

[8] *Id*; Petitioner, Anthony U. Unciano, is a female per verification with the records.

[9] Dated April 30, 2001; *id*. at 54.

[10] Dated November 5, 2001; *id*. at 55.

[11] Dated December 13, 2002; *id*. at 56.

[12] Per Patent No. 021502-02-17999; *id*. at 57.

[13] *Rollo,* pp. 58-59.

[14] *Id*. at 57-A.

[15] *Id*. at 60.

[16] *Id*. at 61.

[17] See Certification to File Action dated May 2, 2011; *id*. at 63.

This impelled petitioner to file an *accion reinvindicatoria* with prayer for a temporary restraining order and damages[18] before the MTC.

The MTC Ruling

In her complaint, petitioner, under claim of ownership by virtue of the Deeds of Absolute Sale and Reconveyance and the TCT in her name, prayed that respondents be ordered to vacate the property so that she could cultivate it herself.[19] For their part, respondents lamented that the sale was void under Section 118 of Commonwealth Act (C.A.) No. 141 which prohibits the sale or encumbrance of awarded public lands within five (5) years from the issuance of the patent.[20]

The MTC found petitioner to be the lawful owner of the land after having derived her title from Enrique, Sr., through the Deed of Absolute Sale. As the sale was perfected prior to the registration and titling of the property, the MTC held that the same was not prohibited under Section 118 of C.A. No. 141. It pointed out that the approval of Enrique, Sr.'s free patent application and the issuance of the OCT in his name were conclusive proof of his ownership from which petitioner derives her right. It declared the OCT indefeasible and imprescriptible, and not subject to collateral attack in the instant action for recovery of possession but rather in a direct proceeding assailing its validity. In the same vein, it held that questions as to the validity of the Deed of Reconveyance and the consequent deprivation of the other heirs of their share by virtue thereof, must likewise be resolved in the proper forum.[21]

The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendants and hereby ORDERS (sic):

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[18] Docketed as Civil Case No. 94; *id.* at 66.

[19] *Rollo,* pp. 45-51.

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

[21] *Id.* at 77-81.

(i) defendants and any and all persons acting under them and in their behalf to vacate the subject property described as Lot No. 2926 Pls-570 located at Leron, Buguey, Cagayan and covered by Transfer Certificate of Title No. T-134942 and surrender the possession of the same to the plaintiff;

(ii) defendants to pay plaintiff reasonable rent in the amount of Five Thousand Pesos (₱5,000.00) per annum from December 2002 up to the time they actually vacate the subject property;

(iii) defendants to pay plaintiff moral damages in the amount of Fifty Thousand Pesos (₱50,000.00);

(iv) defendants to pay plaintiff litigation expenses and attorney's fees in the amount of Fifty Thousand Pesos (₱50,000.00); and,

(v) Cost against defendants[.]

SO ORDERED.[22]

The RTC Ruling

The RTC, in its April 21, 2014 Decision, affirmed the findings and conclusion of the MTC as follows:

WHEREFORE, premises considered, the Decision of the Municipal Trial Court, Buguey, Cagayan dated August 27, 2013, appealed from is **AFFIRMED *IN TOTO.***

[SO ORDERED].[23]

The Court of Appeals' Ruling

Disagreeing with the rulings below, the CA held that the waiver, the Deed of Absolute Sale and the Deed of Confirmation of Sale were all inconsequential because they were executed pending approval of the free patent application, as in fact they were not annotated on the OCT. With that, the Deed of Reconveyance, executed after the issuance of the OCT, was likewise ineffective and not binding because any alienation or encumbrance of the property is proscribed under the terms of

[22] *Id.* at 83-84.

[23] *Id.* at 87.

Section 118 of C.A. No. 141. Accordingly, it declared petitioner's TCT as null and void, and the OCT in Enrique, Sr.'s name, valid and subsisting as follows:

> **WHEREFORE,** premises considered, the Petition for Review is **PARTLY GRANTED**. The assailed Decision dated April 21, 2014 and Order dated June 10, 2014 of the RTC, Branch 10, Aparri, Cagayan in Civil Case No. II-5511 are hereby **SET ASIDE.** Transfer Certificate of Title (TCT) No. T-134942 is hereby declared null and void, while Original Certificate of Title (OCT) No. P-80515 is declared valid and subsisting. Accordingly, the Register of Deeds of the Province of Cagayan is hereby **ORDERED** to cancel TCT No. T-134942 in the name of respondent Anthony Unciano and to reinstate OCT No. P-80515 in the name of Enrique Unciano, Sr.
>
> **SO ORDERED.**[24]

Hence, this Petition.

The Issues

The Honorable Court of Appeals erred in ruling that:

1) the provision in Section 118 of Commonwealth Act No. 141 applies to alienation before the approval of a Patent;
2) a Counterclaim is a [permissible [d]irect [a]ttack to the validity of a Torrens Title; and
3) the Transfer Certificate of Title (TCT) No. T-134942 in the name of herein petitioner is [n]ull and [v]oid.[25]

The Court's Ruling

The Court shall address the issues jointly as we resolve to deny the Petition.

Verily, the validity or invalidity of the subject Deed of Absolute Sale is the lynchpin that holds all the other issues raised in this petition.

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[24] *Id.* at 37.

[25] *Id.* at 6.

Petitioner posits that the prohibition against alienation or encumbrance under Section 118 of C.A. No. 141 does not apply to a sale made prior to the approval of the patent application supposedly because the prohibition applies only from the approval of the application and for five years from the date of the issuance of the patent.[26]

Section 118 states:

> **SEC. 118.** Except in favor of the Government or any of its branches, units, or institutions, **lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant,** nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period, but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.
>
> No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Commerce, which approval shall not be denied except on constitutional and legal grounds. (Emphasis supplied)

The proscription against the sale or encumbrance of property subject of a pending free patent application is not pointedly found in the aforequoted provision. Rather, it is embodied in the regalian doctrine enshrined in the Constitution, which declares all lands of the public domain as belonging to the State, and are beyond the commerce of man and not susceptible of private appropriation and acquisitive prescription.[27] What divests the Government of its title to the land is the issuance of the patent and its subsequent registration in the Office of the Register of Deeds. Such registration is the operative act that would bind the land and convey its ownership to the applicant.[28]

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

[27] See *Valiao v. Republic,* 677 Phil. 318, 326-327 (2011).

[28] *Visayan Realty v. Meer,* 96 Phil. 515, 520 (1955).

It is then that the land is segregated from the mass of public domain, converting it into private property.[29]

In property law, fundamental is the principle that no one can give what he does not have.[30] In other words, a seller may sell only what he or she owns, or that which he does not own but has authority to transfer, and a buyer can acquire only what the seller can legally transfer.[31] In fact, the Civil Code states that in a contract of sale, the seller binds himself to transfer the ownership of the thing sold,[32] and to do so, he must have the right to convey ownership of the thing at the time it is delivered.[33] The thing must be licit.[34]

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[29] *Javier v. Court of Appeals*, 301 Phil. 506, 515 (1994).

[30] *Daclag v. Macahilig*, 582 Phil. 138, 153 (2008), *Segura v. Segura*, 247-A Phil. 449, 458 (1988).

[31] *Daclag v. Macahilig*, 582 Phil. 138, 153 (2008).

[32] Art. 1458. By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

[33] Art. 1459. The thing must be licit and the vendor must have a right to transfer the ownership thereof at the time it is delivered.

[34] Sec. 90. Every application under the provisions of this Act shall be made under oath and shall set forth:
(a) The full name of applicant, his age, place of birth, citizenship, civil status, and post-office address.
In case the applicant is a corporation, association or co-partnership, the application shall be accompanied with a certified copy of its articles of incorporation, association or co-partnership together with an affidavit of its President, manager, or other responsible officer, giving the names of the stockholders or members, their citizenship, and the number of shares subscribed by each.
(b) That the applicant has all the qualifications required by this Act in the case.
(c) That he has none of the disqualifications mentioned herein.
(d) **That the application is made in good faith,** for the actual purpose of using the land for the object specified in the application and for no other purpose, and that the land is suitable for the purpose to which it be devoted.
(e) **That the application is made for the exclusive benefit of the application and not, either directly or indirectly, for the benefit of any other person or persons, corporation, association, or partnership.**

Based on these precepts, the contested lot in this case, during the pendency of the free patent application, was still part of the public domain and, therefore, an illicit subject of a contract of sale between Enrique, Sr. and petitioner. At the time, Enrique, Sr. did not have the right to transfer ownership inasmuch as he merely had an inchoate right as a patent applicant. By lodging an application for free patent, he had thereby acknowledged and recognized the land to be part of the public domain.[35] His application is an unmistakable recognition of his non-ownership of the subject land, such that his waiver of rights and the execution of the subsequent Deed of Absolute Sale – both in favor of petitioner – only suggest bad faith on his part for violating the condition of the sworn application that the same is for his exclusive benefit alone.[36] Indeed, the fact that the OCT was later issued in his name is an affirmation that the state will award homestead lots only to the person in whose name the application was filed and to no one else.

Thus, in *Development Bank of the Philippines v. Court of Appeals*,[37] the Court affirmed the nullification of a mortgage on a piece of public land constituted during the pendency of the free patent application therefor. In holding that the petitioner bank did not acquire valid title as mortgagee under the deed of mortgage, the open, continuous and public possession of the land by the mortgagor for thirty 30 years did not change the character of the land as still being part of the public domain prior to the issuance of the patent.[38] *Visayan Realty v. Meer*[39] pointed out that the grant of a sales application merely authorizes the applicant to take possession of the land so that he could comply with the requirements prescribed by law before a final

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[35] *Heirs of Patiwayan v. Martinez,* 226 Phil. 183, 190 (1986), and *Sumail v. CFI,* 96 Phil. 946, 953 (1955).

[36] Section 90(e) C.A. No. 141.

[37] 323 Phil. 489 (1996).

[38] *Id.* at 495-496.

[39] 96 Phil. 515 (1955).

patent can be issued in his favor.[40] Before these requirements shall have been complied with, *Javier v. Court of Appeals*[41] emphasizes that the Government still remains the owner of the property, as in fact the application could still be cancelled and the land awarded to another applicant should it be shown that the legal requirements had not been complied with.[42]

Upon this disquisition and on the basis of Section 118 in relation to Section 124[43] of C.A. No. 141 did the Court, in *Egao v. Court of Appeals*,[44] invalidate two sale transactions involving portions of a homestead lot – one entered into by petitioner therein during pendency of the application and the other, after issuance of the free patent but within the 5-year ban on encumbrance and alienation. There, the Court upheld the petitioner's OCT in spite of the contracts of sale which were perfected prior to the approval of the patent application and during the prohibitory period and therefore null and void.[45]

On this note, the Court of Appeals was correct in holding that the Deed of Reconveyance, upon which petitioner's TCT was issued, is void and ineffective in transferring rights to her as it involved a prohibited alienation under Section 118 of C.A. No. 141. It is clear at this juncture that petitioner's TCT is a nullity, yet petitioner now objects to the competence of the Court of Appeals in declaring it so. She posits that by handing

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[40] *Id*. at 520.

[41] 301 Phil. 506 (1994).

[42] *Id*. at 515.

[43] Sec. 124. Any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of any of the provisions of sections one hundred and eighteen, one hundred and twenty, one hundred and twenty-one, one hundred and twenty-two, and one hundred and twenty-three of this Act shall be unlawful and null and void from its execution and shall produce the effect of annulling and cancelling the grant, title, patent, or permit originally issued, recognized or confirmed, actually or presumptively, and cause the reversion of the property and its improvements to the State.

[44] 256 Phil. 243 (1989).

[45] *Id.* at 250-253.

down a ruling on the validity of her title, the appellate court has thereby sanctioned an impermissible attack on a Torrens title.[46]

Petitioner is mistaken.

Accion reinvindicatoria, or an action for reconveyance, is a legal and equitable remedy granted to the rightful owner of a land which has been wrongfully or erroneously registered in the name of another for the purpose of compelling the latter to transfer or reconvey the land to him. The action does not seek to reopen the registration proceedings and to set aside the decree of registration but only purports to show that the person who secured the registration of the property in controversy is not the real owner thereof.[47] In this action, the decree of registration is respected as incontrovertible, but what is sought instead is the transfer of the property, wrongfully or erroneously registered, in another's name, to its rightful owner or to one with a better right.[48]

Indeed, Section 48[49] of Presidential Decree No. 1529[50] bars a collateral attack to a certificate of title and allows only a direct attack. An attack is direct when the object of the action is to annul or set aside such proceeding or enjoin its enforcement.[51] Conversely, an attack is indirect or collateral when, in an action to obtain a different relief, an attack on the proceeding is nevertheless made as an incident thereof. Such

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[46] *Rollo,* p. 11.

[47] *Spouses Lopez v. Spouses Lopez,* 620 Phil. 368, 376 (2009).

[48] *Uy v. Court of Appeals,* 769 Phil. 705, 718-179, citing *Hi-Tone Marketing Corp. v. Baikal Realty Corp.*, G.R. No. 149992, August 20, 2004, 437 SCRA, 121, 143.

[49] 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.

[50] THE PROPERTY REGISTRATION DECREE.

[51] *Arangote v. Maglunob,* 599 Phil. 91, 111 (2009).

action to attack a certificate of title may be an original action or a counterclaim, in which a certificate of title is assailed as void.[52]

There is no obstacle to the determination of the validity of petitioner's TCT in the instant case. While the indefeasibility of a Torrens title may not be collaterally attacked, it bears to stress that the underlying complaint originated from the MTC as an action for reconveyance filed by petitioner against herein respondents, and not an original action filed by the latter to question the validity of the TCT on which petitioner anchors her claim. Thus, although a ruling on the validity of the title may constitute a collateral attack, it must be emphasized that respondents, in their answer to the complaint, have put forth a counterclaim of ownership over the subject property along with a claim for damages.[53]

The Court of Appeals, therefore, may competently rule – as in fact it did – on the validity of petitioner's title for the counterclaim to be considered a direct attack on the same. This is based on the well-settled principle that a counterclaim is essentially a complaint filed by the defendant against the plaintiff and stands on the same footing as an independent action.[54] As plaintiffs in their own counterclaim, respondents are entitled to an opportunity to prove their cause of action and establish their rights like the petitioner in the original complaint.

In sum, the Court finds that the sale made by Enrique, Sr. in favor of petitioner during the pendency of his free patent application is void and did not produce legal effect. As petitioner has not derived valid title from the said transaction, the Deed of Reconveyance in her favor and the TCT that was eventually issued could also not have placed her in ownership of the subject property. Indeed, the definite state policy which our public

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[52] *Id.*

[53] *Rollo*, pp. 68-69. In their Answer, respondents, under the heading "Compulsory Counterclaim," repleaded portions of their affirmative defenses claiming ownership of the subject lot. In their prayer, they sought the court to declare them to be the absolute owner of the land, among others.

[54] *Firaza v. Spouses Ugay*, 708 Phil. 24, 30 (2013).

land laws seek to promote is to keep in the family of the homesteader that portion of the public land which the state has gratuitously given to him.[55]

That the alienation of the property in this case was made in favor of the applicant's own heir no less, and before the issuance of the patent applied for, is, to our mind of no moment. A validation of arrangements of this kind would only open the door to fraudulent schemes that enable the means to circumvent the law. Thus, it was held in *Gonzaga v. Court of Appeals:*[56]

> Section 118 of the Public Land Act reads: "Except in favor of the Government or any of its branches, units, or institutions, or legally constituted banking corporations, lands acquired under the free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period; but the improvements or crops of the land may be mortgaged or pledged to qualified persons, associations, or corporations." Is it not a clear expression then of the state policy to assure that the original grantee, even if he were minded otherwise, is deprived for a period of five years of his freedom of disposition? Thus is he protected from his own weaknesses or temptation to sell, or lack of business acumen, the purpose being, in the language of Justice *J.B.L. Reyes in Artates v. Urbi*, to keep and preserve for him "or his family the land given to him gratuitously by the State, so that being a property owner, he may become and remain a contented and useful member of our society." **Considering that such is policy, does it not logically follow that he is precluded disposing of his rights prior even to his obtaining the patent? Both policy and reason, therefore, unite in conclusion that no such distinction should be made. Then, it is not to be forgotten that the state is possessed of plenary power as the *persona* in law to determine who shall be the favored recipients of public lands, as well as under what terms they may be granted such privilege, not excluding placing of obstacles in the way of their exercising what otherwise would be ordinary acts of ownership?**[57]

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[55] *Ortega v. Tan,* 260 Phil. 371, 378 (1990).

[56] 151-A Phil. 834-842 (2002).

[57] *Id*. at 840, emphasis supplied.

WHEREFORE, the Petition is **DENIED.** The October 23, 2015 Decision of the Court of Appeals in CA-G.R. SP No. 135946 is **AFFIRMED.**

SO ORDERED.

Caguioa (Acting Chairman), Lazaro-Javier, and *Zalameda, JJ.,* concur.

Carpio, S.A.J. (*Chairperson*), on official leave.

EN BANC

[G.R. No. 223134. August 14, 2019]

VICENTE G. HENSON, JR., *petitioner, vs.* **UCPB GENERAL INSURANCE CO., INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; DAMAGES; SUBROGATION; BY VIRTUE OF THE SUBROGEE-INSURER'S PAYMENT OF INDEMNITY TO THE SUBROGOR-INSURED, THE FORMER IS ABLE TO ACQUIRE, BY OPERATION OF LAW, ALL RIGHTS OF THE LATTER AGAINST THE DEBTOR; DEBTOR IS A STRANGER TO THIS JURIDICAL TIE BECAUSE IT ONLY REMAINS BOUND BY ITS ORIGINAL OBLIGATION TO ITS CREDITOR WHOSE RIGHTS, HOWEVER, HAVE ALREADY BEEN ASSUMED BY THE SUBROGEE.— [S]ubrogation's legal effects under Article 2207 of the Civil Code are primarily between the subrogee-insurer and the subrogor-insured: by virtue of the former's payment of indemnity to the latter, it is able to acquire, by operation of law, all rights of the subrogor-insured against the debtor. The debtor is a stranger to this juridical tie because it only remains bound by its original obligation to its creditor whose rights, however, have already been assumed by the

subrogee. In *Vector*'s case, American Home was able to acquire *ipso jure* all the rights Caltex had against Vector under their contract of affreightment by virtue of its payment of indemnity. If at all, subrogation had the effect of obliging Caltex to respect this assumption of rights in that it must now recognize that its rights against the debtor, *i.e.*, Vector, had already been transferred to American Home as the subrogee-insurer. In other words, by operation of Article 2207 of the Civil Code, Caltex cannot deny American Home of its right to claim against Vector. However, the subrogation of American Home to Caltex's rights did not alter the original obligation between Caltex and Vector. Accordingly, the Court, in *Vector*, erroneously concluded that "the cause of action [against Vector] accrued as of the time [American Home] actually indemnified Caltex in the amount of ₱7,455,421.08 on July 12, 1988." Instead, it is the subrogation of rights between Caltex and American Home which arose from the time the latter paid the indemnity therefor. Meanwhile, the accrual of the cause of action that Caltex had against Vector did not change because, as mentioned, no new obligation was created as between them by reason of the subrogation of American Home. The cause of action against Vector therefore accrued at the time it breached its original obligation with Caltex whose right of action just so happened to have been assumed in the interim by American Home by virtue of subrogation. "[A] right of action is the right to presently enforce a cause of action, while a cause of action consists of the operative facts which give rise to such right of action." The foregoing application hews more with the fundamental principles of civil law, especially on the well-established doctrines on subrogation. Article 1303 of the Civil Code states that "[s]ubrogation transfers to the person subrogated the credit with all the rights thereto appertaining, either against the debtor or against third persons x x x." In *Loadstar Shipping Company, Inc. v. Malayan Insurance Company, Inc.*, the Court had clearly explained that because of the nature of subrogation as a mode of "creditor-substitution," the rights of a subrogee cannot be superior to the rights possessed by a subrogor.

2. ID.; ID.; ID.; CHARACTERIZED AS AN "EQUITABLE ASSIGNMENT" SINCE IT IS AN ASSIGNMENT OF CREDIT WITHOUT THE NEED OF CONSENT.— Despite its error, Vector had aptly cited the case of *Pan Malayan*

Insurance Corporation v. CA (*Pan Malayan*), wherein it was explained that subrogation, under Article 2207 of the Civil Code, operates as a form of "**equitable assignment**" whereby "the insurer, upon payment to the assured, will be subrogated to the rights of the assured to recover from the wrongdoer to the extent that the insurer has been obligated to pay." **It is characterized as an "equitable assignment" since it is an assignment of credit without the need of consent** - as it was, in fact, mentioned in *Pan Malayan*, "[t]he right of subrogation is not dependent upon, nor does it grow out of, any privity of contract or upon written assignment of claim. It accrues simply upon payment of the insurance claim by the insurer." **It is only to this extent that the equity aspect of subrogation must be understood.** Indeed, subrogation under Article 2207 of the Civil Code allows the insurer, as the new creditor who assumes *ipso jure* the old creditor's rights without the need of any contract, to go after the debtor, but it does not mean that a new obligation is created between the debtor and the insurer. Properly speaking, the insurer, as the new creditor, remains bound by the limitations of the old creditor's claims against the debtor, which includes, among others, the aspect of prescription. Hence, the debtor's right to invoke the defense of prescription cannot be circumvented by the mere expedient of successive payments of certain insurers that purport to create new obligations when, in fact, what remains subsisting is only the original obligation. Verily, equity should not be stretched to the prejudice of another.

3. ID.; ID.; ID.; DISTINGUISHED FROM ASSIGNMENT, IN THEIR LEGAL AND CONVENTIONAL SENSES.— [I]n an assignment of credit, the consent of the debtor is not necessary in order that the assignment may fully produce legal effects (as notice to the debtor suffices); also, in assignment, no new contractual relation between the assignee/new creditor and debtor is created. On the other hand, in conventional subrogation, an agreement between all the parties concerning the substitution of the new creditor is necessary. ***Meanwhile, legal subrogation produces the same effects as assignment and also, no new obligation is created between the subrogee/new creditor and debtor.*** As observed in commentaries on the subject: The effect of legal subrogation is to transfer to the new creditor the credit and all the rights and actions that could have been exercised by the former creditor either against the debtor or against third

persons, be they guarantors or mortgagors. **Simply stated, except only for the change in the person of the creditor, the obligation subsists in all respects as before the novation.** Unlike assignment, however, legal subrogation, to produce effects, does not need to be agreed upon by the subrogee and subrogor, unlike the need of an agreement between the assignee and assignor. As mentioned, "[l]egal subrogation is that which takes place without agreement but by operation of law because of certain acts," as in the case of payment of the insurer under Article 2207 of the Civil Code.

4. ID.; ID.; ID.; THE INSURER CAN TAKE NOTHING BY SUBROGATION BUT THE RIGHTS OF THE INSURED, AND IS SUBROGATED ONLY TO SUCH RIGHTS AS THE INSURED POSSESSES; FOR PURPOSES OF PRESCRIPTION, INSURER INHERITS ONLY THE REMAINING PERIOD WITHIN WHICH THE INSURED MAY FILE AN ACTION AGAINST THE WRONGDOER.— "[T]he insurer can take nothing by subrogation but the rights of the insured, and is subrogated only to such rights as the insured possesses. This principle has been frequently expressed in the form that the rights of the insurer against the wrongdoer cannot rise higher than the rights of the insured against such wrongdoer, since the insurer as subrogee, in contemplation of law, stands in the place of the insured and succeeds to whatever rights he may have in the matter. ***Therefore, any defense which a wrongdoer has against the insured is good against the insurer subrogated to the rights of the insured***," and this would clearly include the defense of prescription. Based on the above-discussed considerations, the Court must heretofore **abandon the ruling in *Vector*** that an insurer may file an action against the tortfeasor within ten (10) years from the time the insurer indemnifies the insured. **Following the principles of subrogation, the insurer only steps into the shoes of the insured and therefore, for purposes of prescription, inherits only the remaining period within which the insured may file an action against the wrongdoer.** To be sure, the prescriptive period of the action that the insured may file against the wrongdoer begins at the time that the tort was committed and the loss/injury occurred against the insured. The indemnification of the insured by the insurer only allows it to be subrogated to the former's rights, and does not create a new reckoning point for the cause of action that the insured originally has against the wrongdoer.

5. ID.; EFFECT AND APPLICATION OF LAW; JUDICIAL DECISIONS APPLYING OR INTERPRETING THE LAWS OR THE CONSTITUTION, UNTIL REVERSED, SHALL FORM PART OF THE LEGAL SYSTEM OF THE PHILIPPINES; ABANDONMENT OF THE *VECTOR* DOCTRINE SHOULD BE PROSPECTIVE IN APPLICATION.— [I]t should, however, be clarified that this Court's abandonment of the *Vector* doctrine should be **prospective** in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines. Unto this Court devolves the sole authority to interpret what the law means, and all persons are bound to follow its interpretation. As explained in *De Castro v. Judicial and Bar Council*: Judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria that must control the actuations, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them. Hence, while the future may ultimately uncover a doctrine's error, it should be, **as a general rule**, recognized as a "good law" prior to its abandonment.

6. ID.; ID.; ID.; PREVAILING RULE APPLICABLE TO THE CASE AT BAR IS *VECTOR*; DENIAL OF PETITION, PROPER IN CASE AT BAR.— In this case, it is undisputed that the water leak damage incident, which gave rise to Copylandia's cause of action against any possible defendants, including NASCL and petitioner, happened on **May 9, 2006**. As this incident gave rise to an obligation classified as a *quasi-delict*, Copylandia would have only had four (4) years, or until **May 9, 2010**, within which to file a suit to recover damages. When Copylandia's rights were transferred to respondent by virtue of the latter's payment of the former's insurance claim on **November 2, 2006**, as evidenced by the Loss and Subrogation Receipt, respondent was likewise bound by the same prescriptive period. Since it was only on: (*a*) **May 20, 2010** when respondent made an extrajudicial demand to NASCL, and thereafter, filed its complaint; (*b*) **October 6, 2011** when respondent amended its complaint to implead CHI as party-defendant; and (*c*) **April 21, 2014** when respondent moved to further amend the complaint in order to implead petitioner as party-defendant in lieu of CHI,

prescription — if adjudged under the present parameters of legal subrogation under this Decision — should have already set in. ***However, it must be recognized that the prevailing rule applicable to the pertinent events of this case is Vector.*** Pursuant to the guidelines stated above, specifically under **guideline 1 (a)**, the *Vector* doctrine — which was even relied upon by the courts *a quo* — would then apply. Hence, as the amended complaint impleading petitioner was filed on April 21, 2014, which is within ten (10) years from the time respondent indemnified Copylandia for its injury/loss, *i.e.*, on November 2, 2006, the case cannot be said to have prescribed under *Vector*. As such, the Court is constrained to deny the instant petition.

CAGUIOA, *J., concurring opinion*:

1. CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION OF ACTIONS; CAUSE OF ACTION BASED ON QUASI-DELICT PRESCRIBES IN FOUR YEARS; CORRESPONDING OBLIGATION *VIS-À-VIS* THE RIGHT CREATED BY LEGAL SUBROGATION UNDER ARTICLE 2207 OF THE CIVIL CODE MUST BE SUBSUMED WITHIN OR UNDER THE RIGHT THAT THE SUBROGEE MAY EXERCISE AGAINST THE "WRONGDOER OR THE PERSON WHO HAS VIOLATED THE CONTRACT" BECAUSE THE SUBROGEE MERELY STEPS INTO THE SHOES OF THE INSURED.— I concur with the *ponencia* that the applicable prescriptive period is 4 years because the cause of action is based on quasi-delict. Stated differently, the right that UCPB Gen is subrogated to is the right of Copylandia to damages arising from the quasi-delict committed by NASCL which resulted in the damage to its various equipment. The obligation of NASCL arises from quasi-delict under Article 2176 of the Civil Code and not from law. Under Article 2176, 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 preexisting contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter [on Quasi-Delicts]. The corresponding obligation *vis-a-vis* the right created by legal subrogation under Article 2207 must be subsumed within or under the right that the subrogee may exercise against "the wrongdoer or the person who has violated the

contract" because the subrogee merely steps into the shoes of the insured. Thus, the corresponding obligation of NASCL arises from quasi-delict and not from the law creating the right of subrogation in favor of respondent.

2. ID.; DAMAGES; LEGAL SUBROGATION; UNDER ARTICLE 2207 OF THE CIVIL CODE, LEGAL SUBROGATION DOES NOT CREATE A "SECOND" OBLIGATION ON THE PART OF THE TORTFEASOR TO THE SUBROGEE THAT IS INDEPENDENT AND DISTINCT FROM THE FORMER'S OBLIGATION ARISING FROM QUASI-DELICT TO THE SUBROGOR.— I x x x take the position that legal subrogation under Article 2207 does **not** create a "second" obligation (*i.e.*, arising from law) on the part of the tortfeasor to the subrogee that is independent and distinct from the former's obligation arising from quasi-delict to the subrogor (aggrieved insured party). ***There is only one obligation and that is the one arising from quasi-delict.*** The rights of the subrogor and the subrogee are identical. In fact, if the subrogor files the complaint for damages against the tortfeasor and is later substituted by the subrogee after payment of the subrogor's insurance claim, the cause of action remains the same because the subrogee simply steps into the shoes of the subrogor. The insurer's right of subrogation against third persons causing the loss paid by the insurer to the insured arises out of the contract of insurance and is derived from the insured alone. Consequently, the insurer can take nothing by subrogation but **only** the rights of the insured. This is so because the rights of the insurer against the wrongdoer cannot rise higher than the rights of the insured against such wrongdoer; as subrogee, the insurer, in contemplation of law, stands in the place of the insured and succeeds to whatever rights he may have in the matter. The cause of action of the insurer against the wrongdoer is the very cause of action of the insured against the wrongdoer such that when the property upon which there is insurance is damaged or destroyed by the negligence of another, the right of action accruing to the injured party is for an indivisible wrong giving rise to a single indivisible cause of action which abides in the insured, through whom the insurer, upon payment of the insurance, must work out its rights. And, any defense which a wrongdoer has against the insured is good against the insurer subrogated to the rights of the insured, including statute of limitations.

3. ID.; ID.; ID.; ID.; THE RIGHTS OF THE INSURER AGAINST THE WRONGDOER CANNOT RISE HIGHER THAN THE RIGHTS OF THE INSURED AGAINST SUCH WRONGDOER BECAUSE THE INSURER AS SUBROGEE, IN CONTEMPLATION OF LAW, STANDS IN THE PLACE OF THE INSURED AND SUCCEEDS TO WHATEVER RIGHTS HE MAY HAVE IN THE MATTER.— Similarly, it is my position that it is § 1795 (Extent of right; dependence upon rights of insured) of Am. Jur. 2d (1982 ed.) or § 1821 (Extent of right; dependence upon rights of insured) of Am. Jur. 2d (1969 ed.) that is relevant in this case. Based on Am. Jur. 2d (1982 ed.), the insurer's right of subrogation against third persons causing the loss paid by the insurer to the insured does not rest upon any relation of contract or privity between the insurer and such third persons; ***but arises out of the contract of insurance and is derived from the insured alone***. As a consequence, the insurer can take nothing by subrogation but the rights of the insured, and is subrogated to only such rights as the insured possesses. ***The principle that proceeds from the foregoing is that the rights of the insurer against the wrongdoer cannot rise higher than the rights of the insured against such wrongdoer because the insurer as subrogee, in contemplation of law, stands in the place of the insured and succeeds to whatever rights he may have in the matter.*** Thus, any defense which a wrongdoer has against the insured is good against the insurer subrogated to the rights of the insured; and the wrongdoer may assert a claim he has against the insured as a counterclaim against the insurer. It must be noted that the subrogation claim, being derived from the claim of the insured, is subject to same defenses, **including statute of limitations**, as if the action had been sued upon by the insured. In this respect, *St. Paul Fire Marine Ins. v. Glassing* (*St. Paul II*) is in point. x x x Borrowing the words of *St. Paul II*, since the right of subrogation is purely derivative, UCPB Gen's claim is derivative of Copylandia's claim; and the latter's claim accrued on **May 9, 2006**, the occurrence of the damage to its various equipment. The 4-year prescriptive period for tort or quasi-delict began to run on UCPB Gen's action at the same time that the same statute of limitations would have begun to run on Copylandia's action against NASCL. Also, since the Philippines has no statutory authority extending the limitation period for subrogation claims of insurers that have paid damages to their insureds similar to

the State of Montana, U.S.A., and the insurer's claim is derivative from that of the insured, the insurer's claim is subject to the same 4-year prescriptive period applicable to quasi-delicts as though the cause of action were sued upon by Copylandia. Consequently, the claim of UCPB Gen, as subrogee, had prescribed on **May 9, 2010**. ***To reiterate, the cause of action of the insurer against the wrongdoer is the very cause of action of the insured against the wrongdoer such that when the property upon which there is insurance is damaged or destroyed by the negligence of another, the right of action accruing to the injured party is for an indivisible wrong giving rise to a single indivisible cause of action which abides in the insured, through whom the insurer, upon payment of the insurance, must work out its rights.*** Thus, American jurisprudence clearly supports the majority view. In subrogation, the insurer literally steps into the shoes of the insured regardless of their size.

4. ID.; ID.; ID.; TO HOLD THAT SUBROGATION GIVES RISE TO A CAUSE OF ACTION CREATED BY LAW, BASIC PRINCIPLES OF SUBROGATION ARE VIOLATED.— [T]o hold that subrogation under Article 2207 of the Civil Code gives rise to a cause of action created by law is erroneous. There are basic principles of subrogation that are violated. Firstly, such ruling sanctions an unauthorized bifurcation of the singular indivisible obligation of the wrongdoer or tortfeasor, NASCL in this case, to both the injured party-insured, Copylandia, and the insurer, UCPB Gen as it violates a basic principle of subrogation that the right of action accruing to the injured party is for an indivisible wrong giving rise to a single indivisible cause of action which abides in the insured, through whom the insurer, upon payment of the insurance, must work out its rights. If Copylandia's cause of action against NASCL arises from quasi-delict and UCPB Gen's cause of action against NASCL arises from law, then there will, in effect, be two distinct obligations and causes of action. Secondly, such ruling violates another basic principle of subrogation that the rights of the insurer against the wrongdoer cannot rise higher than the rights of the insured against such wrongdoer because the insurer, as subrogee, in contemplation of law, stands in the place of the insured and succeeds to whatever rights he may have in the matter. If UCPB Gen's cause of action prescribes in 10 years while that of Copylandia prescribes in 4 years, then the right of the insurer

against the wrongdoer will necessarily rise higher than the right of the insured against such wrongdoer. Thirdly, if UCPB Gen's cause of action is deemed not to have prescribed despite the fact that Copylandia's cause of action against NASCL had already prescribed, then still another basic principle of subrogation is violated, *i.e.*, the subrogation claim, being derived from the claim of the insured is subject to same defenses, including statute of limitations, as if the action had been sued upon by the injured.

5. ID.; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION; AN ACTION UPON A QUASI-DELICT PRESCRIBES IN 4 YEARS; DISMISSAL OF THE COMPLAINT, PROPER IN CASE AT BAR.— [T]he non-dismissal of the complaint based on the 10-year prescriptive period of an action upon an obligation created by law is fundamentally wrong because — to borrow the language of the cited American authorities — the right of action accruing to the injured party that is passed on to the insurer is for an indivisible wrong giving rise to a single indivisible cause of action which abides in the insured, through whom the insurer, upon payment of the insurance, must work out its rights. The complaint for damages should have been dismissed on the ground that it was not seasonably filed within the 4-year prescriptive period under Article 1146(2), an action upon a quasi-delict. It must be recalled that on May 20, 2010 UCPB Gen made an extrajudicial demand upon NASCL. Under Article 1155 of the Civil Code, "[t]he prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor." ***However***, the extrajudicial demand here could not have interrupted the 4-year prescriptive period because the same had already lapsed on **May 9, 2010**, which is 4 years from the occurrence of the damage to the various equipment on **May 9, 2006**. In view of the guidelines adopted by the Court to transition the abandonment of the *Vector* ruling, I concur in denying the petition.

LAZARO-JAVIER, *J., concurring opinion*:

1. CIVIL LAW; DAMAGES; LEGAL SUBROGATION; AN EQUITABLE PRINCIPLE TO PREVENT UNJUST ENRICHMENT; DISTINGUISHED FROM CONVENTIONAL

SUBROGATION.— As their respective names suggest, legal suborgation differs from *conventional* subrogation in that the former arises by operation of law while the latter comes from the agreement between the subrogor and the subrogee. Legal subrogation is oftentimes referred to as an *equitable* assignment of credit not only to indicate its historical origin but also its reference to circumstances (*or the equities of a case*) upon which the law builds and provides for a remedy. But more than what its name suggests, it is the *purpose* of legal subrogation that *defines the scope of its legal effects*. It has been said that legal subrogation is "an equitable principle to prevent unjust enrichment." Accordingly: **Limitations on the Right** The right of subrogation, with its origin in the Civil Law, is merely an equitable right. **It is not enforced at the expense of a legal right.** In this State the Court of Appeals in a number of cases has enunciated the principles just stated and **has refused substitution"... when by so doing it will work an injury upon other persons by destroying their legal or equitable rights**. From the above, it is clear that **the right of subrogation is not granted against a superior equity or a legal right, but that a judgment creditor has no such superior equity as entitles him to the benefit of this principle**. It would hardly seem necessary to cite authorities for the statement that **if the creditor in connection with whose rights subrogation is claimed has no rights thus to be equitably conveyed to the person claiming subrogation, no right of subrogation can arise**. **Subrogation being a right to which a person claiming it is substituted by virtue of equitable principles**, this right exists as to securities, which the creditor did not have or did not know about at the time his obligation was incurred.

2. ID.; ID.; ID.; WHEN APPLIED, THE EQUITABLE DOCTRINE OF SUBROGATION ACCORDS TO THE SUBROGATED PERSON ALL OF THE RIGHTS OF THE CREDITOR TO WHICH THE SUBROGEE BECOMES THUS ENTITLED; EQUITABLE SUBROGEE'S RIGHT CANNOT RISE HIGHER THAN THAT OF THE EQUITABLE SUBROGOR.— This phase of the matter could probably be summarily disposed of by saying that **the equitable doctrine of subrogation when applied accords to the subrogated person all of the rights of the creditor to which the subrogee becomes thus entitled....** x x x Legal subrogation,

therefore, gives rise to an *indivisible right of recovery*, that is, *indivisible from the original right pertaining to the equitable subrogor*. The equitable subrogee's right cannot rise higher than that of the equitable subrogor.

3. ID.; ID.; ID.; EQUITY PLAYS A VERY IMPORTANT ROLE IN THE RESOLUTION OF THE SCOPE OF LEGAL SUBROGATION; ADHERING TO THE OLD AND NOW ABANDONED LEGAL DOCTRINE THAT THE EQUITABLE SUBROGEE'S RIGHT OF RECOVERY ACCRUES FROM THE TIME OF PAYMENT TO THE SUBROGOR OF THE TORTFEASOR'S LIABILITY AND CONTINUES FOR TEN (10) YEARS AFTER; THIS IS HIGHLY INIQUITOUS AS IT APPEARS GIVING AN UNWARRANTED PREFERENCE TO THE INSURER; CASE AT BAR.— Further, *equity* plays a very important role in the resolution of the *scope of legal subrogation.* I think it is *highly iniquitous to continue adhering* to the *old* and *now abandoned* legal doctrine that the equitable subrogee's right of recovery accrues from the time of payment to the subrogor of the tortfeasor's liability *and* continues for *10 years after*. This is *iniquitous* when *juxtaposed against* the circumstances of a tortfeasor and his or her victim where an insurer does *not* play a role. In the *latter case*, the cause of action accrues from the time of the discovery of the tort *and* only for *four years after*. The intervention of an insurer who pays for the damage *does not rest upon a legitimate distinction* between the former and the latter cases. In fact, the old legal doctrine appears to be *giving an unwarranted preference to the insurer* which in most if not all instances, is a big-budgeted artificial person that has both the resources and capacity to immediately investigate the cause of the insured's injuries, pay for the injuries, and launch the lawsuit to recover what it has paid. There is *no reason* for the insurer to have the luxury of time that others similarly situated, *i.e.*, those who have been injured by a tortfeasor but without an insurer to help them by, do not have. If we are to pursue the inequality further, an insurer can opt to pay an insured only after, for example, seven years, and from then on, will have ten more years to sue the tortfeasor for recovery. *The insurer is thus benefitted by a timeline that is not reasonable under the insurer's own circumstances.* This is in contrast to an uninsured victim of a tortfeasor who would only have four

years from the date of discovery of the tort to pursue his or her claim. As well, the tortfeasor in the latter case would have to wait only four years until the claim against him would become stale, while in the former, he or she has to lie in wait not only for the time that the insurer decides to pay the insured victim but for 10 year more from the time of payment by the insurer to the insured, before the tortfeasor can claim prescription. Whether for the uninsured victim of the tortfeasor or the tortfeasor himself or herself, there is an inequality that being justified only by the presence of a deep-pocketed and legally savvy and experienced insurer.

BERSAMIN, *C.J., dissenting opinion*:

1. CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION OF ACTIONS; SUBROGATION OF THE INSURER UNDER ARTICLE 2207 OF THE CIVIL CODE GIVES RISE TO AN OBLIGATION CREATED BY LAW, THE CAUSE OF ACTION WHICH PRESCRIBES IN TEN (10) YEARS; CASE AT BAR.— I submit that the ruling on prescription in *Vector Shipping Corporation v. American Home Assurance Company* is the applicable rule for this case. x x x **To me, the letter and intent of the law are too clear and forthright to be ignored. Subrogation of the insurer under Article 2207 of the *Civil Code* gives rise to an obligation *created by law*. With the clarity and forthrightness of the legal provision on the nature of subrogation as an obligation arising from law, the cause of action based on subrogation prescribes in 10 years pursuant to Article 1144(2) of the *Civil Code*.** x x x Based on the foregoing, the dictum in *Vector Shipping Corporation v. American Home Assurance Company*, that subrogation gives rise to an action created by operation of law, and that, consequently, the action prescribes in 10 years reckoned from the moment of payment, is unassailable. With UCPBGen's cause of action against Henson, which accrued on November 2, 2006, not yet prescribed by April 21, 2014 when UCPBGen impleaded him as a party-defendant, Civil Case No. 10-885 should be allowed to prosper against him.

2. ID.; DAMAGES; DOCTRINE OF SUBROGATION; ESSENTIALLY HOLDS THAT AN INSURER WHO HAS FULLY INDEMNIFIED AN INSURED AGAINST A LOSS

COVERED BY A CONTRACT OF INSURANCE BETWEEN THEM MAY ORDINARILY ENFORCE, IN THE INSURER'S OWN NAME, ANY RIGHT OF RECOURSE AVAILABLE TO THE INSURED; EFFECTS OF INSURER'S PAYMENT TO THE INSURED; CASE AT BAR.— There is no question that the right of subrogation is a creature of equity, owing its origin at common law, and later evolved as a doctrine through the decision of Lord Hardwicke in *Randal v. Cockran*. Lord Hardwicke pronounced in *Randal v. Cockran* that: x x x **The person originally sustaining the loss was the owner; but after satisfaction made to him, the insurer. No doubt, but from that time, as to the goods themselves, if restored *in specie*, or compensation made for them, the assured stands as a trustee for the insurer, in proportion for what he paid.** As can be seen, the doctrine of subrogation essentially holds that an insurer who has fully indemnified an insured against a loss covered by a contract of insurance between them may ordinarily enforce, in the insurer's own name, any right of recourse available to the insured. **The role of equity comes into play once the insurer has indemnified the insured. Payment is the crucial event that allows the insurer to succeed to the rights of the insured. Unless the insurer pays pursuant to the policy, there is no loss that he has sustained and, therefore, there arises no right of recovery.** Since the time of the pronouncement in *Randal v. Cockran*, therefore, it has been judicially recognized that the insurer's payment to the insured produces the following effects, namely: (1) The person making the payment to the third party was recognized as having acquired *at the moment of paying* a right to claim a contribution or an indemnity (as the case might be) from the principal obligor; (2) The acquisition of that right did not result from an express agreement to transfer such right, which the third party had against the principal obligor; and (3) Both the common law courts and the courts of equity accepted that this acquisition of rights against the principal obligor was an operation of equity, not of the common law.

3. MERCANTILE LAW; INSURANCE; SUBROGATION DISTINGUISHED FROM ASSIGNMENT.— Under insurance law principles, *assignment* varies from *subrogation* in both the method of creation and the results produced. Subrogation arises by operation of law when the insurer pays either a portion or

the entire amount of property damages an insured individual claims under a policy, and may exist even without a statute or agreement that provides for it. Subrogation accompanies payment, and carries with it only the limited claim to reimbursement, arising as it does upon payment to discharge a third person's indebtedness. If the insurer has a right to subrogation, Philippine laws — particularly Article 2207 of the *Civil Code* — confer upon the insurer the status of a real party-in-interest with regard to the indemnity paid. x x x In contrast, assignment is preceded by an agreement by virtue of which the owner of a credit (known as the assignor), by a legal cause - such as sale, dation in payment, exchange or donation - and without need of the debtor's consent, transfers that credit and its accessory rights to another (known as the assignee), who thereby acquires the power to enforce it, to the same extent as the assignor could have enforced it against the debtor. Unlike the right to subrogation that arises only upon the insurer's payment of the insured's claim, assignment of the insured's property damage claim may take place even before the damage occurs. After the assignment of the claims of the insured, the insurer becomes the real party-in-interest and may bring a claim in its own name against the tortfeasor or the latter's insurer. The only similarity that the doctrine of subrogation and the concept of assignment share is that the transferee has no right independent of the transferor. In insurance, the insurer can only enforce the rights that the insured has; consequently, the insurer, as the person paying for the loss, cannot assume a better right than the insured, or person being indemnified. Yet, it must be recalled that subrogation, as an equitable principle, is supposed to ensure that the person who actually caused damages will eventually pay for those damages. To underscore, this allowance of subrogation has its roots in the equitable doctrine of preventing unjust enrichment.

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

1. CIVIL LAW; DAMAGES; LEGAL SUBROGATION; TOTAL LEGAL SUBROGATION; CONTEMPLATES LEGAL SUBROGATION WHICH GROWS NOT OUT OF PRIVITY OF CONTRACT BUT ARISES BY THE FACT OF PAYMENT; LEGAL SUBROGATION IS A RIGHT THAT SPRINGS FROM ARTICLE 2207 OF THE CIVIL CODE,

THE RESULTING OBLIGATION ARISING THEREFROM IS THEREFORE, CREATED BY LAW.— The *first sentence* of Article 2207 provides that upon receipt of indemnity by the insured, the insurer is automatically subrogated to the rights of the insured against the wrongdoer subject to the concurrence of the following: (1) A property has been insured; (2) There is a loss, injury or damage to the insured; (3) The loss or injury was caused by or through the fault of the wrongdoer; and (4) The insured received indemnity from the insurance company for the injury, loss, or damage arising out of the wrong or breach complained of. This contemplates legal subrogation which grows not out of privity of contract but arises by the fact of payment. In *Malayan Insurance Co., Inc. v. Alberto, et al.,* the Court explained the nature of legal subrogation in this wise: x x x We have held that payment by the insurer to the insured operates as an **equitable assignment to the insurer of all the remedies** that the insured may have against the third party whose negligence or wrongful act caused the loss. **The right of subrogation is not dependent upon, nor does it grow out of, any privity of contract. It accrues simply upon payment by the insurance company of the insurance claim.** The doctrine of subrogation has its roots in equity. It is designed to promote and to accomplish justice; and is the mode that equity adopts to compel the ultimate payment of a debt by one who, in justice, equity, and good conscience, ought to pay. The provision is clear, legal subrogation is a right that springs from Article 2207 of the Civil Code. The resulting obligation arising therefrom is, therefore, created by law. In my humble point of view, no sufficient basis was presented to warrant the abandonment of the *Vector* doctrine. Article 2207 is clear and needs no further interpretation.

2. ID.; ID.; ID.; PARTIAL LEGAL SUBROGATION; INSURER WILL ONLY BE SUBROGATED TO THE RIGHTS OF THE INSURED ONLY TO THE EXTENT OF WHAT THE FORMER HAS PAID THE LATTER; THERE IS A CONCURRENCE OF RIGHTS BETWEEN INSURED AND INSURER THAT AROSE OUT OF THE SAME EVENT BUT CONSTITUTE DIFFERENT CAUSES OF ACTION.— The *second sentence* of Article 2207, on the other hand, provides for a situation wherein the amount insured or indemnified is less than the actual damage. In this case, the insured retains

the right to recover the difference from the wrongdoer based on the original obligation which in this case is quasi-delict. Otherwise stated, the insurer will only be subrogated to the rights of the insured only to the extent of what the former has paid the latter. This is under the principle that "the insured shall be fully indemnified but should never be more than fully indemnified." Legal subrogation "will not permit a windfall." Proceeding from the foregoing, two (2) scenarios can be deduced. *First*, before the payment of indemnity by the insurer, the insured has a cause of action for his injury or loss based on *quasi-delict*. *Second*, upon receipt of full indemnity by the insured from the insurer, an equitable or legal subrogation is created *ipso jure*. If the amount recovered does not fully indemnify the insured for the loss, the insurer is partly subrogated to the rights of the insured to the extent of what the former has paid the latter. The insured retains the right to recover the difference from the wrongdoer under the original obligation. In this instance, there is a concurrence of rights between insured and insurer that arose out of the same event but constitute different causes of action. The insured has the right to be indemnified for the damage or loss it suffered due to the fault or negligence of the wrongdoer **based on *quasi-delict*** while the insurer has the right to be reimbursed of the amount it paid the insured **based on legal subrogation**.

3. ID.; ID.; ID.; ID.; CLAIM LIABILITY UNDER *QUASI-DELICT*; ELEMENTS.— In *Indophil Textile Mills, Inc. v. Engr. Adviento*, the Court enunciated that a **claim liability under *quasi-delict*** requires the concurrence of the following elements: (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. Under Article 1146 of the Civil Code, actions upon *quasi-delict* must be instituted within four (4) years.

4. ID.; ID.; ID.; ID.; CAUSE OF ACTION FOR EQUITABLE OR LEGAL SUBROGATION; ELEMENTS.— The case of *Fireman's Fund Insurance Company v. Maryland Casualty Company et al.*, on the other hand, provides for the essential elements of an insurer's **cause of action for equitable or legal subrogation**, *viz.*: (a) the insured suffered a loss for which the defendant is liable, either as the wrongdoer whose act or omission

caused the loss or because the defendant is legally responsible to the insured for the loss caused by the wrongdoer; (b) the claimed loss was one for which the insurer was not primarily liable; (c) the insurer has compensated the insured in whole or in part for the same loss for which the defendant is primarily liable; (d) the insurer has paid the claim of its insured to protect its own interest and not as a volunteer; (e) the insured has an existing, assignable cause of action against the defendant which the insured could have asserted for its own benefit had it not been compensated for its loss by the insurer; (f) the insurer has suffered damages caused by the act or omission upon which the liability of the defendant depends; (g) justice requires that the loss be entirely shifted from the insurer to the defendant, whose equitable position is inferior to that of the insurer; and (h) the insurer's damages are in a liquidated sum, generally the amount paid to the insured. Under this jurisdiction, as an obligation that arose by operation of law, an action for legal subrogation prescribes in ten (10) years as statutorily provided in Article 1144.

5. ID.; ID.; ID.; AS A LEGAL CONSEQUENCE THEREOF, A RELATIONSHIP PRIMARILY BETWEEN INSURER AND THE DEBTOR-WRONGDOER IS CREATED.— The *ponencia* is of the opinion that the subrogation's legal effect is mainly between the insurer and the insured; the wrongdoer is a mere stranger to this juridical tie who remains bound to the insured by its original obligation, one that arose from *quasi-delict*. To my mind, the more logical view is that as a legal consequence of subrogation under Article 2207, a relationship **primarily between** insurer and the debtor-wrongdoer is created. Payment of indemnity by the insurer to the insured produces a *vinculum juris* between the insurer and the debtor-wrongdoer, in that the insurer now becomes the real party-in-interest in a collection case against the debtor-wrongdoer with regard to the indemnity paid. In contrast, the effect of legal subrogation between the insured and insurer, who are governed by the insurance contract they entered into, is merely consequential.

6. ID.; ID.; ID.; ULTIMATE PURPOSE OF THE CREATION OF SUBROGATION IS EQUITY AND "RESULTS FROM THE NATURAL JUSTICE OF PLACING THE BURDEN WHERE IT OUGHT TO REST"; ABANDONMENT OF

***VECTOR DOCTRINE* WILL RESTRICT THE RIGHT OF THE INSURER TO RECOVER FROM ITS ASSUMED LOSS OR INJURY BY LIMITING THE PERIOD WITHIN WHICH IT COULD RECOVER.—** Of all the principles related to subrogation, it cannot be denied that the ultimate purpose for its creation is equity and "results from the natural justice of placing the burden where it ought to rest." Subrogation flows not from any fixed rule of law, but rather born from "principles of justice, equity and benevolence." It makes sure that the responsibility must be on the person who should ultimately discharge the liability and not on the party who merely assumed the loss or injury. Subrogation operates as a device that places the burden for the loss on the party ultimately liable or responsible for it and "to relieve entirely the insurer who indemnified the loss and who in equity was not primarily liable therefor." **Thus, Article 2207 of the Civil Code, in relation to Article 1144, should be construed under the aforementioned context.** In my perspective, to conform with the *ponencia* is to put the insurer at a disadvantage. This is against the very essence of legal subrogation that is to prevent unjust enrichment. The abandonment of the *Vector doctrine* will limit the options of the insurer, who upon payment to the insured, assumes the loss or injury caused by or through the fault of the wrongdoer. It will restrict the right of the insurer to recover from its assumed loss or injury by limiting the period within which it could recover. This will defeat the purpose of the principle of legal subrogation as a creature of the "highest equity" which is "designed to promote and to accomplish justice and is the mode which equity adopts to compel the ultimate payment of a debt by one who in justice, equity and good conscience ought to pay." Accordingly, I submit that the CA is correct in ruling that UCPB General Insurance's cause of action based on legal subrogation has not yet prescribed pursuant to this Court's ruling in *Vector*.

APPEARANCES OF COUNSEL

Orosa Kahayon Lagmadeo Law Offices for petitioner.
Fajardo Law Offices for private respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated November 13, 2015 and the Resolution[3] dated February 26, 2016 of the Court of Appeals (CA) in CA-G.R. SP. No. 138147, which affirmed the Orders dated June 10, 2014[4] and September 22, 2014[5] of the Regional Trial Court of Makati City, Branch 138 (RTC) in Civil Case No. 10-885, ruling that the suit filed by respondent UCPB General Insurance Co., Inc. (respondent) has yet to prescribe, and resultantly, allowing the inclusion of petitioner Vicente G. Henson, Jr. (petitioner) as party-defendant to the same.

The Facts

From 1989 to 1999, National Arts Studio and Color Lab[6] (NASCL) leased the front portion of the ground floor of a two (2)-storey building located in Sto. Rosario Street, Angeles City, Pampanga, then owned by petitioner.[7] In 1999, NASCL gave up its initial lease and instead, leased the right front portion of the ground floor and the entire second floor of the said building, and made renovations with the building's piping assembly.[8] Meanwhile, Copylandia Office Systems Corp. (Copylandia) moved in to the ground floor.[9] On **May 9, 2006**, a water leak

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

[2] *Id*. at 196-203. Penned by Associate Justice Stephen C. Cruz with Associate Justices Elihu A. Ybañez and Ramon Paul L. Hernando (now a Member of this Court), concurring.

[3] *Id*. at 193-194.

[4] *Id.* at 52-55. Penned by Presiding Judge Josefino A. Subia.

[5] *Id*. at 56-58.

[6] "National Art Studio," "National Art Studio Lab," or "National Art Studio and Color Lab" in some parts of the *rollo*.

[7] See *rollo*, pp. 196-197.

[8] See *id*. at 197.

[9] See *id*.

occurred in the building and damaged Copylandia's various equipment, causing injury to it in the amount of ₱2,062,640.00.[10] As the said equipment were insured with respondent,[11] Copylandia filed a claim with the former. Eventually, the two parties settled on **November 2, 2006** for the amount of ₱1,326,342.76.[12] This resulted in respondent's subrogation to the rights of Copylandia over all claims and demands arising from the said incident.[13] On May 20, 2010, respondent, as subrogee to Copylandia's rights, demanded from, *inter alia*, NASCL for the payment of the aforesaid claim, but to no avail.[14] Thus, it filed a complaint for damages[15] against NASCL, among others, before the RTC, docketed as Civil Case No. 10-885.[16]

Meanwhile, sometime in 2010, petitioner transferred the ownership of the building to Citrinne Holdings, Inc. (CHI), where he is a stockholder and the President.[17]

On **October 6, 2011**, respondent filed an Amended Complaint (Second Amendment),[18] impleading CHI as a party-defendant to the case, as the new owner of the building. However, on **April 21, 2014**, respondent filed a Motion to Admit Attached Amended Complaint and Pre-Trial Brief (Third [A]mendment),[19] praying that petitioner, instead of CHI, be impleaded as a party-defendant to the case, considering that petitioner was then the owner of the building when the water leak damage incident happened.[20]

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[10] See *id*.

[11] See Policy Schedule; *id*. at 117-141.

[12] See *id*. at 198.

[13] See Loss and Subrogation Receipt; *id*. at 142.

[14] *Id*. at 198.

[15] Not attached to the *rollo*.

[16] *Rollo*, p. 198.

[17] *Id*.

[18] Dated October 6, 2011. *Id*. at 61-64.

[19] Dated April 21, 2014. *Id*. at 92-94.

[20] See *id*. at 198.

In the said complaints, respondent faults: (*a*) NASCL for its negligence in not properly maintaining in good order the comfort room facilities where the renovated building's piping assembly was utilized; and (*b*) CHI/petitioner, as the owner of the building, for neglecting to maintain the building's drainage system in good order and in tenantable condition. According to respondent, such negligence on their part directly resulted in substantial damage to Copylandia's various equipment amounting to ₱2,062,640.00.[21]

CHI opposed[22] the motion principally on the ground of prescription, arguing that since respondent's cause of action is based on *quasi-delict*, it must be brought within four (4) years from its accrual on May 9, 2006. As such, respondent is already barred from proceeding against CHI/petitioner, especially since the latter never received any prior demand from the former.[23]

The RTC Ruling

In an Order[24] dated June 10, 2014, the RTC ruled in respondent's favor and accordingly, ordered the: (*a*) dropping of CHI as party-defendant; and (*b*) joining of petitioner as one of the party-defendants in the case.[25]

The RTC pointed out that respondent's cause of action against the party-defendants, including petitioner, arose when it paid Copylandia's insurance claim and became subrogated to the rights and claims of the latter in connection with the water leak damage incident. Since respondent was merely enforcing its right of subrogation, the prescriptive period is ten (10) years

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[21] See Amended Complaints; *id*. at 62 and 114. See also *id*. at 20.

[22] See Comment/Opposition (to Motion to Admit Attached Amended Complaint and Pre-Trial Brief [The Amendment]) dated May 5, 2014; *id*. at 151-154.

[23] See *id*. at 53.

[24] *Id.* at 52-55.

[25] See *id*. at 55.

based on an obligation created by law reckoned from the date of Copylandia's indemnification, or on November 2, 2006. As such, respondent's claim against petitioner has yet to prescribe when it sought to include the latter as party-defendant on April 21, 2014.[26]

CHI moved for reconsideration,[27] which was, however, denied in an Order[28] dated September 22, 2014. Aggrieved with his inclusion as party-defendant to the case, petitioner filed a petition for *certiorari*[29] under Rule 65 of the Rules of Court before the CA, docketed as CA-G.R. SP. No. 138147.

The CA Ruling

In a Decision[30] dated November 13, 2015, the CA affirmed the RTC ruling. It held that respondent's cause of action has not yet prescribed since it was not based on *quasi-delict*, which must be brought within four (4) years from the date of the occurrence of the negligent act. Rather, it is based on an obligation created by law, which has a longer prescriptive period often (10) years reckoned from its accrual.[31]

Undaunted, petitioner moved for reconsideration,[32] but the same was denied in a Resolution[33] dated February 26, 2016; hence, this petition.

The Issue Before the Court

The issue for the Court's Resolution is whether or not respondent's claim has yet to prescribe.

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[26] See *id*. at 53-54.

[27] See motion for reconsideration dated July 4, 2014; *id*. at 174-181.

[28] *Id.* at 56-58.

[29] With Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction dated November 24, 2014. *Id.* at 30-47.

[30] *Id.* at 196-203.

[31] See *id*. at 202.

[32] See motion for reconsideration dated December 1, 2015; *id*. at 259-268.

[33] *Id.* at 193-194.

The Court's Ruling

In ruling that respondent's claim against petitioner has yet to prescribe, the courts *a quo* cited *Vector Shipping Corporation v. American Home Assurance Company* (*Vector*).[34] In that case, therein petitioner Vector Shipping Corporation (Vector) entered into a contract of affreightment with Caltex Philippines, Inc. (Caltex) for the transport of the latter's goods. In connection therewith, Caltex insured its goods with therein respondent American Home Assurance Company (American Home). During transport on **December 20, 1987**, Vector's ship collided with another vessel and sank, resulting in the total loss of Caltex's goods. On **July 12, 1988**, American Home fully indemnified Caltex for its loss in the amount of ₱7,455,421.08, and thereafter, filed a suit against, *inter alia*, Vector for the recovery of such amount on **March 5, 1992**. Initially, the RTC ruled that American Home's claim against Vector has prescribed as it was based on a *quasi-delict* which should have been filed within four (4) years from the time Caltex suffered a total loss of its goods. However, the CA reversed the ruling, holding that the claim has yet to prescribe as it is based on a breach of Vector's contract of affreightment with Caltex, which has a longer prescriptive period often (10) years, again reckoned from the time of the loss.[35] The Court, in *Vector*, agreed with the CA that the claim has yet to prescribe, but qualified that "the present action was not upon a written contract, but upon an obligation created by law,"[36] *viz*.:

> We concur with the CA's ruling that respondent's action did not yet prescribe. The legal provision governing this case was not Article 1146 of the Civil Code, but Article 1144 of the Civil Code, which states:
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> Article 1144. The following actions must be brought within ten years from the time the cause of action accrues:

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[34] 713 Phil. 198 (2013).

[35] See *id.* at 201-204.

[36] *Id.* at 206.

(1) Upon a written contract;
(2) Upon an obligation created by law;
(3) Upon a judgment.

We need to clarify, however, that we cannot adopt the CA's characterization of the cause of action as based on the contract of affreightment between Caltex and Vector, with the breach of contract being the failure of Vector to make the M/T Vector seaworthy, so as to make this action come under Article 1144 (1), supra. **Instead, we find and hold that the present action was not upon a written contract, but upon an obligation created by law.** Hence, it came under Article 1144 (2) of the Civil Code. This is because the subrogation of respondent to the rights of x x x the insured was by virtue of the express provision of law embodied in Article 2207 of the Civil Code, to wit:

> Article 2207. If the plaintiffs property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, **the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract**. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

The juridical situation arising under Article 2207 of the *Civil Code* is well explained in *Pan Malayan Insurance Corporation v.* [*CA*,[37]] as follows:

> Article 2207 of the Civil Code is founded on the well-settled principle of subrogation. If the insured property is destroyed or damaged through the fault or negligence of a party other than the assured, then the insurer, upon payment to the assured, will be subrogated to the rights of the assured to recover from the wrongdoer to the extent that the insurer has been obligated to pay. **Payment by the insurer to the assured operates as an equitable assignment to the former of all remedies which the latter may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of, any privity of contract or upon written assignment of claim. It accrues**

[37] 262 Phil. 919 (1990).

simply upon payment of the insurance claim by the insurer [*Compañia Maritima v. Insurance Company of North America*, 120 Phil. 998 (1964); *Fireman's Fund Insurance Company v. Jamila & Company, Inc.*, 162 Phil. 421 (1976)].

Verily, the contract of affreightment that Caltex and Vector entered into did not give rise to the legal obligation of Vector and Soriano to pay the demand for reimbursement by respondent because it concerned only the agreement for the transport of Caltex's petroleum cargo. As the Court has aptly put it in *Pan Malayan Insurance Corporation v.* [*CA*], supra, respondent's right of subrogation pursuant to Article 2207, supra, was "not dependent upon, nor d[id] it grow out of, any privity of contract or upon written assignment of claim [but] accrue[d] simply upon payment of the insurance claim by the insurer."

Considering that the cause of action accrued as of the time respondent actually indemnified Caltex in the amount of ₱7,455,421.08 on July 12, 1988, the action was not yet barred by the time of the filing of its complaint on March 5, 1992, which was well within the 10-year period prescribed by Article 1144 of the Civil Code.[38] (Emphases and underscoring supplied)

In *Vector*, the Court held that the insured's (*i.e.*, American Home's) claim against the debtor (*i.e.*, Vector) was premised on the right of subrogation pursuant to Article 2207 of the Civil Code and hence, an obligation created by law. While indeed American Home was entitled to claim against Vector by virtue of its subrogation to the rights of the insured (*i.e.*, Caltex), the Court failed to discern that **no new obligation was created between American Home and Vector** for the reason that a subrogee only steps into the shoes of the subrogor; hence, **the subrogee-insurer only assumes the rights of the subrogor-insured based on the latter's original obligation with the debtor**.

To expound, subrogation's legal effects under Article 2207 of the Civil Code are primarily between the subrogee-insurer and the subrogor-insured: by virtue of the former's payment

[38] *Id.* at 206-208.

of indemnity to the latter, it is able to acquire, by operation of law, all rights of the subrogor-insured against the debtor. The debtor is a stranger to this juridical tie because it only remains bound by its original obligation to its creditor whose rights, however, have already been assumed by the subrogee. In *Vector*'s case, American Home was able to acquire *ipso jure* all the rights Caltex had against Vector under their contract of affreightment by virtue of its payment of indemnity. If at all, subrogation had the effect of obliging Caltex to respect this assumption of rights in that it must now recognize that its rights against the debtor, *i.e.*, Vector, had already been transferred to American Home as the subrogee-insurer. In other words, by operation of Article 2207 of the Civil Code, Caltex cannot deny American Home of its right to claim against Vector. However, the subrogation of American Home to Caltex's rights did not alter the original obligation between Caltex and Vector.

Accordingly, the Court, in *Vector*, erroneously concluded that "the cause of action [against Vector] accrued as of the time [American Home] actually indemnified Caltex in the amount of ₱7,455,421.08 on July 12, 1988."[39] Instead, it is the subrogation of rights between Caltex and American Home which arose from the time the latter paid the indemnity therefor. Meanwhile, the accrual of the cause of action that Caltex had against Vector did not change because, as mentioned, no new obligation was created as between them by reason of the subrogation of American Home. The cause of action against Vector therefore accrued at the time it breached its original obligation with Caltex whose right of action just so happened to have been assumed in the interim by American Home by virtue of subrogation. "[A] right of action is the right to presently enforce a cause of action, while a cause of action consists of the operative facts which give rise to such right of action."[40]

The foregoing application hews more with the fundamental principles of civil law, especially on the well-established

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[39] *Id.* at 208.

[40] *Philippine American General Insurance Co., Inc. v. Sweet Lines, Inc.*, G.R. No. 87434, August 5, 1992, 212 SCRA 194, 208.

doctrines on subrogation. Article 1303 of the Civil Code states that "[s]ubrogation transfers to the person subrogated the credit with all the rights thereto appertaining, either against the debtor or against third persons x x x." In *Loadstar Shipping Company, Inc. v. Malayan Insurance Company, Inc.*,[41] the Court had clearly explained that because of the nature of subrogation as a mode of "creditor-substitution," the rights of a subrogee cannot be superior to the rights possessed by a subrogor, *viz*.:

> **The rights of a subrogee cannot be superior to the rights possessed by a subrogor.** "**Subrogation is the substitution of one person in the place of another with reference to a lawful claim or right**, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies or securities. The rights to which the subrogee succeeds are the same as, but not greater than, those of the person for whom he is substituted, that is, he cannot acquire any claim, security or remedy the subrogor did not have. In other words, a subrogee cannot succeed to a right not possessed by the subrogor. **A subrogee in effect steps into the shoes of the insured and can recover only if the insured likewise could have recovered.**"
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> Consequently, an insurer indemnifies the insured based on the loss or injury the latter actually suffered from. If there is no loss or injury, then there is no obligation on the part of the insurer to indemnify the insured. **Should the insurer pay the insured and it turns out that indemnification is not due, or if due, the amount paid is excessive, the insurer takes the risk of not being able to seek recompense from the alleged wrongdoer. This is because the supposed subrogor did not possess the right to be indemnified and therefore, no right to collect is passed on to the subrogee.**[42] (Emphases and underscoring supplied)

Despite its error, Vector had aptly cited the case of *Pan Malayan Insurance Corporation v. CA* (*Pan Malayan*),[43] wherein it was explained that subrogation, under Article 2207 of the

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[41] 748 Phil. 569 (2014).

[42] *Id.* at 584-585.

[43] *Supra* note 37.

Civil Code, operates as a form of "**equitable assignment**"[44] whereby "the insurer, upon payment to the assured, will be subrogated to the rights of the assured to recover from the wrongdoer to the extent that the insurer has been obligated to pay."[45] **It is characterized as an "equitable assignment" since it is an assignment of credit without the need of consent** - as it was, in fact, mentioned in *Pan Malayan*, "[t]he right of subrogation is not dependent upon, nor does it grow out of, any privity of contract or upon written assignment of claim. It accrues simply upon payment of the insurance claim by the insurer."[46] **It is only to this extent that the equity aspect of subrogation must be understood.** Indeed, subrogation under Article 2207 of the Civil Code allows the insurer, as the new creditor who assumes *ipso jure* the old creditor's rights without the need of any contract, to go after the debtor, but it does not mean that a new obligation is created between the debtor and the insurer. Properly speaking, the insurer, as the new creditor, remains bound by the limitations of the old creditor's claims against the debtor, which includes, among others, the aspect of prescription. Hence, the debtor's right to invoke the defense of prescription cannot be circumvented by the mere expedient of successive payments of certain insurers that purport to create new obligations when, in fact, what remains subsisting is only the original obligation. Verily, equity should not be stretched to the prejudice of another.

To better understand the concept of legal subrogation under Article 2207 of the Civil Code as a form of "equitable assignment," it deserves mentioning that there exist intricate differences between assignment and subrogation, both in their legal and conventional senses. In *Ledonio v. Capitol Development Corporation*:[47]

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[44] *Id*. at 923.

[45] *Id*.

[46] *Id*.

[47] 553 Phil. 344 (2007).

An assignment of credit has been defined as an agreement by virtue of which the owner of a credit (known as the assignor), by a legal cause - such as sale, *dation* in payment or exchange or donation - and without need of the debtor's consent, transfers that credit and its accessory rights to another (known as the assignee), who acquires the power to enforce it, to the same extent as the assignor could have enforced it against the debtor.

On the other hand, subrogation, by definition, is the transfer of all the rights of the creditor to a third person, who substitutes him in all his rights. It may either be legal or conventional. **Legal subrogation is that which takes place without agreement but by operation of law because of certain acts.** *Conventional subrogation is that which takes place by agreement of parties.*

Although it may be said that the effect of the assignment of credit is to subrogate the assignee in the rights of the original creditor, this Court still cannot definitively rule that assignment of credit and conventional subrogation are one and the same.

A noted authority on civil law provided a discourse on the difference between these two transactions, to wit —

> Conventional Subrogation and Assignment of Credits. — In the Argentine Civil Code, there is essentially no difference between conventional subrogation and assignment of credit. The subrogation is merely the effect of the assignment. In fact[,] it is expressly provided (Article 769) that conventional redemption shall be governed by the provisions on assignment of credit.
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> Under our Code, however, conventional subrogation is not identical to assignment of credit. In the former, the debtor's consent is necessary; in the latter, it is not required. Subrogation extinguishes an obligation and gives rise to a new one; assignment refers to the same right which passes from one person to another. The nullity of an old obligation may be cured by subrogation, such that the new obligation will be perfectly valid; but the nullity of an obligation is not remedied by the assignment of the creditor's right to another. x x x

This Court has consistently adhered to the foregoing distinction between an assignment of credit and a conventional subrogation. Such distinction is crucial because it would determine the necessity of the debtor's consent. **In an assignment of credit, the consent of the debtor is not necessary in order that the assignment may fully**

produce the legal effects. What the law requires in an assignment of credit is not the consent of the debtor, but merely notice to him as the assignment takes effect only from the time he has knowledge thereof. A creditor may, therefore, validly assign his credit and its accessories without the debtor's consent. **On the other hand, conventional subrogation requires an agreement among the parties concerned — the original creditor, the debtor, and the new creditor. It is a new contractual relation based on the mutual agreement among all the necessary parties.**[48] (Emphases and underscoring supplied)

As discussed above, in an assignment of credit, the consent of the debtor is not necessary in order that the assignment may fully produce legal effects (as notice to the debtor suffices); also, in assignment, no new contractual relation between the assignee/new creditor and debtor is created. On the other hand, in conventional subrogation, an agreement between all the parties concerning the substitution of the new creditor is necessary. ***Meanwhile, legal subrogation produces the same effects as assignment and also, no new obligation is created between the subrogee/new creditor and debtor.*** As observed in commentaries on the subject:

> The effect of legal subrogation is to transfer to the new creditor the credit and all the rights and actions that could have been exercised by the former creditor either against the debtor or against third persons, be they guarantors or mortgagors. **Simply stated, except only for the change in the person of the creditor, the obligation subsists in all respects as before the novation.**[49] (Emphasis supplied)

Unlike assignment, however, legal subrogation, to produce effects, does not need to be agreed upon by the subrogee and subrogor, unlike the need of an agreement between the assignee and assignor. As mentioned, "[l]egal subrogation is that which takes place without agreement but by operation of law because

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[48] *Id.* at 360-362; citations omitted.

[49] De Leon, Hector and De Leon, Hector Jr., *COMMENTS AND CASES ON OBLIGATIONS AND CONTRACTS*, 2014 Edition, p. 480.

of certain acts,"[50] as in the case of payment of the insurer under Article 2207 of the Civil Code.

In sum, as legal subrogation is not equivalent to conventional subrogation, no new obligation is created by virtue of the insurer's payment under Article 2207 of the Civil Code; also, as legal subrogation is not the same as an assignment of credit (as the former is in fact, called an "equitable assignment"), no privity of contract is needed to produce its legal effects. Accordingly, "the insurer can take nothing by subrogation but the rights of the insured, and is subrogated only to such rights as the insured possesses. This principle has been frequently expressed in the form that the rights of the insurer against the wrongdoer cannot rise higher than the rights of the insured against such wrongdoer, since the insurer as subrogee, in contemplation of law, stands in the place of the insured and succeeds to whatever rights he may have in the matter. ***Therefore, any defense which a wrongdoer has against the insured is good against the insurer subrogated to the rights of the insured***,"[51] and this would clearly include the defense of prescription.

Based on the above-discussed considerations, the Court must heretofore **abandon the ruling in *Vector*** that an insurer may file an action against the tortfeasor within ten (10) years from the time the insurer indemnifies the insured. **Following the principles of subrogation, the insurer only steps into the shoes of the insured and therefore, for purposes of prescription, inherits only the remaining period within which the insured may file an action against the wrongdoer.** To be sure, the prescriptive period of the action that the insured may file against the wrongdoer begins at the time that the tort was committed and the loss/injury occurred against the insured. The indemnification of the insured by the insurer only allows

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[50] *Ledonio v. Capitol Development Corporation, supra* note 47, at 361.

[51] *Pasker v. Harleysville Mutual Ins. Co.*, 192 N.J. Super. 133 (1983), citing 44 Am.Jur.2d, Insurance, § 1821 at 748; emphasis and underscoring supplied.

it to be subrogated to the former's rights, and does not create a new reckoning point for the cause of action that the insured originally has against the wrongdoer.

Be that as it may, it should, however, be clarified that this Court's abandonment of the *Vector* doctrine should be **prospective** in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines.[52] Unto this Court devolves the sole authority to interpret what the law means, and all persons are bound to follow its interpretation. As explained in *De Castro v. Judicial and Bar Council*:[53]

> Judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria that must control the actuations, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them.[54]

Hence, while the future may ultimately uncover a doctrine's error, it should be, **as a general rule**, recognized as a "good law" prior to its abandonment.[55] In *Philippine International Trading Corporation vs. Commission on Audit*,[56] it was elucidated that:

> It is consequently clear that a judicial interpretation becomes a part of the law as of the date that law was originally passed, subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a **reversal thereof, the new doctrine should be applied prospectively and**

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[52] See *Office of the Ombudsman v. Vergara*, G.R. No. 216871, December 6, 2017, 848 SCRA 151, 17 citing *Carpio Morales v. CA*, 772 Phil. 672, 775 (2015).

[53] 632 Phil. 657 (2010).

[54] *Id*. at 686, citing *Caltex (Philippines), Inc. v. Palomar*, 124 Phil. 763, 774 (1966).

[55] *Carpio Morales v. CA*, *supra* note 52, at 775.

[56] G.R. No. 205837, November 21, 2017, 845 SCRA 583.

should not apply to parties who relied on the old doctrine and acted in good faith. To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication.[57] (Emphasis and underscoring supplied)

In *Pesca v. Pesca*[58] the Court further elaborated:

The "doctrine of *stare decisis*," ordained in Article 8 of the Civil Code, expresses that judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines. The rule follows the settled legal maxim - "*legis interpretado legis vim obtinet*" — that the interpretation placed upon the written law by a competent court has the force of law. The interpretation or construction placed by the courts establishes the contemporaneous legislative intent of the law. The [said interpretation or construction] would thus constitute a part of that law as of the date the statute is enacted. **It is only when a prior ruling of this Court finds itself later overruled, and a different view is adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith** in accordance therewith under the familiar rule of "*lex prospicit, non respicit.*"[59] (Emphasis and underscoring supplied)

With these in mind, the Court therefore sets the following **guidelines** relative to the application of *Vector* and this Decision *vis-a-vis* the prescriptive period in cases where the insurer is subrogated to the rights of the insured against the wrongdoer **based on a *quasi-delict***:

1. For actions of such nature that **have already been filed and are currently pending** before the courts at the time of the finality of this Decision, the *rules on prescription prevailing at the time the action is filed* would apply. Particularly:

(a) For cases that were filed by the subrogee-insurer **during** the applicability of the *Vector* ruling (*i.e.*, from *Vector*'s finality on August

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[57] *Id.* at 596-597; citing *Columbia Pictures v. CA*, 329 Phil. 875, 908 (1996).

[58] 408 Phil. 713 (2001).

[59] *Id*. at 720.

15, 2013[60] up until the finality of this Decision), the prescriptive period is ten (10) years from the time of payment by the insurer to the insured, which gave rise to an obligation created by law.

Rationale: Since the *Vector* doctrine was the prevailing rule at this time, issues of prescription must be resolved under *Vector*'s parameters.

(*b*) For cases that were filed by the subrogee-insurer **prior** to the applicability of the *Vector* ruling (*i.e.*, before August 15, 2013), the prescriptive period is four (4) years from the time the tort is committed against the insured by the wrongdoer.

Rationale: The *Vector* doctrine, which espoused unique rules on legal subrogation and prescription as aforedescribed, was not yet a binding precedent at this time; hence, issues of prescription must be resolved under the rules prevailing before *Vector*, which, incidentally, are the basic principles of legal subrogation vis-a-vis prescription of actions based on *quasi-delicts*.

2. For actions of such nature that have **not yet** been filed at the time of the finality of this Decision:

(*a*) For cases where the tort was committed and the consequent loss/injury against the insured occurred **prior** to the finality of **this Decision**, the subrogee-insurer is given a period not exceeding four (4) years from the time of the finality of this Decision to file the action against the wrongdoer; ***provided***, that in all instances, the total period to file such case shall not exceed ten (10) years from the time the insurer is subrogated to the rights of the insured.

Rationale: The erroneous reckoning and running of the period of prescription pursuant to the *Vector* doctrine should not be taken against any and all persons relying thereon because the same were based on the then-prevailing interpretation and construction of the Court. Hence, subrogees-insurers, who are, effectively, only now notified of the abandonment of *Vector*, must be given the benefit of the present doctrine on subrogation as ruled in this Decision.

However, the benefit of the additional period (*i.e.*, not exceeding four [4] years) under this Decision must not result in the insured being given a total of more than ten (10) years from the time the insurer is subrogated to the rights of the insured (*i.e.*, the old prescriptive

[60] See *supra* note 34.

period in *Vector*); otherwise, the insurer would be able to unduly propagate its right to file the case beyond the ten (10)-year period accorded by *Vector* to the prejudice of the wrongdoer.

(*b*) For cases where the tort was committed and the consequent loss/injury against the insured occurred only **upon or after** the finality of **this Decision**, the *Vector* doctrine would hold no application. The prescriptive period is four (4) years from the time the tort is committed against the insured by the wrongdoer.

Rationale: Since the cause of action for *quasi-delict* and the consequent subrogation of the insurer would arise after due notice of *Vector*'s abandonment, all persons would now be bound by the present doctrine on subrogation as ruled in this Decision.

Application to the Case at Bar

In this case, it is undisputed that the water leak damage incident, which gave rise to Copylandia's cause of action against any possible defendants, including NASCL and petitioner, happened on **May 9, 2006**. As this incident gave rise to an obligation classified as a *quasi-delict*, Copylandia would have only had four (4) years, or until **May 9, 2010**, within which to file a suit to recover damages.[61] When Copylandia's rights were transferred to respondent by virtue of the latter's payment of the former's insurance claim on **November 2, 2006**, as evidenced by the Loss and Subrogation Receipt,[62] respondent was likewise bound by the same prescriptive period. Since it was only on: (*a*) **May 20, 2010** when respondent made an extrajudicial demand to NASCL, and thereafter, filed its complaint; (*b*) **October 6, 2011** when respondent amended its complaint to implead CHI as party-defendant; and (*c*) **April 21, 2014** when respondent moved to further amend the complaint in order to implead petitioner as party-defendant in lieu of CHI, prescription — if adjudged under the present parameters of legal subrogation under this Decision — should have already set in.

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[61] Article 1146 (2) of the CIVIL CODE reads:

Art. 1146. The following actions must be instituted within four years:

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(2) Upon a *quasi-delict*.

[62] *Rollo*, p. 142.

However, it must be recognized that the prevailing rule applicable to the pertinent events of this case is Vector. Pursuant to the guidelines stated above, specifically under **guideline 1 (a)**, the *Vector* doctrine — which was even relied upon by the courts *a quo* — would then apply. Hence, as the amended complaint[63] impleading petitioner was filed on April 21, 2014, which is within ten (10) years from the time respondent indemnified Copylandia for its injury/loss, *i.e.*, on November 2, 2006, the case cannot be said to have prescribed under *Vector*. As such, the Court is constrained to deny the instant petition.

WHEREFORE, the petition is **DENIED**. The Decision dated November 13, 2015 and the Resolution dated February 26, 2016 of the Court of Appeals in CA-G.R. SP No. 138147 are hereby **AFFIRMED** with **MODIFICATION** based on the guidelines stated in this Decision.

SO ORDERED.

Carpio, Leonen, Gesmundo, Reyes, J. Jr., Carandang, Inting, and *Zalameda, JJ.,* concur.

Caguioa and Lazaro-Javier, JJ., see concurring opinions.

Bersamin, C.J. and *Reyes, A. Jr. JJ.*, dissent, see dissenting opinions.

Peralta, J., joins the dissenting opinion of *C.J. Bersamin.*

Jardeleza and Hernando JJ., no part.

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[63] Under Section 8, Rule 10 of the Rules of Court, an amended complaint supersedes an original one. As a consequence, the original complaint is deemed withdrawn and no longer considered as part of the records (*Mercado v. Spouses Espina*, 704 Phil. 545, 551 [2013], citing *Figuracion v. Libi*, 564 Phil. 46, 58 [2007]). Hence, for purposes of determining whether or not the claim is already barred by the statute of limitations, the date of filing of the amended complaint shall be controlling (see *Wallem Philippines Shipping, Inc. v. S.R. Farms, Inc.*, 638 Phil. 324, 333 [2010], citing *Republic v. Sandiganbayan*, 355 Phil. 181, 205 [1998]).

CONCURRING OPINION

CAGUIOA, *J.*:

I concur.

Because of the occurrence of a water leak in the building that Copylandia Office Systems Corp. (Copylandia) was leasing, its various equipment which were insured with respondent UCPB General Insurance Company, Inc. (UCPB Gen) were damaged on **May 9, 2006**. Copylandia filed a claim in the amount of ₱2,062,400.00 with UCPB Gen and on November 2, 2006, the parties settled for the amount of ₱1,326,342.76. More than 4 years after the damage to the equipment had been sustained, or on **May 20, 2010**, UCPB Gen, as subrogee to Copylandia's rights, made a demand on National Arts Studio and Color Lab (NASCL) — the entity that apparently caused the water leak — for the payment of Copylandia's claim. Eventually, UCPB Gen filed a complaint for damages against NASCL when UCPB Gen's demand failed.

Both the RTC and the CA held that UCPB Gen's cause of action has not yet prescribed since the applicable prescriptive period is 10 years based on legal subrogation which they considered to be an obligation created by law under Article 1144[1] of the Civil Code, and not 4 years based on quasi-delict (Article 1146[2]).

I concur with the *ponencia* that the applicable prescriptive period is 4 years because the cause of action is based on quasi-delict. Stated differently, the right that UCPB Gen is subrogated

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[1] 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.

[2] ART. 1146. The following actions must be instituted within four years:

(1) Upon an injury to the rights of the plaintiff;
(2) Upon a quasi-delict.

to is the right of Copylandia to damages arising from the quasi-delict committed by NASCL which resulted in the damage to its various equipment. The obligation of NASCL arises from quasi-delict under Article 2176 of the Civil Code and not from law.[3] Under Article 2176,

> 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 preexisting contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter [on Quasi-Delicts].

The corresponding obligation *vis-a-vis* the right created by legal subrogation under Article 2207 must be subsumed within or under the right that the subrogee may exercise against "the wrongdoer or the person who has violated the contract" because the subrogee merely steps into the shoes of the insured. Thus, the corresponding obligation of NASCL arises from quasi-delict and not from the law creating the right of subrogation in favor of respondent.

It is noted that the RTC and the CA relied on the ruling in *Vector Shipping Corp. v. American Home Assurance Co.*[4] (*Vector*) where the Court made the following pronouncement, *viz.*:

> We need to clarify, however, that we cannot adopt the CA's characterization of the cause of action as based on the contract of affreightment between Caltex and Vector, with the breach of contract being the failure of Vector to make the M/T Vector seaworthy, as to make this action come under Article 1144 (1), *supra*. Instead, we find and hold that the present action was not upon a written contract, but upon an obligation created by law. Hence, it came under Article 1144 (2) of the *Civil Code*. This is because the subrogation of respondent

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[3] CIVIL CODE, Art. 1157.

[4] 713 Phil. 198 (2013). Penned by Associate Justice Lucas P. Bersamin and concurred by Chief Justice Maria Lourdes P.A. Sereno and Associate Justices Presbitero J. Velasco, Jr., Teresita J. Leonardo-De Castro and Martin S. Villarama, Jr.

to the rights of Caltex as the insured was by virtue of the express provision of law embodied in Article 2207 of the *Civil Code*, to wit:

> Article 2207. If the plaintiffs property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, **the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract**. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury. (Emphasis supplied)[5]

I join the *ponente* that it is now opportune to **revisit** the Court's interpretation of Article 2207 in *Vector* insofar as the obligation of "the wrongdoer or the person who has violated the contract" to the subrogee is concerned.

The phrase "**the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract**" in the above-quoted Article 2207 means only what it plainly states: that the insurance company merely acquires the rights of the insured in order to have a cause of action against the wrongdoer or the person who has violated the contract — the obligation of the latter being by virtue of quasi-delict or breach of contract. This is the only inference which is both legal and logical that can be derived from the quoted portion of Article 2207. If the obligation of the wrongdoer or the person who has violated the contract to the subrogee "arises from law", then what defense/s can the former interpose to exculpate him or limit his liability? I submit that the defenses which he can interpose are the very same ones he can interpose against the original plaintiff, *i.e.*, those defenses available in a quasi-delict or breach of contract case.

If his defense is based on quasi-delict, then he should be able to interpose the defense of prescription of actions arising from quasi-delict. Going back to *Vector*, the liability of Vector Shipping Corp. did not arise because its vessel was not

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[5] *Id*. at 206-207.

"seaworthy." Rather, it arose because of its failure to safely transport the petroleum cargo of Caltex. Seaworthiness is a defense in quasi-delict but not in a breach of contract of carriage or affreightment. In this case, clearly there is no privity of contract between NASCL and Copylandia.

I thus take the position that legal subrogation under Article 2207 does **not** create a "second" obligation (*i.e.*, arising from law) on the part of the tortfeasor to the subrogee that is independent and distinct from the former's obligation arising from quasi-delict to the subrogor (aggrieved insured party). ***There is only one obligation and that is the one arising from quasi-delict.*** The rights of the subrogor and the subrogee are identical. In fact, if the subrogor files the complaint for damages against the tortfeasor and is later substituted by the subrogee after payment of the subrogor's insurance claim, the cause of action remains the same because the subrogee simply steps into the shoes of the subrogor.

The insurer's right of subrogation against third persons causing the loss paid by the insurer to the insured arises out of the contract of insurance and is derived from the insured alone.[6] Consequently, the insurer can take nothing by subrogation but **only** the rights of the insured.[7]

This is so because the rights of the insurer against the wrongdoer cannot rise higher than the rights of the insured against such wrongdoer; as subrogee, the insurer, in contemplation of law, stands in the place of the insured and succeeds to whatever rights he may have in the matter.[8] The cause of action of the insurer against the wrongdoer is the very cause of action of the insured against the wrongdoer such that when the property upon which there is insurance is damaged or destroyed by the negligence of another, the right of action

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[6] 44 Am. Jur. 2d, *Extent of right; dependence upon rights of insured*, § 1795, p. 785 (1982).

[7] *Id*.; citations omitted.

[8] *Id*. at 785-786, citations omitted.

accruing to the injured party is for an indivisible wrong giving rise to a single indivisible cause of action which abides in the insured, through whom the insurer, upon payment of the insurance, must work out its rights.[9] And, any defense which a wrongdoer has against the insured is good against the insurer subrogated to the rights of the insured, including statute of limitations.[10]

The dissent relies on *Fireman's Fund Insurance Company v. Jamila & Company, Inc.*[11] (*Fireman's Fund*). In *Fireman's Fund*, properties of Firestone Tire and Rubber Company of the Philippines (Firestone) valued at ₱11,925.00 were lost allegedly due to the acts of its employees who connived with Jamila & Co., Inc.'s (Jamila) security guard. Fireman's Fund Insurance Company (Fireman's Fund), as insurer, paid to Firestone the amount of the loss, and, claiming subrogation, sued Jamila for reimbursement of what it paid to Firestone.[12] The complaint was dismissed by the lower court because there was no allegation that Jamila consented to the subrogation, and as such, Fireman's Fund had no cause of action against Jamila.[13] It is, thus, understandable, that *Fireman's Fund* only discussed the general principles on the insurer's right of subrogation and did not touch on the issue of prescription.

It is noted that *Fireman's Fund* relied on both Corpus Juris Secundum (C.J.S.) and American Jurisprudence 2d (Am. Jur. 2d). The citations from C.J.S.[14] deal with the Definition and Origin, Nature, and Purpose of Subrogation while those from

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[9] *Virginia Electric & Power Co. v. Carolina Peanut Co.* (CA4 NC), 186 F2d 816, 32 ALR2d 234 cited in 44 Am. Jur. 2d, *Extent of right; dependence upon rights of insured*, § 1795, note 87 p. 786 (1982).

[10] *Id*. at 786; citations omitted.

[11] 162 Phil. 421 (1976).

[12] *Id*. at 424.

[13] *Id*.

[14] 83 C.J.S., *Definition*, § 1 and *Origin, Nature, and Purpose of Doctrine*, §2, specifically pp. 576-580.

Am. Jur. 2d[15] deal with Subrogation In General (§ 1820. Insurer's right of subrogation, generally). Also, it is noted that *Fireman's Fund* cited the 1969 edition of Am. Jur. 2d. Under the 1982 edition of Am. Jur. 2d., it is § 1794.[16]

I believe that the subsequent section of C.J.S. on Operation and Effect[17] of subrogation is what is in point in the present case.

Based on C.J.S., subrogation passes all the creditor's rights, privileges, remedies, liens, judgments and mortgages to the subrogee, subject to such limitations and conditions as were binding on the creditor; but the subrogee is not entitled to any greater rights than the creditor.[18]

Stated differently, a person entitled to subrogation, the subrogee, must work through the creditor whose rights he claims.[19] The subrogee stands in the shoes of the creditor; and he is entitled to the benefit of all remedies of the creditor and may use all the means which the creditor could employ to enforce payment.[20] The subrogee, however, can enforce only such rights as the creditor could enforce and must exercise such rights under the same conditions and limitations as were binding on the creditor; and, hence, can be subrogated to no greater rights than the one in whose place he is substituted.[21] Thus, if the latter had no rights, the subrogee can have none.[22]

The right asserted by the subrogee is subject to the same infirmities and set-offs as though its original owner were asserting

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[15] 44 Am. Jur. 2d, *Insurer's right of subrogation, generally*, § 1820, specifically pp. 745-746 (1969).

[16] 44 Am. Jur. 2d, *Insurer's right of subrogation, generally*, § 1794, pp. 782-785 (1982).

[17] 83 C.J.S., *Operation and Effect*, § 14, pp. 611-614.

[18] *Id*. at 611.

[19] *Id*. at 612; citations omitted.

[20] *Id*.; citations omitted.

[21] *Id*. at 612-613; citations omitted.

[22] *Id*. at 613; citations omitted.

it, and the extent to which the subrogee's recovery will be diminished thereby must be determined just as though the original owner were asserting it.[23]

As a subrogee, the insurer, cannot improve his position or augment his right beyond that of the subrogor, the insured, merely because he sues in his own name without bringing in the subrogor as a party.[24]

Similarly, it is my position that it is § 1795 (Extent of right; dependence upon rights of insured)[25] of Am. Jur. 2d (1982 ed.) or § 1821 (Extent of right; dependence upon rights of insured)[26] of Am. Jur. 2d (1969 ed.) that is relevant in this case.

Based on Am. Jur. 2d (1982 ed.), the insurer's right of subrogation against third persons causing the loss paid by the insurer to the insured does not rest upon any relation of contract or privity between the insurer and such third persons; ***but arises out of the contract of insurance and is derived from the insured alone***.[27] As a consequence, the insurer can take nothing by subrogation but the rights of the insured, and is subrogated to only such rights as the insured possesses.[28]

The principle that proceeds from the foregoing is that the rights of the insurer against the wrongdoer cannot rise higher than the rights of the insured against such wrongdoer because the insurer as subrogee, in contemplation of law, stands in the place of the insured and succeeds to whatever rights he may have in the matter.[29] Thus, any defense which a wrongdoer

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[23] *Coal Operators Cas. Co. v. U.S. D.C.Pa.*, 76 F. Supp. 681 cited in 83 C.J.S., *Operation and Effect*, § 14, note 19, p. 613.

[24] *Coal Operators Casualty Co. v. U.S. D.C.Pa.*, *id*., cited in 83 C.J.S. *Operation and Effect*, § 14, note 20, *id*.

[25] 44 Am. Jur. 2d, pp. 785-787(1982).

[26] 44 Am. Jur. 2d, pp. 748-749 (1969).

[27] 44 Am. Jur. 2d, *Extent of right; dependence upon rights of insured*, § 1795, p. 785 (1982).

[28] *Id*.; citations omitted.

[29] *Id.* at 785-786, citations omitted.

has against the insured is good against the insurer subrogated to the rights of the insured; and the wrongdoer may assert a claim he has against the insured as a counterclaim against the insurer.[30]

It must be noted that the subrogation claim, being derived from the claim of the insured, is subject to same defenses, **including statute of limitations**, as if the action had been sued upon by the insured.[31]

In this respect, *St. Paul Fire Marine Ins. v. Glassing*[32] (*St. Paul II*) is in point. In this case, Ellen Lynn (Lynn) and Gary Glassing (Glassing) were involved in a motor vehicle collision in Bozeman on June 12, 1985. Lynn filed in Gallatin County District Court a personal injury action against Glassing on November 17, 1989 and judgment was entered in Lynn's favor in the net amount of $95,377.92. At the time of the motor vehicle collision, St. Paul Fire Marine Insurance Company (St. Paul) insured Lynn with a policy that provided coverage in the event that Lynn was injured by an underinsured motorist. Allstate Insurance Company (Allstate) insured Glassing against liability resulting from the operation of his motor vehicle up to $50,000 only — the limit of Glassing's liability coverage. On December 15, 1989, Lynn made a demand for underinsured motorist benefits to her insurer, St. Paul, and the latter paid Lynn on or about May 31, 1990 in the amount of $51,461.16, which represented the difference between Glassing's $50,000 policy limits and the judgment with interest to the date of St. Paul's payment. A release was subsequently executed by Lynn in favor of Glassing and Allstate, wherein Lynn acknowledged the receipt of $50,000. On July 24, 1990, St. Paul initiated an action against Glassing to recover the $51,461.16 payment, together with interest and costs it paid to Lynn pursuant to her underinsured

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[30] *Id*. at 786; citations omitted.

[31] *Beedie v. Shelly*, (Mont) 610 P2d 713 cited in 44 Am. Jur. 2d, *Extent of right; dependence upon rights of insured*, § 1795, note 89, p. 786 (1982).

[32] 269 Mont. 76, 887 P.2d 218, 51 St. Rep. 1437, accessed at <https://www.casemine.com/judgement/us/5914bdb0_add7b049347a3ba4#>.

motorist coverage. Glassing moved for summary judgment citing the ground that St. Paul's claim was barred by the statute of limitations. The Eighth Judicial District Court of Cascade County (District Court) denied Glassing's motion and granted summary judgment in favor of St. Paul. In reversing the District Court's order, the Supreme Court of Montana ruled:

[1] One issue raised by Glassing is dispositive of this appeal. Glassing contends that St. Paul's suit is barred by the statute of limitations. We agree.

In support of his argument, Glassing maintains that the same statute of limitations applies to an action for subrogation as applies to the injured party's claim. Because the accident occurred on June 12, 1985, and St. Paul did not file its action for subrogation until July 24, 1990, Glassing argues that the applicable three year statute of limitations on Lynn's negligence claim had expired, thus barring St. Paul's claim. See. § 27-2-204, MCA.

The District Court however, ruled that St. Paul's right of subrogation did not accrue until its duty to pay was triggered by the rendering of the excess judgment in favor of St. Paul's insured, Lynn. The court concluded that "[p]rior to that time neither Lynn's right to underinsured motorist benefits nor St. Paul's right to subrogation existed." In reaching its conclusion that the statute of limitations had not expired on St. Paul's claim, the District Court determined a distinction existed between uninsured motorist benefits and underinsured motorist benefits. The court concluded that "[u]nderinsured motorist benefits are not triggered until a settlement or judgment has been rendered by which the insured persons damages are not fully compensated." Therefore, the court found that St. Paul's subrogation claim did not accrue or come into existence until November 17, 1989, the date judgment was rendered in Gallatin County. Accordingly, the court concluded that St. Paul's suit was timely filed. However, the court did not state what the applicable statute of limitations would be on St. Paul's suit against Glassing. We conclude that the District Court erred in ruling that St. Paul's claim was not time-barred for two reasons.

First, the court's conclusion that St. Paul's claim accrued on the date of judgment ignores the basic premise of subrogation; that as a subrogee, St. Paul has no independent claim for its damages. It is a well established principle of subrogation law, that subrogation is "the substitution of another person in place of the creditor, so that the person substituted

will succeed to the rights of the creditor in relation to the debt or claim." *Skauge v. Mountain States Tel. Tel.* (1977), 172 Mont. 521, 526, 565 P.2d 628, 630.

Additional subrogation principles provide:

> Subrogation confers no greater rights than the subrogor had at the time the surety became subrogated. The subrogated insurer stands in the same position as the subrogor, for one cannot acquire by subrogation what another, whose rights he claims, did not have.

16 Couch on Insurance 2d, § 61:36 (1983).

> The right of subrogation is purely derivative as the insurer succeeds only to the rights of the insured, and no new cause of action is created. In other words, the concept of subrogation merely gives the insurer the right to prosecute the cause of action which the insured possessed against anyone legally responsible for the latter's harm....

16 Couch on Insurance 2d, § 61:37 (1983).

[2] Because an insurer's claim is derived from that of the insured, its claim is subject to the same defenses, including the statute of limitations as though the action were sued upon by the insured. *Beedie v. Shelly* (1980), 187 Mont. 556, 561, 610 P.2d 713, 716. **Accordingly, St. Paul's claim is derivative of Lynn's claim, and her claim accrued on June 12, 1985, the date of the accident.**

Second, we are cited to no authority for the proposition that the principles of subrogation vary with the type of risk insured against. We recognize that there are jurisdictions which have statutes extending the limitation period for subrogation claims of insurers that have paid damages to their insureds under uninsured or underinsured motorist policy provisions from the date of payment made under the policy. See, *Liberty Mut. Ins. Co. v. Fales* (Cal. 1973) 505 P.2d 213. However, Montana has no such statutory authority extending the limitation date. Whether there should be such a statute is a matter to be determined by the legislature.

Rather, this Court follows the general principles of subrogation which provide:

> **Since the insurer's claim by subrogation is derivative from that of the insured, it is subject to the same statute of**

> **limitations as though the cause of action were sue[d] upon by the insured. Consequently, the insurer's action is barred if it sued after expiration of the period allowed for the suing out of tort claims.**

16 Couch on Insurance 2d, § 61:234 (1983).

On appeal, St. Paul argues that the following statement from [*St. Paul Fire Marine Ins. Co. v. Allstate Ins. Co.* (1993 Mont. 47, 847 P.2d 705)] (*St. Paul I*), supports its contention that its right to subrogation arose upon the rendering of the judgment:

> St. Paul's right to subrogation arises from the judgment entered in favor of its insured against the defendant, and that judgment is the result of the defendant's tortious conduct within the State of Montana. *St. Paul I*, 847 P.2d at 707.

We note however, that we made this statement in relation to the jurisdiction question which was before us. We concluded that the District Court had personal jurisdiction over Glassing because of the tortious conduct which occurred in the State of Montana, and that the judgment was entered as a result of this tortious conduct. Therefore, the statement does not support St. Paul's argument that its subrogation rights arose upon judgment.

[3, 4] It is apparent from St. Paul's argument, that St. Paul confuses the accrual of a claim for subrogation, and the attachment of the right of subrogation. An insurer's right to subrogation attaches, by operation of law, upon paying an insured's loss. *Skauge*, 565 P.2d at 630. Accordingly, we held in *St. Paul I*, that "[i]n this case, St. Paul became substituted for its insured as a matter of law when it paid Ellen Lynn pursuant to its insurance policy with her and is entitled to pursue her right to collect the amount of her judgment against the defendant." *St. Paul I*, 847 P.2d at 707. **While St. Paul's right to subrogation arose upon its payment to Lynn, the right to subrogation does not operate to extend the statute of limitations.**

> While a subrogated insurer frequently contends that its action against the third-party tortfeasor who allegedly caused the damage or injury for which the insurer had to recompense its insured did not accrue, and the statute of limitations did not begin to run thereon, until the insurer had made the payments required under its insurance contract, courts have held, generally, that such a contention was without merit... ***[T]he statute of limitations be sins to run on such actions at the same time that the statute***

of limitations would have been to run on the insured's action...against the third-party tortfeasor.

Annotation, "When Does Statute of Limitations Begin to Run upon Action by Subrogated Insurer Against Third-Party Tortfeasor," 91 ALR 3d 844, 850 § 3; See also, *Beedie*, 610 P.2d 716; *Preferred Risk Mut. Ins. Co. v. Vargas* (Ariz.App. 1988), 754 P.2d 346; *Nationwide Mut. Ins. Co. v. State Farm* (N.C.App. 1993), 426 S.E.2d 298.[33]

Borrowing the words of *St. Paul II*, since the right of subrogation is purely derivative, UCPB Gen's claim is derivative of Copylandia's claim; and the latter's claim accrued on **May 9, 2006**, the occurrence of the damage to its various equipment. The 4-year prescriptive period for tort or quasi-delict began to run on UCPB Gen's action at the same time that the same statute of limitations would have begun to run on Copylandia's action against NASCL. Also, since the Philippines has no statutory authority extending the limitation period for subrogation claims of insurers that have paid damages to their insureds similar to the State of Montana, U.S.A., and the insurer's claim is derivative from that of the insured, the insurer's claim is subject to the same 4-year prescriptive period applicable to quasi-delicts as though the cause of action were sued upon by Copylandia. Consequently, the claim of UCPB Gen, as subrogee, had prescribed on **May 9, 2010**.[34]

To reiterate, the cause of action of the insurer against the wrongdoer is the very cause of action of the insured against the wrongdoer such that when the property upon which there is insurance is damaged or destroyed by the negligence of another, the right of action accruing to the injured party is for an indivisible wrong giving rise to a single indivisible cause of action which abides in the insured, through whom

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[33] *Id*.

[34] REVISED ADMINISTRATIVE CODE OF 1987 (Executive Order No. 292, 1987), Book I, Chapter 8, Section 31 provides that "Year" shall be understood to be twelve calendar months.

the insurer, upon payment of the insurance, must work out its rights.[35]

Thus, American jurisprudence clearly supports the majority view. In subrogation, the insurer literally steps into the shoes of the insured regardless of their size.

In *Filipino Merchants Insurance Company, Inc. v. Alejandro*[36] (*Filipino Merchants*) where the issue is "whether or not the one-year period within which to file a suit against the carrier and the ship, in case of damage or loss as provided for in the Carriage of Goods by Sea Act [(COGSA)] applies to the insurer of the goods,"[37] the Court ruled that the coverage of the Act includes the insurer of the goods. The Court reasoned out:

> x x x Otherwise, what the Act intends to prohibit after the lapse of the one[-]year prescriptive period can be done indirectly by the shipper or owner of the goods by simply filing a claim against the insurer even after the lapse of one year. This would be the result if we follow the petitioner's argument that the insurer can, at any time, proceed against the carrier and the ship since it is not bound by the time-bar provision. In this situation, the one[-]year limitation will be practically useless. x x x[38]

Applying the *Vector* ruling, the insurer in *Filipino Merchants* would have a 10-year period to be indemnified based on subrogation and not be bound by the one-year prescriptive period under COGSA. If that is allowed, the rights of the insurer against the wrongdoer will rise higher than the rights of the insured against such wrongdoer and the insurer will have greater rights than the one in whose place he is substituted.

Further, the application of the second sentence of Article 2207 would lead to absurdity if the source of the obligation of

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[35] *Virginia Electric & Power Co. v. Carolina Peanut Co.* (CA4 NC), 186 F2d 816, 32 ALR2d 234 cited in 44 Am. Jur. 2d, *Extent of right; dependence upon rights of insured*, § 1795, note 87, p. 786 (1982).

[36] 229 Phil. 73 (1986).

[37] *Id.* at 75.

[38] *Id.* at 79.

the wrongdoer or the person who has violated the contract to the aggrieved party is different from the source of his obligation to the subrogee. With respect to prescription, if the aggrieved party files the deficiency suit beyond the 4 years from the occurrence of the quasi-delict, his cause of action would have prescribed. But with respect to the subrogee, it would not be barred provided that the case is filed within 10 years from the payment of the insurance claim. The subrogee's right will then become superior to the right of the aggrieved insured party. The wrongdoer will not be able to raise prescription as defense against the insurer which would otherwise be available to the wrongdoer against the insured party had there been no subrogation. This is in violation of the principle in subrogation that any defense which a wrongdoer has against the insured is good against the insurer subrogated to the rights of the insured.

To recapitulate, to hold that subrogation under Article 2207 of the Civil Code gives rise to a cause of action created by law is erroneous. There are basic principles of subrogation that are violated.

Firstly, such ruling sanctions an unauthorized bifurcation of the singular indivisible obligation of the wrongdoer or tortfeasor, NASCL in this case, to both the injured party-insured, Copylandia, and the insurer, UCPB Gen as it violates a basic principle of subrogation that the right of action accruing to the injured party is for an indivisible wrong giving rise to a single indivisible cause of action which abides in the insured, through whom the insurer, upon payment of the insurance, must work out its rights. If Copylandia's cause of action against NASCL arises from quasi-delict and UCPB Gen's cause of action against NASCL arises from law, then there will, in effect, be two distinct obligations and causes of action.

Secondly, such ruling violates another basic principle of subrogation that the rights of the insurer against the wrongdoer cannot rise higher than the rights of the insured against such wrongdoer because the insurer, as subrogee, in contemplation of law, stands in the place of the insured and succeeds to whatever rights he may have in the matter. If UCPB Gen's cause of action

prescribes in 10 years while that of Copylandia prescribes in 4 years, then the right of the insurer against the wrongdoer will necessarily rise higher than the right of the insured against such wrongdoer.

Thirdly, if UCPB Gen's cause of action is deemed not to have prescribed despite the fact that Copylandia's cause of action against NASCL had already prescribed, then still another basic principle of subrogation is violated, *i.e.*, the subrogation claim, being derived from the claim of the insured is subject to same defenses, including statute of limitations, as if the action had been sued upon by the injured.

As to the time insurance companies respond to the insurance claim as opposed to the period wherein they run after the wrongdoer, it appears that they respond quickly to the claim of the insured and yet they take considerable time in going after the wrongdoer despite the relatively early settlement of the insurance claim.

In *Vector*, the collision between the M/T Vector and the M/V Doña Paz occurred in the evening of **December 20,1987** and on July 12, 1988, the respondent insurer therein indemnified Caltex, the insured, for the loss of the petroleum cargo in the full amount of ₱7,455,421.08.[39] But, it was only on March 5, 1992 when the respondent insurer therein filed the complaint against Vector Shipping Corporation, *et al*. to recover the full amount that it paid to Caltex.[40] The respondent insurer therein could have filed the complaint immediately after its payment to Caltex, but it did not.

In the instant case, the water leak that caused the damage to Copylandia's various equipment occurred on **May 9, 2006** and the settlement between the insured and the respondent insurer happened on November 2, 2006. The demand for indemnity against the tortfeasor was made by the respondent insurer, as

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[39] *Vector Shipping Corp. v. American Home Assurance Co., supra* note 4, at 201.

[40] *Id*. at 202.

the subrogee to Copylandia's rights, on May 20, 2010. Clearly, the respondent had ample time to file its complaint for damages against the tortfeasor within the 4-year prescriptive period.

It is a well-known practice among insurance companies to require the insured to file the insurance claim within a short period of time from the occurrence of the event for which the insurance policy was obtained subject to Section 63 of the Insurance Code, which provides that a condition, stipulation or agreement in any policy of insurance limiting the time for commencing an action thereunder to a period less than one year from the time when the cause of action accrues is void. Given the fact that it mainly depends on the insurer when it will settle the claim of the insured, the belated settlement with the insured and filing of the complaint against the wrongdoer should be the insurer's look out. And, equity and justice should not be exploited to excuse the insurer's own fault or negligence in not seasonably enforcing its rights as the subrogee.

Based on the foregoing, the non-dismissal of the complaint based on the 10-year prescriptive period of an action upon an obligation created by law is fundamentally wrong because — to borrow the language of the cited American authorities — the right of action accruing to the injured party that is passed on to the insurer is for an indivisible wrong giving rise to a single indivisible cause of action which abides in the insured, through whom the insurer, upon payment of the insurance, must work out its rights. The complaint for damages should have been dismissed on the ground that it was not seasonably filed within the 4-year prescriptive period under Article 1146(2), an action upon a quasi-delict. It must be recalled that on May 20, 2010 UCPB Gen made an extrajudicial demand upon NASCL. Under Article 1155 of the Civil Code, "[t]he prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor." ***However***, the extrajudicial demand here could not have interrupted the 4-year prescriptive period because the same

had already lapsed on **May 9, 2010**, which is 4 years from the occurrence of the damage to the various equipment on **May 9, 2006**.

In view of the guidelines adopted by the Court to transition the abandonment of the *Vector* ruling, I concur in denying the petition.

CONCURRING OPINION

LAZARO-JAVIER, *J.*:

I concur with the concise but exhaustive *ponencia* of my senior colleague, Madam Justice Estela M. Perlas-Bernabe. May I just add a few thoughts to explain why I support Justice Perlas-Bernabe's *ponencia*.

As their respective names suggest, *legal* subrogation differs from *conventional*[1] subrogation in that the former arises by operation of law while the latter comes from the agreement between the subrogor and the subrogee. Legal subrogation is oftentimes referred to as an *equitable* assignment of credit not only to indicate its historical origin but also its reference to circumstances (*or the equities of a case*) upon which the law builds and provides for a remedy.[2]

But more than what its name suggests, it is the *purpose* of legal subrogation that *defines the scope of its legal effects*. It

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[1] Conventional, (n.d.) *West's Encyclopedia of American law, edition 2.* (2008), https://legal-dictionary.thefreedictionary.com/conventional (last accesssed August 22, 2019). Conventional mean "derived from or contingent upon the mutual agreement of the parties, as opposed to that created by or dependent upon a stature or other act of the law." James M. Mullen, The Equitable Doctrine of Subrogation, 3 Md. L. Rev. 202 (1939). available at:http://digitalcommons.law.umaryland.edu/mlr/vol3/iss3/1 (last accessed August 22, 2019): "Thus, transposing one of the instances given above, if A as holder of a second mortgage on the property of B pays off the first mortgage, and has it assigned to him by the first mortgage, the rights claimed would be adjudicated on the basis of the written assignments and not by virtue of ai y principle of equitable subrogation."

[2] *James M. Mullen, Supra.*

has been said that legal subrogation is "an equitable principle to prevent unjust enrichment."[3] Accordingly:

Limitations on the Right

The right of subrogation, with its origin in the Civil Law, is merely an equitable right. **It is not enforced at the expense of a legal right.** In this State the Court of Appeals in a number of cases has enunciated the principles just stated and **has refused substitution... when by so doing it will work an injury upon other persons by destroying their legal or equitable rights**. From the above, it is clear that **the right of subrogation is not granted against a superior equity or a legal right, but that a judgment creditor has no such superior equity as entitles him to the benefit of this principle**.

It would hardly seem necessary to cite authorities for the statement that **if the creditor in connection with whose rights subrogation is claimed has no rights thus to be equitably conveyed to the person claiming subrogation, no right of subrogation can arise**.

Subrogation being a right to which a person claiming it is substituted by virtue of equitable principles, this right exists as to securities, which the creditor did not have or did not know about at the time his obligation was incurred.

Extent of the Right

This phase of the matter could probably be summarily disposed of by saying that **the equitable doctrine of subrogation when applied accords to the subrogated person all of the rights of the creditor to which the subrogee becomes thus entitled....**

In *Packham v. German Fire Insurance Company*, an insurance company had become subrogated to the rights of an insurer by paying his fire insurance loss claims on furniture and fixtures. **The rights to which the insurance company was subrogated (of course, those of the insured) comprised a claim against a third person tortfeasor, who by a negligent fire had destroyed or damaged the insured's furniture and fixtures and merchandise and caused him a loss of profits. The insurance covered the furniture and fixtures only and had nothing to, do with the merchandise and loss of profits. The insured endeavored to handle his claim against the tortfeasor in such a way that he could therein by settlement recover against**

[3] *Id*.

the latter for the loss of merchandise and loss of profits, but not for the furniture and fixtures. In connection with this, **he sued the insurance company, but the appellate court, applying the equitable doctrine of subrogation to the circumstances, felt that there could be no recovery, as by reason of having disentitled himself to sue against the tort feasor for loss of furniture and fixtures, he had thus voluntarily destroyed a right to which his insurer was entitled under the equitable doctrine of subrogation, and the insurer's right of recovery for his damages, being an indivisible right, he could not recover against the fire insurance company**.[4] (*emphasis added*)

Legal subrogation, therefore, gives rise to an *indivisible right of recovery*, that is, *indivisible from the original right pertaining to the equitable subrogor*. The equitable subrogee's right cannot rise higher than that of the equitable subrogor.

Further, *equity* plays a very important role in the resolution of the *scope of legal subrogation*. I think it is *highly iniquitous to continue adhering* to the *old* and *now abandoned* legal doctrine that the equitable subrogee's right of recovery accrues from the time of payment to the subrogor of the tortfeasor's liability *and* continues for *10 years after*. This is *iniquitous* when *juxtaposed against* the circumstances of a tortfeasor and his or her victim where an insurer does *not* play a role. In the *latter case*, the cause of action accrues from the time of the discovery of the tort *and* only for *four years after*.

The intervention of an insurer who pays for the damage *does not rest upon a legitimate distinction* between the former and the latter cases. In fact, the old legal doctrine appears to be *giving an unwarranted preference to the insurer* which in most if not all instances, is a big-budgeted artificial person that has both the resources and capacity to immediately investigate the cause of the insured's injuries, pay for the injuries, and launch the lawsuit to recover what it has paid.

There is *no reason* for the insurer to have the luxury of time that others similarly situated, *i.e.*, those who have been injured

[4] *Id*.

by a tortfeasor but without an insurer to help them by, do not have. If we are to pursue the inequality further, an insurer can opt to pay an insured only after, for example, seven years, and from then on, will have ten more years to sue the tortfeasor for recovery. *The insurer is thus benefitted by a timeline that is not reasonable under the insurer's own circumstances.* This is in contrast to an uninsured victim of a tortfeasor who would only have four years from the date of discovery of the tort to pursue his or her claim. As well, the tortfeasor in the latter case would have to wait only four years until the claim against him would become stale, while in the former, he or she has to lie in wait not only for the time that the insurer decides to pay the insured victim but for 10 year more from the time of payment by the insurer to the insured, before the tortfeasor can claim prescription. Whether for the uninsured victim of the tortfeasor or the tortfeasor himself or herself, there is an inequality that being justified only by the presence of a deep-pocketed and legally savvy and experienced insurer.

DISSENTING OPINION

BERSAMIN, *C.J.*:

The majority opinion overturns the ruling in *Vector Shipping Corporation v. American Home Assurance Company*[1] wherein the Court has held that subrogation under Article 2207 of the *Civil Code* gives rise to a cause of action created by law; hence, the applicable prescriptive period is 10 years.

I submit that the present case has not given the Court any grounds to warrant the overturn. The dictum in *Vector Shipping Corporation v. American Home Assurance Company* remains good law in the context of Article 2207 of the *Civil Code*.

Before anything more, however, a review of the antecedents is enlightening.

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[1] G.R. No. 159213, July 3, 2013, 700 SCRA 385.

National Arts Studio and Color Lab (National Arts Studio) leased for the period from 1989 to 1999 the front portion of the ground floor of a two-storey building then owned by Vicente G. Henson (Henson) located on Sto. Rosario Street in Angeles City, Pampanga.[2] In 1999, National Arts Studio leased the right front portion of the ground floor and the entire second floor of the building, and renovated its piping assembly. Meanwhile, Copylandia Office Systems Corporation (Copylandia) moved to the ground floor.[3]

A water leak occurred in the building on **May 9, 2006** and damaged Copylandia's various equipment to the tune of ₱2,062.640.00.[4] Copylandia filed its claim for indemnity with respondent UCPB General Insurance Co., Inc. (UCPBGen), the insurer of its equipment.[5] On **November 2, 2006**, Copylandia and UCPBGen agreed to settle for ₱1,326,342.76,[6] thereby subrogating UCPBGen to the rights of Copylandia arising from the water leak incident. On **May 20, 2010**, UCPBGen demanded payment from National Arts Studio, but without success.[7] Hence, UCPBGen sued National Arts Studio, among others, for damages in the Regional Trial Court (RTC) in Makati City. The suit, docketed as Civil Case No. 10-885, was raffled to Branch 138 of the RTC.[8]

In 2010, Henson transferred the ownership of the building to Citrinne Holdings, Inc. (CTI), wherein he was a stockholder and the President at the same time.[9]

UCPBGen amended its complaint on October 6, 2011 to implead CTI as a party-defendant by virtue of its being the

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[2] *Rollo*, pp. 196-197.

[3] *Id*.

[4] *Id*.

[5] *Id*. at 198.

[6] *Id*.

[7] *Id*.

[8] *Id*.

[9] *Id*.

new owner of the building. UCPBGen later changed its mind, and filed on April 21, 2014 a *Motion to Admit Attached Amended Complaint and Pre-Trial Brief* praying that Henson, instead of CTI, be impleaded as the party-defendant considering that he was the owner of the building at the time of the water leak incident.[10]

CTI opposed the motion principally on the ground of prescription, and contended that UCPBGen's cause of action, having arisen from quasi-delict, must be brought within four years from its accrual on **May 9, 2006**.[11]

On June 10, 2014, the RTC directed the dropping of CTI as a party-defendant and the joining of Henson as one of the party-defendants.[12] It observed that UCPBGen's cause of action against the defendants, including Henson, arose when it paid Copylandia's insurance claim and thereby became subrogated to the latter's rights and claims arising from the water leak incident; that UCPBGen was merely enforcing its right of subrogation which prescribed in 10 years reckoned from the date of Copylandia's indemnification on November 2, 2006; and that UCPBGen's claim against Henson had yet to prescribe on April 21, 2014 when it sought to include him as party-defendant.

On September 22, 2014, the RTC denied CTI's motion for reconsideration.[13]

On his part, Henson brought a petition for *certiorari* in the Court of Appeals (CA).

On November 13, 2015, the CA rendered its decision upholding the ruling of the RTC.[14] The CA agreed that

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[10] *Id.*

[11] *Id.* at 53.

[12] *Id.* at 52-55.

[13] *Id.* at 56-58.

[14] *Id.* at 196-203; penned by Associate Justice Stephen C. Cruz, with Associate Justice Elihu A. Ybañez and Associate Justice Ramon Paul L. Hernando concurring.

UCPBGen's cause of action was not based on quasi-delict, but on an obligation created by law, and, as such, the prescriptive period was 10 years reckoned from its accrual.

After the CA denied Henson's motion for reconsideration on February 26, 2016,[15] he appealed to the Court.

The issue for consideration is whether or not the CA correctly ruled that UCPBGen's cause of action was based on an obligation created by law that prescribed in 10 years.[16]

The majority opinion states that —

> In sum, as legal subrogation is not equivalent to conventional subrogation, no new obligation is created by virtue of the insurer's payment under Article 2207 of the Civil Code; also, as legal subrogation is not the same as an assignment of credit (as the former is in fact, called an "equitable assignment"), no privity of contract is needed to produce its legal effects. Accordingly, the insurer can take nothing by subrogation but the rights of the insured, and is subrogated only to such rights as the insured possesses. This principle has been frequently expressed in the form that the rights of the insurer against the wrongdoer cannot rise higher than the rights of the insured against such wrongdoer, since the insurer as subrogee, in contemplation of law, stands in the place of the insured and succeeds to whatever rights he may have in the matter. ***Therefore, any defense which a wrongdoer has against the insured is good against the insurer subrogated to the rights of the insured***, and this would clearly include the defense of prescription.
>
> Based on the above-discussed considerations, the Court must heretofore **abandon the ruling in *Vector*** that an insurer may file an action against the tortfeasor within ten (10) years from the time he indemnifies the insured. **Following the principles of subrogation, the insurer only steps into the shoes of the insured and therefore, for purposes of prescription, inherits only the remaining period within which the insured may file an action against the wrongdoer.** To be sure, the prescriptive period of the action that the insured may file against the wrongdoer begins at the time that the tort was committed

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[15] *Id.* at 193-194.

[16] Decision, p. 4.

and the loss/injury occurred against the insured. The indemnification of the insured by the insurer only allows it to be subrogated to the former's rights, and does not create a new reckoning point for the cause of action that the insured originally has against the wrongdoer.

Be that as it may, it should, however, be clarified that this Court's abandonment of the *Vector* doctrine should be **prospective** in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines.[17]

The majority opinion concludes that because the insurer merely stepped into the shoes of the insured, its cause of action against the debtor was already barred by prescription considering that the cause of action was in the nature of a quasi-delict that was subject to the prescriptive period of four years.[18]

I **DISSENT**.

I submit that the ruling on prescription in *Vector Shipping Corporation v. American Home Assurance Company* is the applicable rule for this case.

Article 2207 of the *Civil Code* expressly provides:

Article 2207. **If the plaintiffs property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract.** If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

To me, the letter and intent of the law are too clear and forthright to be ignored. Subrogation of the insurer under Article 2207 of the *Civil Code* gives rise to an obligation *created by law*. With the clarity and forthrightness of the

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

[18] *Id.* at 6.

legal provision on the nature of subrogation as an obligation arising from law, the cause of action based on subrogation prescribes in 10 years pursuant to Article 1144(2) of the *Civil Code*.

The Court pointed this out in *Vector Shipping Corporation v. American Home Assurance Company*, thusly:

> The juridical situation arising under Article 2207 of the *Civil Code* is well explained in *Pan Malayan Insurance Corporation v. Court of Appeals*, as follows:
>
> > Article 2207 of the Civil Code is founded on the well-settled principle of subrogation. If the insured property is destroyed or damaged through the fault or negligence of a party other than the assured, then the insurer, upon payment to the assured, will be subrogated to the rights of the assured to recover from the wrongdoer to the extent that the insurer has been obliged to pay. **Payment by the insurer to the assured operates as an equitable assignment to the former of all remedies which the latter may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of, any privity of contract or upon written assignment of claim. It accrues simply upon payment of the insurance claim by the insurer.** [*Compania Maritama v. Insurance Company of North America*, G.R. No. L-18965, October 30, 1964, 12 SCRA 213; *Fireman's Fund Insurance Company v. Jamila & Company, Inc.*, G.R. No. L-27427, April 7, 1976, 70 SCRA 323].

Verily, the contract of affreightment that Caltex and Vector entered into did not give rise to the legal obligation of Vector and Soriano to pay the demand for reimbursement by respondent because it concerned only the agreement for the transport of Caltex's petroleum cargo. As the Court has aptly put it in *Pan Malayan Insurance Corporation v. Court of Appeals, supra*, **respondent's right of subrogation pursuant to Article 2207, *supra*, was "not dependent upon, nor d[id] it grow out of, any privity of contract or upon written assignment of claim [but] accrue[d] simply upon payment of the insurance claim by the insurer."**[19]

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[19] *Supra* note 1, at 394-395.

In *Fireman's Fund Insurance Company v. Jamila & Company, Inc.*,[20] the Court has expounded on the rule enunciated under Article 2207 of the *Civil Code, viz*.:

Article 2207 is a restatement of a settled principle of American jurisprudence. Subrogation has been referred to as the doctrine of substitution. It "is an arm of equity that may guide or even force one to pay a debt for which an obligation was incurred but which was in whole or in part paid by another" (83 C.J.S. 576, 578, note 16, citing Fireman's Fund Indemnity Co. *vs.* State Compensation Insurance Fund, 209 Pac. 2d 55).

"Subrogation is founded on principles of justice and equity, and its operation is governed by principles of equity. It rests on the principle that substantial justice should be attained regardless of form, that is, its basis is the doing of complete, essential, and perfect justice between all the parties without regard to form" (83 C.J.S. 579-80).

Subrogation is a normal incident of indemnity insurance (Aetna L. Ins. Co. *vs*. Moses, 287 U.S. 530, 77 L. ed. 477). Upon payment of the loss, the insurer is entitled to be subrogated *pro tanto* to any right of action which the insured may have against the third person whose negligence or wrongful act caused the loss (44 Am. Jur. 2nd 745, citing Standard Marine Ins. Co. *vs*. Scottish Metropolitan Assurance Co., 283 U.S. 284, 75 L. ed. 1037).

The right of subrogation is of the highest equity. The loss in the first instance is that of the insured but after reimbursement or compensation, it becomes the loss of the insurer (44 Am. Jur. 2d 746, note 16, citing Newcomb *vs*. Cincinnati Ins. Co., 22 Ohio St. 382).

"Although many policies including policies in the standard form, now provide for subrogation, and thus determine the rights of the insurer in this respect, the equitable right of subrogation as the legal effect of payment inures to the insurer without any formal assignment or any express stipulation to that effect in the policy" (44 Am. Jur. 2nd 746). Stated otherwise, when the insurance company pays for the loss, such payment operates as an equitable assignment to the insurer of the property and all remedies which the insured may have for the recovery thereof. That right is not dependent upon, nor does

[20] L-27427, April 7, 1976, 70 SCRA 323.

it grow out of, any privity of contract, or upon written assignment of claim, and payment to the insured makes the insurer an assignee in equity (Shambley *vs.* Jobe-Blackley Plumbing and Heating Co., 264 N. C. 456, 142 SE 2d 18).[21]

There is no question that the right of subrogation is a creature of equity, owing its origin at common law,[22] and later evolved as a doctrine through the decision of Lord Hardwicke in *Randal v. Cockran*.[23] Lord Hardwicke pronounced in *Randal v. Cockran* that:

x x x **The person originally sustaining the loss was the owner; but after satisfaction made to him, the insurer.**

No doubt, but from that time, as to the goods themselves, if restored *in specie*, or compensation made for them, the assured stands as a trustee for the insurer, in proportion for what he paid.[24]

As can be seen, the doctrine of subrogation essentially holds that an insurer who has fully indemnified an insured against a loss covered by a contract of insurance between them may ordinarily enforce, in the insurer's own name, any right of recourse available to the insured. **The role of equity comes into play once the insurer has indemnified the insured. Payment is the crucial event that allows the insurer to succeed to the rights of the insured. Unless the insurer pays pursuant to the policy, there is no loss that he has sustained and, therefore, there arises no right of recovery.**[25]

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[21] *Id.* at 327-328.

[22] See Marasinghe, M.L., *An Historical Introduction to the Doctrine of Subrogation: The Early History of the Doctrine I and II, An Historical Introduction to the Doctrine of Subrogation: The Early History of the Doctrine I and II*, Valparaiso University Law Review, Vol. 10, No. 1, pp. 45-65; and Vol. 10 No. 2, pp. 275-299.

[23] 1 Ves. Sen. 98, 27 Eng. Rep. 916 (1748).

[24] *Id.*, as quoted and cited in Marasinghe, *supra* note 22, at 63.

[25] Marasinghe, *supra*, note 22, at 298.

Since the time of the pronouncement in *Randal v. Cockran*, therefore, it has been judicially recognized that the insurer's payment to the insured produces the following effects, namely:

(1) The person making the payment to the third party was recognized as having acquired *at the moment of paying* a right to claim a contribution or an indemnity (as the case might be) from the principal obligor;

(2) The acquisition of that right did not result from an express agreement to transfer such right, which the third party had against the principal obligor; and

(3) Both the common law courts and the courts of equity accepted that this acquisition of rights against the principal obligor was an operation of equity, not of the common law.[26]

The automatic transfer of rights from the payor to the payee occurs *at the moment of payment*, and it takes place *by act of law*.[27] Yet, the *ipso jure* transfer of rights from the insured to the insurer does not result to a simple case of assignment.

Under insurance law principles, *assignment* varies from *subrogation* in both the method of creation and the results produced.[28]

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[26] Marasinghe, M.L., *supra* note 24, at 279.

[27] *Id.* at 277, citing *London Assurance Co. v. Sainsbury* where it was held that:

> The care of a sheriff who has paid the whole debt is very strong, for he stands in the place of the debtor, *by act of Law*; yet he must sue in the name of the plaintiff.

London Assurance Co. v. Sainsbury is said to have settled three issues, namely: (1) the trust concept enables the insurer to sue a tortfeasor of the assured once the payment was made pursuant to the policy; (2) such an action must be brought in the name of the assured; and (3) the subrogation process occurs by operation of law.

[28] Bueler, Jennifer A., *Understanding the Difference Between the Right to Subrogation and Assignment of an Insurance Claim — Keisker v. Farmer*, Missouri Law Review, Volume 68, Issue 4, Fall 2003, p. 950.

Subrogation arises by operation of law when the insurer pays either a portion or the entire amount of property damages an insured individual claims under a policy, and may exist even without a statute or agreement that provides for it.[29] Subrogation accompanies payment, and carries with it only the limited claim to reimbursement, arising as it does upon payment to discharge a third person's indebtedness.[30] If the insurer has a right to subrogation, Philippine laws — particularly Article 2207 of the *Civil Code* — confer upon the insurer the status of a real party-in-interest with regard to the indemnity paid. That the insurer becomes the real party-in-interest after subrogation was aptly explained in *Philippine Airlines, Inc. v. Heald Lumber Company*,[31] whereby the Court clarified that:

> x x x In this jurisdiction, we have our own legal provision which in substance differs from the American law. We refer to Article 2207 of the New Civil Code which provides:
>
> > ART. 2207. If the plaintiffs property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.
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> Note that if a property is insured and the owner receives the indemnity from the insurer, it is provided in said article that the insurer is deemed subrogated to the rights of the insured against the wrongdoer and if the amount paid by the insurer does not fully cover the loss, then the aggrieved party is the one entitled to recover the deficiency. Evidently, under this legal provision, the real party in interest with regard to the portion of the indemnity paid is the insurer and not the insured. The

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[29] *Id.* at 949.

[30] Snellings III; George M., *The Role of Subrogation by Operation of Law and Related Problems in the Insurance Field,* Louisiana Law Review, Volume 22, Number 1, December 1961, pp. 225, 227.

[31] 101 Phil. 1031 (August 16, 1957).

reason is obvious. The payment of the indemnity by the insurer to the insured does not make the latter a trustee of the former as in the American law. This matter being statutory, the same must be governed by our own law in this jurisdiction.

This interpretation finds support in the explanatory note given by the Code Commission in proposing the adoption of the article under consideration. Thus, said Commission, in its report on the proposed Civil Code of the Philippines, referring to the article in question, says:

> The rule in article 2227 (Art. 2207 of the Code as enacted) about insurance indemnity *is different from the American law*. Said article provides:
>
> ART. 2227. If the plaintiffs property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who was violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss the aggrieved party shall be entitled to recover the deficiency from the person causing the loss of injury.
>
> *According to American jurisprudence, the fact that the plaintiff has been indemnified by an insurance company cannot lessen the damages to be paid by the defendant.* Such rules give more damages than those actually suffered by the plaintiff, and the defendant, if also sued by the insurance company for imbursement, would have to pay in many cases twice the damages he has caused. *The proposed article would seem to be a better adjustment of the rights* of the three parties concerned. (Report of Code Commission on the Proposed Civil Code of the Philippines, p. 73) (Emphasis supplied)

It is insisted that despite the subrogation of the insurer to the rights of the insured, the latter can still bring the action in its name because the subrogation vests in the latter the character of a trustee charged with the duty to pay to the insurer so much of the recovery as corresponds to the amount it had received as a partial indemnity. This cannot be true in this for before a person can sue for the benefit of another under a trusteeship, he must be "a trustee of an express trust" (Section 3, Rule 3, Rules of Court). Thus, under this provision,

"in order that a trustee may sue or be sued alone, it is essential that his trust should be express, that is, a trust created by the direct and positive acts of the parties, by some writing, deed, or will or by proceedings in court. The provision does not apply in cases of implied trust, that is, a trust which may be inferred merely from the acts of the parties or from other circumstances" (Moran, Comments on the Rules of Court, Vol. I, 1952 Ed., p. 35).

It also contended that to adopt a contrary rule to what is authorized by the American statutes would be splitting a cause of action or promoting multiplicity of suits which should be avoided. This contention cannot also hold water considering that under our rules both the insurer and the insured may join as plaintiffs to press their claims against the wrongdoer when the same arise out of the same transaction or event. This is authorized by Section 6, Rule 3, of the Rules of Court.[32]
x x x

In contrast, assignment is preceded by an agreement by virtue of which the owner of a credit (known as the assignor), by a legal cause — such as sale, dation in payment, exchange or donation — and without need of the debtor's consent, transfers that credit and its accessory rights to another (known as the assignee), who thereby acquires the power to enforce it, to the same extent as the assignor could have enforced it against the debtor.[33] Unlike the right to subrogation that arises only upon the insurer's payment of the insured's claim, assignment of the insured's property damage claim may take place even before the damage occurs.[34] After the assignment of the claims of the insured, the insurer becomes the real party-in-interest and may bring a claim in its own name against the tortfeasor or the latter's insurer.[35]

The only similarity that the doctrine of subrogation and the concept of assignment share is that the transferee has no right

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[32] *Id*. at 1035-1037 (italicized portions are part of the original text).

[33] See *Ledonio v. Capitol Development Corporation*, G.R. No. 149040, July 4, 2007, 526 SCRA 379, 393-394.

[34] Bueler, Jennifer A., *supra* note 28 at 951.

[35] *Id*. at p. 953.

independent of the transferor. In insurance, the insurer can only enforce the rights that the insured has; consequently, the insurer, as the person paying for the loss, cannot assume a better right than the insured, or person being indemnified. Yet, it must be recalled that subrogation, as an equitable principle, is supposed to ensure that the person who actually caused damages will eventually pay for those damages.[36] To underscore, this allowance of subrogation has its roots in the equitable doctrine of preventing unjust enrichment.[37]

If we adhere to the majority opinion's holding that subrogation is akin to assignment, *which means that the insurer merely steps into the shoes of the insured*, then an insurance claim filed after or even near the end of the prescriptive period to bring an action arising from quasi-delict may possibly defeat the fundamental purpose of subrogation as an arm of equity and justice. Moreover, the majority opinion's submission overrides the fact that the insurer's cause of action, or his right to recover the indemnity, only arises by reason of the payment made by the insurer independent of any agreement with the insured. Thus, once the insured received the payment, he is no longer the loser because his loss has been remedied by the insurer.[38] At that point, the insurer became the loser and his right to recover the payment he made to the insured then arises by operation of law.

Based on the foregoing, the dictum in *Vector Shipping Corporation v. American Home Assurance Company*, that subrogation gives rise to an action created by operation of law, and that, consequently, the action prescribes in 10 years reckoned

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[36] *Id*. at p. 949.

[37] Snellings III, George M., *The Role of Subrogation by Operation of Lew and Related Problems in the Insurance Field*, Louisiana Law Review, Volume 22, Number 1, December 1961 p. 228.

[38] Marasinghe, M.L., *An Historical Introduction to the Doctrine of Subrogation: The Early History of the Doctrine I*, Valparaiso University Law Review, Vol. 10, No. 1, p. 63.

from the moment of payment, is unassailable. With UCPBGen's cause of action against Henson, which accrued on November 2, 2006, not yet prescribed by April 21, 2014 when UCPBGen impleaded him as a party-defendant, Civil Case No. 10-885 should be allowed to prosper against him.

ACCORDINGLY, I vote to **DENY** the petition for review on *certiorari*; and to **AFFIRM** the November 13, 2015 decision and February 26, 2016 resolution of the Court of Appeals promulgated in C.A.-G.R. SP No. 138147.

DISSENTING OPINION

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

I agree with the denial of the petition but I respectfully enter my dissent with respect to the abandonment of the *Vector*[1] doctrine.

The Antecedents

The case under consideration pertains to Copylandia Office Systems Corporation's (Copylandia) damaged equipment caused by a water leak that occurred on May 9, 2006 in a two-storey building owned by petitioner Vicente G. Henson, Jr. (Henson) but leased by National Arts Studio and Color Lab (NASCL). The damaged equipment of Copylandia was insured with respondent UCPB General Insurance Co, Inc. (UCPB General Insurance). Consequently, Copylandia filed a claim with UCPB General Insurance for ₱2,062,640.00, but the parties settled the case for ₱1,326,342.76 on November 2, 2006.

After demand to pay has failed, UCPB General Insurance filed a complaint to recover the amount it paid Copylandia initially against NASCL, but later on impleaded Henson as the owner of the building. The complaint was opposed mainly on the ground of prescription arguing that UCPB General

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[1] See *Vector Shipping Corp., et al. v. American Home Assurance Co., et al.*, 713 Phil. 198 (2013).

Insurance's cause of action was based on *quasi-delict*; hence, must be brought within four (4) years from the time it accrued.

Relying on *Vector Shipping Corporation, et al. v. American Home Assurance Co, et al.*,[2] the Regional Trial Court and the Court of Appeals (CA) rejected the defense of prescription and ruled that UCPB General Insurance's cause of action was based on an obligation created by law pursuant to Article 2207 of the Civil Code which prescribes in ten (10) years.

Hence, the instant case for petition for review on *certiorari* where the petitioner insists that the insurer's claim has already prescribed.

The *ponencia* submits that the CA did not err when it relied on *Vector* in resolving the issue of prescription since it is the prevailing rule applicable to the events of this case. However, the *ponencia* suggests that the *Vector doctrine* should no longer be applied in the future based mainly on the following justification:

> In *Vector*, the Court held that the insurer's (*i.e.* American Home's) claim against the debtor (*i.e.* Vector) was premised on the right of subrogation pursuant to Article 2207 of the Civil Code and hence, an obligation created by law. While indeed American Home was entitled to claim against Vector by virtue of its subrogation to the rights of the insured (*i.e.* Caltex), **the Court failed to discern that no new obligation was created between American Home and Vector for the reason that a subrogee only steps into the shoes of the subrogor; hence, the subrogee-insurer only assumes the rights of the subrogor-insured based on the latter's original obligation with the debtor**.
>
> To expound, subrogation's legal effects under Article 2207 of the Civil Code **are primarily between the subrogee-insurer and the subrogor-insured: by virtue of the former's payment of indemnity to the latter, it is able to acquire, by operation of law, all the rights of the subrogor-insured against the debtor. The debtor is a stranger to this juridical tie because it only remains bound by its original obligation to its creditor whose rights, however, have already been assumed by the subrogee**. In *Vector's* case, American

[2] *Supra*.

Home was able to acquire *ipso jure* all the rights Caltex had against Vector under their contract of affreightment by virtue of its payment of indemnity. If at all, subrogation had the effect of obliging Caltex to respect this assumption of rights in that it must now recognize that its rights against the debtor, *i.e.* Vector, had already been transferred to American Home as subrogee-insurer. In other words, by operation of Article 2207 of the Civil Code, Caltex cannot deny American Home of its right to claim against Vector. **However, subrogation of American Home to Caltex's rights did not alter the original obligation between Caltex and Vector.**

Accordingly, **the Court, in *Vector*, erroneously concluded that "the cause of action [against Vector] accrued as of the time [American Home] actually indemnified Caltex in the amount of ₱7,455,421.08 on July 12, 1988."** Instead, it is the subrogation of rights between Caltex and American Home which arose from the time the latter paid the indemnity therefor. Meanwhile, the accrual of the cause of action that Caltex had against Vector did not change because, as mentioned, no new obligation was created as between them by reason of the subrogation of American Home. The cause of action against Vector therefore accrued at the time it breached its original obligation with Caltex whose right of action just so happened to have been assumed in the interim by American Home by virtue of subrogation. "[A] right of action is the right to presently enforce a cause of action, while a cause of action consists of the operative facts which gives rise to such right of action."[3] (Emphases Ours)

As gleaned from the foregoing, the *ponencia* proceeds under these premises:

(a) The insured and the insurer's cause of action is the same, *i.e.* quasi-delict; the action prescribes within four (4) years from its accrual;

(b) No new obligation is created by the subrogation; the cause of action of the insurer accrued at the time of the original breach of the obligation by the debtor; and

(c) The subrogation's legal effects under Article 2207 of the Civi Code are primarily between the subrogee-insurer and the subrogor-insured;

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[3] See *ponencia*, pp. 6-7.

I beg to differ.

The insured and the insurer's causes of action arose from different sources[4] *of obligation*.

Article 2207 of the Civil Code reads:

> Art. 2207. If the plaintiff's property has been insured and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

A reading of the said provision reveals two (2) possible situations: (1) total legal subrogation; and (2) partial legal subrogation.

Total legal subrogation

The *first sentence* of Article 2207 provides that upon receipt of indemnity by the insured, the insurer is automatically subrogated to the rights of the insured against the wrongdoer subject to the concurrence of the following:

(1) A property has been insured;
(2) There is a loss, injury or damage to the insured;
(3) The loss or injury was caused by or through the fault of the wrongdoer; and
(4) The insured received indemnity from the insurance company for the injury, loss, or damage arising out of the wrong or breach complained of.

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[4] CIVIL CODE OF THE PHILIPPINES, Article 1157.

Article 1157. Obligations arise from:

a) **Law;**
b) Contracts;
c) Quasi-contracts;
d) Acts or omissions punished by law; and
e) **Quasi-delicts.** (Emphases Ours)

This contemplates legal subrogation which grows not out of privity of contract but arises by the fact of payment. In *Malayan Insurance Co., Inc. v. Alberto, et al.*,[5] the Court explained the nature of legal subrogation in this wise:

> Subrogation is the substitution of one person by another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies or securities. The principle covers a situation wherein an insurer has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured against a third party with respect to any loss covered by the policy. It contemplates **full substitution** such that it places the party subrogated in the shoes of the creditor, and he may use all means that the creditor could employ to enforce payment.
>
> We have held that payment by the insurer to the insured operates as an **equitable assignment to the insurer of all the remedies** that the insured may have against the third party whose negligence or wrongful act caused the loss. **The right of subrogation is not dependent upon, nor does it grow out of, any privity of contract. It accrues simply upon payment by the insurance company of the insurance claim.** The doctrine of subrogation has its roots in equity. It is designed to promote and to accomplish justice; and is the mode that equity adopts to compel the ultimate payment of a debt by one who, in justice, equity, and good conscience, ought to pay.[6] (Emphases Ours)

The provision is clear, legal subrogation is a right that springs from Article 2207 of the Civil Code. The resulting obligation arising therefrom is, therefore, created by law.

In my humble point of view, no sufficient basis was presented to warrant the abandonment of the *Vector* doctrine. Article 2207 is clear and needs no further interpretation.

Partial legal subrogation

The *second sentence* of Article 2207, on the other hand, provides for a situation wherein the amount insured or

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[5] 680 Phil. 813 (2012).

[6] *Id.* at 829.

indemnified is less than the actual damage. In this case, the insured retains the right to recover the difference from the wrongdoer based on the original obligation which in this case is quasi-delict. Otherwise stated, the insurer will only be subrogated to the rights of the insured only to the extent of what the former has paid the latter. This is under the principle that "the insured shall be fully indemnified but should never be more than fully indemnified."[7] Legal subrogation "will not permit a windfall."[8]

Proceeding from the foregoing, two (2) scenarios can be deduced.

First, before the payment of indemnity by the insurer, the insured has a cause of action for his injury or loss based on *quasi-delict*.

Second, upon receipt of full indemnity by the insured from the insurer, an equitable or legal subrogation is created *ipso jure*. If the amount recovered does not fully indemnify the insured for the loss, the insurer is partly subrogated to the rights of the insured to the extent of what the former has paid the latter. The insured retains the right to recover the difference from the wrongdoer under the original obligation.

In this instance, there is a concurrence of rights between insured and insurer that arose out of the same event but constitute different causes of action.

The insured has the right to be indemnified for the damage or loss it suffered due to the fault or negligence of the wrongdoer **based on *quasi-delict*** while the insurer has the right to be reimbursed of the amount it paid the insured **based on legal subrogation**.

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[7] Marasinghe, M.L., *An Historical Introduction to the Doctrine of Subrogation; The Early History of the Doctrine II*, Valparaiso University Law Review, Vol. 10, Number 2, p. 292.

[8] *Id.* at 294.

To elaborate on the disparity, a cause of action is the act or omission by which a party violates a right of another.[9] The elements of a cause of action based on *Mercene v. Government Service Insurance System*,[10] are the following:

> In order for cause of action to arise, the following elements must be present: (1) a right in favor-of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of obligation of the defendant to the plaintiff.[11]

In *Indophil Textile Mills, Inc. v. Engr. Adviento*,[12] the Court enunciated that a **claim liability under *quasi-delict*** requires the concurrence of the following elements: (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.[13]

Under Article 1146[14] of the Civil Code, actions upon *quasi-delict* must be instituted within four (4) years.

The case of *Fireman's Fund Insurance Company v. Maryland Casualty Company, et al.*,[15] on the other hand, provides for the

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[9] RULES OF COURT, Rule 2, Section 2.

[10] G.R. No. 192971, January 10, 2018, 850 SCRA 209.

[11] *Id.* at 218.

[12] 740 Phil. 336 (2014).

[13] *Id.* at 350.

[14] Article 1146. The following actions must be instituted within four years:

(1) Upon an injury to the rights of the plaintiff;

(2) Upon a quasi-delict.

[15] No. A079345. July 31, 1998, citing *Caito v. United California Bank, supra*, 20 Cal.3d at p. 704; *Fireman's Fund Ins. Co. v. Wilshire Film Ventures, Inc.* (1997) 52 Cal. App. 4th 553, 555-556 [60 Cal Rptr. 2d 591]; *Patent*

essential elements of an insurer's **cause of action for equitable or legal subrogation**, *viz.*:

(a) the insured suffered a loss for which the defendant is liable, either as the wrongdoer whose act or omission caused the loss or because the defendant is legally responsible to the insured for the loss caused by the wrongdoer;

(b) the claimed loss was one for which the insurer was not primarily liable;

(c) the insurer has compensated the insured in whole or in part for the same loss for which the defendant is primarily liable;

(d) the insurer has paid the claim of its insured to protect its own interest and not as a volunteer;

(e) the insured has an existing, assignable cause of action against the defendant which the insured could have asserted for its own benefit had it not been compensated for its loss by the insurer;

(f) the insurer has suffered damages caused by the act or omission upon which the liability of the defendant depends;

(g) justice requires that the loss be entirely shifted from the insurer to the defendant, whose equitable position is inferior to that of the insurer; and

(h) the insurer's damages are in a liquidated sum, generally the amount paid to the insured.[16]

Under this jurisdiction, as an obligation that arose by operation of law, an action for legal subrogation prescribes in ten (10) years as statutorily provided in Article 1144.[17]

Scaffolding Co. v. William Simpson Constr. Co., *supra*, 256 Cal. App. 2d at p. 509; *Grant v. de Otte* (1954) 122 Cal. App. 2d 724, 728 [265 P.2d 952]; 11 Witkin, Summary of Cal. Law, *supra*, Equity, § 169, p. 849.

[16] *Supra*.

[17] Article 1144. The following actions must be brought within ten years from the time the cause of action accrues:

(1) Upon a written contract;
(2) Upon an obligation created by law;
(3) Upon a judgment.

In both instances of legal subrogation, the effects of Article 2207 of the Civil Code are primarily between the insurer and the debtor-wrongdoer.

The *ponencia* is of the opinion that the subrogation's legal effect is mainly between the insurer and the insured; the wrongdoer is a mere stranger to this juridical tie who remains bound to the insured by its original obligation, one that arose from *quasi-delict*.

To my mind, the more logical view is that as a legal consequence of subrogation under Article 2207, a relationship **primarily between** insurer and the debtor-wrongdoer is created. Payment of indemnity by the insurer to the insured produces a *vinculum juris* between the insurer and the debtor-wrongdoer, in that the insurer now becomes the real party-in-interest[18] in a collection case against the debtor-wrongdoer with regard to the indemnity paid. In contrast, the effect of legal subrogation between the insured and insurer, who are governed by the insurance contract they entered into, is merely consequential.

The end of subrogation is to prevent inequity

Of all the principles related to subrogation, it cannot be denied that the ultimate purpose for its creation is equity and "results from the natural justice of placing the burden where it ought to rest." Subrogation flows not from any fixed rule of law, but rather born from "principles of justice, equity and benevolence."[19] It makes sure that the responsibility must be on the person who should ultimately discharge the liability and not on the party who merely assumed the loss or injury. Subrogation operates as a device that places the burden for the loss on the party ultimately liable or responsible for it and "to relieve entirely

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[18] *Phil. Air Lines, Inc. v. Heald Lumber Co.*, 101 Phil. 1031, 1035 (1957).

[19] *Home Owner's Loan Corp. v. Parker*, 73 P.2d 170 (Okla. 1937).

the insurer who indemnified the loss and who in equity was not primarily liable therefor."[20]

Thus, Article 2207 of the Civil Code, in relation to Article 1144, should be construed under the aforementioned context.

In my perspective, to conform with the *ponencia* is to put the insurer at a disadvantage. This is against the very essence of legal subrogation that is to prevent unjust enrichment.[21]

The abandonment of the *Vector doctrine* will limit the options of the insurer, who upon payment to the insured, assumes the loss or injury caused by or through the fault of the wrongdoer. It will restrict the right of the insurer to recover from its assumed loss or injury by limiting the period within which it could recover. This will defeat the purpose of the principle of legal subrogation as a creature of the "highest equity"[22] which is "designed to promote and to accomplish justice and is the mode which equity adopts to compel the ultimate payment of a debt by one who in justice, equity and good conscience ought to pay."[23]

Accordingly, I submit that the CA is correct in ruling that UCPB General Insurance's cause of action based on legal subrogation has not yet prescribed pursuant to this Court's ruling in *Vector*.

THUS, I vote to **DENY** the petition for review on *certiorari*. But for the reasons stated, I respectfully **VOTE AGAINST THE ABANDONMENT** of the *Vector* doctrine.

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[20] *Fireman's Fund Insurance Company v. Maryland Casualty Company, et al., supra* note 15.

[21] Mullen, J.M., *The Equitable Doctrine of Subrogation*, Maryland Law Review, Vol. 3. Issue 3, 3 Md. L. Rev. 202 (1939), p. 201.

[22] *Fireman's Fund Insurance Company v. Jamila & Company, Inc.*, 162 Phil. 421, 429 (1976).

[23] *PHILAMGEN v. Court of Appeals*, 339 Phil. 455, 466 (1997).

EN BANC

[G.R. No. 223705. August 14, 2019]

LOIDA NICOLAS-LEWIS, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; THERE EXISTS AN ACTUAL JUSTICIABLE CONTROVERSY THAT IS RIPE FOR ADJUDICATION IN CASE AT BAR.— Guided by the foregoing principles, the Court finds that there exists an actual justiciable controversy in this case given the "evident clash of the parties' legal claims" as to whether the questioned provision infringe upon the constitutionally-guaranteed freedom of expression of the petitioner, as well as all the Filipinos overseas. Petitioner's allegations and arguments presented a *prima facie* case of grave abuse of discretion which necessarily obliges the Court to take cognizance of the case and resolve the paramount constitutional issue raised. The case is likewise ripe for adjudication considering that the questioned provision continues to be in effect until the Court issued the TRO above-cited, enjoining its implementation. While it may be true that petitioner failed to particularly allege the details of her claimed direct injury, the petition has clearly and sufficiently alleged the existence of an immediate or threatened injury sustained and being sustained by her, as well as all the overseas Filipinos, on their exercise of free speech by the continuing implementation of the challenged provision. A judicial review of the case presented is, thus, undeniably warranted.

2. ID.; ID.; BILL OF RIGHTS; FREEDOM OF EXPRESSION, EXPLAINED; ANY GOVERNMENTAL RESTRICTION ON THE RIGHT TO CONVINCE OTHERS TO VOTE FOR OR AGAINST A CANDIDATE CARRIES WITH IT A HEAVY PRESUMPTION OF INVALIDITY.— Freedom of expression has gained recognition as a fundamental principle of every democratic government, and given a preferred right that stands on a higher level than substantive economic freedom

or other liberties. In no equivocal terms did the fundamental law of the land prohibit the abridgement of the freedom of expression. x x x A fundamental part of this cherished freedom is the right to participate in electoral processes, which includes not only the right to vote, but also the right to express one's preference for a candidate or the right to influence others to vote or otherwise not vote for a particular candidate. This Court has always recognized that these expressions are basic and fundamental rights in a democratic polity as they are means to assure individual self-fulfillment, to attain the truth, to secure participation by the people in social and political decision-making, and to maintain the balance between stability and change. Rightfully so, since time immemorial, "[i]t has been our constant holding that this preferred freedom [of expression] calls all the more for the utmost respect when what may be curtailed is the dissemination of information to make more meaningful the equally vital right of suffrage." In the recent case of *1-United Transport Koalisyon (1-UTAK) v. COMELEC*, the Court *En Banc* pronounced that any governmental restriction on the right to convince others to vote for or against a candidate – a protected expression – carries with it a heavy presumption of invalidity.

3. ID.; ID.; ID.; ID.; ID.; RATIONALE BEHIND THE PRESUMPTION OF INVALIDITY, BEING A DEVIATION FROM A CONVENTIONAL ADHERENCE TO THE PRESUMPTION OF CONSTITUTIONALITY.— [T]his rather potent deviation from our conventional adherence to the presumption of constitutionality enjoyed by legislative acts is not without basis. Nothing is more settled than that any law or regulation must not run counter to the Constitution as it is the basic law to which all laws must conform. Thus, while admittedly, these rights, no matter how sacrosanct, are not absolute and may be regulated like any other right, in every case where a limitation is placed on their exercise, the judiciary is called to examine the effects of the challenged governmental action considering that our Constitution emphatically mandates that no law shall be passed abridging free speech and expression. Simply put, a law or statute regulating or restricting free speech and expression is an outright departure from the express mandate of the Constitution against the enactment of laws abridging free speech and expression, warranting, thus, the presumption against its validity. In this regard, therefore, a law or regulation, even

if it purports to advance a legitimate governmental interest, may not be permitted to run roughshod over the cherished rights of the people enshrined in the Constitution. It is only when the challenged restriction survives the appropriate test will the presumption against its validity be overthrown.

4. ID.; ID.; ID.; ID.; DIFFERENT TESTS OF JUDICIAL SCRUTINY TO DETERMINE THE VALIDITY OR INVALIDITY OF FREE SPEECH RESTRICTIONS, DISCUSSED.— [A] facial review of a law or statute encroaching upon the freedom of speech on the ground of overbreadth or vagueness is acceptable in our jurisdiction. Under the overbreadth doctrine, a proper governmental purpose, constitutionally subject to state regulation, may not be achieved by means that unnecessarily sweep its subject broadly, thereby invading the area of protected freedoms. Put differently, an overbroad law or statute needlessly restricts even constitutionally-protected rights. On the other hand, a law or statute suffers from vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. It is noteworthy, however, that facial invalidation of laws is generally disfavored as it results to entirely striking down the challenged law or statute on the ground that they may be applied to parties not before the Court whose activities are constitutionally protected. It disregards the case and controversy requirement of the Constitution in judicial review, and permits decisions to be made without concrete factual settings and in sterile abstract contexts, deviating, thus, from the traditional rules governing constitutional adjudication. Hence, an on-its-face invalidation of the law has consistently been considered as a "manifestly strong medicine" to be used "sparingly and only as a last resort." The allowance of a review of a law or statute on its face in free speech cases is justified, however, by the aim to avert the "chilling effect" on protected speech, the exercise of which should not at all times be abridged. x x x Restraints on freedom of expression are also evaluated by either or a combination of the following theoretical tests, to wit: (a) the dangerous tendency doctrine, which were used in early Philippine case laws; (b) the clear and present danger rule, which was generally adhered to in more recent cases; and (c) the balancing of interests test, which was also recognized in our jurisprudence. In the landmark case of *Chavez v. Gonzales*, the

Court laid down a more detailed approach in dealing with free speech regulations. Its approach was premised on the rational consideration that "the determination x x x of whether there is an impermissible restraint on the freedom of speech has always been based on the circumstances of each case, including the nature of the restraint." x x x The paramount consideration in the analysis of the challenged provision, therefore, is the nature of the restraint on protected speech, whether it is content-based or otherwise, content-neutral. As explained in *Chavez*, a content-based regulation is evaluated using the clear and present danger rule, while courts will subject content-neutral restraints to intermediate scrutiny.

5. ID.; ID.; CONSTITUTIONALITY OF THE OVERSEAS ABSENTEE VOTING ACT OF 2003 (RA 9189) AS AMENDED BY THE ABSENTEE VOTING ACT OF 2013 (RA 10590); SECTION 36.8 OF RA 9189 AS AMENDED BY RA 10590 IS AN IMPERMISSIBLE CONTENT-NEUTRAL REGULATION FOR BEING OVERBROAD, VIOLATING THE FREE SPEECH CLAUSE OF THE 1987 CONSTITUTION.— Section 36.8 of R.A. No. 9189, as amended by R.A. No. 10590, is an impermissible content-neutral regulation for being overbroad, violating, thus, the free speech clause under Section 4, Article III of the 1987 Constitution. The questioned provision is clearly a restraint on one's exercise of right to campaign or disseminate campaign-related information. Prior restraint refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination. Undoubtedly, the prohibition under the questioned legislative act restrains speech or expression, in the form of engagement in partisan political activities, before they are spoken or made. The restraint, however, partakes of a content-neutral regulation as it merely involves a regulation of the incidents of the expression, specifically the time and place to exercise the same. It does not, in any manner, affect or target the actual content of the message. It is not concerned with the words used, the perspective expressed, the message relayed, or the speaker's views. More specifically, the prohibition does not seek to regulate the exercise of the right to campaign on the basis of the particular message it conveys. It does not, in any manner, target the actual content of the message. It is easily understandable that the restriction was not adopted

because of the government's disagreement with the message the subject speech or expression relays. There was no intention on the part of the government to make any distinction based on the speaker's perspectives in the implementation of the regulation. Simply put, regardless of the content of the campaign message or the idea it seeks to convey, whether it is for or, otherwise against a certain candidate, the prohibition was intended to be applied *during the voting period abroad*. The fact that the questioned regulation applies only to political speech or election-related speech does not, by itself, make it a content-based regulation. It is too obvious to state that every law or regulation would apply to a particular type of speech such as commercial speech or political speech. It does not follow, however, that these regulations affect or target the content of the speech or expression to easily and sweepingly identify it as a content-based regulation. Instead, the particular law or regulation must be judiciously examined on what it actually intends to regulate to properly determine whether it amounts to a content-neutral or content-based regulation as contemplated under our jurisprudential laws. To rule otherwise would result to the absurd interpretation that every law or regulation relating to a particular speech is a content-based regulation. Such perspective would then unjustifiably disregard the well-established jurisprudential distinction between content-neutral and content-based regulations.

6. ID.; ID.; ID.; CRITERIA IN THE INTERMEDIATE TEST THAT MUST BE CONSIDERED TO DETERMINE THE VALIDITY OF A CONTENT-NEUTRAL REGULATION, APPLIED; THE ASSAILED PROVISION'S SWEEPING AND ABSOLUTE PROHIBITION AGAINST ALL FORMS OF EXPRESSION WITHOUT ANY QUALIFICATION IS MORE THAN WHAT IS ESSENTIAL TO ACHIEVE THE GOVERNMENTAL PURPOSE; THERE IS NO REASON TO IMPOSE A LIMITATION ON THE PROTECTED RIGHT TO PARTICIPATE IN PARTISAN POLITICAL ACTIVITIES EXERCISED BEYOND THE PREMISES WHERE VOTING IS CONDUCTED.— Being a content-neutral regulation, we, therefore, measure the same against the intermediate test, *viz.*: (1) the regulation is within the constitutional power of the government; (2) it furthers an important or substantial governmental interest; (3) such governmental interest is unrelated to the suppression of the free

expression; and (4) the incidental restriction on the alleged freedom of expression is no greater than what is essential to the furtherance of the governmental interest. Our point of inquiry focuses on the fourth criterion in the said test, *i.e.*, that **the regulation should be no greater than what is essential to the furtherance of the governmental interest**. The failure to meet the fourth criterion is fatal to the regulation's validity as even if it is within the Constitutional power of the government agency or instrumentality concerned and it furthers an important or substantial governmental interest which is unrelated to the suppression of speech, the regulation shall still be invalidated if the restriction on freedom of expression is greater than what is necessary to achieve the invoked governmental purpose. In the judicial review of laws or statutes, especially those that impose a restriction on the exercise of protected expression, it is important that we look not only at the legislative intent or motive in imposing the restriction, but more so at the effects of such restriction when implemented. The restriction must not be broad and should only be narrowly-tailored to achieve the purpose. It must be demonstrable. It must allow alternative avenues for the actor to make speech. x x x In this case, the challenged provision's sweeping and absolute prohibition against all forms of expression considered as partisan political activities without any qualification is more than what is essential to the furtherance of the contemplated governmental interest. On its face, the challenged law provides for an absolute and substantial suppression of speech as it leaves no ample alternative means for one to freely exercise his or her fundamental right to participate in partisan political activities. Consider: The use of the unqualified term **"abroad"** would bring any intelligible reader to the conclusion that the prohibition was intended to also be extraterritorial in application. *Generalia verba sunt generaliter inteligencia.* General words are understood in a general sense. The basic canon of statutory interpretation is that the word used in the law must be given its ordinary meaning, unless a contrary intent is manifest from the law itself. Thus, since the Congress did not qualify the word "abroad" to any particular location, it should then be understood to include any and all location abroad. Regardless, therefore, of whether the exercise of the protected expression is undertaken within or without our jurisdiction, it is made punishable under the challenged provision couched in pervasive terms. To reiterate, the perceived danger sought to be prevented by the restraint is

the purported risk of compromising the integrity and order of our elections. Sensibly, such risk may occur only within premises where voting is conducted, *i.e.*, in embassies, consulates, and other foreign service establishments. There is, therefore, no rhyme or reason to impose a limitation on the protected right to participate in partisan political activities exercised beyond said places.

7. ID.; ID.; ID.; ID.; ID.; BY BANNING POLITICAL ACTIVITIES OR CAMPAIGNING EVEN DURING THE CAMPAIGN PERIOD WITHIN THE EMBASSIES, CONSULATES, AND OTHER FOREIGN SERVICE ESTABLISHMENTS, IT GOES BEYOND THE OBJECTIVE OF MAINTAINING ORDER DURING THE VOTING PERIOD AND ENSURING A CREDIBLE ELECTION; AS THE ASSAILED PROVISION CONSTITUTES A RESTRICTION ON FREE SPEECH THAT IS GREATER THAN WHAT IS ESSENTIAL TO ACHIEVE GOVERNMENTAL INTEREST, THE COURT DECLARES THE SAME UNCONSTITUTIONAL.— By banning partisan political activities or campaigning even *during the campaign period* within embassies, consulates, and other foreign service establishments, regardless of whether it applies only to candidates or whether the prohibition extends to private persons, it goes beyond the objective of maintaining order during the voting period and ensuring a credible election. To be sure, there can be no legally acceptable justification, whether measured against the strictest scrutiny or the most lenient review, to absolutely or unqualifiedly disallow one to campaign within our jurisdiction during the campaign period. Most certainly, thus, the challenged provision, whether on its face or read with its IRR, constitutes a restriction on free speech that is greater than what is essential to the furtherance of the governmental interest it aims to achieve. Section 36.8 of R.A. No. 9189 should be struck down for being overbroad as it does not provide for well-defined standards, resulting to the ambiguity of its application, which produces a chilling effect on the exercise of free speech and expression, and ultimately, resulting to the unnecessary invasion of the area of protected freedoms. For the foregoing reasons, this Court declares Section 36.8 of R.A. No. 9189, as amended by R.A. No. 10590, unconstitutional for violating Section 4, Article III of the 1987 Constitution.

PERLAS-BERNABE, *J.*, *concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF SECTION 36.8 OF THE OVERSEAS ABSENTEE VOTING ACT OF 2003 (RA 9189) AS AMENDED BY THE ABSENTEE VOTING ACT OF 2013 (RA 10590); AS THE ASSAILED PROVISION SHOULD BE CLASSIFIED AS CONTENT-NEUTRAL REGULATION, THE INTERMEDIATE SCRUTINY TEST SHOULD BE MADE TO APPLY; PARAMETERS THAT MUST BE MET FOR A CONTENT-NEUTRAL REGULATION TO BE VALID.— Section 36.8 is primarily a regulation on the ***place*** (*i.e.*, overseas/abroad) and ***time*** (*i.e.*, during the thirty [30]-day overseas voting period) in which political speech (particularly, those considered as "partisan political activity") may be uttered under the standards the provision prescribes. The government's purpose therefor is not so much on prohibiting "the message or idea of the expression" *per se*, but rather on regulating "the time, place or manner of the expression." As such, Section 36.8 should only be classified as a content-neutral regulation, and not a content-based one. Being a content-neutral regulation, case law states that the **intermediate scrutiny test** should be made to apply. x x x Following the intermediate scrutiny approach, a content-neutral regulation is valid if it meets these parameters: (1) it is within the constitutional power of the government; (2) it furthers an important or substantial governmental interest; (3) the governmental interest is unrelated to the suppression of free expression; and (4) **the incidental restriction on freedoms of speech, expression, and press is no greater than what is essential to the furtherance of that interest**. In relation to the fourth element, a restriction that is so broad that it encompasses more than what is required to satisfy the governmental interest will be invalidated. In other words, the regulation must be "**narrowly tailored**" to fit the regulation's purpose. In my view, Section 36.8 fails to satisfy this fourth parameter of the intermediate scrutiny approach, and hence, unconstitutional for the reasons explained below.

2. ID.; ID.; ID.; BY GENERALLY BANNING PARTISAN POLITICAL ACTIVITY REGARDLESS OF THE LOCATION WHERE THE POLITICAL SPEECH IS SPECIFICALLY UTTERED ABROAD, THE ASSAILED

PROVISION GOES OVER AND BEYOND THE OBJECTIVE OF THE LAW, HENCE, IT SHOULD BE DECLARED UNCONSTITUTIONAL.— The purpose of the thirty (30)-day prohibition, based on respondent the Commission on Elections' (COMELEC) Comment, is "to ensure the holding of an honest and orderly election that upholds the secrecy and sanctity of the ballot" or "to maintain public order during election day." Although the law's objective is clearly constitutive of "an important or substantial governmental interest," **Section 36.8's sweeping restriction of all forms of speech considered as partisan political activity abroad, without any qualification whatsoever concerning the location where such disorder may emanate**, *is more than essential to the furtherance of the above-stated interest*. To my mind, the perceived danger of election-related disorder would only be extant when partisan political activity is allowed in places that fall within the jurisdictional reach of our election laws, *e.g.*, within the premises of the embassy, consulate, and other foreign service establishment, and not beyond it. Stated otherwise, the possibility of election-related discord discernibly arises only in places where our election laws remain operative; conversely, where foreign election laws apply, the possibility of election-related discord becomes a domestic concern of that country, and not ours. Hence, by **generally banning partisan political activity regardless of the location where the political speech is specifically uttered abroad**, Section 36.8 **goes over and beyond the objective** of ensuring "the holding of an honest and orderly [Philippine (not foreign)] election that upholds the secrecy and sanctity of the ballot" and "to maintain public order during election day." x x x Section 36.8 of RA 9189, as amended by RA 10590, is a content-neutral regulation that, however, constitutes a restriction of free speech that is greater than what is essential to the furtherance of the public interest it was intended to meet. Thus, based on the above-discussed considerations, I vote to **GRANT** the petition and **DECLARE** the subject provision as unconstitutional.

LEONEN, *J.*, *separate concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOM OF EXPRESSION; IMPORTANCE, DISCUSSED.— Freedom of expression, as with other cognate

constitutional rights, is essential to citizens' participation in a meaningful democracy. Through it, they can participate in public affairs and convey their beliefs and opinion to the public and to the government. Ideas are developed and arguments are refined through public discourse. Freedom of expression grants the people "the dignity of individual thought." When they speak their innermost thoughts, they take their place in society as productive citizens. Through the lens of self-government, free speech guarantees an "ample opportunity for citizens to determine, debate, and resolve public issues." Speech that enlivens political discourse is the lifeblood of democracy. A free and robust discussion in the political arena allows for an informed electorate to confront its government on a more or less equal footing. Without free speech, the government robs the people of their sovereignty, leaving them in an echo chamber of autocracy. Freedom of speech protects the "democratic political process from the abusive censorship of political debate by the transient majority which has democratically achieved political power."

2. ID.; ID.; ID.; ID.; POLITICAL SPEECH AND COMMERCIAL SPEECH, DISTINGUISHED; BEING A DIRECT EXERCISE OF THE PEOPLE'S SOVEREIGNTY, POLITICAL EXPRESSION OCCUPIES A PREFERRED RANK AND IS ACCORDED THE HIGHEST PROTECTION AGAINST ANY ILLICIT AND UNWARRANTED GOVERNMENT CENSORSHIP.— Speech with political consequences occupies a higher position in the hierarchy of protected speeches and is conferred with a greater degree of protection. The difference in the treatment lies in the varying interests in each type of speech. x x x This Court recognized in *The Diocese of Bacolod* that political speech occupies a preferred rank within our constitutional order, it being a direct exercise of the sovereignty of the people. In a separate opinion in *Chavez*, Associate Justice Antonio Carpio underscored that "if ever there is a hierarchy of protected expressions, political expression would occupy the highest rank[.]" In contrast, other types of speeches, such as commercial speech, are treated in this jurisdiction as "low value speeches." In *Disini, Jr. v. Secretary of Justice*, this Court has recognized that "[c]ommercial speech . . . is not accorded the same level of protection as that given to other constitutionally guaranteed forms of expression[.]" This is because, as I opined in that case, the protection accorded to

commercial speech is anchored on its informative character and it merely caters to the market. Since the value of protection accorded to commercial speech is only to the extent of its channel to inform, advertising is not on par with other forms of expression. In contrast, political speech is "indispensable to the democratic and republican mooring of the state whereby the sovereignty residing in the people is best and most effectively exercised through free expression." The rationale behind this distinction lies in the nature and impact of political speech. x x x As a direct exercise of the people's sovereignty, political expression is accorded the highest protection. This is even more heightened during the election period, when political activities and speech are propelled by the electorate's ideals and choice of representatives. Given the crucial importance of political expression in our democracy, it should be favored and guarded against any illicit and unwarranted government censorship.

3. ID.; ID.; ID.; ID.; PRIOR RESTRAINT AS A FORM OF RESTRICTION ON ANY FORM OF EXPRESSION, EXPLAINED; DISTINGUISHED FROM THE LESSER RESTRICTION OF SUBSEQUENT PUNISHMENT; ANY FORM OF PRIOR RESTRAINT IS AN EXEMPTION AND BEARS A HEAVY PRESUMPTION OF INVALIDITY.— Prior restraint is an official governmental restriction on any form of expression in advance of its actual utterance, dissemination, or publication. Thus, freedom from prior restraint is freedom from government censorship, regardless of its form and the branch of government that wielded it. When a governmental act is in prior restraint of expression, it bears a heavy presumption against its validity. x x x On the other hand, subsequent punishment is the imposition of liability on the individual exercising his or her freedom. The penalty may be penal, civil, or administrative. Prior restraint is deemed a more severe restriction on expression than subsequent punishment because while the latter dissuades expression, ideas are still disseminated to the public. On the other hand, prior restraint prevents even the dissemination of ideas. Even if there is no prior restraint, the exercise of expression may still be subject to subsequent punishment, either civilly or criminally. If the expression is not subject to the lesser restriction of subsequent punishment, it follows that it cannot also be subject to the greater restriction of prior restraint. On the other hand, if the expression

warrants prior restraint, it is unavoidably subject to subsequent punishment. Because our Constitution favors freedom of expression, any form of prior restraint is an exemption and bears a heavy presumption of invalidity.

4. ID.; ID.; ID.; ID.; TESTS IN DETERMINING THE VALIDITY OF FREE SPEECH REGULATIONS; CLEAR AND PRESENT DANGER TEST DISTINGUISHED FROM THE DANGEROUS TENDENCY TEST.— [F]ree speech is not absolute, and not all prior restraint regulations are held invalid. Free speech must "not be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society." Doctrinally, this Court has settled the applicable tests in determining the validity of free speech regulations. To justify an intrusion on expression, we employ two (2) tests, namely: (1) the clear and present danger test; and (2) the dangerous tendency test. In *Cabansag v. Fernandez*, this Court laid down what these tests entail: The [clear and present danger test], as interpreted in a number of cases, means that the evil consequence of the comment or utterance must be "extremely serious and the degree of imminence extremely high" before the utterance can be punished. x x x The "dangerous tendency" rule, on the other hand, has been adopted in cases where extreme difficulty is confronted in determining where the freedom of expression ends and the right of courts to protect their independence begins. There must be a remedy to borderline cases and the basic principle of this rule lies in that the freedom of speech and of the press, as well as the right to petition for redress of grievance, while guaranteed by the constitution, are not absolute. They are subject to restrictions and limitations, one of them being the protection of the courts against contempt. As its designation connotes, the clear and present danger test demands that the danger not only be clear, but also present. In contrast, the dangerous tendency test does not require that the danger be present.

5. ID.; ID.; ID.; ID.; WHEN FACED WITH CONTENTIONS INVOLVING PRIOR RESTRAINT ON FREE SPEECH, IT IS IMPORTANT TO DISTINGUISH CONTENT-BASED AND CONTENT-NEUTRAL REGULATIONS.— When faced with contentions involving prior restraint on free speech, it is important to create a distinction between content-based and content-neutral regulations. Whether a regulation is content-

based or content-neutral spells out the difference in the test applied in assaying a governmental regulation. A regulation is content-neutral if it is "merely concerned with the incidents of the speech, or one that merely controls the time, place[,] or manner, and under well-defined standards[,]" regardless of the content of the speech. On the other hand, content-based restraint or censorship is based on the subject matter of the expression. In a content-based regulation, the governmental action is tested with the strictest scrutiny "in light of its inherent and invasive impact." It bears a heavy presumption of unconstitutionality. To pass constitutional muster, the regulation has to overcome the clear and present danger rule. Thus, the government must show the type of harm sought to be prevented by the content-based regulation. It must be based on a "substantive and imminent evil that has taken the life of a reality already on ground." There must be an inquiry on whether the words used will "bring about the substantive evils that Congress has a right to prevent." To justify the regulation, strict scrutiny requires a compelling State interest, and that it is narrowly tailored and the least restrictive means to achieve that interest. x x x While content-based regulations are "treated as more suspect than content-neutral" regulations due to discrimination in regulating the expression, content-neutral regulations are subject to "lesser but still heightened scrutiny." In content-neutral regulations, the intermediate approach is applied where only a substantial governmental interest is required to be established. This is lower than the stringent standard of compelling State interest required in content-based regulations, since content-neutral regulations are not designed to suppress free speech but only its incidents. Through the intermediate approach, the validity of a content-neutral regulation is analyzed along the following parameters: (1) whether it is within the government's constitutional power; (2) whether it furthers an important or substantial governmental interest; (3) whether the governmental interest is unrelated to the suppression of free expression; and (4) whether the incidental restriction on freedoms of speech, expression, and the press is no greater than is essential to the furtherance of that interest. Nevertheless, content-neutral regulations may still be invalidated if the incidental restriction on expressive freedom is greater than is essential to achieve the governmental interest. The regulation must be "reasonable and narrowly drawn to fit the

regulatory purpose, with the least restrictive means undertaken"; otherwise, it must be struck down.

6. ID.; ID.; CONSTITUTIONALITY OF SECTION 36.8 OF THE OVERSEAS ABSENTEE VOTING ACT OF 2013 (RA 10590) AND SECTION 74(II)(8) OF COMMISSION ON ELECTIONS RESOLUTION NO. 10035; THE ASSAILED PROVISIONS ARE CONTENT-BASED REGULATIONS SINCE THE PROHIBITION ON THE CONDUCT OF POLITICAL ACTIVITIES DOES NOT MERELY CONTROL THE INCIDENTS OR MANNER OF POLITICAL EXPRESSION BUT ACTUALLY REGULATES ITS CONTENT.— [P]etitioner Loida Nicolas-Lewis assails the constitutionality and validity of Section 36.8 of the Overseas Absentee Voting Act and Section 74(II)(8) of Commission on Elections Resolution No. 10035. These are uniform provisions that prohibit partisan political activities abroad during the 30-day overseas voting period. x x x From this, it can easily be determined that the assailed provisions are content-based regulations precisely because they specifically target a kind of speech identified by its political element. Contrary to respondent's submission, the assailed provisions are not content-neutral. While they seem to merely limit the time allowed in conducting partisan political activities, they should be evaluated without losing sight of the nature of the expression they seek to regulate. x x x The prohibition on the conduct of partisan political activities does not merely control the incidents or manner of the political expression, but actually regulates the content of the expression. As admitted by respondent, the limits are placed on the conduct of partisan political activities to subdue the "violence and atrocities" that mar the electoral process. This means that the regulation is anchored on the content, nature, and effect of the prohibited activities. Although guised as merely limiting the manner of the expression, the assailed provisions cut deep into the expression's communicative impact and political consequences. The regulations are not merely incidental.

7. ID.; ID.; ID.; APPLYING THE STRICTEST SCRUTINY TEST, THE ASSAILED PROVISIONS FAIL BECAUSE THERE ARE NO CLEAR, PRESENT, AND SUBSTANTIAL ELECTORAL DANGERS THAT WILL BE PREVENTED BY THE PROHIBITION THEY IMPOSE; THE SAME PROVISIONS ARE DECLARED UNCONSTITUTIONAL.—

To sustain the validity of Section 36.8 of the Overseas Absentee Voting Act and Section 74(II)(8) of Commission on Elections Resolution No. 10035, they must be evaluated with strict scrutiny. To pass constitutional muster, there must be a showing of a compelling State interest in the 30-day prohibition of partisan political activities abroad. However, there are no clear, present, and substantial electoral dangers that will be prevented by the prohibition they impose. It is unclear if the substantial dangers and evils sought to be curtailed even exist in every foreign jurisdiction where the prohibition is applied. x x x The prohibition applied to partisan political activities within the Philippines cannot be applied as a blanket prohibition that covers overseas voting. The government cannot instate a regulation that unduly interferes with protected expression. In overseas voting, Philippine embassies, consulates, and foreign service establishments are designated as polling precincts. Filipinos abroad would need to allot hours of travel to get to them without the benefit of an election holiday. A longer duration of a 30-day voting period abroad is, therefore, understandable. The longer voting period is enacted to encourage Filipinos overseas to participate in the elections. Considering the Philippines' experience during the election period, the two-day prohibition on partisan political activities here bears a crucial role in subduing the dire consequences and abuses that attend it. The tail end of the election campaign period is the peak of candidates' and political parties' efforts to secure a win, and prolonged political campaigns frequently result in "violence and even death . . . because of the heat engendered by such political activities." Overseas, the sweeping prohibition on the partisan political activities during the 30-day voting period has no added value in "safeguarding the conduct of an honest, peaceful, and orderly elections" abroad. There is no discernable reason behind the blanket prohibition. Through the lens of strict scrutiny, the assailed law and resolution fail because there are no dangers and evils present abroad that are "substantive, 'extremely serious[,] and the degree of imminence extremely high.'" Being forms of prior restraint and content-based regulation, the assailed provisions bear the heavy presumption of unconstitutionality. The government, then, has to prove that the regulations are valid. Here, respondent failed in discharging its burden of proof. x x x It is clear that respondent failed to discharge its burden of proof. It has not shown why prohibiting partisan political activities abroad

is necessary to maintain public order during the election period. It is uncertain what clear and present dangers the prohibition aims to dispel within the different countries abroad. Hence, the presumption of the regulations' invalidity stands. Absent any clear and present danger, the people's exercise of free speech cannot be restrained by the government. Without any discernable reason to broadly impose the prohibition on political activities abroad, this Court is impelled to favor and uphold the exercise of free expression. x x x Section 36.8 of the Overseas Absentee Voting Act of 2013 and Section 74(II)(8) of Commission on Elections Resolution No. 10035 are declared **UNCONSTITUTIONAL**.

JARDELEZA, *J.*, *separate and concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; THERE EXISTS AN ACTUAL JUSTICIABLE CONTROVERSY INVOLVING FREE SPEECH IN CASE AT BAR.— It bears emphasis at the outset that the Court should take cognizance of this case because of the presence of a justiciable controversy involving free speech, a textually identified fundamental right under the Constitution, and not because of the alleged transcendental importance of the issue petitioner invokes. There exists an actual justiciable controversy when there is a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. Here, there is an evident clash of the parties' legal claims, particularly on whether Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 impair the free speech rights of petitioner and of all Filipinos abroad. Section 36.8 of RA 9189, as amended by RA 10590 is an existing law that was fully implemented, as evidenced by the issuance of Section 74(II)(8) of Comelec Resolution No. 10035 during the 2016 national elections. The purported threat or incidence of injury is, therefore, not merely speculative or hypothetical but rather, real and apparent. x x x The justiciable controversy present here involves a pure question of law. We are not being called to rule on questions of fact. This direct recourse to Us via this petition is, therefore, being allowed on this basis as well, and not on petitioner's misplaced invocation of the transcendental importance doctrine.

2. ID.; ID.; CONSTITUTIONALITY OF SECTION 36.8 OF THE OVERSEAS ABSENTEE VOTING ACT OF 2003 (RA 9189) AS AMENDED BY RA 10590 AND SECTION 74 (II)(8) OF COMMISSION ON ELECTIONS RESOLUTION NO. 10035; BEING CONTENT-BASED REGULATIONS, THE ASSAILED PROVISIONS ARE SUBJECT TO STRICT SCRUTINY; RESPONDENT FAILED TO PROVE THAT THE RESTRICTION FURTHERS THE GOVERNMENT'S INTEREST OF PRESERVING THE INTEGRITY AND ORDER OF THE ELECTORAL PROCESS AND IS NOT NARROWLY TAILORED TO ACHIEVE THAT INTEREST.— Being content-based regulations, Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 are subject to strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest. In my view, the Government in this case has failed to discharge its burden in this respect. What constitutes compelling state interest is measured by the scale of rights and powers arrayed in the Constitution and calibrated by history. It is akin to the paramount interest of the State for which some individual liberties must give way, such as the public interest in safeguarding health or maintaining medical standards, or in maintaining access to information on matters of public concern. In this case, respondent advances the wisdom behind Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035, which is to maintain the integrity of the election process and curb the violence and atrocities that have, in recent years, marred the electoral exercise. x x x The Court in *Gonzales v. Comelec* had found the restrictions reasonable and warranted in light of a "serious substantive evil affecting the electoral process, not merely in danger of happening, but actually in existence, and likely to continue unless curbed or remedied." It is beyond question that the State has an important and substantial interest in seeing to it that the conduct of elections be honest, orderly, and peaceful, and that the right to suffrage of its citizens be protected at all times. This interest, I agree, is compelling in Philippine setting, where history would readily show how the partisan political activities of candidates and their supporters have not only fostered "huge expenditure of funds on the part of candidates," but have also resulted to the "corruption of the electorate," and worse, have "precipitated violence and

even deaths." But what is true in one location is not necessarily true elsewhere. The prevailing substantive evils recognized in *Gonzales* may be endemic to the Philippines alone. Respondent has failed to demonstrate that these same evils persist in the foreign locations where overseas voting is allowed. At the same time, the prohibition under Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 is not narrowly tailored to achieve the Government's objective of preserving the integrity and order of the electoral process. The regulations completely prohibit partisan political activities with neither any limitation as to place or location nor as to the speaker or actor.

3. **ID.; ID.; ID.; ID.; RATIONALE BEHIND THE APPLICATION OF THE STRICT SCRUTINY TEST INVOLVING POLITICAL SPEECH, EXPLAINED.—** [T]he application of a strict or exacting scrutiny to a content-based prior restraint becomes all the more imperative when political speech is involved. The fundamental right to freedom of speech and expression has its fullest and most urgent application to speech and expression uttered during a campaign for political office. For one, discussions of public issues and debate on the qualifications of candidates are integral to the operation of the system of Government established by our Constitution. Also, under our system of laws, everyone has the right to promote his or her agenda and attempt to persuade society of the validity of his or her position through normal democratic means. It is in the public square that deeply held convictions and differing opinions should be distilled and deliberated upon. Thus, the Constitution affords the broadest protection to political speech and expression in order to assure the unfettered interchange of ideas for the bringing about of political and social changes desired by the people. In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation.

APPEARANCES OF COUNSEL

Ateneo Human Rights Center for petitioner.
The Solicitor General for respondent.

D E C I S I O N

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

On grounds of violation of the freedom of speech, of expression, and of assembly; denial of substantive due process; violation of the equal protection clause; and violation of the territoriality principle in criminal cases, Loida Nicolas-Lewis (petitioner) seeks to declare as unconstitutional Section 36.8 of Republic Act (R.A.) No. 9189, as amended by R.A. No. 10590[1] and Section 74(II)(8) of the Commission on Elections (COMELEC) Resolution No. 10035,[2] which prohibit the engagement of any person in partisan political activities abroad during the 30-day overseas voting period.

Relevant Antecedents

On February 13, 2003, R.A. No. 9189, entitled "An Act Providing for a System of Overseas Absentee Voting by Qualified Citizens of the Philippines Abroad, Appropriating Funds Therefor, and for other Purposes," also known as "The Overseas Absentee Voting Act of 2003," was enacted. Its purpose is to ensure equal opportunity to all qualified Filipino citizens abroad to exercise the fundamental right of suffrage pursuant to Section 2, Article V[3] of the 1987 Constitution.

In 2012, certain amendments to R.A. No. 9189 were proposed both by the House of Representatives and the Senate through House Bill No. 6542 and Senate Bill No. 3312, respectively.

Consequently, R.A. No. 9189 was amended by R.A. No. 10590 or "The Overseas Voting Act of 2013."

Of relevance in the instant petition is Section 37 of R.A. No. 10590 which renumbered Section 24 of R.A. No. 9189 and amended the same as follows:

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[1] Approved on May 27, 2013.

[2] Promulgated on January 13, 2016.

[3] Sec. 2. The Congress shall provide a system for securing the secrecy and sanctity of the ballot as well as a system for absentee voting by qualified Filipinos abroad. x x x.

SEC. 36. Prohibited Acts. - In addition to the prohibited acts provided by law, it shall be unlawful:

x x x x x x x x x

36.8. For any person to engage in partisan political activity abroad during the thirty (30)-day overseas voting period;

x x x x x x x x x

The provision of existing laws to the contrary notwithstanding, and with due regard to the Principle of Double Criminality, the prohibited acts described in this section are electoral offenses and shall be punishable in the Philippines.

On January 13, 2016, the COMELEC promulgated Resolution No. 10035 entitled "General Instructions for the Special Board of Election Inspectors and Special Ballot Reception and Custody Group in the Conduct of Manual Voting and Counting of Votes under Republic Act No. 9189, x x x as amended by Republic Act No. 10590 for Purposes of the May 9, 2016 National and Local Elections." Section 74(II)(8), Article XVII thereof provides for the same prohibition above-cited, *viz.*:

Sec. 74. Election offenses/prohibited acts. -

x x x x x x x x x

II. Under R.A. 9189 "Overseas Absentee Voting Act of 2003", as amended

x x x x x x x x x

8. For any person to engage in partisan political activity abroad during the thirty (30)-day overseas voting period.

x x x x x x x x x

The provision of existing laws to the contrary notwithstanding, and with due regard to the Principle of Double Criminality, the prohibited acts described in this section are electoral offenses and shall be punishable in the Philippines.

x x x x x x x x x

Petitioner possesses dual citizenship (Filipino and American), whose right to vote under R.A. No. 9189, as amended, or the

absentee voting system, was upheld by the Court *En Banc* in the 2006 case of *Nicolas-Lewis v. COMELEC*.[4]

Petitioner alleges, albeit notably *sans* support, that she, "together with thousands of Filipinos all over the world," were prohibited by different Philippine consulates from conducting information campaigns, rallies, and outreach programs in support of their respective candidates, especially for the positions of President and Vice-President for the 2016 Elections, pursuant to the above-cited provisions.[5]

Hence, this petition.

Considering the urgency of the matter as the May 2016 presidential and vice-presidential elections were forthcoming when the petition was filed, the Court, in its April 19, 2016 Resolution[6] partially granted the application for temporary restraining order (TRO), enjoining the COMELEC, its deputies and other related instrumentalities from implementing the questioned provisions, except within Philippine Embassies, Consulates, and other Posts where overseas voters may exercise their right to vote pursuant to the Overseas Voting System, where partisan political activities shall still be prohibited until further orders from the Court.

Issues

Notably, the questioned provision in COMELEC Resolution No. 10035 merely echoed that of Section 36.8 of R.A. No. 9189, as amended by R.A. No. 10590. Also, said Resolution was issued for purposes of the May 9, 2016 Elections only, which already came to pass.

Thus, ultimately, this Court is called upon to resolve the issue on whether Section 36.8 of R.A. No. 9189, as amended by R.A. No. 10590, is unconstitutional for violating the right to speech, expression, assembly, and suffrage; for denial of

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[4] *Nicolas-Lewis v. COMELEC*, 529 Phil. 642 (2006).

[5] *Rollo*, p. 8.

[6] *Id.* at 94-95.

substantive due process and equal protection of laws; and for violating the territoriality principle of our criminal law.

The Court's Ruling

The Court is once again confronted with the task of harmonizing fundamental interests in our constitutional and democratic society. On one hand are the constitutionally-guaranteed rights, specifically, the rights to free speech, expression, assembly, suffrage, due process and equal protection of laws, which this Court is mandated to protect. On the other is the State action or its constitutionally-bounden duty to preserve the sanctity and the integrity of the electoral process, which the Court is mandated to uphold. It is imperative, thus, to cast a legally-sound and pragmatic balance between these paramount interests.

Essentially, petitioner urges the Court to review the questioned provision, premised on the claim that "she and all the Filipino voters all over the world" have experienced its detrimental effect when she, "together with thousands of similarly situated Filipinos all over the world," were allegedly prohibited by different Philippine consulates from conducting information campaigns, rallies, and outreach programs in support of their respective candidates in the 2016 Elections.

The Office of the Solicitor General (OSG), however, argues that these allegations do not only lack veracity, but also failed to demonstrate how petitioner, or overseas Filipino voters for that matter, were left to sustain or are in the immediate danger to sustain direct injury as a result of the enforcement of the assailed provision. Significant details such as the true nature of the activities allegedly conducted by the petitioner and the alleged thousands of overseas Filipino voters all over the world and the circumstances that led to the alleged prohibition made by the Philippine consulates, if at all, were not asserted which could have clearly demonstrated the claimed detrimental effect caused by the operation of the questioned law to her and all the Filipino voters abroad. Hence, the OSG posits that petitioner failed to establish that this case involves a justiciable controversy to warrant the Court's review of a co-equal branch's act.

Contrary to the OSG's position, the instant petition involves an actual case or justiciable controversy, warranting the Court's exercise of the power of judicial review.

Indeed, whether under the traditional or the expanded setting, the power of judicial review is subject to certain limitations, one of which is that there must be an actual case or controversy calling for the exercise of judicial power.[7] In the recent case of *Samahan ng mga Progresibong Kabataan* (*SPARK) v. Quezon City*,[8] the Court expounded on this requisite, *viz.*:

> x x x [A]n actual case or controversy is one which ["]involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.["] In other words, **"there must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.**" According to recent jurisprudence, in the Court's exercise of its expanded jurisdiction under the 1987 Constitution, this requirement is simplified **"by merely requiring a *prima facie* showing of grave abuse of discretion in the assailed governmental act."**
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> Corollary to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. **For a case to be considered ripe for adjudication, it is a prerequisite that something has then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action.**

Relatedly, in *Ifurung v. Morales*,[9] the Court explained that:

> [G]rave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law, or existing jurisprudence. We have already ruled that petitions for *certiorari* and prohibition

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[7] *Peralta v. Philippine Postal Corporation*, G.R. No. 223395, December 4, 2018; *Biraogo v. Philippine Truth Commission of 2010*, 651 Phil. 374, 438 (2010).

[8] G.R. No. 225442, August 8, 2017, 835 SCRA 350, 385.

[9] G.R. No. 232131, April 24, 2018.

filed before the Court "are the remedies by which grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the [g]overnment may be determined under the Constitution," and explained that "[w]ith respect to the Court, x x x the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions, but **also to set right, undo, and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the [g]overnment, *even if the latter does not exercise judicial, quasi-judicial or ministerial functions*.**"

Thus, "[w]here an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right, but in fact the duty of the judiciary to settle the dispute. The question, thus, posed is judicial rather than political. The duty to adjudicate remains to assure that the supremacy of the Constitution is upheld."[10]

Guided by the foregoing principles, the Court finds that there exists an actual justiciable controversy in this case given the "evident clash of the parties' legal claims"[11] as to whether the questioned provision infringe upon the constitutionally-guaranteed freedom of expression of the petitioner, as well as all the Filipinos overseas. Petitioner's allegations and arguments presented a *prima facie* case of grave abuse of discretion which necessarily obliges the Court to take cognizance of the case and resolve the paramount constitutional issue raised. The case is likewise ripe for adjudication considering that the questioned provision continues to be in effect until the Court issued the TRO above-cited, enjoining its implementation. While it may be true that petitioner failed to particularly allege the details of her claimed direct injury, the petition has clearly and sufficiently alleged the existence of an immediate or threatened

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[10] *Id.*

[11] *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, *supra* note 8, at 385-386.

injury sustained and being sustained by her, as well as all the overseas Filipinos, on their exercise of free speech by the continuing implementation of the challenged provision. A judicial review of the case presented is, thus, undeniably warranted.

Besides, in *Gonzales v. COMELEC*,[12] the Court ruled that when the basic liberties of free speech, freedom of assembly and freedom of association are invoked to nullify a statute designed to maintain the purity and integrity of the electoral process by Congress calling a halt to the undesirable practice of prolonged political campaign or partisan political activities, the question confronting the Court is one of transcendental significance, warranting this Court's exercise of its power of judicial review.[13]

Verily, in discharging its solemn duty as the final arbiter of constitutional issues, the Court shall not shirk from its obligation to determine novel issues, or issues of first impression, with far-reaching implications.[14]

That being so, this Court shall now endeavor to settle the constitutional issue raised in the petition promptly and definitely.

Petitioner assails the constitutionality of Section 36.8 of R.A. No. 9189, as amended by R.A. No. 10590, which prohibits "any person to engage in partisan political activity abroad during the 30-day overseas voting period." A violation of this provision entails penal and administrative sanctions.

Section 79(b) of the Omnibus Election Code defines partisan political activity as follows:

Section 79. Definitions. – x x x

x x x x x x x x x

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[12] *Gonzales v. COMELEC*, 137 Phil. 471 (1969).

[13] *Estipona, Jr. v. Judge Lobrigo*, G.R. No. 226679, August 15, 2017, 837 SCRA 160, 171.

[14] *Id.*

(b) The term "election campaign" or "partisan political activity" refers to an act designed to promote the election or defeat of a particular candidate or candidates to a public office which shall include:

(1) Forming organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign for or against a candidate;

(2) Holding political caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate;

(3) Making speeches, announcements or commentaries, or holding interviews for or against the election of any candidate for public office;

(4) Publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or

(5) Directly or indirectly soliciting votes, pledges or support for or against a candidate.

The foregoing enumerated acts if performed for the purpose of enhancing the chances of aspirants for nomination for candidacy to a public office by a political party, aggroupment, or coalition of parties shall not be considered as election campaign or partisan election activity.

Public expressions or opinions or discussions of probable issues in a forthcoming election or on attributes of or criticisms against probable candidates proposed to be nominated in a forthcoming political party convention shall not be construed as part of any election campaign or partisan political activity contemplated under this Article.

Basically, on its face, the questioned provision prohibits the act of campaigning for or against any candidate during the voting period abroad.

In the main, petitioner argues that the prohibition is a violation of Article III, Section 4 of the 1987 Constitution. Petitioner explains that the prohibited partisan political activities as defined under the law are acts of exercising free speech, expression, and assembly. Corollary, these activities are necessary for the

voters to be informed of the character, platforms, and agenda of the candidates to the end of having an educated decision on who to vote for. As such, it is petitioner's position that the prohibition on partisan political activities is a clear curtailment of the most cherished and highly-esteemed right to free speech, expression, and assembly, as well as the right to suffrage.

Specifically, petitioner argues that the questioned prohibition constitutes a content-based prior restraint on the overseas Filipino voters' right to express their political inclinations, views and opinions on the candidates, hence, must be given the presumption of unconstitutionality and subjected to the strictest scrutiny, *i.e.*, overcoming the clear and present danger rule.

We resolve.

Freedom of expression has gained recognition as a fundamental principle of every democratic government, and given a preferred right that stands on a higher level than substantive economic freedom or other liberties.[15] In no equivocal terms did the fundamental law of the land prohibit the abridgement of the freedom of expression. Section 4, Article II of the 1987 Constitution expressly states:

> No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

A fundamental part of this cherished freedom is the right to participate in electoral processes, which includes not only the right to vote, but also the right to express one's preference for a candidate or the right to influence others to vote or otherwise not vote for a particular candidate. This Court has always recognized that these expressions are basic and fundamental rights in a democratic polity[16] as they are means to assure individual self-fulfillment, to attain the truth, to secure

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[15] *Chavez v. Gonzales*, 569 Phil. 155, 195 (2008).

[16] *The Diocese of Bacolod v. COMELEC*, 751 Phil. 301, 444 (2015), citing *National Press Club v. COMELEC*, 283 Phil. 795, 810 (1992).

participation by the people in social and political decision-making, and to maintain the balance between stability and change.[17]

Rightfully so, since time immemorial, "[i]t has been our constant holding that this preferred freedom [of expression] calls all the more for the utmost respect when what may be curtailed is the dissemination of information to make more meaningful the equally vital right of suffrage."[18] In the recent case of *1-United Transport Koalisyon (1-UTAK) v. COMELEC*,[19] the Court *En Banc* pronounced that any governmental restriction on the right to convince others to vote for or against a candidate – a protected expression – carries with it a heavy presumption of invalidity.

To be sure, this rather potent deviation from our conventional adherence to the presumption of constitutionality enjoyed by legislative acts is not without basis. Nothing is more settled than that any law or regulation must not run counter to the Constitution as it is the basic law to which all laws must conform. Thus, while admittedly, these rights, no matter how sacrosanct, are not absolute and may be regulated like any other right, in every case where a limitation is placed on their exercise, the judiciary is called to examine the effects of the challenged governmental action[20] considering that our Constitution emphatically mandates that no law shall be passed abridging free speech and expression. Simply put, a law or statute regulating or restricting free speech and expression is an outright departure from the express mandate of the Constitution against the enactment of laws abridging free speech and expression, warranting, thus, the presumption against its validity.

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[17] *ABS-CBN Broadcasting Corporation v. COMELEC*, 380 Phil. 780, 792 (2000).

[18] *Mutuc v. COMELEC*, 146 Phil. 798, 805-806 (1970).

[19] 758 Phil. 67 (2015).

[20] *BAYAN v. Ermita*, 522 Phil. 201, 224 (2006), citing *Reyes v. Bagatsing*, 210 Phil. 457, 467 (1983).

In this regard, therefore, a law or regulation, even if it purports to advance a legitimate governmental interest, may not be permitted to run roughshod over the cherished rights of the people enshrined in the Constitution.[21] It is only when the challenged restriction survives the appropriate test will the presumption against its validity be overthrown.

The question now is what measure of judicial scrutiny should be used to gauge the challenged provision.

Over the years, guided by notable historical circumstances in our nation and related American constitutional law doctrines on the First Amendment, certain tests of judicial scrutiny were developed to determine the validity or invalidity of free speech restrictions in our jurisdiction.

Foremost, a facial review of a law or statute encroaching upon the freedom of speech on the ground of overbreadth or vagueness is acceptable in our jurisdiction. Under the overbreadth doctrine, a proper governmental purpose, constitutionally subject to state regulation, may not be achieved by means that unnecessarily sweep its subject broadly, thereby invading the area of protected freedoms.[22] Put differently, an overbroad law or statute needlessly restricts even constitutionally-protected rights. On the other hand, a law or statute suffers from vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application.[23]

It is noteworthy, however, that facial invalidation of laws is generally disfavored as it results to entirely striking down the challenged law or statute on the ground that they may be applied to parties not before the Court whose activities are constitutionally protected. It disregards the case and controversy requirement of the Constitution in judicial review, and permits

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[21] *Id*.

[22] *Disini v. The Secretary of Justice,* 727 Phil. 28, 121 (2014).

[23] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council,* 646 Phil. 452, 488 (2010).

decisions to be made without concrete factual settings and in sterile abstract contexts,[24] deviating, thus, from the traditional rules governing constitutional adjudication. Hence, an on-its-face invalidation of the law has consistently been considered as a "manifestly strong medicine" to be used "sparingly and only as a last resort."[25]

The allowance of a review of a law or statute on its face in free speech cases is justified, however, by the aim to avert the "chilling effect" on protected speech, the exercise of which should not at all times be abridged.[26] The Court elucidated:

> The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, **the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity**."[27] (Emphasis supplied, citation omitted)

Restraints on freedom of expression are also evaluated by either or a combination of the following theoretical tests, to wit: (a) the dangerous tendency doctrine,[28] which were used in early Philippine case laws; (b) the clear and present danger rule,[29] which was generally adhered to in more recent cases;

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[24] *Estrada v. Sandiganbayan*, 421 Phil. 290, 355 (2001).

[25] *David v. Macapagal-Arroyo*, 522 Phil. 705, 726 (2006).

[26] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra* note 23, at 489.

[27] *Id.* at 485-486.

[28] This test permits limitations on speech once a rational connection has been established between the speech restrained and the danger contemplated; *Chavez v. Gonzales*, *supra* note 15, at 200.

[29] This rule rests on the premise that speech may be restrained because there is substantial danger that the speech will likely lead to an evil the government has a right to prevent; *Chavez v. Gonzales*, *id*.

and (c) the balancing of interests test,[30] which was also recognized in our jurisprudence.

In the landmark case of *Chavez v. Gonzales*,[31] the Court laid down a more detailed approach in dealing with free speech regulations. Its approach was premised on the rational consideration that "the determination x x x of whether there is an impermissible restraint on the freedom of speech has always been based on the circumstances of each case, including the nature of the restraint." The Court discussed:

> Given that deeply ensconced in our fundamental law is the hostility against all prior restraints on speech, and any act that restrains speech is presumed invalid, and "any act that restrains speech is hobbled by the presumption of invalidity and should be greeted with furrowed brows," it is important to stress that not all prior restraints on speech are invalid. Certain previous restraints may be permitted by the Constitution, but determined only upon a careful evaluation of the challenged act as against the appropriate test by which it should be measured against.
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> **Hence, it is not enough to determine whether the challenged act constitutes some form of restraint on the freedom of speech. A distinction has to be made whether the restraint is (1) a content-neutral regulation**, *i.e.*, merely concerned with the incidents of speech, or one that merely controls the time, place, or manner, and under well[-] defined standards; **or (2) a content-based restraint or censorship**, *i.e.*, the restriction is based on the subject matter of the utterance or speech. The cast of the restriction determines the test by which the challenged act is assayed with.
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> **When the speech restraints take the form of a content-neutral regulation, only a substantial governmental interest is required for its validity. Because regulations of this type are not designed to suppress any particular message, they are not subject to the strictest form of judicial scrutiny but an intermediate approach—**

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[30] This is used as a standard when courts need to balance conflicting social values and individual interests, and requires a conscious and detailed consideration of the interplay of interests observable in a given situation; *Chavez v. Gonzales*, *id.*

[31] *Supra* note 15.

somewhere between the mere rationality that is required of any other law and the compelling interest standard applied to content-based restrictions. The test is called intermediate because the Court will not merely rubberstamp the validity of a law but also require that the restrictions be narrowly-tailored to promote an important or significant governmental interest that is unrelated to the suppression of expression. **The intermediate approach has been formulated in this manner:**

> **A governmental regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incident restriction on alleged [freedom of speech & expression] is no greater than is essential to the furtherance of that interest.**

On the other hand, a governmental action that restricts freedom of speech or of the press based on content is given the strictest scrutiny in light of its inherent and invasive impact. Only when the challenged act has overcome the clear and present danger rule will it pass constitutional muster, with the government having the burden of overcoming the presumed unconstitutionality.

Unless the government can overthrow this presumption, the content-based restraint will be struck down.

With respect to content-based restrictions, the government must also show the type of harm the speech sought to be restrained would bring about — especially the gravity and the imminence of the threatened harm — otherwise the prior restraint will be invalid. Prior restraint on speech based on its content cannot be justified by hypothetical fears, "but only by showing a substantive and imminent evil that has taken the life of a reality already on ground." As formulated, "the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

The regulation which restricts the speech content must also serve an important or substantial government interest, which is unrelated to the suppression of free expression.

Also, the incidental restriction on speech must be no greater than what is essential to the furtherance of that interest. A restriction that is so broad that it encompasses more than what is required to satisfy the governmental interest will be invalidated. The regulation, therefore, must be reasonable and narrowly drawn to fit the regulatory purpose, with the least restrictive means undertaken.

Thus, when the prior restraint partakes of a content-neutral regulation, it is subjected to an intermediate review. A content-based regulation, however, bears a heavy presumption of invalidity and is measured against the clear and present danger rule. The latter will pass constitutional muster only if justified by a compelling reason, and the restrictions imposed are neither overbroad nor vague. (Emphasis supplied, citations omitted)[32]

The paramount consideration in the analysis of the challenged provision, therefore, is the nature of the restraint on protected speech, whether it is content-based or otherwise, content-neutral. As explained in *Chavez*, a content-based regulation is evaluated using the clear and present danger rule, while courts will subject content-neutral restraints to intermediate scrutiny.

Section 36.8 of R.A. No. 9189, as amended by R.A. No. 10590, is an impermissible content-neutral regulation for being overbroad, violating, thus, the free speech clause under Section 4, Article III of the 1987 Constitution.

The questioned provision is clearly a restraint on one's exercise of right to campaign or disseminate campaign-related information. Prior restraint refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination.[33] Undoubtedly, the prohibition under the questioned legislative act restrains speech or expression, in the form of engagement in partisan political activities, before they are spoken or made.

The restraint, however, partakes of a content-neutral regulation as it merely involves a regulation of the incidents of the

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[32] *Id.* at 204-208.

[33] *1-United Transport Koalisyon (1-UTAK) v. COMELEC*, *supra* note 19, at 84.

expression, specifically the time and place to exercise the same. It does not, in any manner, affect or target the actual content of the message. It is not concerned with the words used, the perspective expressed, the message relayed, or the speaker's views. More specifically, the prohibition does not seek to regulate the exercise of the right to campaign on the basis of the particular message it conveys. It does not, in any manner, target the actual content of the message. It is easily understandable that the restriction was not adopted because of the government's disagreement with the message the subject speech or expression relays.[34] There was no intention on the part of the government to make any distinction based on the speaker's perspectives in the implementation of the regulation.[35] Simply put, regardless of the content of the campaign message or the idea it seeks to convey, whether it is for or, otherwise against a certain candidate, the prohibition was intended to be applied *during the voting period abroad*.

The fact that the questioned regulation applies only to political speech or election-related speech does not, by itself, make it a content-based regulation. It is too obvious to state that every law or regulation would apply to a particular type of speech such as commercial speech or political speech. It does not follow, however, that these regulations affect or target the content of the speech or expression to easily and sweepingly identify it as a content-based regulation. Instead, the particular law or regulation must be judiciously examined on what it actually intends to regulate to properly determine whether it amounts to a content-neutral or content-based regulation as contemplated under our jurisprudential laws. To rule otherwise would result to the absurd interpretation that every law or regulation relating

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[34] See *Police Department of City of Chicago v. Mosley*, 408 U.S. 92, 96 (1972), wherein the U.S. Supreme Court held that the government may not grant a forum to acceptable views yet deny it from those who "express less favored or more controversial views." <https://supreme.justia.com/cases/federal/us/408/92/> (visited August 9, 2019).

[35] See *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) <https://supreme.justia.com/cases/federal/ us/491/781/> (visited August 9, 2019).

to a particular speech is a content-based regulation. Such perspective would then unjustifiably disregard the well-established jurisprudential distinction between content-neutral and content-based regulations.

To be sure, not all regulations against political speech are content-based. Several regulations on this type of speech had been declared content-neutral by this Court in previous cases. In *National Press Club v. COMELEC*,[36] the Court ruled that while the questioned provision therein – preventing the sale or donation of print space or airtime for political advertisement during the campaign period – of course, limits the right of speech and access to mass media, it does not authorize intervention with the content of the political advertisements, which every candidate is free to present within their respective COMELEC time and space. In the case of *1-UTAK*[37] above-cited, the questioned prohibition on posting election campaign materials in public utility vehicles was classified as a content-neutral regulation by the Court, albeit declared an invalid one for not passing the intermediate test.

Being a content-neutral regulation, we, therefore, measure the same against the intermediate test, *viz.*: (1) the regulation is within the constitutional power of the government; (2) it furthers an important or substantial governmental interest; (3) such governmental interest is unrelated to the suppression of the free expression; and (4) the incidental restriction on the alleged freedom of expression is no greater than what is essential to the furtherance of the governmental interest.[38]

Our point of inquiry focuses on the fourth criterion in the said test, *i.e.*, that **the regulation should be no greater than what is essential to the furtherance of the governmental interest**.

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[36] *Supra* note 16.

[37] *1-United Transport Koalisyon (1-UTAK) v. COMELEC*, *supra* note 19.

[38] *Chavez v. Gonzales*, *supra* note 15.

The failure to meet the fourth criterion is fatal to the regulation's validity as even if it is within the Constitutional power of the government agency or instrumentality concerned and it furthers an important or substantial governmental interest which is unrelated to the suppression of speech, the regulation shall still be invalidated if the restriction on freedom of expression is greater than what is necessary to achieve the invoked governmental purpose.[39]

In the judicial review of laws or statutes, especially those that impose a restriction on the exercise of protected expression, it is important that we look not only at the legislative intent or motive in imposing the restriction, but more so at the effects of such restriction when implemented. The restriction must not be broad and should only be narrowly-tailored to achieve the purpose. It must be demonstrable. It must allow alternative avenues for the actor to make speech.[40]

As stated, the prohibition is aimed at ensuring the conduct of honest and orderly elections to uphold the credibility of the ballots. Indeed, these are necessary and commendable goals of any democratic society. However, no matter how noble these aims may be, they cannot be attained by sacrificing the fundamental right of expression when such aim can be more narrowly pursued by not encroaching on protected speech merely because of the apprehension that such speech creates the danger of the evils sought to be prevented.[41]

In this case, the challenged provision's sweeping and absolute prohibition against all forms of expression considered as partisan political activities without any qualification is more than what is essential to the furtherance of the contemplated governmental interest. On its face, the challenged law provides for an absolute and substantial suppression of speech as it leaves no ample alternative means for one to freely exercise his or her fundamental right to participate in partisan political activities. Consider:

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[39] *Social Weather Stations, Inc. v. COMELEC*, 409 Phil. 571, 588 (2001).

[40] *The Diocese of Bacolod v. COMELEC*, *supra* note 16, at 381.

[41] *Social Weather Stations, Inc. v. COMELEC*, *supra* at 590.

The use of the unqualified term **"abroad"** would bring any intelligible reader to the conclusion that the prohibition was intended to also be extraterritorial in application. *Generalia verba sunt generaliter inteligencia*.[42] General words are understood in a general sense. The basic canon of statutory interpretation is that the word used in the law must be given its ordinary meaning, unless a contrary intent is manifest from the law itself.[43] Thus, since the Congress did not qualify the word "abroad" to any particular location, it should then be understood to include any and all location abroad. Regardless, therefore, of whether the exercise of the protected expression is undertaken within or without our jurisdiction, it is made punishable under the challenged provision couched in pervasive terms.

To reiterate, the perceived danger sought to be prevented by the restraint is the purported risk of compromising the integrity and order of our elections. Sensibly, such risk may occur only within premises where voting is conducted, *i.e.*, in embassies, consulates, and other foreign service establishments. There is, therefore, no rhyme or reason to impose a limitation on the protected right to participate in partisan political activities exercised beyond said places.

While it may be argued that the Congress could not be presumed to have enacted a ridiculous rule that transgresses the elementary principle of territoriality in penalizing offenses, however, the general language of the law itself contradicts such argument.

For the same reason, we cannot accept the OSG's argument that the prohibition was intended to apply to candidates only, whose exercise of the right to campaign may be regulated as to time, place, and manner, citing the case of *The Diocese of Bacolod v. COMELEC*.[44] Again, the overbroad language of

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[42] *Gutierrez v. The House of Representatives Committee on Justice*, 658 Phil. 322, 382 (2011).

[43] *Philippine Consumers Foundation, Inc. v. National Telecommunications Commission,* 216 Phil. 185, 195 (1984).

[44] *Supra* note 16.

the questioned provision, *i.e.*, "**any person**" is prohibited to engage in any partisan political activity within the voting period abroad, betrays such argument. The general term "any person" should be understood to mean "any person" in its general sense as it was not clearly intended to be restricted to mean "candidates only."

It may not be amiss to point out, at this juncture, that a facial invalidation of the questioned statute is warranted to counter the "chilling effect" on protected speech that comes from its overbreadth as any person may simply restrain himself from speaking or engaging in any partisan political activity anywhere in order to avoid being charged of an electoral offense. Indeed, an overbroad law that "chills one into silence" should be invalidated on its face.

Neither was there any provision in the Implementing Rules and Regulations (IRR) of the challenged law which clearly qualifies the application of the questioned prohibition within our jurisdiction and to candidates only. COMELEC Resolution No. 9843[45] or the IRR of R.A. No. 9189, as amended, which should have provided for well-defined and narrowly-tailored standards to guide our executive officials on how to implement the law, as well as to guide the public on how to comply with it, failed to do so.

Article 63, Rule 15 of the said IRR similarly provides for an all-encompassing provision, which reads:

RULE 15
CAMPAIGNING ABROAD

ART. 63. ***Regulation on campaigning abroad.*** – The use of campaign materials, as well as the limits on campaign spending shall be governed by the laws and regulations applicable in the Philippines and subject to the limitations imposed by laws of the host country, if applicable.

Personal campaigning of candidates shall be subject to the laws of the host country.

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[45] Promulgated on January 15, 2014.

All forms of campaigning within the thirty (30)[-]day voting period shall be prohibited. (Emphasis supplied)

What is more, while Section 64 thereof provides for specific rules on campaigning, it absolutely prohibits engagement in partisan political activities within our jurisdiction (embassies, consulates, and other foreign service establishments), not only during the voting period, but *even during the campaign period*, or simply *during the entire election period*, *viz.*:

ART. 64. ***Specific rules on campaigning.*** – **The following rules shall apply during the campaign period, including the day of the election**:

1) The "port courtesies" that embassies, consulates and other foreign service establishments may extend to candidates shall not go beyond welcoming them at the airport and providing them with briefing materials about the host country, and shall at all times be subject to the availability of the personnel and funding for these activities.

2) The embassies, consulates and other foreign service establishments shall continue to assist candidates engaged in official Philippine government activities at the host country and in making the representations with the host government.

3) Members of the Foreign Service Corps may attend public social/civic/religious affairs where candidates may also be present, provided that these officers and employees do not take part in the solicitation of votes and do not express public support for candidates.

4) While nothing in the Overseas Voting Act of 2003 as amended shall be deemed to prohibit free discussion regarding politics or candidates for public office, members of the Foreign Service Corps cannot publicly endorse any candidate or political party nor take part in activities involving such public endorsement.

5) No partisan political activity shall be allowed within the premises of the embassy, consulate and other foreign service establishment.

6) Government-sponsored or permitted information dissemination activities shall be strictly non-partisan and cannot be conducted where a candidate is present.

7) A Member of the Foreign Service Corps cannot be asked to directly organize any meeting in behalf of a party or candidate, or assist in organizing or act as liaison in organizing any such meeting. The prohibition shall apply to all meetings – social, civic, religious meetings – where a candidate is present. (Emphases supplied)

By banning partisan political activities or campaigning even *during the campaign period* within embassies, consulates, and other foreign service establishments, regardless of whether it applies only to candidates or whether the prohibition extends to private persons, it goes beyond the objective of maintaining order during the voting period and ensuring a credible election. To be sure, there can be no legally acceptable justification, whether measured against the strictest scrutiny or the most lenient review, to absolutely or unqualifiedly disallow one to campaign within our jurisdiction during the campaign period.

Most certainly, thus, the challenged provision, whether on its face or read with its IRR, constitutes a restriction on free speech that is greater than what is essential to the furtherance of the governmental interest it aims to achieve. Section 36.8 of R.A. No. 9189 should be struck down for being overbroad as it does not provide for well-defined standards, resulting to the ambiguity of its application, which produces a chilling effect on the exercise of free speech and expression, and ultimately, resulting to the unnecessary invasion of the area of protected freedoms.[46]

For the foregoing reasons, this Court declares Section 36.8 of R.A. No. 9189, as amended by R.A. No. 10590, unconstitutional for violating Section 4, Article III of the 1987 Constitution.

To be clear, this Court does not discount the fact that our leaders, chosen to maneuver this nation's political ventures, are put in position through an electoral process and as such, the government is constitutionally-mandated to ensure sound, free, honest, peaceful, and credible elections, the same being indispensable in our democratic society. In our goal to achieve

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[46] *Disini v. The Secretary of Justice*, *supra* note 22.

such peaceful and credible democratic process, however, we cannot likewise disparage the most exalted freedom of expression, which is undeniably recognized as the bedrock of every democratic society, it being an "indispensable condition of nearly every other form of freedom."[47] After all, the conduct of elections is premised upon every democratic citizen's right to participate in the conduct of public affairs and social and political decision-making through the exercise of the freedom of expression. A restraint on such a vital constitutional right through an overbroad statute cannot, thus, be countenanced and given judicial *imprimatur*. As pronounced by the Court in the landmark case of *Adiong v. COMELEC*:[48]

> When faced with border line situations where freedom to speak by a candidate or party and freedom to know on the part of the electorate are invoked against actions intended for maintaining clean and free elections, the police, local officials and COMELEC, should lean in favor of freedom. For in the ultimate analysis, the freedom of the citizen and the State's power to regulate are not antagonistic. There can be no free and honest elections if in the efforts to maintain them, the freedom to speak and the right to know are unduly curtailed.

WHEREFORE, premises considered, the petition is **GRANTED**. The Court declares Section 36.8 of Republic Act No. 9189, as amended by Republic Act No. 10590 as **UNCONSTITUTIONAL**. The temporary restraining order issued by this Court on April 19, 2016 is hereby made **PERMANENT** and its application is accordingly extended within Philippine Embassies, Consulates, and other posts where overseas voters may exercise their right to vote pursuant to the Overseas Voting System.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, Reyes, A. Jr., Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting, and *Zalameda, JJ.,* concur.

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[47] *ABS-CBN Broadcasting Corporation v. COMELEC*, *supra* note 17.

[48] G.R. No. 103956, March 31, 1992, 207 SCRA 712, 717.

Perlas-Bernabe, Leonen, Jardeleza, JJ., see concurring opinion.

Caguioa, J., joins the separate concurring opinion of *J. Jardeleza.*

CONCURRING OPINION

PERLAS-BERNABE, *J.*:

At the onset, I concur that Section 36.8 of Republic Act No. (RA) 9189,[1] as amended by RA 10590[2] (Section 36.8), is a content-neutral regulation, for which the intermediate scrutiny test should be made to apply.[3] The said provision reads:

> Section 36. *Prohibited Acts*. — In addition to the prohibited acts provided by law, it shall be unlawful:
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> x x x x x x x x x
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> 36.8. **For any person to engage in partisan political activity abroad during the thirty (30)-day overseas voting period**[.] (Emphasis supplied)

The distinction between content-neutral and content-based regulations is well-settled in our jurisprudence. In *Newsounds Broadcasting Network Inc. v. Dy*:[4]

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[1] Entitled "AN ACT PROVIDING FOR A SYSTEM OF OVERSEAS ABSENTEE VOTING BY QUALIFIED CITIZENS OF THE PHILIPPINES ABROAD, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," Otherwise Known As "THE OVERSEAS ABSENTEE VOTING ACT OF 2003," approved on February 13, 2003.

[2] Entitled "AN ACT AMENDING REPUBLIC ACT NO. 9189, ENTITLED "AN ACT PROVIDING FOR A SYSTEM OF OVERSEAS ABSENTEE VOTING BY QUALIFIED CITIZENS OF THE PHILIPPINES ABROAD, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES.'" otherwise known as "THE OVERSEAS VOTING ACT OF 2013," approved on May 27, 2013.

[3] See *ponencia,* pp. 12-13.

[4] 602 Phil. 255 (2009).

[J]urisprudence distinguishes between a **content-neutral** regulation, *i.e.*, merely concerned with **the incidents of the speech, or one that merely controls the time, place or manner, and under well-defined standards**; and a **content-based** restraint or censorship, *i.e.*, **the restriction is based on the subject matter of the utterance or speech.**[5] (Emphases supplied)

In *Ward v. Rock Against Racism*,[6] the Supreme Court of the United States of America stated that the principal inquiry in determining content-neutrality is whether the government has adopted such regulation "***because of disagreement with the message it conveys.***"[7]

As I see it, Section 36.8 is primarily a regulation on the ***place*** (*i.e.*, overseas/abroad) and ***time*** (*i.e.*, during the thirty [30]-day overseas voting period) in which political speech (particularly, those considered as "partisan political activity") may be uttered under the standards the provision prescribes. The government's purpose therefor is not so much on prohibiting "the message or idea of the expression"[8] *per se*, but rather on regulating "the time, place or manner of the expression."[9] As such, Section 36.8 should only be classified as a content-neutral regulation, and not a content-based one.

Being a content-neutral regulation, case law states that the **intermediate scrutiny test** should be made to apply. In the Separate Concurring Opinion of Senior Associate Justice Antonio T. Carpio in *Chavez v. Gonzales*,[10] he discussed:

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[5] *Id.* at 271.

[6] 491 U.S. 781 (1989).

[7] See *id.* See also *Police Department of City of Chicago v. Mosley*, 408 U.S. 92 (1972), wherein the Supreme Court of the United States of America held that government may not grant a forum to acceptable views yet deny it from those who "express less favored or more controversial views."

[8] See Separate Concurring Opinion of Senior Associate Justice Antonio T. Carpio in *Chavez v. Gonzales*, 569 Phil. 155, 238 (2008).

[9] *Id.*

[10] *Id.*

If the prior restraint is not aimed at the message or idea of the expression, it is content-neutral even if it burdens expression. A content-neutral restraint is a restraint which regulates the time, place or manner of the expression in public places without any restraint on the content of the expression. **Courts will subject content-neutral restraints to intermediate scrutiny**.

An example of a content-neutral restraint is a permit specifying the date, time and route of a rally passing through busy public streets. A content- neutral prior restraint on protected expression which does not touch on the content of the expression enjoys the presumption of validity and is thus enforceable subject to appeal to the courts. **Courts will uphold time, place or manner restraints if they are content-neutral, narrowly tailored to serve a significant government interest, and leave open ample alternative channels of expression.**[11] (Emphases and underscoring supplied)

Following the intermediate scrutiny approach, a content-neutral regulation is valid if it meets these parameters: (1) it is within the constitutional power of the government; (2) it furthers an important or substantial governmental interest; (3) the governmental interest is unrelated to the suppression of free expression; and (4) **the incidental restriction on freedoms of speech, expression, and press is no greater than what is essential to the furtherance of that interest**.[12] In relation to the fourth element, a restriction that is so broad that it encompasses more than what is required to satisfy the governmental interest will be invalidated. In other words, the regulation must be "**narrowly tailored**" to fit the regulation's purpose.[13] In my view, Section 36.8 fails to satisfy this fourth parameter of the intermediate scrutiny approach,[14] and hence, unconstitutional for the reasons explained below.

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[11] *Id*. at 238.

[12] See *ponencia* in *Chavez v. Gonzales*, *id*. at 205-206; citing *Osmeña v. COMELEC*, 351 Phil. 692, 717 (1998).

[13] See *Chavez v. Gonzales*, *id*. at 210 and 238; emphasis supplied. See also *Ward v. Rock Against Racism*, *supra* note 6.

[14] In *Gonzales v. COMELEC*, the Court held that "even though the governmental purposes be legitimate and substantial, they cannot be pursued

The purpose of the thirty (30)-day prohibition, based on respondent the Commission on Elections' (COMELEC) Comment,[15] is "to ensure the holding of an honest and orderly election that upholds the secrecy and sanctity of the ballot" or "to maintain public order during election day."[16] Although the law's objective is clearly constitutive of "an important or substantial governmental interest," **Section 36.8's sweeping restriction of all forms of speech considered as partisan political activity abroad, without any qualification whatsoever concerning the location where such disorder may emanate**, *is more than essential to the furtherance of the above-stated interest*. To my mind, the perceived danger of election-related disorder would only be extant when partisan political activity is allowed in places that fall within the jurisdictional reach of our election laws, *e.g.*, within the premises of the embassy, consulate, and other foreign service establishment, and not beyond it. Stated otherwise, the possibility of election-related discord discernibly arises only in places where our election laws remain operative; conversely, where foreign election laws apply, the possibility of election-related discord becomes a domestic concern of that country, and not ours. Hence, by **generally banning partisan political activity regardless of the location where the political speech is specifically uttered abroad,** Section 36.8 **goes over and beyond the objective** of ensuring "the holding of an honest and orderly [Philippine (not foreign)] election that upholds the secrecy and sanctity of the ballot" and "to maintain public order during election day."

While the COMELEC argues that the thirty (30)-day prohibition only applies in the designated polling precincts[17]

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by means that **broadly stifle fundamental personal liberties when the end can be more narrowly achieved,"** as in this case. Indeed, **"precision of regulation is the touchstone in an area so closely related to our most precious freedoms."** (137 Phil. 471, 507 [1969]; emphases supplied)

[15] Dated April 23, 2016.

[16] See Comment, p. 29.

[17] See *id*. at 21.

located in the above-stated places abroad, the general language of the law itself betrays such argumentation. On its face, Section 36.8 broadly prohibits "partisan political activity **abroad** during the thirty (30)-day overseas voting period."[18] It is a rule in statutory construction that "a word of general significance in a statute *[— such as the word abroad -]* is to be taken in its ordinary and comprehensive sense, unless it is shown that the word is intended to be given a different or restricted meaning,"[19] which exception was not shown to obtain in the present case. Hence, Section 36.8, as worded, foists a prohibition on partisan political activity (including political speech) that generally applies in all places abroad.

In any case, even assuming that Section 36.8 was intended to restrictively apply only within the premises of the embassy, consulate, and other foreign service establishment as the COMELEC argues,[20] it is my view that this intent is not amply reflected in the provision or even amply clarified in its implementing rules.[21] Hence, there is an ambiguity in the law's scope that ultimately has the effect of "chilling" the free speech of our citizens residing overseas. In one case, it was observed that "where vague statutes regulate behavior that is even close to constitutionally protected, courts fear [that] a chilling effect will impinge on constitutional rights."[22] Verily, this observation gains peculiar significance when it comes to regulations that

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[18] Emphasis and underscoring supplied.

[19] *Naval v. COMELEC*, 738 Phil. 506, 535 (2014).

[20] See Comment, p. 21.

[21] See COMELEC Resolution No. 9843, entitled "IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 10590, OTHERWISE KNOWN AS 'AN ACT AMENDING REPUBLIC ACT NO. 9189, ENTITLED 'AN ACT PROVIDING FOR A SYSTEM OF OVERSEAS ABSENTEE VOTING BY QUALIFIED CITIZENS OF THE PHILIPPINES ABROAD, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES,'" otherwise known as "THE RULES AND REGULATIONS IMPLEMENTING THE OVERSEAS VOTING ACT OF 2003, AS AMENDED," approved on January 15, 2014.

[22] See Dissenting Opinion of Retired Associate Justice Dante O. Tinga in *Spouses Romualdez v. COMELEC*, 576 Phil. 357, 433 (2008).

affect political speech. This is because, in *The Diocese of Bacolod v. COMELEC*,[23] the Court has ruled that "[p]olitical speech enjoys preferred protection within our constitutional order. x x x. [I]f ever there is a hierarchy of protected expressions, political expression would occupy the highest rank, and among different kinds of political expression, the subject of fair and honest elections would be at the top.[24] Sovereignty resides in the people [and] [p]olitical speech is a direct exercise of the sovereignty."[25]

In fine, Section 36.8 of RA 9189, as amended by RA 10590, is a content-neutral regulation that, however, constitutes a restriction of free speech that is greater than what is essential to the furtherance of the public interest it was intended to meet. Thus, based on the above-discussed considerations, I vote to **GRANT** the petition and **DECLARE** the subject provision as unconstitutional.

SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I concur in the result. Nonetheless, I maintain that the provisions in question should be stricken down as they are forms of prior restraint and content-based illicit prohibition on the exercise of the primordial right to freedom of expression.

During elections, active deliberations prompted by the exercise of the freedoms of speech, expression, and association of the electorate itself should remain untrammeled. Our assurance of authentic democracy depends on safe spaces for vigorous discussion. The provisions in question do the exact opposite. Curtailing political speech during the elections is presumptively unconstitutional.

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[23] 751 Phil. 301 (2015).

[24] *Id.* at 343, citing Senior Associate Justice Antonio T. Carpio's Separate Concurring Opinion in *Chavez v. Gonzales*, *supra* note 8, at 245.

[25] *The Diocese of Bacolod v. COMELEC*; *id*. at 343.

The very first section in the Declaration of Principles and State Policies of the Constitution states:

> SECTION 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.

The electoral exercise is a significant forum for the sovereign. It is during this time that the primordial and fundamental protection for the speech of every voter and every citizen is most sacred. It is this type of political speech that lies at the core of the guarantee of freedom of expression in Article III, Section 4 of the Constitution.

Therefore, any limitation on speech by the electorate must be justified on legitimate grounds that are clear and indubitable and with means that are narrowly tailored and only specifically calibrated to achieve those purposes.

Unfortunately, neither Section 36.8[1] of the Overseas Absentee Voting Act of 2013 nor Section 74(II)(8) of Commission on Elections Resolution No. 10035[2] can be justified as to its clear purpose or its narrowly circumscribed and calibrated means. Both impose a prohibition that unduly stifles the votes of Filipinos abroad when we should amplify their ideas, especially during elections, and even more so that a multitude of them are overseas workers whose sacrifices are just as abundant.

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[1] Republic Act No. 9189 (2003), as amended by Republic Act No. 10590 (2013), Sec. 36.8 provides:

> SECTION 36. *Prohibited Acts.* — In addition to the prohibited acts provided by law, it shall be unlawful:
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> . . . . . .
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> 36.8. For any person to engage in partisan political activity abroad during the thirty (30)-day overseas voting period[.]

[2] General Instructions for the Special Board of Election Inspectors and Special Ballot Reception and Custody Group in the Conduct of Manual Voting and Counting of Votes Under Republic Act No. 9189, otherwise known as "The Overseas Absentee Voting Act of 2003" as amended by Republic Act No. 10590 for Purposes of the May 9, 2016 National and Local Elections.

Rather than a scalpel to precisely remove a specific evil, these regulations carelessly wield a wayward machete, striking negligent blows on the fundamental rights of Filipinos living overseas.

In my view, and after a careful examination of the case and a cautious review of our jurisprudence, the 30-day prohibition on partisan political activities abroad violates the fundamental right of freedom of expression.

Foremost, the assailed provisions are content-based regulations because they specifically target a kind of speech identified by its political element. While they seem to merely regulate the time allowed in conducting partisan political activities, their prohibition actually cuts deep into the expression's communicative impact and political consequences. Thus, being content-based regulations, the strict scrutiny test must be applied. They must bear a heavy presumption of unconstitutionality.

It is uncertain what clear, present, and substantial dangers are sought to be curtailed in the different countries where the prohibition is applied. Respondent Commission on Elections failed to discharge its burden of proving that the State has a compelling interest in prohibiting partisan political activities abroad. It has not shown why the prohibition is necessary to maintain public order abroad during the election period. As they failed to overcome the presumption of the law's invalidity, the assailed provisions must be stricken down.

Absent any compelling State interest, the constitutionally preferred status of free speech must be upheld.

I

The Constitution guarantees protection to the exercise of free speech, recognizing that free speech is fundamental in a democratic and republican State.[3] Freedom of expression is

[3] *Reyes v. Bagatsing*, 210 Phil. 457, 465-467 (1983) [Per *C.J.* Fernando, *En Banc*].

enshrined in Article III, Section 4 of the 1987 Constitution, which states:

> SECTION 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

This essential right springs from the constitutional touchstone that "[s]overeignty resides in the people and all government authority emanates from them."[4] This is why the extent of freedom of expression is broad. It protects almost all media of communication, whether verbal, written, or through assembly. The protection conferred is not limited to a field of interest; it does not regard whether the cause is political or social, or whether it is conventional or unorthodox.[5]

To have a proper understanding and evaluation of this fundamental freedom, it is necessary to know how and why freedom of expression occupied a core value in our society, along with the influences that shaped the contours of our free speech clause.

Prior to being enacted in the present Bill of Rights, our free speech clause was worded differently in the 1899 Malolos Constitution:

> ARTICLE 20. Neither shall any Filipino be deprived:
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> 1. Of the right to freely express his ideas or opinions, orally or in writing, through the use of the press or other similar means.

The framing of the Malolos Constitution, while copied from the Spanish Constitution, should be understood in view of the country's inadequate protection to free speech during the Spanish rule.[6] At that time, there was an increasing demand for reforms

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[4] CONST., Art. II, Sec. 1.

[5] *Chavez v. Gonzales*, 569 Phil. 155, 198 (2008) [Per *C.J.* Puno, *En Banc*].

[6] George A. Malcolm, *The Malolos Constitution*, 36 POLITICAL SCIENCE QUARTERLY 91 (1921), available at <https://archive.org/details/jstor-2142663> (last visited on August 12, 2019).

for free speech and free press.[7] Apparent from the text is that the protection to free speech clause is tightly interweaved with a guaranteed free press, as the printing press was the main medium through which free speech was exercised then.

Before the printing press, the societal outlook had been authoritarian, and the medieval church had the central authority to determine what was true and false.[8] Slowly, after the dawn of the Renaissance and Reformation and the birth of the printing press, the modern concept of freedom of thought and expression developed.[9] Particularly, in England, the monopoly of the king and the church on the societal truth eroded with the advent of dissent through the new medium of print.[10]

With the growing threat of the printing press, different forms of control on expression and discourse were used, such as treason, seditious libel, and domination of the press through state monopoly and licensing.[11] By the end of the 17th century, the Bill of Rights was introduced, gradually relaxing control on the press. Nevertheless, state control was still in place through subsidizing and taxation.[12]

From the English common law, the concept of freedom of speech and the press was inherited by the United States through its adoption of the First Amendment.[13] By the dawn of the 20th

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[7] *U.S. v. Bustos*, 37 Phil. 731, 739 (1918) [Per *J*. Malcolm, First Division] citing Jose Rizal, *Filipinas Despues de Cien Anos* (The Philippines A Century Hence) (1912).

[8] WILLIAM COHEN, *THE FIRST AMENDMENT: CONSTITUTIONAL PROTECTION OF EXPRESSION AND CONSCIENCE* 1 (2003).

[9] *Id*. at 2.

[10] *Id*.

[11] *Id*.

[12] *Id*. at 3.

[13] David S. Bogen, *Freedom of Speech and Origins*, 42 MD. L. REV. 429, 430-431 (1983), available at <https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2503&context=mlr> (last visited on August 12, 2019) and JOSEPH J. HEMMER, *COMMUNICATION LAW: THE SUPREME COURT AND THE FIRST AMENDMENT* 4 (2000).

century, disputes on free speech and the press mostly involved the role of newspapers and periodicals, particularly "those of a different political persuasion than the party in power—in acting as critics of the government."[14]

The roots of our own free speech clause can be traced back to the U.S. First Amendment. In 1900, U.S. President William McKinley introduced a differently worded free speech clause through the Magna Carta of Philippine Liberty. Heavily influenced by the First Amendment, it read: "That no law shall be passed abridging the freedom of speech or of the press or of the rights of the people to peaceably assemble and petition the Government for a redress of grievances."[15] This was echoed in the organic acts of the Philippine Bill of 1902 and the Jones Law of 1916.[16] With the increasing desire for independence, the free exercise of speech and the press became indispensable for our people.

The free speech clause eventually flowed through our jurisprudence. In the 1922 case of *United States v. Perfecto*,[17] the right of the people to free exercise of speech and of assembly has been acknowledged as fundamental in our democratic and republican state:

> The interest of civilized society and the maintenance of good government demand a full and free discussion of all affairs of public interest. Complete liberty to comment upon the administration of Government, as well as the conduct of public men, is necessary for free speech. The people are not obliged, under modern civilized governments, to speak of the conduct of their officials, their servants, in whispers or with bated breath.
>
> The right to assemble and petition the Government, and to make requests and demands upon public officials, is a necessary consequence

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[14] WILLIAM COHEN, *THE FIRST AMENDMENT: CONSTITUTIONAL PROTECTION OF EXPRESSION AND CONSCIENCE* 8–9 (2003). See also *Masses Publishing Co v. Patten*, 244 F. 535 (S.D.N.Y. 1917).

[15] *U.S. v. Bustos*, 37 Phil. 731, 740 (1918) [Per *J*. Malcolm, First Division].

[16] *Id*.

[17] 43 Phil. 58 (1922) [Per *J*. Johnson, *En Banc*].

of republican and democratic institutions, and the complement of the right of free speech.[18] (Citations omitted)

The right to free speech was accorded constitutional protection in the 1935 Constitution, and eventually, the 1973 Constitution, which retained the same wording of the free speech clause:

No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances.

Free speech has since enjoyed a preferred position in the scheme of our constitutional values.[19] In *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Company, Inc.*:[20]

Property and property rights can be lost thru prescription; but human rights are imprescriptible. If human rights are extinguished by the passage of time, then the Bill of Rights is a useless attempt to limit the power of government and ceases to be an efficacious shield against the tyranny of officials, of majorities, of the influential and powerful, and of oligarchs - political, economic or otherwise.

In the hierarchy of civil liberties, the rights of free expression and of assembly occupy a preferred position as they are essential to the preservation and vitality of our civil and political institutions; and such priority "gives these liberties the sanctity and the sanction not permitting dubious intrusions."[21]

Free speech was accorded with even greater protection and wider coverage with the enactment of the 1987 Constitution, which added the more expansive word "expression" in the free speech clause.

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[18] *Id.* at 62.

[19] *Reyes v. Bagatsing*, 210 Phil. 457, 475 (1983) [Per *C.J.* Fernando, *En Banc*].

[20] 151-A Phil. 656 (1973) [Per *J.* Makasiar, First Division].

[21] *Id*. at 676.

Freedom of speech has gained constitutional value among liberal democratic societies.[22] This is because free speech promotes liberal and democratic values. Particularly, it protects "democratic political process from abusive censorship"[23] and promotes "equal respect for the moral self-determination of all persons[.]"[24]

The significance of freedom of expression in our jurisdiction has been oft-repeated in recent jurisprudence. Paraphrasing *In re: Gonzales v. Commission on Elections*,[25] this Court in *Chavez v. Gonzales*[26] elucidated:

> [T]he vital need of a constitutional democracy for freedom of expression is undeniable, whether as a means of assuring individual self-fulfillment; of attaining the truth; of assuring participation by the people in social, including political, decision-making; and of maintaining the balance between stability and change. As early as the 1920s, the trend as reflected in Philippine and American decisions was to recognize the broadest scope and assure the widest latitude for this constitutional guarantee. The trend represents a profound commitment to the principle that debate on public issue should be uninhibited, robust, and wide-open.[27] (Citations omitted)

Further, in *The Diocese of Bacolod v. Commission of Elections*:[28]

> In a democracy, the citizen's right to freely participate in the exchange of ideas in furtherance of political decision-making is recognized. It deserves the highest protection the courts may provide,

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[22] See *Primicias v. Fugoso*, 80 Phil. 71 (1948) [Per *J.* Feria, *En Banc*]. See also EDWIN BAKER, *HUMAN LIBERTY AND FREEDOM OF SPEECH* 30-31 (1989).

[23] DAVID A.J. RICHARDS, *FREE SPEECH AND THE POLITICS OF IDENTITY* 18 (1999).

[24] *Id.* at 21.

[25] 137 Phil. 471 (1969) [Per *J.* Fernando, *En Banc*].

[26] 569 Phil. 155 (2008) [Per *C.J.* Puno, *En Banc*].

[27] *Id.* at 197.

[28] 751 Phil. 301 (2015) [Per *J.* Leonen, *En Banc*].

as public participation in nation-building is a fundamental principle in our Constitution. As such, their right to engage in free expression of ideas must be given immediate protection by this court.[29]

Freedom of expression, as with other cognate constitutional rights, is essential to citizens' participation in a meaningful democracy. Through it, they can participate in public affairs and convey their beliefs and opinion to the public and to the government.[30] Ideas are developed and arguments are refined through public discourse. Freedom of expression grants the people "the dignity of individual thought."[31] When they speak their innermost thoughts, they take their place in society as productive citizens.[32] Through the lens of self-government, free speech guarantees an "ample opportunity for citizens to determine, debate, and resolve public issues."[33]

Speech that enlivens political discourse is the lifeblood of democracy. A free and robust discussion in the political arena allows for an informed electorate to confront its government on a more or less equal footing.[34] Without free speech, the government robs the people of their sovereignty, leaving them in an echo chamber of autocracy. Freedom of speech protects the "democratic political process from the abusive censorship of political debate by the transient majority which has democratically achieved political power."[35]

In *The Diocese of Bacolod*:

Proponents of the political theory on "deliberative democracy" submit that "substantial, open, [and] ethical dialogue is a critical,

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[29] *Id.* at 332.

[30] ERIC BARENDT, *FREEDOM OF SPEECH* 20 (1987).

[31] JOSEPH J. HEMMER, JR., *COMMUNICATION LAW: THE SUPREME COURT AND THE FIRST AMENDMENT* 3 (2000).

[32] *Id.*

[33] *Id.*

[34] ERIC BARENDT, *FREEDOM OF SPEECH* 146 (1987).

[35] DAVID A.J. RICHARDS, *FREE SPEECH AND THE POLITICS OF IDENTITY* 18 (1999).

and indeed defining, feature of a good polity." This theory may be considered broad, but it definitely "includes [a] collective decision making with the participation of all who will be affected by the decision." It anchors on the principle that the cornerstone of every democracy is that sovereignty resides in the people. To ensure order in running the state's affairs, sovereign powers were delegated and individuals would be elected or nominated in key government positions to represent the people. On this note, the theory on deliberative democracy may evolve to the right of the people to make government accountable. Necessarily, this includes the right of the people to criticize acts made pursuant to governmental functions.[36] (Citations omitted)

Speech with political consequences occupies a higher position in the hierarchy of protected speeches and is conferred with a greater degree of protection. The difference in the treatment lies in the varying interests in each type of speech. Nevertheless, the exercise of freedom of speech may be regulated by the State pursuant to its sovereign police power. In prescribing regulations, distinctions are made depending on the nature of the speech involved. In *Chavez*:

Some types of speech may be subjected to some regulation by the State under its pervasive police power, in order that it may not be injurious to the equal right of others or those of the community or society. The difference in treatment is expected because the relevant interests of one type of speech, e.g., political speech, may vary from those of another, e.g., obscene speech. Distinctions have therefore been made in the treatment, analysis, and evaluation of the permissible scope of restrictions on various categories of speech.[37] (Citations omitted)

This Court recognized in *The Diocese of Bacolod* that political speech occupies a preferred rank within our constitutional order, it being a direct exercise of the sovereignty of the people.[38] In

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[36] *The Diocese of Bacolod v. Commission of Elections*, 751 Phil. 301, 360 (2015) [Per *J.* Leonen, *En Banc*].

[37] *Chavez v. Gonzales*, 569 Phil. 155, 199 (2008) [Per *J.* Puno, *En Banc*].

[38] *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 343 (2015) [Per *J.* Leonen, *En Banc*].

a separate opinion in *Chavez,* Associate Justice Antonio Carpio underscored that "if ever there is a hierarchy of protected expressions, political expression would occupy the highest rank[.]"[39]

In contrast, other types of speeches, such as commercial speech, are treated in this jurisdiction as "low value speeches."[40]

In *Disini, Jr. v. Secretary of Justice*,[41] this Court has recognized that "[c]ommercial speech . . . is not accorded the same level of protection as that given to other constitutionally guaranteed forms of expression[.]"[42] This is because, as I opined in that case, the protection accorded to commercial speech is anchored on its informative character and it merely caters to the market.[43]

Since the value of protection accorded to commercial speech is only to the extent of its channel to inform, advertising is not on par with other forms of expression.

In contrast, political speech is "indispensable to the democratic and republican mooring of the state whereby the sovereignty residing in the people is best and most effectively exercised through free expression."[44]

The rationale behind this distinction lies in the nature and impact of political speech:

> Political speech is motivated by the desire to be heard and understood, to move people to action. It is concerned with the sovereign right to change the contours of power whether through the election of representatives in a republican government or the revision of the basic

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[39] *Id*. *citing J*. Carpio, *Separate Concurring Opinion in Chavez v. Gonzales*, 569 Phil. 155, 245 (2008) [Per *J*. Puno, *En Banc*].

[40] *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893, 933 (1996) [Per *J*. Puno, *En Banc*].

[41] 727 Phil. 28 (2014) [Per *J*. Abad, *En Banc*].

[42] *Id*. at 110.

[43] See *J*. Leonen, Dissenting Opinion in *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28 (2014) [Per *J*. Abad, *En Banc*].

[44] *Id*. at 420.

text of the Constitution. The zeal with which we protect this kind of speech does not depend on our evaluation of the cogency of the message. Neither do we assess whether we should protect speech based on the motives of COMELEC. We evaluate restrictions on freedom of expression from their effects. We protect both speech and medium because the quality of this freedom in practice will define the quality of deliberation in our democratic society.[45]

Media law professor Eric Barendt explained it succinctly in his book, *Freedom of Speech*:

> To confine freedom of expression to political speech (or at any rate to protect it most rigorously in this context) does reduce the scale of the difficulty. Political speech is immune from restriction, because it is a dialogue between members of the electorate and between governors and governed, and is, therefore, conducive, rather than inimical, to the operation of a constitutional democracy. The same is not so obviously true of other categories of 'speech', for which the protection of the free speech may be claimed—pornography or commercial advertising.[46]

Philosopher and free speech advocate Alexander Meiklejohn similarly forwarded this thesis in arguing "that the principle of freedom of speech was rooted in principles of self-government, and that there should be absolute protection for the discussion of public issues, but considerably less protection for speech that did not discuss issues of public interest."[47]

As a direct exercise of the people's sovereignty, political expression is accorded the highest protection. This is even more heightened during the election period, when political activities and speech are propelled by the electorate's ideals and choice of representatives. Given the crucial importance of political expression in our democracy, it should be favored and guarded against any illicit and unwarranted government censorship.

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[45] *The Diocese of Bacolod v. Commission on Elections,* 751 Phil. 301, 325 (2015) [Per *J.* Leonen, *En Banc*].

[46] ERIC BARENDT, *FREEDOM OF SPEECH* 147 (1987).

[47] WILLIAM COHEN, *THE FIRST AMENDMENT: CONSTITUTIONAL PROTECTION OF EXPRESSION AND CONSCIENCE 41* (2003).

II

To be a true channel of democracy, free speech must be exercised without prior restraint or censorship and subsequent punishment. In Associate Justice Santiago Kapunan's separate opinion in *Iglesia ni Cristo v. Court of Appeals*:[48]

> The rights of free expression and free exercise of religion occupy a unique and special place in our constellation of civil rights. The primacy our society accords these freedoms determines the mode it chooses to regulate their expression. But the idea that an ordinary statute or decree could, by its effects, nullify both the freedom of religion and the freedom of expression puts an ominous gloss on these liberties. Censorship law as a means of regulation and as a form of prior restraint is anathema to a society which places high significance to these values.[49]

Prior restraint is an official governmental restriction on any form of expression in advance of its actual utterance, dissemination, or publication. Thus, freedom from prior restraint is freedom from government censorship, regardless of its form and the branch of government that wielded it. When a governmental act is in prior restraint of expression, it bears a heavy presumption against its validity.[50] In *Chavez*:

> Prior restraint refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination. Freedom from prior restraint is largely freedom from government censorship of publications, whatever the form of censorship, and regardless of whether it is wielded by the executive, legislative or judicial branch of the government. Thus, it precludes governmental acts that required approval of a proposal to publish; licensing or permits as prerequisites to publication including the payment of license taxes for the privilege to publish; and even injunctions against publication. Even the closure of the business and printing offices of certain newspapers, resulting in the

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[48] 328 Phil. 893 (1996) [Per *J.* Puno, *En Banc*].

[49] *Id.* at 953-954.

[50] *United Transport Koalisyon v. Commission on Elections*, 758 Phil. 67, 84 (2015) [Per *J.* Reyes, *En Banc*].

discontinuation of their printing and publication, are deemed as previous restraint or censorship. Any law or official that requires some form of permission to be had before publication can be made, commits an infringement of the constitutional right, and remedy can be had at the courts.[51] (Citations omitted)

On the other hand, subsequent punishment is the imposition of liability on the individual exercising his or her freedom. The penalty may be penal, civil, or administrative.[52]

Prior restraint is deemed a more severe restriction on expression than subsequent punishment because while the latter dissuades expression, ideas are still disseminated to the public. On the other hand, prior restraint prevents even the dissemination of ideas.[53]

Even if there is no prior restraint, the exercise of expression may still be subject to subsequent punishment, either civilly or criminally. If the expression is not subject to the lesser restriction of subsequent punishment, it follows that it cannot also be subject to the greater restriction of prior restraint. On the other hand, if the expression warrants prior restraint, it is unavoidably subject to subsequent punishment.[54]

Because our Constitution favors freedom of expression, any form of prior restraint is an exemption and bears a heavy presumption of invalidity.[55]

Nevertheless, free speech is not absolute, and not all prior restraint regulations are held invalid. Free speech must "not

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[51] *Chavez v. Gonzales*, 569 Phil. 155, 203-204 (2008) [Per *J.* Puno, *En Banc*].

[52] *J.* Sandoval-Gutierrez, Concurring Opinion in *Chavez v. Gonzales*, 569 Phil. 155, 224 (2008) [Per *J.* Puno, *En Banc*].

[53] See *Chavez v. Gonzales*, 569 Phil. 155 (2008) [Per *J.* Puno, *En Banc*] and *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893 (1996) [Per *J.* Puno, *En Banc*].

[54] *J.* Sandoval-Gutierrez, Concurring Opinion in *Chavez v. Gonzales*, 569 Phil. 155, 240–241 (2008) [Per *J.* Puno, *En Banc*].

[55] *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893, 928 (1996) [Per *J.* Puno, *En Banc*].

be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society."[56]

Doctrinally, this Court has settled the applicable tests in determining the validity of free speech regulations. To justify an intrusion on expression, we employ two (2) tests, namely: (1) the clear and present danger test; and (2) the dangerous tendency test.

In *Cabansag v. Fernandez*,[57] this Court laid down what these tests entail:

> The [clear and present danger test], as interpreted in a number of cases, means that the evil consequence of the comment or utterance must be "extremely serious and the degree of imminence extremely high" before the utterance can be punished. The danger to be guarded against is the "substantive evil" sought to be prevented. And this evil is primarily the "disorderly and unfair administration of justice." This test establishes a definite rule in constitutional law. It provides the criterion as to what words may be published. Under this rule, the advocacy of ideas cannot constitutionally be abridged unless there is a clear and present danger that such advocacy will harm the administration of justice.
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> . . . . . .
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> The question in every case, according to Justice Holmes, is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that congress has a right to prevent. It is a question of proximity and degree.
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> The "dangerous tendency" rule, on the other hand, has been adopted in cases where extreme difficulty is confronted in determining where the freedom of expression ends and the right of courts to protect their independence begins. There must be a remedy to borderline cases and the basic principle of this rule lies in that the freedom of speech and of the press, as well as the right to petition for redress of grievance, while guaranteed by the constitution, are not absolute. They are subject to restrictions and limitations, one of them being the protection of the courts against contempt.

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[56] *Primicias v. Fugoso*, 80 Phil. 71, 75 (1948) [Per J. Feria, *En Banc*].

[57] 102 Phil. 152 (1957) [Per J. Bautista Angelo, First Division].

This rule may be epitomized as follows: If the words uttered create a dangerous tendency which the state has a right to prevent, then such words are punishable. It is not necessary that some definite or immediate acts of force, violence, or unlawfulness be advocated. It is sufficient that such acts be advocated in general terms. Nor is it necessary that the language used be reasonably calculated to incite persons to acts of force, violence, or unlawfulness. It is sufficient if the natural tendency and probable effect of the utterance be to bring about the substantive evil which the legislative body seeks to prevent.[58] (Citations omitted)

As its designation connotes, the clear and present danger test demands that the danger not only be clear, but also present. In contrast, the dangerous tendency test does not require that the danger be present. In *In Re: Gonzales*:[59]

The term clear seems to point to a causal connection with the danger of the substantive evil arising from the utterance questioned. Present refers to the time element. It used to be identified with imminent and immediate danger. The danger must not only be probable but very likely inevitable.[60]

The clear and present danger test has undergone changes from its inception in *Schenck v. U.S.*,[61] where it was applied to speeches espousing anti-government action.[62]

In the 1951 case of *Dennis v. U.S.*,[63] the imminence requirement of the test was diminished. That case, which involved communist conspiracy, adopted Judge Learned Hand's framework, where it must be asked "whether the gravity of the

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[58] *Id.* at 161-163.

[59] 137 Phil. 471 (1969) [Per J. Fernando, *En Banc*].

[60] *Id.* at 496.

[61] 249 U.S. 47 (1919).

[62] *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893, 932 (1996) [Per J. Puno, *En Banc*].

[63] 341 U.S. 494 (1951).

'evil,' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger."[64]

Nevertheless, in the 1969 case of *Brandenburg v. Ohio*,[65] the U.S. High Court not only restored the imminence requirement, but added "an intent requirement which according to a noted commentator ensured that only speech directed at inciting lawlessness could be punished."[66]

As the prevailing standard, *Brandenburg* limits the clear and present danger test's application "to expression where there is 'imminent lawless action.'"[67]

The *Brandenburg* standard was applied in *Reyes v. Bagatsing*.[68] In *Reyes*, this Court required the existence of grave and imminent danger to justify the procurement of permit for use of public streets. It held:

> By way of a summary. The applicants for a permit to hold an assembly should inform the licensing authority of the date, the public place where and the time when it will take place. If it were a private place, only the consent of the owner or the one entitled to its legal possession is required. Such application should be filed well ahead in time to enable the public official concerned to appraise whether there may be valid objections to the grant of the permit or to its grant but at another public place. It is an indispensable condition to such refusal or modification that the clear and present danger test be the standard for the decision reached. If he is of the view that there is such an imminent and grave danger of a substantive evil, the applicants must be heard on the matter. Thereafter, his decision, whether favorable

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[64] *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893, 932 (1996) [Per *J.* Puno, *En Banc*].

[65] 95 U.S. 444 (1969).

[66] *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893, 933 (1996) [Per *J.* Puno, *En Banc*].

[67] See footnote 33 of *J.* Carpio, Separate Concurring Opinion in *Chavez v. Gonzales*, 569 Phil. 155, 242 (2008) [Per *C.J.* Puno, *En Banc*].

[68] *Reyes v. Bagatsing*, 210 Phil. 457 (1983) [Per *J.* J.B.L. Reyes, *En Banc*].

or adverse, must be transmitted to them at the earliest opportunity. Thus if so minded, they can have recourse to the proper judicial authority. Free speech and peaceable assembly, along with the other intellectual freedoms, are highly ranked in our scheme of constitutional values. It cannot be too strongly stressed that on the judiciary, — even more so than on the other departments — rests the grave and delicate responsibility of assuring respect for and deference to such preferred rights. No verbal formula, no sanctifying phrase can, of course, dispense with what has been so felicitiously (*sic*) termed by Justice Holmes "as the sovereign prerogative of judgment." Nonetheless, the presumption must be to incline the weight of the scales of justice on the side of such rights, enjoying as they do precedence and primacy.[69]

This standard was applied in the recent case of *Chavez*:

[T]he clear and present danger rule . . . rests on the premise that speech may be restrained because there is substantial danger that the speech will likely lead to an evil the government has a right to prevent. This rule requires that the evil consequences sought to be prevented must be substantive, "extremely serious and the degree of imminence extremely high."[70] (Citations omitted)

In *ABS-CBN Broadcasting Corporation v. Commission on Elections*,[71] this Court explained that to justify a restriction on expression, a substantial government interest must be clearly shown:

> A government regulation is sufficiently justified if it is within the constitutional power of the government, if it furthers an important or substantial government interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

Hence, even though the government's purposes are legitimate and substantial, they cannot be pursued by means that broadly stifle

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[69] *Id*. at 475.

[70] *Chavez v. Gonzales*, 569 Phil. 155, 200 (2008) [Per *C.J*. Puno, *En Banc*].

[71] 380 Phil. 780 (2000) [Per *J*. Panganiban, *En Banc*].

fundamental personal liberties, when the end can be more narrowly achieved.[72] (Citations omitted)

In cases involving expression that strengthens suffrage, all the more should freedom of expression be protected and upheld.[73] It is the government's interest that the sanctity and integrity of the electoral process are preserved and the right to vote is protected by providing safe and accessible areas for voting and campaigning. However, to uphold a restriction, the governmental interest must outweigh the people's freedom of expression.[74]

In this case, the regulations are forms of prior restraint on political speech because they disallow certain partisan political activities and expression before they are conducted and uttered. Specifically, Section 36.8 of the Overseas Absentee Voting Act of 2013 and Section 74(II)(8) of Commission on Elections Resolution No. 10035 declare unlawful the engagement of Filipinos abroad in partisan political activities during the 30-day overseas voting period.

This results in a chilling effect that would discourage Filipinos abroad to express their opinion and political ideals during elections. Thus, being forms of prior restraint on the people's political expression, the assailed provisions bear a heavy presumption of invalidity.

III

When faced with contentions involving prior restraint on free speech, it is important to create a distinction between content-based and content-neutral regulations. Whether a regulation is content-based or content-neutral spells out the difference in the test applied in assaying a governmental regulation.

A regulation is content-neutral if it is "merely concerned with the incidents of the speech, or one that merely controls the time, place[,] or manner, and under well-defined

[72] *Id.* at 795.

[73] *Id.* at 795–796 citing *Mutuc v. Commission on Elections*, 146 Phil. 798 (1970) [Per *J.* Fernando, First Division].

[74] *Id.* at 796.

standards[,]"[75] regardless of the content of the speech. On the other hand, content-based restraint or censorship is based on the subject matter of the expression.[76]

In a content-based regulation, the governmental action is tested with the strictest scrutiny "in light of its inherent and invasive impact."[77] It bears a heavy presumption of unconstitutionality. To pass constitutional muster, the regulation has to overcome the clear and present danger rule.[78]

Thus, the government must show the type of harm sought to be prevented by the content-based regulation. It must be based on a "substantive and imminent evil that has taken the life of a reality already on ground."[79] There must be an inquiry on whether the words used will "bring about the substantive evils that Congress has a right to prevent."[80] To justify the regulation, strict scrutiny requires a compelling State interest, and that it is narrowly tailored and the least restrictive means to achieve that interest.[81]

In his dissent in *Soriano v. Laguardia*,[82] Chief Justice Reynato Puno explained the rationale behind the application of the strict scrutiny test:

The test is very rigid because it is the communicative impact of the speech that is being regulated. The regulation goes into the heart of the rationale for the right to free speech; that is, that there should be

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[75] *Newsounds Broadcasting Network, Inc. v. Dy*, 602 Phil. 255, 271 (2009) [Per *J*. Tinga, Second Division].

[76] *Id*.

[77] *Chavez v. Gonzales*, 569 Phil. 155, 206 (2008) [Per *J*. Puno, *En Banc*].

[78] *Id*. See also *Ayer Productions Pty. Ltd. v. Capulong*, 243 Phil. 1007 (1988) [Per *J*. Feliciano, *En Banc*].

[79] *Chavez v. Gonzales*, 569 Phil. 155, 206 (2008) [Per *J*. Puno, *En Banc*].

[80] *Cabansag v. Fernandez*, 102 Phil. 152, 163 (1957) [Per *J*. Bautista Angelo, First Division].

[81] See *Divinagracia v. Consolidated Broadcasting System, Inc.*, 602 Phil. 625 (2009) [Per *J*. Tinga, Second Division].

[82] 605 Phil. 43 (2009) [Per *J*. Velasco, Jr., *En Banc*].

no prohibition of speech merely because public officials disapprove of the speaker's views. Instead, there should be a free trade in the marketplace of ideas, and only when the harm caused by the speech cannot be cured by more speech can the government bar the expression of ideas.[83] (Emphasis supplied, citation omitted)

In *Newsounds Broadcasting Network, Inc. v. Dy*:[84]

The immediate implication of the application of the "strict scrutiny" test is that the burden falls upon respondents as agents of government to prove that their actions do not infringe upon petitioners' constitutional rights. As content regulation cannot be done in the absence of any compelling reason, the burden lies with the government to establish such compelling reason to infringe the right to free expression.[85]

While content-based regulations are "treated as more suspect than content-neutral"[86] regulations due to discrimination in regulating the expression, content-neutral regulations are subject to "lesser but still heightened scrutiny."[87]

In content-neutral regulations, the intermediate approach is applied where only a substantial governmental interest is required to be established.[88] This is lower than the stringent standard of compelling State interest required in content-based regulations, since content-neutral regulations are not designed to suppress free speech but only its incidents.[89]

Through the intermediate approach, the validity of a content-neutral regulation is analyzed along the following parameters: (1) whether it is within the government's constitutional power;

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[83] *Id*. at 163.

[84] 602 Phil. 255 (2009) [Per *J*. Tinga, Second Division].

[85] *Id*. at 274.

[86] *Id*. at 271 *citing* GUNTHER, *ET AL*., *CONSTITUTIONAL LAW* 964 (14th ed., 2001).

[87] *Id*.

[88] *Osmeña v. Commission on Elections*, 351 Phil. 692, 718 (1998) [Per *J*. Mendoza, *En Banc*].

[89] *Id.* at 718-719.

(2) whether it furthers an important or substantial governmental interest; (3) whether the governmental interest is unrelated to the suppression of free expression; and (4) whether the incidental restriction on freedoms of speech, expression, and the press is no greater than is essential to the furtherance of that interest.[90]

Nevertheless, content-neutral regulations may still be invalidated if the incidental restriction on expressive freedom is greater than is essential to achieve the governmental interest.[91] The regulation must be "reasonable and narrowly drawn to fit the regulatory purpose, with the least restrictive means undertaken";[92] otherwise, it must be struck down.

This Court has recognized that the right of suffrage necessarily includes the right to express one's chosen candidate to the public.[93] Especially during the election period, the right to free speech and expression is fundamental and consequential:

> "[S]peech serves one of its greatest public purposes in the context of elections when the free exercise thereof informs the people what the issues are, and who are supporting what issues." At the heart of democracy is every advocate's right to make known what the people need to know, while the meaningful exercise of one's right of suffrage includes the right of every voter to know what they need to know in order to make their choice.[94] (Citations omitted)

During the election period, citizens seek information on candidates and campaigns and, upon reaching a choice, campaign and persuade other people to likewise vote for their candidate. At this time, people are most engaged in political discourse. Expressing a political ideology and campaigning for a candidate cannot be divorced from one's right of suffrage. Even electoral

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[90] *Chavez v. Gonzales*, 569 Phil. 155, 206 (2008) [Per *J*. Puno, *En Banc*].

[91] *Social Weather Stations, Inc. v. Commission on Elections*, 409 Phil. 571, 588 (2001) [Per *J*. Leonen, *En Banc*].

[92] *Chavez v. Gonzales*, 569 Phil. 155, 207 (2008) [Per *J*. Puno, *En Banc*].

[93] *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 332 (2015) [Per *J*. Leonen, *En Banc*].

[94] *Id*. at 372.

candidates rely on their supporters to campaign for them. Thus, any speech or act that directly involves the right of suffrage is a political activity by the people themselves.

In *Social Weather Stations, Inc. v. Commission on Elections*,[95] this Court discussed the regulation of speech in the context of campaigns done by non-candidates or non-members of political parties:

> Regulation of speech in the context of electoral campaigns made by persons who are not candidates or who do not speak as members of a political party which are, taken as a whole, principally advocacies of a social issue that the public must consider during elections is unconstitutional. Such regulation is inconsistent with the guarantee of according the fullest possible range of opinions coming from the electorate including those that can catalyze candid, uninhibited, and robust debate in the criteria for the choice of a candidate.
>
> This does not mean that there cannot be a specie of speech by a private citizen which will not amount to an election paraphernalia to be validly regulated by law.[96]

In *Social Weather Stations, Inc.*, this Court considered the parameters within which a regulation may be held valid:

> Regulation of election paraphernalia will still be constitutionally valid if it reaches into speech of persons who are not candidates or who do not speak as members of a political party if they are not candidates, only if what is regulated is declarative speech that, taken as a whole, has for its principal object the endorsement of a candidate only. *The regulation (a) should be provided by law, (b) reasonable, (c) narrowly tailored to meet the objective of enhancing the opportunity of all candidates to be heard and considering the primacy of the guarantee of free expression, and (d) demonstrably the least restrictive means to achieve that object. The regulation must only be with respect to the time, place, and manner of the rendition of the message. In no situation may the speech be prohibited or censored on the basis of its content.*[97] (Emphasis in the original)

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[95] 757 Phil. 483 (2015) [Per *J.* Leonen, *En Banc*].

[96] *Id.* at 516.

[97] *Id.* at 516-517.

Here, petitioner Loida Nicolas-Lewis assails the constitutionality and validity of Section 36.8 of the Overseas Absentee Voting Act and Section 74(II)(8) of Commission on Elections Resolution No. 10035. These are uniform provisions that prohibit partisan political activities abroad during the 30-day overseas voting period.[98]

Section 36(8) of the Overseas Absentee Voting Act states:

> SECTION 36. Prohibited Acts. — In addition to the prohibited acts provided by law, it shall be unlawful:
>
> . . . . . .
>
> 36.8. For any person to engage in partisan political activity abroad during the thirty (30)-day overseas voting period[.]

Section 74(II)(8) of the Commission on Elections Resolution No. 10035 states:

> Sec. 74. Election offenses/ prohibited acts. -
>
> II. Under R.A. 9189 "Overseas Absentee Voting Act of 2003", as amended
>
> . . . . . .
>
> (8) For any person to engage in partisan political activity abroad during the thirty (30)-day overseas voting period.

The definition of "partisan political activity" is found in Section 79(b) of Batas Pambansa Blg. 881, or the Omnibus Election Code. It states:

> (b) The term "election campaign" or "partisan political activity" refers to an act designed to promote the election or defeat of a particular candidate or candidates to a public office which shall include:
>
> (1) Forming organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/ or undertaking any campaign for or against a candidate;
>
> (2) Holding political caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting

[98] *Rollo*, p. 4.

votes and/or undertaking any campaign or propaganda for or against a candidate;

(3) Making speeches, announcements or commentaries, or holding interviews for or against the election of any candidate for public office;

(4) Publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or

(5) Directly or indirectly soliciting votes, pledges or support for or against a candidate.

The foregoing enumerated acts if performed for the purpose of enhancing the chances of aspirants for nomination for candidacy to a public office by a political party, aggroupment, or coalition of parties shall not be considered as election campaign or partisan election activity.

Public expressions or opinions or discussions of probable issues in a forthcoming election or on attributes of or criticisms against probable candidates proposed to be nominated in a forthcoming political party convention shall not be construed as part of any election campaign or partisan political activity contemplated under this Article.

From this, it can easily be determined that the assailed provisions are content-based regulations precisely because they specifically target a kind of speech identified by its political element. Contrary to respondent's submission,[99] the assailed provisions are not content-neutral. While they seem to merely limit the time allowed in conducting partisan political activities, they should be evaluated without losing sight of the nature of the expression they seek to regulate.

In her separate opinion, Associate Justice Estela Perlas-Bernabe characterized the regulations as forms of content-neutral restriction, arguing that they merely regulate the place and time in which political speech may be uttered. I disagree.

The prohibition on the conduct of partisan political activities does not merely control the incidents or manner of the political expression, but actually regulates the content of the expression.

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[99] *Id*. at 124.

As admitted by respondent, the limits are placed on the conduct of partisan political activities to subdue the "violence and atrocities"[100] that mar the electoral process. This means that the regulation is anchored on the content, nature, and effect of the prohibited activities.

Although guised as merely limiting the manner of the expression, the assailed provisions cut deep into the expression's communicative impact and political consequences. The regulations are not merely incidental.

Considering a regulation as content-neutral is only appropriate when the governmental interest and purpose are clear and unambiguous. In this case, the government's purpose in placing a 30-day restriction on political activities abroad is unclear.

To sustain the validity of Section 36.8 of the Overseas Absentee Voting Act and Section 74(II)(8) of Commission on Elections Resolution No. 10035, they must be evaluated with strict scrutiny. To pass constitutional muster, there must be a showing of a compelling State interest in the 30-day prohibition of partisan political activities abroad.

However, there are no clear, present, and substantial electoral dangers that will be prevented by the prohibition they impose. It is unclear if the substantial dangers and evils sought to be curtailed even exist in every foreign jurisdiction where the prohibition is applied.

It cannot be assumed that the same "horrendous and unforgivable atrocities"[101] during the election period in the Philippines are present and recurring in each and every country where Filipinos are situated. Every country has a unique election experience; it is uncertain if our overseas voters have been through any electoral conflict or violence to justify the State's restraint on free speech abroad. The prohibition applied to partisan political activities within the Philippines cannot be applied as a blanket prohibition that covers overseas voting.

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[100] *Id.* at 125.

[101] *Id.*

The government cannot instate a regulation that unduly interferes with protected expression.

In overseas voting, Philippine embassies, consulates, and foreign service establishments are designated as polling precincts.[102] Filipinos abroad would need to allot hours of travel to get to them without the benefit of an election holiday. A longer duration of a 30-day voting period abroad is, therefore, understandable. The longer voting period is enacted to encourage Filipinos overseas to participate in the elections.

Considering the Philippines' experience during the election period, the two-day prohibition on partisan political activities here bears a crucial role in subduing the dire consequences and abuses that attend it. The tail end of the election campaign period is the peak of candidates' and political parties' efforts to secure a win, and prolonged political campaigns frequently result in "violence and even death . . . because of the heat engendered by such political activities."[103]

Overseas, the sweeping prohibition on the partisan political activities during the 30-day voting period has no added value in "safeguarding the conduct of an honest, peaceful, and orderly elections" abroad.[104] There is no discernable reason behind the blanket prohibition. Through the lens of strict scrutiny, the assailed law and resolution fail because there are no dangers and evils present abroad that are "substantive, 'extremely serious[,] and the degree of imminence extremely high.'"[105]

Being forms of prior restraint and content-based regulation, the assailed provisions bear the heavy presumption of unconstitutionality. The government, then, has to prove that

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[102] Commission on Elections Resolution No. 9843 (2014), Art. 89, in relation to Republic Act No. 10590 (2013), Sec. 2(l).

[103] *In re: Gonzales v. Commission on Elections*, 137 Phil. 471, 506 (1969) [Per *J.* Fernando, *En Banc*].

[104] *Rollo,* p. 125.

[105] *Chavez v. Gonzales*, 569 Phil. 155, 200 (2008) [Per *J.* Puno, *En Banc*].

the regulations are valid. Here, respondent failed in discharging its burden of proof.

In maintaining their constitutionality, respondent insists that the assailed provisions are content-neutral.[106] As such, respondent contends that they are permissible for satisfying the intermediate test laid down by jurisprudence, *i.e.*, provided by law, reasonable, narrowly tailored to meet their objective, and the least restrictive means to achieve that objective.[107]

Respondent heavily capitalizes on this Court's ruling in *In Re: Gonzales*[108] to justify the assailed law. Quoting *In Re: Gonzales*, respondent postulates that while freedom of expression is at the core of a partisan political activity, Congress has the power to regulate and limit this freedom "for the sake of general welfare and, ironically enough, safeguarding the right of suffrage."[109] It quotes a relevant portion of the Decision:

> This is not to deny that Congress was indeed called upon to seek remedial measures for the far-from-satisfactory condition arising from the too-early nomination of candidates and the necessarily prolonged political campaigns. The direful consequences and the harmful effects on the public interest with the vital affairs of the country sacrificed many a time to purely partisan pursuits were known to all. Moreover, it is no exaggeration to state that violence and even death did frequently occur because of the heat engendered by such political activities. Then, too, the opportunity for dishonesty and corruption, with the right to suffrage being bartered, was further magnified.
>
> Under the police power then, with its concern for the general welfare and with the commendable aim of safeguarding the right of suffrage, the legislative body must have felt impelled to impose the foregoing restrictions. It is understandable for Congress to believe that without the limitations thus set forth in the challenged legislation, the laudable purpose of Republic Act No. 4880 would be frustrated and nullified.[110]

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[106] *Rollo*, p. 124.

[107] *Id*.

[108] 137 Phil. 471 (1969) [Per *J*. Fernando, *En Banc*].

[109] *Rollo*, p. 116.

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

Thus, respondent argues that the measure is reasonable because there is a need to counteract the prevailing abuses and violence that mar the election process. It adds:

> [T]he realities of Philippine politics in 1969 and four decades after remain the same – the unbridled passions of supporters and candidates alike have, in the recent years, even resulted, in some of the most horrendous and unforgivable atrocities. . . .
>
> . . . With that, the regulation, through the prohibition of partisan political activity during the day or days that votes are cast, is not only reasonable, but warranted as well.[111]

Moreover, respondent asserts that the provisions are narrowly tailored to meet their objective of enhancing the opportunity of all candidates to be heard. Respondent construes the provisions in conjunction with Section 261 of the Omnibus Election Code, which provides:

> SECTION 261. Prohibited Acts. — The following shall be guilty of an election offense:
>
> . . . .
>
> (k) Unlawful electioneering. — It is unlawful to solicit votes or undertake any propaganda on the day of registration before the board of election inspectors and on the day of election, for or against any candidate or any political party within the polling place and *with a radius of thirty meters thereof.*
>
> . . . .
>
> (cc) On candidacy and campaign:
>
> . . . .
>
> (6) Any person who solicits votes or undertakes any propaganda, on the day of election, for or against any candidate or any political party within the polling place or *within a radius of thirty meters thereof.*

Accordingly, respondent notes that partisan political activities are only prohibited on the days of casting of votes and within

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[111] *Id.* at 125.

a 30-meter radius of the polling place. The prohibition, respondent further contends, is only addressed to election candidates.[112]

Lastly, respondent adds that the prohibition is the least restrictive means in safeguarding the conduct of the elections because it is narrowly limited to "solicitation of votes done at the designated polling precincts and only during the time when casting of votes has begun."[113]

These arguments fail to address the constitutional test required to uphold the assailed provisions' validity.

To recapitulate, Section 36.8 of the Overseas Absentee Voting Act and Section 74(II)(8) of Commission on Elections Resolution No. 10035 are content-based regulations because they strike at the core of the communicative effect of political expression and speech. Thus, the presumption of invalidity is put against them. Respondent's reliance on their presumption of constitutionality cannot hold water.

Respondent's argument that there is substantial governmental interest in the regulations must likewise fail. On the contrary, this case calls for the application of the strictest scrutiny test. Respondent must show that the evils sought to be subdued by the assailed provisions are "substantive, 'extremely serious[,] and the degree of imminence extremely high.'"[114]

Here, respondent takes refuge in this Court's ruling in *In Re: Gonzales*. Arguing that the regulations are needed to curb the practices that taint the electoral process, respondent is firm that the assailed provisions must be upheld as valid because they are similar to the regulation involved in *In Re: Gonzales*. Respondent is mistaken.

In a sharply divided vote in *In Re: Gonzales*, this Court upheld the constitutionality of Section 50-B of Republic Act No. 4880,

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[112] *Rollo*, p. 122.

[113] *Id.* at 125.

[114] *Chavez v. Gonzales*, 569 Phil. 155, 200 (2008) [Per *J.* Puno, *En Banc*].

or the Revised Election Code. The provision, which is a verbatim copy of Section 76(b) of the Omnibus Election Code, defines the term "partisan political activity":

Sec. 50-B. Limitation upon the period of Election Campaign or Partisan Political Activity. — It is unlawful for any person whether or not a voter or candidate, or for any group or association of persons, whether or not a political party or political committee, to engage in an election campaign or partisan political activity except during the period of one hundred twenty days immediately preceding an election involving a public office voted for at large and ninety days immediately preceding an election for any other elective public office.

The term 'Candidate' refers to any person aspiring for or seeking an elective public office, regardless of whether or not said person has already filed his certificate of candidacy or has been nominated by any political party as its candidate.

The term 'Election Campaign' or 'Partisan Political Activity' refers to acts designed to have a candidate elected or not or promote the candidacy of a person or persons to a public office which shall include:

(a) Forming Organizations, Associations, Clubs, Committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a party or candidate;

(b) Holding political conventions, caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a any candidate or party;

(c) Making speeches, announcements or commentaries or holding interviews for or against the election of any party or candidate for public office;

(d) Publishing or distributing campaign literature or materials;

(e) Directly or indirectly soliciting votes and/or undertaking any campaign or propaganda for or against any candidate or party;

(f) Giving, soliciting, or receiving contributions for election campaign purposes, either directly or indirectly. Provided, That simple expressions or opinion and thoughts concerning the election shall not be considered as part of an election campaign: Provided, further, That nothing herein stated shall be understood to prevent any person

from expressing his views on current political problems or issues, or from mentioning the names of the candidates for public office whom he supports.

In *In Re: Gonzales,* this Court determined that Section 50-B of Republic Act No. 4880 is a content-based regulation because it is a limitation that cuts deep into the substance of the speech and expression. Proceeding to apply the clear and present danger test, the majority reasoned that the limits on freedom of speech is justified by the serious substantive evil that affects the electoral process.It held that the evils that the law sought to prevent are "not merely in danger of happening, but actually in existence, and likely to continue unless curbed or remedied."[115] It ruled:

> For under circumstances that manifest abuses of the gravest character, remedies much more drastic than what ordinarily would suffice would indeed be called for. The justification alleged by the proponents of the measures weighs heavily with the members of the Court, though in varying degrees, in the appraisal of the aforesaid restrictions to which such precious freedoms are subjected. They are not unaware of the clear and present danger that calls for measures that may bear heavily on the exercise of the cherished rights of expression, of assembly, and of association.
>
> This is not to say that once such a situation is found to exist, there is no limit to the allowable limitations on such constitutional rights. The clear and present danger doctrine rightly viewed requires that not only should there be an occasion for the imposition of such restrictions but also that they be limited in scope.[116]

This case, however, bears a different factual milieu. It would be a judicial error to carelessly apply the ruling in *In Re: Gonzales* here.

Respondent overlooked that the prohibition on partisan political activities in *In Re: Gonzales* specifically pertains to elections conducted in the Philippines. Likewise, this Court's justification in *In Re: Gonzales* operates within the premise

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[115] *In re: Gonzales v. Commission on Elections*, 137 Phil. 471, 500 (1969) [Per *J.* Fernando, *En Banc*].

[116] *Id.* at 503.

and context of an election period within the Philippines. Respondent cannot simply rely on that justification in arguing for the validity of the assailed provisions in this case. The application of the prohibition is different for overseas elections.

Respondent cannot use the perceived electoral violence in the Philippines as a justification for a prohibition applied abroad. Thus, I cannot agree with respondent's insistence that "the prohibition on partisan political activities during the 30-day overseas voting period . . . is no different from the election-day prohibition on partisan political activities"[117] within the Philippines.

It is clear that respondent failed to discharge its burden of proof. It has not shown why prohibiting partisan political activities abroad is necessary to maintain public order during the election period. It is uncertain what clear and present dangers the prohibition aims to dispel within the different countries abroad. Hence, the presumption of the regulations' invalidity stands.

Absent any clear and present danger, the people's exercise of free speech cannot be restrained by the government. Without any discernable reason to broadly impose the prohibition on political activities abroad, this Court is impelled to favor and uphold the exercise of free expression.

The Overseas Absentee Voting Act's noble intent to encourage Filipinos abroad to exercise their right of suffrage[118] will fail to materialize if we leave our people voiceless and powerless. A meaningful democratic participation through the exercise of the right of suffrage demands that citizens have the right to know what they ought to know, and to express what they know to make informed choices and influence others to do the same.

ACCORDINGLY, I vote that the Petition be **GRANTED**. Section 36.8 of the Overseas Absentee Voting Act of 2013 and Section 74(II)(8) of Commission on Elections Resolution No. 10035 are declared **UNCONSTITUTIONAL**.

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[117] *Rollo*, p. 117.

[118] *Id.* at 121.

SEPARATE AND CONCURRING OPINION

JARDELEZA, *J.*:

I vote to grant the petition on the ground that Section 36.8[1] of Republic Act No. (RA) 9189,[2] as amended by RA 10590,[3] and Section 74(II)(8)[4] of Commission on Elections (Comelec) Resolution No. 10035[5] are impermissible content-based regulations. These provisions both provide that it shall be unlawful for any person to engage in partisan political activity abroad during the 30-day overseas voting period. Partisan political activity or election campaign is, in tum, defined under Section 79(b) of *Batas Pambansa Bilang* (BP) 881[6] as an act designed to promote the election or defeat of a particular candidate or candidates to a public office. These acts shall include:

1. Forming organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign for or against a candidate;

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[1] Sec. 36.8. For any person to engage in partisan political activity abroad during the thirty (30)-day overseas voting period[.]

[2] The Overseas Absentee Voting Act of 2003.

[3] The Overseas Absentee Voting Act of 2013.

[4] Sec. 74. Election offenses/prohibited acts. —

x x x x x x x x x

II. Under R.A. 9189 "Overseas Absentee Voting Act of 2003," as amended

x x x x x x x x x

8. For any person to engage in partisan political activity abroad during the thirty (30)-day overseas voting period.

[5] General Instructions for the Special Board of Election Inspectors and Special Ballot Reception and Custody Group in the Conduct of Manual Voting and Counting of Votes under Republic Act No. 9189, otherwise known as "The Overseas Absentee Voting Act of 2003" as amended by Republic Act No. 10590 for Purposes of the May 09, 2016 National and Local Elections.

[6] Omnibus Election Code of the Philippines.

2. Holding political caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate;

3. Making speeches, announcements or commentaries, or holding interviews for or against the election of any candidate for public office;

4. Publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or

5. Directly or indirectly soliciting votes, pledges or support for or against a candidate.

Section 79(b) provides, at the same time, when the foregoing acts shall not be considered as election campaign or partisan political activity and these are:

> [1.] x x x [I]f performed for the purpose of enhancing the chances of aspirants for nomination for candidacy to a public office by a political party, aggroupment, or coalition of parties x x x[; and]
>
> [2.] Public expressions or opinions or discussions of probable issues in a forthcoming election or on attributes of or criticisms against probable candidates proposed to be nominated in a forthcoming political party convention x x x.

Petitioner alleges that on the basis of the above regulations, she, together with thousands of similarly situated Filipinos all over the world, was prohibited by the different Philippine Consulates from conducting information campaigns, rallies, and outreach programs in support of their respective candidates for the May 2016 national elections. Petitioner contends that these regulations violate one's freedom of speech, expression, and assembly, and are content-based prior restraints on speech which curtail the expression of political inclinations, views, and opinions of Filipinos abroad. I agree.

It bears emphasis at the outset that the Court should take cognizance of this case because of the presence of a justiciable controversy involving free speech, a textually identified

fundamental right under the Constitution,[7] and not because of the alleged transcendental importance of the issue petitioner invokes. There exists an actual justiciable controversy when there is a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.[8] Here, there is an evident clash of the parties' legal claims, particularly on whether Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 impair the free speech rights of petitioner and of all Filipinos abroad.[9] Section 36.8 of RA 9189, as amended by RA 10590 is an existing law that was fully implemented, as evidenced by the issuance of Section 74(II)(8) of Comelec Resolution No. 10035 during the 2016 national elections. The purported threat or incidence of injury is, therefore, not merely speculative or hypothetical but rather, real and apparent.[10]

Equally important, the Court in *Gios-Samar, Inc. v. Department of Transportation and Communications*[11] already clarified the proposition that the purported transcendental importance of an issue does not operate as a talismanic license to justify direct recourse to the Court. Thus:

> To be clear, the transcendental importance doctrine does not clothe us with the power to tackle factual questions and play the role of a trial court. The only circumstance when we may take cognizance of a case *in the first instance*, despite the presence of factual issues, is in the exercise of our constitutionally-expressed task to review the sufficiency of the factual basis of the President's proclamation of martial law under Section 18, Article VII of the 1987 Constitution. The case before us does not fall under this exception.

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[7] Art. III, Sec. 4. — No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

[8] *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, G.R. No. 225442, August 8, 2017, 835 SCRA 350, 385.

[9] See *SPARK v. Quezon City, id.*

[10] *SPARK v. Quezon City, supra* at 386.

[11] G.R. No. 217158, March 12, 2019.

x x x x x x x x x

Accordingly, for the guidance of the bench and the bar, we reiterate that when a question before the Court involves determination of a factual issue indispensable to the resolution of the legal issue, the Court will refuse to resolve the question regardless of the allegation or invocation of compelling reasons, such as the transcendental or paramount importance of the case. Such question must first be brought before the proper trial courts or the CA, both of which are specially equipped to try and resolve factual questions.[12] (Citations omitted; emphasis in the original.)

The justiciable controversy present here involves a pure question of law. We are not being called to rule on questions of fact. This direct recourse to Us via this petition is, therefore, being allowed on this basis as well, and not on petitioner's misplaced invocation of the transcendental importance doctrine.

Going now to the substance of the. petition, I reiterate that my vote here is grounded on the nature of Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 which, as impermissible content-based restrictions, do not survive strict scrutiny analysis.

Prior restraint refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination.[13] Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 fit this definition because these regulations restrain speech and expression before they are made. While governmental imposition of varying forms of prior restraints of speech and expression may present a constitutional issue, it does not follow, by design, that the regulations herein questioned *ipso facto* violate the Constitution.[14] The State may, indeed,

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[12] *Id.*

[13] *Chavez v. Gonzales*, G.R. No. 168338, February 15, 2008, 545 SCRA 441, 491. Citation omitted.

[14] *Members of City Council of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 803-804 (1984), citing *C.J.* Burger's dissent in *Metromedia, Inc. v. San Diego,* 453 U.S. 490, 561 (1981).

curtail speech when necessary to advance a significant and legitimate interest.[15] Any prior restraint, however, which does so comes to this Court bearing a heavy presumption against its constitutional validity, which the Government has the burden to justify.[16]

Consequently, Our inquiry here does not end with the determination as to whether the challenged act constitutes some form of restraint on freedom of speech. A distinction has to be made whether the restraint is content-neutral or content-based.[17] A content-neutral restraint is merely concerned with the incidents of the speech, or one hat merely controls the time, place or manner, and under well-defined standards.[18] A content-based restraint, on the other hand, is based on the subject matter of the utterance or speech.[19]

In my view, Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 fall under the content-based classification. Following *Ward v. Rock Against Racism*,[20] the restrictions here describe speech, expression, and assembly in terms of time and manner and were not adopted because of the Government's disagreement with the message the subject speech or expression relays. There is no evidence, or suggestion, that the Government made any distinction based on the speaker's views or perspectives. Viewpoint, however, is just one aspect of free speech or expression. The Constitution's hostility to content-based regulation extends not only to a restriction on a particular **viewpoint**, but also to a prohibition of public discussion of an **entire topic**.[21] Hence,

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[15] *Id.* at 804, citing *Schenck v. United States*, 249 U.S. 47, 52 (1919).

[16] See *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963).

[17] *Chavez v. Gonzales, supra* note 13 at 493.

[18] *Newsounds Broadcasting Network, Inc. v. Dy*, G.R. Nos. 170270 & 179411, April 2, 2009, 583 SCRA 333, 352.

[19] *Id.*

[20] 491 U.S. 781 (1989).

[21] *Burson v. Freeman*, 504 U.S. 191, 197 (1992). Emphasis supplied.

while Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 do not discriminate between viewpoints, they do discriminate against a whole class of speech, which is political speech. Whether individuals may exercise their free speech rights during the 30-day voting period overseas depends entirely on whether their speech is related to a political campaign.[22] The regulations do not reach other categories of speech, such as commercial solicitation, distribution, and display.[23] Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 thus "[**slip**] from the neutrality of time, place, and circumstance into a concern about content."[24]

Again, following *Ward*, Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(1I)(8) of Comelec Resolution No. 10035 may not have been adopted by the Government because of disagreement with the message the speech conveys. Nevertheless, following *Reed v. Town of Gilbert, Arizona*,[25] these regulations cannot be justified without reference to their content as regulated speech. Regulations that appear content-neutral will be treated as content-based because they are, in essence, related to the suppression of expression.

Moreover, the United States (US) Supreme Court in *Reed* cautioned that *Ward* involved a facially content-neutral restriction on the use, in a city- owned music venue, of sound amplification systems not provided by the city. It was in that context that the US Supreme Court then looked to governmental motive, including whether the Government had regulated speech because of its disagreement with its message, and whether the regulation was justified without reference to the content of the speech. The US Supreme Court stressed that *Ward*'s framework applies only if a statute is content-neutral.

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[22] *Id.*

[23] *Id.*

[24] *Police Department of Chicago v. Mosley*, 408 U.S. 92, 99 (1972). Emphasis supplied.

[25] 135 S. Ct. 2218 (2015).

Thus, *Reed* declared that the crucial first step in the content-neutrality analysis is to determine whether the law is content-neutral on its face. The mere assertion of a content-neutral purpose is not enough to save a law which, on its face, discriminates based on content.[26] A law that is content-based on its face will be treated as such regardless of the Government's benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech.[27] Citing the dissent of Associate Justice Antonin Scalia in *Hill v. Colorado*,[28] Reed acknowledged that innocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future Government officials may one day wield such statutes to suppress disfavored speech:

> x x x That is why the First Amendment expressly targets the operation of the laws-*i.e.*, the "abridg[ement] of speech"-rather than merely I the motives of those who enacted them. U.S. Const., Amdt. 1. "'The vice of content-based legislation . . . is not that it is always used for invidious, thought-control purposes, but that it lends itself to use for those purposes.'" x x x[29]

Furthermore, the cast of the restriction, whether content-neutral or content-based, determines the test by which the challenged act is assayed with.[30] Content-based laws, which are generally treated as more suspect than content-neutral laws because of judicial concern with discrimination in the regulation of expression,[31] are subject to strict scrutiny. Content-neutral regulations of speech or of expressive conduct are subject to a lesser, but still heightened scrutiny[32] which is commonly referred to as an intermediate approach.[33]

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[26] *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 642-643 (1994).

[27] *Reed v. Town of Gilbert, Arizona, supra* at 2227.

[28] 530 U.S. 703 (2000).

[29] *Reed v. Town of Gilbert, Arizona, supra* at 2229.

[30] *Chavez v. Gonzales, supra* note 13 at 493.

[31] *Newsounds Broadcasting Network, Inc. v. Dy, supra* note 18.

[32] *Id.*

[33] *Chavez v. Gonzales, supra* note 13 at 493-494.

Being content-based regulations, Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 are subject to strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.[34] In my view, the Government in this case has failed to discharge its burden in this respect.

What constitutes compelling state interest is measured by the scale of rights and powers arrayed in the Constitution and calibrated by history. It is akin to the paramount interest of the State for which some individual liberties must give way, such as the public interest in safeguarding health or maintaining medical standards, or in maintaining access to information on matters of public concern.[35]

In this case, respondent advances the wisdom behind Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035, which is to maintain the integrity of the election process and curb the violence and atrocities that have, in recent years, marred the electoral exercise.[36] These are the same objectives behind Sections 50-A and 50-B of the Revised Election Code, which limit the period of election campaign or the conduct of partisan political activity to 150 days immediately preceding the national elections or 90 days immediately preceding the local elections. The Court in *Gonzales v. Comelec*[37] had found the restrictions reasonable and warranted in light of a "serious substantive evil affecting the electoral process, not merely in danger of happening, but actually in existence, and likely to continue unless curbed or remedied."[38]

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[34] *Citizens United v. Federal Election Commission*, 558 U.S. 310, 882 (2010).

[35] *Serrano v. Gallant Maritime Services, Inc.*, G.R. No. 167614, March 24, 2009, 582 SCRA 254, 296. Citations omitted.

[36] *Rollo*, p. 376.

[37] G.R. No. L-27833, April 18, 1969, 27 SCRA 835.

[38] *Id.* at 864.

It is beyond question that the State has an important and substantial interest in seeing to it that the conduct of elections be honest, orderly, and peaceful, and that the right to suffrage of its citizens be protected at all times. This interest, I agree, is compelling in Philippine setting, where history would readily show how the partisan political activities of candidates and their supporters have not only fostered "huge expenditure of funds on the part of candidates," but have also resulted to the "corruption of the electorate," and worse, have "precipitated violence and even deaths."[39] But what is true in one location is not necessarily true elsewhere. The prevailing substantive evils recognized in *Gonzales* may be endemic to the Philippines alone. Respondent has failed to demonstrate that these same evils persist in the foreign locations where overseas voting is allowed.

At the same time, the prohibition under Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 is not narrowly tailored to achieve the Government's objective of preserving the integrity and order of the electoral process. The regulations completely prohibit partisan political activities with neither any limitation as to place or location nor as to the speaker or actor.

Respondent, in an effort to save the regulation, proffers a resort to statutory construction. Respondent proposes that the regulations must be harmonized with Section 261(k) of BP 881, which reads:

> Sec. 261. *Prohibited Acts*. — The following shall be guilty of an election offense:
>
> x x x x x x x x x
>
> (k) *Unlawful electioneering*. — It is unlawful to solicit votes or undertake any propaganda on the day of registration before the board of election inspectors and on the day of election, for or against any candidate or any political party within the polling place and with a radius of thirty meters thereof.

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[39] See *Gonzales v. Comelec, supra*.

Accordingly, respondent insists that the prohibition under Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 shall be taken to mean that it is confined to the polling places and to a radius of 30 meters.

Respondent also proposes that We look into the intent of Congress to limit the prohibition on campaigning abroad during the 30-day voting period to candidates. Respondent cites the sponsorship speech of Senator Aquilino Pimentel III for Senate Bill No. 3312, where he said that one of the changes agreed upon was to introduce a proviso making it an election offense for candidates to campaign in the country they are visiting within the 30-day voting period for overseas voting.[40]

Respondent's arguments are flawed.

Indeed, the touchstone of statutory interpretation is the probable intent of the legislature. When interpreting a statute, We must ascertain legislative intent so as to effectuate the purpose of a particular law. But the first step in determining that intent is to scrutinize the actual words of the statute, giving them a plain and common-sense meaning. When the words are clear and unambiguous, there is no need for statutory construction or resort to other indicia of legislative intent, such as legislative history.[41]

The language of Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 is clear and unambiguous. If Congress "truly intended the interpretations suggested by respondent, it could have easily identified the exact place where the prohibition applies and to whom the prohibition is addressed. As the regulations plainly read, however, they prohibit **any person** (and not just the candidates) from engaging in partisan political activities **without** any qualification as to the location where these activities are conducted.

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[40] *Rollo*, p. 373.

[41] *Quarterman v. Kefauver*, 55 Cal.App. 4th 1366, 1371 (1997).

Courts must presume that a legislature says in a statute what it means and means in a statute what it says there.[42] When the words of a statute are unambiguous, then judicial inquiry is complete.[43] I cannot subscribe to the proposition of respondent that the legislative history of RA 9189, as amended by RA 10590, points to a different result. Judicial inquiry into the reach of Section 36.8 begins and ends with what Section 36.8 does say and with what it does not.[44]

Thus, the prior restraint imposed in Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 is not narrowly drawn to protect the avowed interest of the government.[45] This second requirement of the strict scrutiny test stems from the fundamental premise that citizens should not be hampered from pursuing legitimate activities in the exercise of their constitutional rights. While rights may be restricted, the restrictions must be minimal or only to the extent necessary to achieve the purpose or to address the State's compelling interest. When it is possible for governmental regulations to be more narrowly drawn to avoid conflicts with constitutional rights, then they must be so narrowly drawn.[46]

All told, the application of a strict or exacting scrutiny to a content-based prior restraint becomes all the more Imperative when political speech is involved. The fundamental right to

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[42] *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-254 (1992).

[43] *Id.* at 254.

[44] *Id.*

[45] See *Burson v. Freeman, supra* note 21 at 119-200, where the US Supreme Court said that to survive strict scrutiny, the State must do more than assert a compelling State interest, but must also demonstrate that its law is **necessary** to serve the asserted interest. It bears emphasis that the US Supreme Court did not categorically say that the State must adopt the least restrictive means. The measure of the restriction, however, —whether it should be the least or whether it being less/necessary would suffice—is a discussion best left in another appropriate case.

[46] *SPARK v. Quezon City, supra* note 8 at 419-420. Citation and emphasis omitted.

freedom of speech and expression has its fullest and most urgent application to speech and expression uttered during a campaign for political office.[47] For one, discussions of public issues and debate on the qualifications of candidates are integral to the operation of the system of Government established by our Constitution.[48] Also, under our system of laws, everyone has the right to promote his or her agenda and attempt to persuade society of the validity of his or her position through normal democratic means. It is in the public square that deeply held convictions and differing opinions should be distilled and deliberated upon.[49]

Thus, the Constitution affords the broadest protection to political speech and expression in order to assure the unfettered interchange of ideas for the bringing about of political and social changes desired by the people.[50] In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation.[51]

I hasten to add at this point that nothing We say here, however, should be construed to mean that the institution of a campaign-free zone in polling places abroad during the voting period is altogether foreclosed.

In fact, the Court has already observed in *Osmeña v. Comelec*[52] that Our previous decisions in *Gonzales* and *Valmonte v. Comelec*[53] have demonstrated that the State can prohibit

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[47] *Buckley v. Valeo*, 424 U.S. 1, 15, 256 (1976).

[48] *Id.* at 14.

[49] *Ang Ladlad LGBT Party v. Commission on Elections*, G.R. No 190582, April 8, 2010, 618 SCRA 32, 65.

[50] *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346 (1995).

[51] *Id.* at 346-347.

[52] G.R. No. 132231, March 31, 1998, 288 SCRA 447.

[53] Resolution, G.R. No. 73551, February 11, 1988.

campaigning **outside** a certain period as well as campaigning **within** a certain place. The Court went on to say that in *Valmonte*, the validity of a Comelec resolution prohibiting members of citizen groups or associations from entering any polling place except to vote was upheld. The Court then concluded that "[i]ndeed, §261(k) of the Omnibus Election Code makes it unlawful for anyone to solicit votes in the polling place and within a radius of 30 meters thereof."[54]

Statutorily mandated campaign-free zones have also been validated in the US. In *Burson*, the US Supreme Court upheld the validity of a provision of the Tennessee Code which prohibits the solicitation of votes and the display or distribution of campaign materials within 100 feet of the entrance to a polling place. The US Supreme Court found the provision to be a content--based restriction, but nonetheless found it valid through the lens of strict scrutiny. The US Supreme Court acknowledged that it was one of the rare cases in which it has held that a law survives strict scrutiny. It arrived at its decision on account of "[a] long history, a substantial consensus, and simple common sense"[55] showing that some restricted zone around polling places is necessary to protect the fundamental right of citizens to cast a ballot in an election free from the taint of intimidation and fraud.

Given *Burson* and Our own pronouncements in *Osmeña*, the establishment of a campaign-free zone in polling places overseas remains an open and viable possibility.

WHEREFORE, I vote to **GRANT** the petition and **DECLARE** Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Cmnelec Resolution No. 10035 as **UNCONSTITUTIONAL** for violating Section 4, Article III of the 1987 Constitution.

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[54] *Osmeña v. Comelec, supra* at 470.

[55] *Burson v. Freeman, supra* note 21 at 211.

SECOND DIVISION

[G.R. No. 224289. August 14, 2019]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DANG ANGELES *y* GUARIN, JAMES SANTOS @ "CHITA," DENNIS RAMOS, and SONNY BAYNOSA @ "JONG,"** *accused,* **DANG ANGELES *y* GUARIN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; CONSPIRACY; EXISTS WHEN TWO (2) OR MORE PERSONS COME TO AN AGREEMENT CONCERNING THE COMMISSION OF A FELONY, AND DECIDE TO COMMIT IT; TWO (2) FORMS OF CONSPIRACY, DISTINGUISHED.— Conspiracy exists when two (2) or more persons come to an agreement concerning the commission of a felony, and decide to commit it. Proof of express agreement, however, is not always required to be shown. In ***People of the Philippines v. Jimmy Evasco, et al.,*** the Court emphasized the two (2) forms of conspiracy. The first refers to *express conspiracy*. It requires proof of an actual agreement among the co-conspirators to commit the crime. The second pertains to *implied conspiracy*. It exists when two (2) or more persons are shown by their acts to have aimed toward the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, are in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiments. This is proved by the mode and manner the offense was committed, or from the acts of the accused *before, during, and after* the commission of the crime, indubitably pointing to a joint purpose, a concert of action, and a community of interest. In fine, even without proof of express agreement among the co-accused, conspiracy may still be held to exist among them.

2. ID.; MURDER; ELEMENTS.— Murder requires the following elements: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the

qualifying circumstances mentioned in Article 248; and (4) that the killing is not parricide or infanticide.

3. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; THERE IS NO HARD AND FAST STANDARD BY WHICH TO MEASURE A PERSON'S BEHAVIOR OR REACTION WHEN CONFRONTED WITH A STARTLING OR HORRIFYING OCCURRENCE.— In a long line of cases, this Court has recognized that different persons react differently to the same situations for there is no hard and fast standard by which to measure a person's behavior or reaction when confronted with a startling or horrifying occurrence, as in this case. Some may shout for help, some may be hysterical, some fight back, and others may simply freeze and take the blows mutely.

4. ID.; ID.; CREDIBILITY OF WITNESSES; RELATIONSHIP *PER SE* DOES NOT EQUATE TO BIAS OR ULTERIOR MOTIVE NOR AUTOMATICALLY TARNISH THE TESTIMONY OF A WITNESS; CASE AT BAR.— Appellant further attacks the credibility of the prosecution witnesses, alleging they are relatives of the victims. To begin with, relationship *per se* does not equate to bias or ulterior motive nor automatically tarnish the testimony of a witness. On the contrary, a witness who is related to the victim is naturally interested in securing the conviction of the guilty and definitely not the innocent or just any or some "fall guy." Otherwise, the real culprits would gain immunity.

5. ID.; ID.; ID.; DENIAL CANNOT PREVAIL OVER A CONSISTENT AND CATEGORICAL DECLARATIONS OF CREDIBLE WITNESSES ON AFFIRMATIVE MATTERS.— It bears stress that denial, if not substantiated by clear and convincing evidence, as in this case, is a negative and self-serving defense. It carries scant, if not nil, evidentiary value. It cannot prevail over the consistent and categorical declarations of credible witnesses on affirmative matters.

6. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; THE ESSENCE OF TREACHERY LIES ON THE DELIBERATE, SWIFT, AND UNEXPECTED ATTACK ON THE HAPLESS, UNARMED, AND UNSUSPECTING VICTIM, LEAVING THE LATTER NO CHANCE TO RESIST OR ESCAPE; NOT ESTABLISHED

IN CASE AT BAR.— Treachery means the offender directly employs means, methods, or forms for the purpose of ensuring the execution of the crime without risk to the offender arising from the defense which the offended party might make. The essence of treachery lies on the deliberate, swift, and unexpected attack on the hapless, unarmed, and unsuspecting victim, leaving the latter no chance to resist or escape. Here, when Abelardo came out of their house and approached his brothers, he already knew that appellant and his companions had violently attacked his brothers. Thus, Abelardo was already aware of the danger appellant posed in his person. It cannot be said, therefore, that the attack made against him was "unexpected." In sum, Abelardo was not an *"unsuspecting victim."* Consequently, treachery cannot be appreciated as a qualifying circumstance in Abelardo's killing. x x x In ***People of the Philippines v. Marcial D. Pulgo,*** the Court pronounced that treachery may still be appreciated even when the victim was forewarned of the danger to his person. *What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.*

7. ID.; ID.; ABUSE OF SUPERIOR STRENGTH; THIS QUALIFYING CIRCUMSTANCE IS PRESENT WHENEVER THERE IS NOTORIOUS INEQUALITY OF FORCES BETWEEN THE VICTIM AND THE AGGRESSOR, WHICH WAS TAKEN ADVANTAGE BY THE LATTER IN THE COMMISSION OF THE CRIME; ESTABLISHED IN CASE AT BAR.— The Court, nonetheless, holds that Abelardo's killing was attended by abuse of superior strength. This qualifying circumstance is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. In ***People v. Casillar,*** the Court appreciated the qualifying circumstance of abuse of superior strength when four (4) armed assailants attacked the unarmed victim, as in this case. Too, in ***People v. Garcia,*** the Court held that where four (4) persons attacked the unarmed victim but treachery was not proven, the fact that there were four (4) assailants constitutes abuse of superiority. So must it be.

8. ID.; ID.; IN MURDER OR HOMICIDE, THE OFFENDER MUST HAVE THE INTENT TO KILL; THE COURT ENUMERATED THE FACTORS TO CONSIDER IN

DETERMINING INTENT TO KILL.— In murder or homicide, the offender must have the intent to kill. If he or she did not have such intent, he or she is liable only for physical injuries. In ***Gary Fantastico, et al. v. People of the Philippines, et al.,*** the Court considered the following determinants of intent to kill: (1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, at the time, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused. The Court also considered the words uttered by the offender at the time he inflicted injuries on the victim as an additional determinative factor. x x x If one inflicts physical injuries on another but the latter survives, the crime committed is either consummated physical injuries, if the offender had no intention to kill the victim, or frustrated or attempted homicide or frustrated murder or attempted murder if the offender intends to kill the victim. Intent to kill may be proved by evidence of: (a) motive; (b) the nature or number of weapons used in the commission of the crime; (c) the nature and number of wounds inflicted on the victim; (d) the manner the crime was committed; (e) the words uttered by the offender at the time the injuries are inflicted by him on the victim; and (f) the circumstances under which the crime was committed.

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 March 13, 2015[1] of the Court of Appeals in CA-G.R. CR-HC No. 05193

[1] Penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justice Mario V. Lopez and now retired SC Associate Justice Noel G. Tijam, CA *rollo,* pp. 130-147.

which affirmed with modification the trial court's verdict of conviction against appellant Dang Angeles *y* Guarin for murder, frustrated murder, and attempted murder.[2]

The Information

Appellant Dang Angeles *y* Guarin, James Santos *alias* "Chita," Dennis Ramos, and Sonny Baynosa *alias* "Jong,"[3] were charged with murder and two (2) counts of frustrated murder in the following Amended Information, *viz*:

Criminal Case No. L-8886

The undersigned hereby accuses **DANG ANGELES y GUARIN, JAMES SANTOS @, "Chita", DENNIS RAMOS and JOHN DOE @, "JHONG"** of the crime of **MURDER** committed as follows:

> *"That on or about 11:45 o'clock in the evening of April 27, 2010 in Brgy. Gayaman, Binmaley, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping one another, with treachery, abuse of superior strength and evident premeditation, with intent to kill, did, then and there, willfully, unlawfully and feloniously attack, assault and stab ABELARDO Q. EVANGELISTA, with the use of a (sic) bladed weapons inflicting upon him injuries as shown in the autopsy report which caused his instantaneous death, to the damage and prejudice of his heirs."*
>
> *Contrary to Article 248 of the Revised Penal Code.*[4]

x x x x x x x x x

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[2] Penned by Presiding Judge Teodoro C. Fernandez; Decision dated August 12, 2011 of the Regional Trial Court (RTC), Branch 38, Lingayen, Pangasinan, in Criminal Case Nos. L-8886, L-8887, and L-8888, entitled *People of the Philippines v. Dang Angeles y Guarin, James Santos @ "Chita," Dennis Ramos, and Sonny Baynosa @ "Jong;"* CA *rollo*, pp. 19-29; Record (Criminal Case No. L-8886), pp. 206-216.

[3] "John Doe" was later identified to be Sonny Baynosa *alias* "Jong" or "Jhong," Record (Criminal Case No. L-8886), p. 92.

[4] Record (Criminal Case No. L-8886), pp. 29-30.

Criminal Case No. L-8887

The undersigned hereby accuses **DANG ANGELES y GUARIN, JAMES SANTOS @, "Chita", DENNIS RAMOS, and SONNY BAYNOSA @ "Jong"** of the crime of **FRUSTRATED MURDER** committed as follows:

> "That on or about 11:45 o'clock in the evening of April 27, 2010 at Brgy. Gayaman, Binmaley, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, armed with knives, conspiring, confederating and mutually helping one another, with intent to kill, with treachery and taking advantage of their superior strength, did then and there, (willfully), unlawfully and feloniously attack, stab and hit **ERIC Q. EVANGELISTA,** inflicting upon him "lacerated wound 1 cm back scapula area", secondary to stabbing, the accused having thus performed all the acts of execution which would have produced the crime of Murder but which did not produce it by reason of cause/s independent of the will of the accused, that is due to the timely medical assistance rendered to **ERIC Q. EVANGELISTA** to his damage and prejudice."

CONTRARY to Article 248 in relation to Art. 6 of the Revised Penal Code.[5]

x x x x x x x x x

Criminal Case No. L-8888

The undersigned hereby accuses **DANG ANGELES y GUARIN, JAMES SANTOS @, "Chita", DENNIS RAMOS, and SONNY BAYNOSA @, "Jong"** of the crime of **FRUSTRATED MURDER** committed as follows:

> "That on or about 11:45 o'clock in the evening of April 27, 2010 in Brgy. Gayaman, Binmaley, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, armed with knives, conspiring, confederating and mutually helping one another, with intent to kill, with treachery and taking advantage of their superior strength, did then and there, (willfully), unlawfully and feloniously attack, stab and hit **MARK RYAN Q. EVANGELISTA,** inflicting upon him "Grade II Liver injury R. lobe Hmoritorcum secondary to stab wound R lumbar posterior

[5] Record (Criminal Case No. L-8887), p. 64.

aspect, the accused having thus performed all the acts of execution which would have produced the crime of Murder but which did not produce it by reason of cause/s independent of the will of the accused, that is due to the timely medical assistance rendered to **MARK RYAN Q. EVANGELISTA,** to his damage and prejudice."

CONTRARY to Article 248 in relation to Art. 6 of the Revised Penal Code.[6]

The Proceedings Before the Trial Court

Criminal Case No. L-8886 was raffled to the Regional Trial Court (RTC)-Branch 38, Lingayen, Pangasinan, while Criminal Case Nos. L-8887 and L-8888, to Branch 37. All three (3) cases were subsequently consolidated in Branch 38.[7]

Only Appellant got apprehended and detained. James Santos *alias* "Chita," Dennis Ramos, and Sonny Baynosa *alias* "Jong" remained at large.

On arraignment, appellant pleaded not guilty to all three (3) charges.[8]

Eric Q. Evangelista, Mark Ryan Q. Evangelista, Domingo Evangelista, SPO1 Ricardo De Vera, PO1 Tristan Fernandez, Rolando Quinto, Dra. Gladiola Manaois, and Dr. Cipriano Fernandez, testified for the prosecution. On the other hand, appellant alone testified for the defense.

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[6] Record (Criminal Case No. L-8888), p. 58.

[7] Record (Criminal Case No. L-8887), p. 93; A fourth case for Murder was also filed against appellant Dang Angeles for the death of Elmer Q. Evangelista. This case was docketed as Criminal Case No. L-8885, and was raffled to RTC, Branch 68. Considering, however, that the victim in said case involved a minor, Judge Georgina D. Hidalgo denied the consolidation of said case to the other three cases; See Record (Criminal Case No. L-8886), p. 68.

[8] Record (Criminal Case No. L-8886), p. 72; Record (Criminal Case No. L-8887), pp. 46 and 48.

Version of the Prosecution

On April 27, 2010, around 11:30 in the evening, Eric and Mark Ryan Evangelista were inside their residence in Barangay Gayaman, Binmaley, Pangasinan, celebrating the eve of their sister's wedding.[9] While the celebration was ongoing, they suddenly heard a loud noise coming from the engine and muffler of a tricycle. Eric and their youngest brother Elmer stepped out of the house to check what the loud noise was all about. Mark Ryan followed them shortly.[10]

Sonny "Jong" Baynosa occupied the driver's seat of the nearby parked tricycle where the noise was coming from. He was in the company of appellant, James "Chita" Santos, and Dennis Ramos. As brothers Eric and Elmer approached, appellant alighted from the tricycle, walked straight to and forcefully stabbed Elmer in the right abdomen. The knife snapped.[11]

When Eric rushed to help Elmer, Baynosa stabbed him (Eric) in the back, just below his right shoulder. Mark Ryan who followed his brothers was not spared. Santos stabbed him, too, in his right waist.[12]

Abelardo rushed to his brothers' aid. But Ramos also stabbed him in the left stomach. Santos himself turned to Abelardo and stabbed the latter in the right abdomen. Not to be outdone, appellant grabbed an icepick and joined in. He stabbed Abelardo in the left chest. Baynosa also pulled an icepick and stabbed Abelardo in the right chest. In view of the multiple stab wounds he sustained, Abelardo fell to the ground. But still not satisfied, Santos stabbed him again in the back. Thereafter, appellant

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[9] TSN, August 16, 2010, pp. 9-10; TSN, August 31, 2010, p. 3.

[10] TSN, August 16, 2010, pp. 10 and 12-13; TSN, August 31, 2010, p. 4; TSN, September 15, 2010, p. 6.

[11] TSN, August 16, 2010, pp. 11-17; TSN, August 31, 2010, pp. 5-10 and 12-13; TSN, September 15, 2010, pp. 8-14.

[12] TSN, August 16, 2010, pp. 11-17; TSN, August 31, 2010, pp. 5-10 and 12-13; TSN, September 15, 2010, pp. 8-14.

walked away while Baynosa, Ramos, and Santos fled on board the tricycle.[13]

A cousin of the Evangelista brothers, Rolando Quinto, saw the incident but he was too scared to help.[14]

Only after the assailants had left did Rolando and others approach and rush Elmer, Eric, Mark Ryan, and Abelardo to the hospital.[15] Abelardo was pronounced dead on arrival.[16] Elmer died in the hospital.[17]

Dr. Cipriano C. Fernandez treated Eric and Mark Ryan. As for Eric, Dr. Fernandez found a stab wound in his back though it was not fatal. Dr. Fernandez opined that even without adequate medical attendance, the wound would heal in seven (7) to ten (10) days. Eric got discharged from the hospital on the following day.[18]

As for Mark Ryan, he sustained a stab wound in the waist (back). He had to be admitted into the Intensive Care Unit. After twelve (12) hours, however, his condition worsened. Wasting no time, Dr. Fernandez immediately did an operation on Mark Ryan. When Dr. Fernandez opened up Mark Ryan, the latter's abdomen was filled with blood flowing from his punctured liver. It was a fatal injury which could have caused Mark Ryan's death were it not for the timely and adequate medical attendance given him. It would take him up to three (3) months to recover from this injury.[19]

SPO1 Ricardo de Vera and PO1 Tristan B. Fernandez were among the police officers who responded to the reported stabbing

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[13] TSN, August 16, 2010, pp. 11-17; TSN, August 31, 2010, pp. 5-10 and 12-13; TSN, September 15, 2010, pp. 8-14.

[14] TSN, September 15, 2010, p. 9.

[15] TSN, August 31, 2010, p. 13; TSN, September 15, 2010, pp. 13-15.

[16] TSN, September 15, 2010, p. 14.

[17] TSN, August 31, 2010, pp. 13-14.

[18] TSN, February 9, 2011, pp. 5-7.

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

incident. When SPO1 de Vera arrived at the *locus criminis*, the victims had already been brought to the hospital. The victims' father, Domingo Evangelista, identified appellant as one of the assailants. SPO1 De Vera and the other police officers were able to apprehend appellant. After apprising him of his constitutional rights, they took appellant to the Lingayen Community Hospital for medical examination. The police officers though were not able to apprehend Santos, Ramos, and Baynosa.[20]

The prosecution offered the following evidence:

"A" to "A-2"	:	Joint Affidavit of Arrest executed by PO1 de Vera and PO1 Fernandez
"B" to "B-1"	:	Domingo Evangelista's Sworn Statement and Supplemental Affidavit
"C" to "C-1"	:	Rolando Quinto's Affidavit
"D" to "D-1"	:	Eric Evangelista's Sworn Statement
"E" to "E-1"	:	Mark Ryan Evangelista's Sworn Statement
"F" to "F-3"	:	Certification of Police Blotter (Entry Nos. 01936, 01941-42)
"G" to "G-1"	:	Certification of Police Blotter (Entry No. 01943)
"H"	:	Two knives
"I" to "I-2"		Abelardo Evangelista's Death Certificate
"J" to "J-1"		Post Mortem Examination
"K" to "K-3"		Photos showing Abelardo's body and the wounds he sustained
"L" to "L-3"	:	Medical Certificate issued to Eric Evangelista
"M" to "M-7"	:	Receipts showing the expenses for treatment of Eric's injury
"N" to "N-5"	:	Medical Certificate issued to Mark Ryan Evangelista
"O" to "O-19"	:	Receipts showing the expenses for treatment of Mark Ryan

Version of the Defense

Appellant testified that on April 27, 2010, his brother-in-law Marlon invited him to a party at Domingo Evangelista's

[20] See Joint Affidavit of Arrest, Record (Criminal Case No. L-8886), p. 10; TSN, August 25, 2010, pp. 4-7; TSN, September 8, 2010, pp. 6-8.

residence. Marlon was Domingo's nephew. Around 11:45 in the evening, he was outside Domingo's house when Baynosa arrived on board his tricycle. Baynosa was in the company of Santos and Ramos.[21]

Eric and Mark Ryan stepped out from the house and called out Baynosa for the loud noise coming from the tricycle. Santos and Ramos alighted from the tricycle and asked the Evangelista brothers to stop shouting to avoid further trouble. But Eric yelled even louder at Baynosa while Mark Ryan cursed Baynosa and his companions.[22]

Then together, Eric and Mark Ryan walked up to the group and repeatedly punched Ramos. At this point, Abelardo and Elmer arrived and hit Ramos in the head with a bottle. Not satisfied, Abelardo hit Ramos a second time. In retaliation, Ramos drew a knife from his waist and stabbed Abelardo and Elmer.[23] When they saw what Ramos did to their brothers, Eric and Mark Ryan motioned to punch Ramos but were repelled by Baynosa and Santos. Using their respective weapons, Baynosa and Santos struck at Eric and Mark Ryan.[24]

Appellant claimed to be a silent witness to the unfolding of these tragic events. He got so scared, left, and went home.[25]

While buying cigarettes from a nearby store, he saw Domingo and the police coming up to him. Domingo pointed him out as among those who stabbed the Evangelista brothers.[26]

The Trial Court's Ruling

By Decision dated August 12, 2011,[27] the trial court found appellant guilty of murder, frustrated murder, and attempted murder, *viz:*

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[21] TSN, November 3, 2010, pp. 3-4.

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

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

[24] *Id.* at 7.

[25] *Id.* at 7 and 11.

[26] *Id.* at 8.

[27] CA *Rollo,* pp. 19-29; Record (Criminal Case No. L-8886), pp. 206-216.

WHEREFORE, in **Criminal Case No. 8886,** the Court finds accused Dang Angeles y Guarin **GUILTY** beyond reasonable doubt for the crime of MURDER as defined and penalized under Article 248 of the Revised Penal Code, and is sentenced to suffer the penalty of ***reclusion perpetua.*** He is further ordered to pay the heirs of Abelardo Evangelista ₱50,000.00 as civil indemnity *ex delicto,* ₱80,650.00 as actual damages, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

In **Criminal Case No. 8887,** the Court finds accused Dang Angeles y Guarin **GUILTY** beyond reasonable doubt for the crime of ATTEMPTED MURDER, and is hereby sentenced to suffer the penalty of **two (2) years, four (4) months and one (1) day of *prision correctional,* as minimum, to eight (8) years and one (1) day of *prision mayor,* as maximum,** with all the accessory penalties imposed by law. He is further ordered to pay Eric Evangelista the amounts of ₱7,032.00. (sic) as actual damages, ₱40,000.00 as moral damages, and ₱20,000.00 as exemplary damages.

In **Criminal Case No. 8888,** the Court finds accused Dang Angeles y Guarin GUILTY beyond reasonable doubt for the crime of FRUSTRATED MURDER, and is sentenced to suffer an **indeterminate penalty from 6 years and 1 day of *prision mayor* as minimum, to 14 years, 8 months and 1 day of reclusion temporal as maximum.** In addition, he is ordered to pay the victim Mark Ryan Evangelista the amount of ₱40,000.00 as moral damages, ₱68,712.00 as actual damages, and ₱25,000.00 as exemplary damages.

Let the records of these cases be sent to (the) archives insofar as accused James Santos, Dennis Ramos and Sonny Baynosa are concerned, to be revived upon their arrest.

SO ORDERED.[28]

The trial court found that the prosecution witnesses testified in a categorical, straightforward, and spontaneous manner. Their testimonies were consistent on material points, more particularly, on how each of the victims was stabbed by appellant and his co-accused. The trial court held that the credible and positive

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[28] CA *rollo*, pp. 28-29; Record (Criminal Case No. L-8886), pp. 215-216.

testimonies of the prosecution witnesses necessarily prevail over appellant's denial.

The trial court further held that the qualifying circumstance of treachery attended the commission of the crime because the perpetrators, including appellant, suddenly stabbed the unarmed victims without any warning, thus, totally depriving the victims of the opportunity to defend themselves.

Finally, the trial court found appellant to have acted in conspiracy with his co-accused Santos, Ramos, and Baynosa. As established by the evidence on record, these persons acted in such synchronized and coordinated manner indicating unity of purpose and design.

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for finding him guilty as charged in all three (3) cases. We sum up below appellant's assigned errors, *viz*:[29]

(1) The testimonies of the prosecution witnesses were incredible, illogical, and grossly inconsistent with human experience. At the time of the incident, there was an ongoing party attended by relatives and friends of the Evangelista family. It was, therefore, unthinkable, if not preposterous for the Evangelista brothers not to have asked help from the people around who supposedly witnessed the crimes. Even if some of these people may have been, out of fear, hesitant to help them, it was utterly against human experience that even their relatives, other than their immediate family, remained apathetic at such crucial time when their loved ones were being butchered. It even took their relatives an hour to report the incident to the police.[30]

(2) Eric admittedly had a grudge against him (and vice versa), yet, during the alleged incident, he purportedly attacked Elmer first, not Eric against whom he supposedly had a grudge.[31]

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[29] See Appellant's Brief dated July 20, 2012; CA *rollo,* pp. 52-75.

[30] *Id.* at 66-67.

[31] *Id.* at 67.

(3) The trial court should not have readily accepted the testimonies of the prosecution witnesses who, being the relatives of the victims, were not deemed disinterested witnesses.[32]

(4) The testimonies of witnesses who themselves were aggrieved by the death of their relatives should have been handled with the realistic thought that these witnesses had material and emotional ties with the cases.[33]

(5) Although generally weak, denial gains commensurate strength when the credibility of the prosecution witnesses is wanting and questionable.[34]

(6) It was Domingo, the victims' father, who implicated him as the assailant, albeit, Domingo himself did not actually witness the incident.[35]

(7) Even assuming he was liable for Abelardo's death, he should not be made similarly liable for the injuries sustained by Eric and Mark Ryan. The prosecution miserably failed to prove that he, Baynosa, Ramos, and Santos conspired to commit the crimes charged. His mere presence at the *locus criminis* did not mean he agreed to assault the Evangelista brothers.[36]

(8) Granting, without conceding that he was liable for the death of Abelardo and the injuries of Eric and Mark Ryan, still, he cannot be held liable for murder, frustrated murder, and attempted murder. At most, he may only be held liable for homicide, frustrated homicide, and attempted homicide because the qualifying circumstance of treachery was absent in these cases. Both Eric and Mark Ryan knew he (appellant) had a bad reputation in the community. Thus, when Eric and Mark Ryan approached him and his group, these two (2) were already deemed forewarned of the impending danger to their lives. Hence, the attack on the Evangelista brothers cannot be considered to be sudden, unexpected, or unforeseen. There can be no treachery

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[32] *Id.* at 67-68.

[33] *Id.* at 69.

[34] *Id.* at 69.

[35] *Id.* at 70.

[36] *Id.* at 70-72.

when the victim was aware of the impending or actual danger to his life.[37]

The Office of the Solicitor General, through Assistant Solicitor General Herman R. Cimafranca and State Solicitor Cheryl Angeline M. Roque, essentially countered:[38]

(a) The trial court's factual findings are entitled to great weight and should not be disturbed on appeal unless certain facts of substance and value were overlooked or misappreciated, which, if correctly considered, may have altered the outcome of the case.[39]

(b) Relationship *per se* does not affect the credibility of these witnesses.[40]

(c) As between the positive testimonies of the prosecution witnesses and the negative statements of appellant, the former deserve more credence.[41]

(d) The trial court correctly appreciated the attendance of treachery as qualifying circumstance. Assuming the Evangelista brothers were forewarned of the impending danger to their lives that could have possibly come from appellant, they were not aware that at the time of the incident Angeles and his group had actually intended to kill them. The sudden and unexpected attack launched by appellant and his group on the Evangelista brothers completely rendered these men unable to defend themselves.[42]

(e) Conspiracy may be inferred from the acts of the accused before, during, and after the crime, indicating a common design, concerted acts, and concurrence of sentiments. In conspiracy, the act of one is the act of all. Consequently, the precise extent or modality of participation of each co-conspirator becomes secondary.[43]

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

[38] See the People's Brief dated November 19, 2012, CA *rollo*, pp. 93-118.

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

[40] *Id.* at 109-111.

[41] *Id.* at 109-111.

[42] *Id.* at 113-115.

[43] *Id.* at 116-117.

The Court of Appeals' Ruling

By its assailed Decision dated March 13, 2015,[44] the Court of Appeals affirmed with modification, *viz*:

WHEREFORE, the appeal is DENIED. The decision of the Regional Trial Court of Lingayen, Pangasinan, Branch 38 (RTC) is **AFFIRMED with MODIFICATION** as follows:

In Criminal Case No. L-8886, accused-appellant Dang Angeles y Guarin is found guilty beyond reasonable doubt of murder and is sentenced to suffer the penalty of reclusion perpetua. Accused-appellant is ordered to pay the heirs of Abelardo Q. Evangelista the amounts of Seventy-Five Thousand Pesos (₱75,000.00) for civil indemnity, Fifty Thousand Pesos (₱50,000.00) for moral damages, Thirty Thousand Pesos (₱30,000.00) for exemplary damages and Eighty Thousand Six Hundred Fifty Pesos (₱80,650.00) for actual damages as well as interest on all these damages assessed at the legal rate of 6% from date of finality of this decision until fully paid.

In Criminal Case No. L-8887, accused-appellant Dang Angeles y Guarin is found guilty beyond reasonable doubt of attempted murder and is sentenced to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day of prision correccional, as minimum to eight (8) years and one (1) day of prision mayor, as maximum. Accused-appellant is ordered to pay Eric Q. Evangelista the amounts of Forty Thousand Pesos (₱40,000.00) for moral damages, Twenty Thousand Pesos (₱20,000.00) for exemplary damages and Twenty-Five Thousand Pesos (₱25,000.00) for temperate damages as well as interest on all these damages assessed at the legal rate of 6% from date of finality of this decision until fully paid.

In Criminal Case No. L-8888, accused-appellant Dang Angeles y Guarin is found guilty beyond reasonable doubt of frustrated murder and is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum. Accused-appellant is ordered to pay Mark Ryan Q. Evangelista the amounts of Forty Thousand Pesos (₱40,000.00) for moral damages, Twenty Thousand Pesos (₱20,000.00) for exemplary damages and Sixty-Eight Thousand Seven Hundred Twelve Pesos (₱68,712.00)

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[44] CA *rollo,* pp. 130-147.

for actual damages as well as interest on all these damages assessed at the legal rate of 6% from date of finality of this decision until fully paid.

SO ORDERED.[45]

The Present Appeal

Appellant now seeks affirmative relief and prays anew for his acquittal. In compliance with Resolution dated June 29, 2016, both appellant[46] and the OSG[47] 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 the verdict of conviction against appellant for murder, frustrated murder, and attempted murder?

Ruling

The appeal utterly lacks merit.

The Court of Appeals sustained the trial court's finding that appellant and his co-accused conspired to slay Abelardo, Eric, and Mark Ryan all surnamed Evangelista.

Conspiracy exists when two (2) or more persons come to an agreement concerning the commission of a felony, and decide to commit it.[48] Proof of express agreement, however, is not always required to be shown.[49]

In ***People of the Philippines v. Jimmy Evasco, et al.,***[50] the Court emphasized the two (2) forms of conspiracy. The first

[45] *Id.* at 145-147.

[46] *Id.* at 35-37.

[47] *Id.* at 28-30.

[48] *People of the Philippines v. Jimmy Evasco, et al.,* G.R. No. 213415, September 26, 2018.

[49] *People of the Philippines v. Jimmy Evasco, et al.,* G.R. No. 213415, September 26, 2018.

[50] G.R. No. 213415, September 26, 2018.

refers to *express conspiracy*. It requires proof of an actual agreement among the co-conspirators to commit the crime. The second pertains to *implied conspiracy*. It exists when two (2) or more persons are shown by their acts to have aimed toward the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, are in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiments. This is proved by the mode and manner the offense was committed, or from the acts of the accused *before, during, and after* the commission of the crime, indubitably pointing to a joint purpose, a concert of action, and a community of interest.

In fine, even without proof of express agreement among the co-accused, conspiracy may still be held to exist among them. We applied this rule in ***Evasco,*** *viz:*

> Jimmy and Ernesto were shown to have acted in conspiracy when they assaulted Wilfredo. Although their agreement concerning the commission of the felony, and their decision to commit it were not established by direct evidence, the records contained clear and firm showing of their having acted in concert to achieve a common design – that of assaulting Wilfredo. **Direct proof of the agreement concerning the commission of a felony, and of the decision to commit it is not always accessible, but that should not be a hindrance to rendering a finding of implied conspiracy.** (Emphasis supplied)

Here, we are in full accord with the relevant findings of the Court of Appeals on the existence of conspiracy among all the victim's attackers, including appellant himself, *viz:*

> x x x The presence of conspiracy in this case may be inferred from the following circumstances where all the accused acted in concert at the time of the commission of the offense, to wit: (1) The accused-appellant together with the other accused arrived at the crime scene at the same time, (2) Accused-appellant alighted from the same tricycle where the other accused rode, (3) Accused-appellant and the other accused successively assaulted the victims – x x x ; and (4) All accused fled from the crime scene immediately after the stabbing incident.[51]
> x x x

[51] CA *rollo,* pp. 138-139.

Indeed, the testimonies of the prosecution witnesses unequivocally depict one clear picture: appellant, Baynosa, Ramos, and Santos all acted in a coordinated manner in order to consummate their common desire, *i.e.* slay the Evangelista brothers. While there was no express agreement between appellant and his co-accused, their concerted actions indicate that they did conspire with each other for the fulfillment of such common purpose.[52]

Having established conspiracy between appellant and his co-accused, the next question is this: what crime or crimes did appellant commit in connection with the death of Abelardo and the injuries inflicted on Eric and Mark Ryan?

Criminal Case No. L-8886
Murder

Article 248 of the Revised Penal Code (RPC), as amended by Republic Act No. 7659 (RA 7659)[53] 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) that a person was killed; (2) that the accused killed him or her; (3) that the

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[52] See *People of the Philippines v. Ronelo Bermudo, et al.*, G.R. No. 225322, July 4, 2018.

[53] 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.

killing was attended by any of the qualifying circumstances mentioned in Article 248; and (4) that the killing is not parricide or infanticide.[54]

There is no question regarding the first and fourth elements. Abelardo died of cardiorespiratory arrest secondary to hypovolemic shock as a result of the multiple stab wounds inflicted on him. The prosecution offered in evidence Abelardo's Death Certificate with Registry No. 2010-135[55] and *Post-Mortem* Examination Report dated April 28, 2010[56] of Gladiola M. Manaois. There is no evidence showing that Abelardo was related by affinity or consanguinity with Angeles, hence, the killing is not parricide or infanticide.

Appellant, however, belies the presence of the second and third elements.

The second element pertains to the identity of the accused as the person who killed the victim. Here, prosecution witnesses Eric and Mark Ryan Evangelista, and Rolando Quinto consistently and positively identified appellant and his companions as the ones who alternately or simultaneously stabbed Abelardo to death, thus:

Eric Evangelista

Q: Thereafter, what transpired next, Mr. Witness?
A: Then, my older brother, Abelardo Evangelista, was also stabbed by Dennis Ramos, Madam.

Q: And what portion of his body was stabbed by accused Dennis Ramos was hit (sic)?
A: He was hit on (the) left side of his abdomen, Madam.

Q: What was the weapon used by Dennis Ramos in stabbing your brother, Abelardo Evangelista, on the left stomach of his body?
A: A knife, Madam.

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[54] *People of the Philippines v. Charlie Flores, et al.*, G.R. No. 228886, August 8, 2018.

[55] Record (Criminal Case No. L-8886), p. 22.

[56] Record (Criminal Case No. L-8886), p. 17.

Q: And after he was stabbed, what happened next, Mr. Witness?
A: Then, James Santos helped each other in stabbing my brother wherein Dennis Ramos again stabbed my older brother, Abelardo Evangelista, on the right side of his stomach, Madam.[57]

x x x x x x x x x

COURT
Q: Who stabbed your brother, Abelardo Evangelista first?

WITNESS
A: Dennis Ramos, sir.

Q: And he (was) hit on what part?
A: Left side of his stomach, sir.

Q: And then you said the other accused helped each other in attacking your brother, Abelardo?
A: Yes, sir.

Q: Did you see if aside from Dennis Ramos the other accused also stabbed your brother?
A: Yes, sir.

Q: Who was the second person who stabbed your brother, Abelardo Evangelista, if you know?
A: James (Santos), alias "Chita", sir.

Q: What did he use in stabbing your brother?
A: A knife, sir.

Q: What part of the body of your brother Abelardo Evangelista, was hit by James Santos?
A: On his right abdomen, sir.[58]

x x x x x x x x x

Q: So, after James Santos, alias "Chita" stabbed your brother, Abelardo Evangelista, on the right abdomen, who was the next one who stabbed your brother, Mr. Witness?

WITNESS:
A: Dang Angeles, Madam.

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[57] TSN, August 16, 2010, pp. 13-14.

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

Q: And what portion of the body of your brother was hit by accused Dang Angeles?
A: On his left chest, Madam.

Q: And what was the weapon used by accused Dang Angeles when he stabbed your brother on his left chest?
A: He used icepick, Madam.

Q: Can you tell us, if you know, how long that icepick which was used by Dang Angeles when he stabbed your brother?
A: One (1) foot long, Madam.

Q: And at that time after sustaining three (3) fatal wound(s), Mr. Witness, can you tell us the relative condition of your brother?
A: He turned weak, Madam.

Q: But he was still standing?
A: Yes, Madam.

Q: So, after Dang Angeles stabbed him, what transpired next, Mr. Witness?
A: Then, Sonny Baynosa followed in stabbing my brother, Madam.

Q: And what portion was hit by Sonny Baynosa, alias "Jong"?
A: On his right chest, Madam.

Q: And what weapon was used by accused Sonny Baynosa, alias "Jong" when he stabbed your brother on his right chest x x x
A: Icepick about a foot long, Madam, of the same size.

Q: And after he was stabbed by accused Sonny Baynosa, alias "Jong", what happened to your brother, Abelardo Evangelista, Mr. Witness?
A: Then, he died, Madam.[59]

x x x x x x x x x

Mark Ryan Evangelista

Q: When you fell down, what transpired next, Mr. Witness?
A: Then my older brother Abelardo came to us.[60]

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

[60] TSN, August 31, 2010, p. 7.

x x x x x x x x x

Q: What happened Mr. Witness, when your brother who is the victim in this case Abelardo Evangelista went out to see likewise what was happening to you and your other brothers?
A: He was stabbed by Dennis Ramos.[61]

x x x x x x x x x

Q: What happened to your brother Abelardo after he was stabbed by Dennis x x x?
A: He was also stabbed by James Santos.[62]

x x x x x x x x x

Q: So, after he was hit for the second time by accused James Santos, what happened to your brother, Mr. Witness?
A: Then Dang Angeles stabbed my brother again on the left chest x x x[63]

x x x x x x x x x

Q: So after he was hit with an icepick by accused Dang Angeles which you said to the Court, he was hit on his left chest, what happened to your brother?
A: Then Sonny Baynosa stabbed my brother Abelardo with an icepick on his right chest.[64]

x x x x x x x x x

Rolando Quinto

Q: Mr. witness, after victim Mark Ryan Evangelista had fallen likewise (in) the ground due to stab wound he sustained from accused James Santos, what happened next?
A: Then Abelardo also arrived, ma'am.

Q: This Abelardo that you are referring to is the victim in this case?
A: Yes, ma'am.

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[61] *Id.*

[62] TSN, August 31, 2010, p. 9.

[63] *Id.*

[64] *Id.* at 10.

Q: What happened when Abelardo arrived?
A: Dennis suddenly stabbed him on his stomach, ma'am.

Q: What happened to Abelardo when he was stabbed by Dennis?
A: He was stabbed by James and then they helped each other in stabbing him, ma'am.

Q: You said that Abelardo was stabbed by Dennis and James, can you tell us the names of those persons who also stabbed Abelardo aside from Dennis and James?
A: Dang Angeles and Sonny Baynosa alias Jhong also stabbed him, ma'am.[65]

x x x x x x x x x

Q: So who followed James, was it Dang Angeles or Sonny Baynosa?
A: Dang Angeles followed James in stabbing Abelardo, ma'am.[66]

x x x x x x x x x

Q: After Dang Angeles hit Abelardo on his left chest, he was followed by Sonny Baynosa?
A: Yes, ma'am.[67]

x x x x x x x x x

Q: So that, (sic) after the victim in this case sustained at least four (4) stab wounds inflicted by the accused one after the other using their respective weapons, can you tell this Honorable Court what transpired next?

A: He fell on the ground when Dennis stabbed him again on his back, ma'am.[68]

x x x x x x x x x

The trial court found that the prosecution witnesses' testimonies were categorical, straightforward, and spontaneous. They were also consistent on material points, particularly on

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[65] TSN, September 15, 2010, pp. 10-11.

[66] *Id.* at 12.

[67] *Id.*

[68] *Id.* at 13.

the manner and the locus criminis where appellant and his co-accused stabbed the Evangelista brothers.[69]

Indeed, when the credibility of the eyewitness is at issue, due deference and respect shall be given to the findings of the trial court, its calibration of the testimonies, its assessment of the probative weight thereof, and its conclusions anchored on said findings, absent any showing that it had overlooked circumstances that would have affected the final outcome of the case. The foregoing rule finds an even more stringent application where the findings of the trial court are sustained by the Court of Appeals,[70] as in this case. In ***People of the Philippines v. Jeffrey Collamat, et al.***[71] this Court ordained:

> 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 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 degree 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

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[69] CA *rollo*, p. 84.

[70] *People of the Philippines v. Marcial D. Pulgo*, 813 Phil. 205, 211-212 (2017).

[71] G.R. No. 218200, August 15, 2018.

> '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)
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> x x x x x x x x x

So must it be.

Appellant, nonetheless, asserts that the testimonies of the prosecution witnesses were *incredible, illogical, and grossly inconsistent with human experience.* He harps on the failure of the Evangelista brothers to seek help from relatives and guests who were also in their house that night.

The argument fails to persuade.

In a long line of cases, this Court has recognized that different persons react differently to the same situations for there is no hard and fast standard by which to measure a person's behavior or reaction when confronted with a startling or horrifying occurrence, as in this case. Some may shout for help, some may be hysterical, some fight back, and others may simply freeze and take the blows mutely. ***People of the Philippines v. Golem Sota***[72] is apropos:

> x x x x x x x x x
>
> Noteworthy, in *People v. Banez,* the Court ruled that it is not at all uncommon or unnatural for a witness who, as in this case, having seen the killing of a person, did not even move, help, or run away from the crime scene, but simply chose to stay and continue plowing. It explained its ruling as follows:
>
> **It is settled that 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. Witnesses of startling occurrences react**

[72] G.R. No. 203121, November 29, 2017, 847 SCRA 113, 132.

> **differently depending upon their situation and state of mind, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.** The workings of the human mind placed under emotional stress are unpredictable, and people react differently to shocking stimulus - some may shout, some may faint, and others may be plunged into insensibility. (Emphasis supplied)
>
> x x x x x x x x x

Appellant further attacks the credibility of the prosecution witnesses, alleging they are relatives of the victims.

To begin with, relationship *per se* does not equate to bias or ulterior motive nor automatically tarnish the testimony of a witness.[73] On the contrary, a witness who is related to the victim is naturally interested in securing the conviction of the guilty and definitely not the innocent or just any or some "fall guy." Otherwise, the real culprits would gain immunity.[74]

In any case, against the prosecution witnesses' positive and categorical testimonies, appellant only invokes denial. It bears stress that denial, if not substantiated by clear and convincing evidence, as in this case, is a negative and self-serving defense. It carries scant, if not nil, evidentiary value. It cannot prevail over the consistent and categorical declarations of credible witnesses on affirmative matters.[75]

Appellant next points to Ramos, Baynosa, and Santos as the persons who actually stabbed the Evangelista brothers.

We are not convinced.

Appellant never before the investigating prosecutor imputed exclusive criminal liability on Ramos, Baynosa, and Santos. Appellant did not even file his counter-affidavit during the preliminary investigation.[76] It could have been his chance to

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[73] *Romeo Ilisan v. People of the Philippines*, 649 Phil. 151, 160 (2010).

[74] *Supra* note 72, at 133.

[75] *People of the Philippines v. Alberto Petalino*, G.R. No. 213222, September 24, 2018.

[76] TSN, November 3, 2010, p. 22.

implicate the real culprits and consequently be freed of any liability for the crime he later claimed not to have committed. But he did not.

In any event, We refer back to appellant's liability as co-conspirator in the murder of Abelardo. Although he and his co-accused each had their respective designated roles to perform, no one is excused from the consequent liability arising from the acts of his co-conspirator. In conspiracy, the act of one is the act of all.

In the alternative, appellant prays that his conviction for murder be reduced to homicide. He insists that treachery did not attend the killing since the Evangelista brothers were already "obviously forewarned" of the impending danger to their lives when they confronted him and his alleged companions,[77] aside from the fact that the Evangelista brothers knew full well of his notorious reputation in the community.

Treachery means the offender directly employs means, methods, or forms for the purpose of ensuring the execution of the crime without risk to the offender arising from the defense which the offended party might make. The essence of treachery lies on the deliberate, swift, and unexpected attack on the hapless, unarmed, and unsuspecting victim, leaving the latter no chance to resist or escape.[78]

Here, when Abelardo came out of their house and approached his brothers, he already knew that appellant and his companions had violently attacked his brothers. Thus, Abelardo was already aware of the danger appellant posed in his person. It cannot be said, therefore, that the attack made against him was "unexpected." In sum, Aberlardo was not an "*unsuspecting victim.*'" Consequently, treachery cannot be appreciated as a qualifying circumstance in Abelardo's killing.

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[77] CA *rollo*, p. 73.

[78] *People of the Philippines v. Roger Racal*, G.R. No. 224886, September 4, 2017, 838 SCRA 476, 489.

The Court, nonetheless, holds that Abelardo's killing was attended by abuse of superior strength.

This qualifying circumstance is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime.[79]

In ***People v. Casillar,***[80] the Court appreciated the qualifying circumstance of abuse of superior strength when four (4) armed assailants attacked the unarmed victim, as in this case. Too, in ***People v. Garcia,***[81] the Court held that where four (4) persons attacked the unarmed victim but treachery was not proven, the fact that there were four (4) assailants constitutes abuse of superiority. So must it be.

Criminal Case No. L-8887 for Attempted Murder and Criminal Case No. L-8888 for Frustrated Murder

In these cases, appellant similarly argue that none of the qualifying circumstances of treachery or abuse of superior strength is present because the Evangelista brothers knew of his notorious reputation in their community.

We do not agree.

In *People of the Philippines v. Marcial D. Pulgo,*[82] the Court pronounced that treachery may still be appreciated even when the victim was forewarned of the danger to his person. *What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.*

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[79] *People of the Philippines v. Cezar Cortez, et al.,* G.R. No. 239137, December 5, 2018.

[80] See 141 Phil. 43, 50 (1969).

[81] 182 Phil. 398, 411 (1979).

[82] *Supra* note 70, at 217.

Here, even assuming the Evangelista brothers knew of appellant's reputation as a troublemaker, there was no showing that they were in fact aware of had otherwise the faintest idea that on the night in question, appellant and his companions would launch a deadly attack on them.

Records show that when the Evangelista brothers saw appellant and his companions, they were just seated inside the tricycle. Then the Evangelista brothers approached appellant and his companions to ask them to tone down the noise coming from their tricyle because they had a party going on. Under these circumstances, no one would have suspected that appellant and his companions would aggressively react the way they did. Appellant was the first to launch his deadly, swift, unexpected, and sudden attack on Elmer, then Baynosa and Santos joined in stabbing Eric and Mark Ryan, respectively. As in ***Pulgo,*** the victims in these cases were both unarmed, making them more vulnerable from the sudden attack of appellant and his group.

We agree with the relevant disquisitions of the Court of Appeals, *viz*:

x x x x x x x x x

In the instant case, it is evident that the attack in the victim made by accused-appellant and by the other accused was sudden and deliberate. The attack was unexpected on the part of the unarmed victims considering that they were in their house celebrating the forthcoming wedding of their sister. The attack was executed in a manner that the victims were renderd defenseless and unable to retaliate. The severity of the wounds forestalled any possibility of resisting attack. Without doubt, accused-appellant and his co-accused took advantage of the situation. The acts of accused-appellant and his co-accused were clear indications that they employed means and methods which tended directly and specifically to ensure the successful execution of the offense.[83]

x x x x x x x x x

[83] CA *rollo,* pp. 137-138.

In sum, the presence of treachery as a qualifying circumstance in these cases is indubitable.

In murder or homicide, the offender must have the intent to kill. If he or she did not have such intent, he or she is liable only for physical injuries.[84]

In ***Gary Fantastico, et al. v. People of the Philippines, et al.,***[85] the Court considered the following determinants of intent to kill: (1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, at the time, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused. The Court also considered the words uttered by the offender at the time he inflicted injuries on the victim as an additional determinative factor.

We now turn to the different stages of felony: consummated, frustrated, and attempted, as enumerated and defined under Article 6 of the Revised Penal Code, *viz*:

> Art. 6. *Consummated, frustrated, and attempted felonies.* — Consummated felonies as well as those which are frustrated and attempted, are punishable.
>
> A felony is consummated when all the elements necessary for its execution and accomplishment are present; and **it is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.**
>
> There is an **attempt when the offender commences the commission of a felony directly or over acts, and does not perform all the acts of execution** which should produce the felony by reason of some cause or accident other than this own spontaneous desistance. (Emphasis supplied)

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[84] See *Miguel Cirera y Ustelo v. People of the Philippines*, 739 Phil. 25, 39 (2014).

[85] 750 Phil. 120, 132-133 (2015), citing *Rivera v. People*, 515 Phil. 824, 833 (2006).

How does Article 6 insofar as the frustrated and attempted stages apply to Criminal Case Nos. L-8887 and L-8888?

Criminal Case No. L-8887
Eric Evangelista

Eric sustained a single stab wound in the back portion of his right shoulder. Dr. Fernandez testified that the wound was not fatal and with proper medication, the same would heal in seven (7) to ten (10) days, thus:

x x x x x x x x x

Q: Doctor, in connection with Criminal Case No. L-8887 – Eric Evangelista, can you tell us if there was a time (that) you treated him?

A: Yes, I did attend (to) this patient. I admitted him on April 28, 2010 and discharged him the following day, April 29, 2010.

Q: Can you tell us the x x x physical condition of the patient, if you can recall?

A: x x x during the time I attended to this patient he sustained a stab wound at the right scapular area x x x (Witness pointing to the right back in this area scapular bone at the right).[86]

x x x x x x x x x

Q: Aside from this stab wound, did you find any injury from the body of the victim Eric Evangelista?

A: No more.

Q: Can you tell the Honorable Court what would be the possible effect the cause in connection (with) this injury if it bot be (sic) treated immediately x x x?

A: I think you are referring to whether the wound is fatal? Before I answer that all wound(s) no matter (how) superficial is fatal if you will not seek medical attendance. You might develop tetanus or because the wound was attended properly and medical attendance that wound is none (sic) fatal. We remove that factor about possible infection.

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[86] TSN, February 9, 2011, p. 5.

COURT:
Q: What if factor not considered, will you consider?

WITNESS:
A: It is not fatal.

PROSECUTOR PORLUCAS:
Q: As a follow up doctor, you stated this is stab wound, the injury of victim Eric Evangelista is not fatal. Can you tell the Honorable Court likewise the complication that may set in if no medical attendance and can you tell this is not fatal will heal of (sic) its own?

WITNESS:
A: Yes.

Q: And can you tell this Honorable Court without any adequate medical attendance, how many days will it heal?

A: Ten (10) days because of the possible infection.[87]

x x x x x x x x x

If one inflicts physical injuries on another but the latter survives, the crime committed is either consummated physical injuries, if the offender had no intention to kill the victim, or frustrated or attempted homicide or frustrated murder or attempted murder if the offender intends to kill the victim. Intent to kill may be proved by evidence of: (a) motive; (b) the nature or number of weapons used in the commission of the crime; (c) the nature and number of wounds inflicted on the victim; (d) the manner the crime was committed; (e) the words uttered by the offender at the time the injuries are inflicted by him on the victim;[88] and (f) the circumstances under which the crime was committed.[89]

Here, the attendant circumstances showed that appellant and his companions intended to kill Eric and his brothers Elmer,

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[87] TSN, February 9, 2011, pp. 6-7.

[88] *People of the Philippines v. Ireneo Jugueta*, 783 Phil. 806, 820 (2016).

[89] *Gary Fantastico, et al. v. People of the Philippines, et al., supra* note 85, at 833.

Abelardo, and Mark Ryan. The three (3) victims sustained multiple fatal stab wounds. As a result, Elmer and Abelardo died. Mark Ryan was spared due to the timely and proper medical attendance given him; and Eric was also spared because he sustained a non-fatal wound. But this does not dissolve appellant's liability for attempted murder.

In ***Rivera, et al. v. People,***[90] the Court convicted appellants therein of frustrated murder although the wounds sustained by the victim were not fatal, *viz*:

> That the head wounds sustained by the victim were merely superficial and could not have produced his death does not negate petitioners' criminal liability for attempted murder. Even if Edgardo did not hit the victim squarely on the head, petitioners are still criminally liable for attempted murder.
>
> x x x x x x x x x
>
> The first requisite of an attempted felony consists of two elements, namely:
>
> (1) That there be external acts;
>
> (2) Such external acts have direct connection with the crime intended to be committed.
>
> The Court in *People v. Lizada* elaborated on the concept of an overt or external act, thus:
>
> > An overt or external act is defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. The *raison d'etre* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared

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[90] *Esmeraldo Rivera, et al. v. People of the Philippines,* 515 Phil. 824, 833-834 (2006), citing *People of the Philippines v. Freddie Lizada,* 444 Phil. 67, 98-99 (2003).

> intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is. It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the "first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made." The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of Viada, the overt acts must have an immediate and necessary relation to the offense.

In the case at bar, petitioners, who acted in concert, commenced the felony of murder by mauling the victim and hitting him three times with a hollow block; they narrowly missed hitting the middle portion of his head. If Edgardo had done so, Ruben would surely have died.

As stated, the attendant circumstances here clearly show that appellant and his companions did intend to kill the Evangelista brothers. They were able to deal multiple fatal blows on at least three (3) of the brothers; but as for Eric, they did not spare him. He was also stabbed by Baynosa. It just so happened they missed to hit him on a vital part like what they did to Eric's three (3) brothers.

Criminal Case No. L-8888
Mark Ryan

As for Mark Ryan Evangelista, Dr. Fernandez testified that the victim's injury was fatal and could have led to Mark Ryan's death were it not for the timely medical attention given him, thus:

x x x x x x x x x

PROSECUTOR PORCULAS:

Q: Likewise, doctor, the private complainant is Mark Ryan Q. Evangelista. Can you tell the Court if you remember treat(ing) this victim on April 28, 2010?

WITNESS:

A: Yes. I admit(ted) the patient and was discharged (in) May 7, 2010.

Q: Can you tell us likewise the physical condition of the victim at the time of the admition (sic)?

A: At the time of the admition (sic) of the patient and after a few hours the condition of the patient worsen and I have to schedule the operation.

Q: Can you tell us what were the injury or injuries sustained as you noticed to the patient when you admit(ted) him?

A: There was (a) stab wound at the right lower back, in this area. "Witness pointing to his lower back.

Q: And aside from that, what else did you do?

A: I think the main injury of this patient.

Q: So, that is the main injury. You mean it is fatal injury, doctor?

A: Yes, (it) is fatal.

Q: What did you do when you immediately noticed his fatal injury, doctor?

A: This patient was admitted to the ICU at 1:30 in the morning and then, at about 1:10 in the (afternoon) about twelve (12) hours as admitted in the ICU I noticed that there is something wrong, so, I scheduled immediately operation.

Q: Few hours, thereafter, from admission this patient's operation was done upon his person?

A: Yes.

Q: What was the result of your operation?

A: When I open the entire abdomen was filled of clotted (sic) blood meaning none clotting component in the entire abdomen and the reason for that was, the liver was injured. There was stab wound.[91]

x x x x x x x x x

Q: Aside from qualification of the injury as fatal in nature, can you tell us if you can approximately or probable time that the victim will sustain his life any probable adequate medical attendance?

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[91] TSN, February 9, 2011, pp. 8-10.

A: The patient may die on the same depending (on) the rate of the bleeding or fast bleeding the patient might live about 1 to 3 days depending on the rate of the blood lost inside.[92]

x x x x x x x x x

Killing becomes frustrated when the offender performs all the acts of execution which could have produced the crime but did not produce it for reasons independent of his or her will.[93] ***People v. Lababo***[94] is apropros:

As for BBB's case, We agree with the RTC and CA's factual finding that the eight gunshot wounds sustained by BBB, as contained in the *Medico-Legal Certificate*, would have caused his death if he was not given timely medical attention. Furthermore, it does not appear that BBB was armed or was in a position to deflect the attack. As a matter of fact, based on CCC's narration of the events that transpired, the suddenness of the attack upon AAA and BBB cannot be denied. Only that, unlike AAA, BBB survived.

The act of killing becomes frustrated when an offender performs all the acts of execution which could produce the crime but did not produce it for reasons independent of his or her will.

Here, taking into consideration the fact that BBB was shot eight times with the use of a firearm and that AAA, who was with him at that time, was killed, convinces Us that the malefactor intended to take EBB's life as well. However, unlike in AAA's case, BBB survived. It was also established that he survived not because the wounds were not fatal, but because timely medical attention was rendered to him. Definitely, EBB's survival was independent of the perpetrator's will. As such, this Court is convinced that the attack upon BBB qualifies as frustrated murder.

All told, the trial court and Court of Appeals both did not err in finding appellant guilty of murder for the death of Abelardo;

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[92] *Id.* at 10.

[93] *Miguel Cirera y Ustelo v. People of the Philippines, supra* note 84, at 40.

[94] *People of the Philippines v. Benito Lababo,* G.R. No. 234651, June 6, 2018.

attempted murder for the injury sustained by Eric; and frustrated murder for the injury sustained by Mark Ryan.

Penalties

Criminal Case No. L-8886
Murder

Article 248 of the Revised Penal Code, as amended by RA 7659, states:

> 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

Applying Article 63(2) of the Revised Penal Code[95] here the lesser of the two (2) indivisible penalties, *i.e., reclusion perpetua* shall be imposed provided there is no mitigating or aggravating circumstance that attended the killing, as in this case. Hence, the Court of Appeals correctly sentenced appellant to *reclusion perpetua.*

Going now to appellant's civil liabilities, ***People of the Philippines v. Esmael Gervero, et al.***[96] ruled:

> x x x x x x x x x

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,

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[95] Art. 63. *Rules for the application of indivisible penalties.* — 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.

[96] G.R. No. 206725, July 11, 2018.

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.

x x x x x x x x x

The Court of Appeals, therefore, correctly awarded Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity to the heirs of Abelardo Evangelista.

On the award of actual damages, the family of Abelardo Evangelista presented receipts in the amount of Forty Thousand Six Hundred and Fifty Pesos (₱40,650.00) for coffin, funeral mass, and blessing.[97] Although they claimed to have also spent Forty Thousand Pesos (₱40,000.00) for the wake, they failed to present receipts for the alleged expense. Hence, the actual damages proven is only Forty Thousand Six Hundred Fifty Pesos (₱40,650.00).

But, as pronounced in ***Gervero*** and ***People v. Jugueta,***[98] *"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."* Considering that the receipts presented by Abelardo's heirs did not exceed Fifty Thousand Pesos (₱50,000.00), they shall, in lieu of actual damages, be granted Fifty Thousand Pesos (₱50,000.00) temperate damages in order to avoid the situation where those who did not present any receipt at all would get more that those who claimed for more than Fifty Thousand Pesos (₱50,000.00) but failed to present receipts for the excess of that amount. Verily, the heirs of Abelardo Evangelista are entitled to Fifty Thousand Pesos (₱50,000.00) as temperate damages, in lieu of actual damages.

As for moral and exemplary damages, the same must be increased to Seventy-Five Thousand Pesos (₱75,000.00) each in accordance with ***Gervero*** and ***Jugueta.***

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[97] Record (Criminal Case No. L-8886), pp. 94-95.

[98] *Supra* note 88, at 846-847.

Criminal Case No. L-8887
Attempted Murder

Article 51 of the Revised Penal Code states:

> Art. 51. *Penalty to be imposed upon principals of attempted crimes.* — A penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony.

Under the indeterminate sentence law, the maximum of the sentence shall be that which could be properly imposed in view of the attending circumstances, and the minimum shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code. Absent any mitigating or aggravating circumstance, the minimum term should be within the range of *prision correccional*, which has a duration of six (6) months and one (1) day to six (6) years, and the maximum term should be within the range of *prision mayor* in its medium term, which has a duration of eight (8) years and one (1) day to ten (10) years.[99]

The trial court and Court of Appeals, therefore, correctly sentenced appellant to two (2) years, four (4) months, and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

As for civil liabilities, ***Jugueta*** decreed:

> I. For those crimes like, Murder, Parricide, Serious Intentional Mutilation, Infanticide, and other crimes involving death of a victim where the penalty consists of indivisible penalties:
>
> x x x x x x x x x
>
> 2.2 Where the crime committed was not consummated:
>
> b. Attempted:
>
> i. Civil indemnity – ₱25,000.00
> ii. Moral damages – ₱25,000.00
> iii. Exemplary damages – ₱25,000.00

[99] *Gary Fantastico, et al. v. People of the Philippines, et al.*, 750 Phil. 120, 139-140 (2015).

The award of moral damages here should be reduced from Forty Thousand Pesos (₱40,000.00) to Twenty-Five Thousand Pesos (₱25,000.00). The award of exemplary damages, however, is increased from Twenty Thousand Pesos (₱20,000.00) to Twenty-Five Thousand Pesos (₱25,000.00). Appellant is also liable to pay Twenty-Five Thousand Pesos (₱25,000.00) as civil indemnity.

As for actual damages, the parties stipulated on the receipts[100] as proof of the expenses incurred by Eric Evangelista for the treatment of the wounds he sustained.[101]

In its Decision dated March 13, 2015, the Court of Appeals, nonetheless, awarded Twenty-Five Thousand Pesos (₱25,000.00) and not just the full claim of Seven Thousand and Thirty-Two Pesos (₱7,032.00) by Eric Evangelista. The Court of Appeals reasoned:

> When actual damages proven by receipts during the trial amount to less than ₱25,000.00, the award of temperate damages for ₱25,000.00 is justified in lieu of actual damages of a lesser amount. Conversely, if the amount of actual damages proven exceeds ₱25,000.00 then temperate damages may no longer be awarded; actual damages base on the receipts presented during trial should instead be granted.
>
> x x x x x x x x x
>
> In the case of Eric Evangelista, the actual damages proven during the trial amount to less than ₱25,000.00. Only medical expenses amounting to ₱7,032.00 were duly supported by receipts. Thus, the award of temperate damages of ₱25,000.00 in lieu of ₱7,032.00 as actual damages is justified.[102]

We clarify.

In ***People v. Villanueva,***[103] the victim's heirs claimed Six Hundred Thousand Pesos (₱600,000.00) as actual and total

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[100] Exhibits "M" to "M-7"; Record (Criminal Case No. L-8886), pp. 162-168.

[101] Record (Criminal Case No. L-8886), p. 155.

[102] CA *rollo*, pp. 143-144.

[103] 456 Phil. 14, 28 (2003).

expenses. But they were only able to present receipts up to Thirteen Thousand and One Hundred Pesos (₱13,100.00). The Court then, adopted the pronouncement in ***People v. Albrazado***[104] where the Court granted temperate damages, in lieu of actual damages, in the amount of Twenty Five Thousand Pesos (₱25,000.00). The Court said in ***Albrazado*** that it "*would be unfair for the victim's heirs to get nothing, despite the death of their kin, for the reason alone that they cannot produce any receipts*."

Thus, in ***Villanueva,*** the Court said that it would be *"unfair"* for Villanueva's heirs to be awarded with only Thirteen Thousand One Hundred Pesos (₱13,100.00) "*because the victim's heirs who tried but succeeded in proving actual damages to the extent of ₱13,100 only, would be in a worse situation than, say, those who might have presented no receipts at all but would now be entitled to ₱25,000 temperate damages."* The Court ruled that *"when actual damages proven by receipts during the trial amount to less than ₱25,000, as in this case, the award of temperate damages for ₱25,000 is justified in lieu of actual damages of a lesser amount. Conversely, if the amount of actual damages proven exceeds ₱25,000, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted"*

Here, Eric's full claim was only Seven Thousand and Thirty-Two Pesos (₱7,032.00). No more, no less. For it was the only amount he spent for his treatment. Why then should he be given Twenty-Five Thousand Pesos (₱25,000.00)? It would certainly be unjust for appellant to be compelled to pay more than what Eric actually claimed to have spent for his treatment, *i.e.* Seven Thousand and Thirty-Two Pesos (₱7,032.00), exactly the amount covered by the receipts the People offered as Exhibits "M" to "M-7."

It is, therefore, incorrect for the Court to award more than the amount Eric Evangelista actually incurred for his treatment,

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[104] 445 Phil. 109, 126 (2003).

let alone, beyond what Eric Evangelista himself claimed to have actually spent.

Criminal Case No. L-8888
Frustrated Murder

Article 50 of the Revised Penal Code provides:

> Art. 50. *Penalty to be imposed upon principals of a frustrated crime.* — The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principal in a frustrated felony.

In the absence of any modifying circumstances, the imposable penalty for frustrated murder is *reclusion temporal* in its medium period. Applying the indeterminate sentence law, appellant was correctly 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.

As for civil liabilities, ***Jugueta*** decreed:

> II. For those crimes like, Murder, Parricide, Serious Intentional Mutilation, Infanticide, and other crimes involving death of a victim where the penalty consists of indivisible penalties:
>
> x x x x x x x x x
>
> 2.2 Where the crime committed was not consummated:
>
> a. Frustrated:
>
> i. Civil indemnity – ₱50,000.00
> ii. Moral damages – P50,000.00
> iii. Exemplary damages – ₱50,000.00

In sum, the awards of moral and exemplary damages are increased to Fifty Thousand Pesos (₱50,000.00) each. Appellant is also ordered to pay Fifty Thousand Pesos (₱50,000.00) as civil indemnity.

As for actual damages, both the trial court and Court of Appeals correctly awarded Sixty Eight Thousand Seven Hundred

and Twelve Pesos (₱68,712.00) the same being duly supported by corresponding receipts.[105]

ACCORDINGLY, the appeal is **DENIED.** The Decision dated March 13, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05193 is **AFFIRMED with MODIFICATION.**

In **Criminal Case No. L-8886,** Dang Angeles *y* Guarin is found **GUILTY** of **MURDER** and sentenced to ***reclusion perpetua***. The qualifying circumstance of abuse of superior strength, in lieu of treachery is appreciated against him. He is further ordered to **PAY** the heirs of Abelardo Q. Evangelista the following amounts:

(1) Php50,000.00 as temperate damages
(2) Php75,000.00 as civil indemnity
(3) Php75,000.00 as moral damages; and
(4) Php75,000.00 as exemplary damages

In **Criminal Case No. L-8887,** Dang Angeles *y* Guarin is found **GUILTY** of **ATTEMPTED MURDER** and sentenced to the indeterminate penalty of **two (2) years, four (4) months, and one (1) day of *prision correccional,* as minimum, to eight (8) years and one (1) day of *prision mayor,* as maximum.** He is ordered to **PAY** Eric Q. Evangelista the following amounts:

(1)Php7,032.00 as actual damages
(2)Php25,000.00 as civil indemnity
(3)Php25,000.00 as moral damages; and
(4)Php25,000.00 as exemplary damages

In **Criminal Case No. L-8888,** Dang Angeles *y* Guarin is found **GUILTY** of **FRUSTRATED MURDER** and sentenced to the indeterminate penalty of **eight (8) years of *prision mayor,* as the minimum, to fourteen (14) years, eight months (8) and one (1) day *of reclusion temporal,* as the maximum.** He is ordered to **PAY** Mark Ryan Q. Evangelista the following amounts:

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[105] Exhibits "O" to "O-19"; Record (Criminal Case No. L-8886), pp. 170-186.

(1) Php68,712.00 as actual damages;
(2) Php50,000.00 as civil indemnity;
(3) Php50,000.00 as moral damages; and
(4) Php50,000.00 as exemplary damages

All monetary awards shall earn interest at the legal rate of six percent (6%) *per annum* from the finality of this decision until fully paid.

SO ORDERED.

Caguioa (Acting Chairperson), Reyes, J. Jr., and *Zalameda, JJ.,* concur.

Carpio, S.A.J. (*Chairperson*), on official leave.

SECOND DIVISION

[G.R. No. 225793. August 14, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **XXX,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S ASSESSMENT OF THE WITNESSES' TESTIMONIES AND FINDINGS OF FACT, ESPECIALLY WHEN CONCURRED WITH BY THE COURT OF APPEALS, ARE ACCORDED GREAT RESPECT ON APPEAL.— Jurisprudence is replete with cases where the Court ruled that questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of witnesses' deportment on the stand while testifying, which is denied the appellate courts. The trial judge has the advantage of actually examining both real and testimonial evidence including

the demeanor of the witnesses. Hence, the judge's assessment of the witnesses' testimonies and findings of fact are accorded great respect on appeal. In the absence of any substantial reason to justify the reversal of the trial court's assessment and conclusion, as when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings. The rule is even more stringently applied if the appellate court has concurred with the trial court. In this case, we find no cogent reason to deviate from the findings and conclusion of the RTC, as affirmed by the CA, especially with regard to the credibility of AAA's testimony.

2. **CRIMINAL LAW; QUALIFIED RAPE; ELEMENTS.—** The RTC, as affirmed by the CA, correctly ruled that the elements of qualified rape through force, threat and intimidation were clearly established in this case, to wit: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under 18 years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.

3. **ID.; RAPE; SLIGHTEST PENETRATION OF THE LABIA OF THE FEMALE VICTIM'S GENITALIA CONSUMMATES THE CRIME OF RAPE; FULL PENILE PENETRATION THAT CAUSES HYMENAL LACERATION IS NOT NECESSARY FOR THE PROSECUTION OF RAPE TO PROSPER; CASE AT BAR.—** As correctly held by the courts *a quo*, the slightest penetration of the labia of the female victim's genitalia consummates the crime of rape. Full penile penetration that causes hymenal laceration is not necessary for the prosecution of rape to prosper. x x x At any rate, as elucidated by this Court in a number of cases, medical findings suggest that it is possible for the victim's hymen to remain intact despite repeated sexual intercourse. Hence, this Court has, in several cases, affirmed the conviction of the accused for rape despite the absence of laceration in the victim's hymen. In any case, this Court has previously stated that a medical examination and a medical certificate, albeit corroborative of the commission of rape, are not indispensable to a successful prosecution for rape. It is settled that the absence of physical injuries or fresh lacerations does not negate rape, and although medical results may not

indicate physical abuse or hymenal lacerations, rape can still be established since medical findings or proof of injuries are not among the essential elements in the prosecution for rape. In this case, AAA's testimony, found credible by the RTC and the CA, corroborated by the testimony of Dr. Rebueno as an expert witness, are convincing and sufficient proof of the commission of rape. AAA categorically testified in open court that in the four incidents of molestation, the tip of her father's penis touched the opening of her vagina.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY; DENIAL AND ALIBI; INHERENTLY WEAK DEFENSES AND CONSTITUTE SELF-SERVING NEGATIVE EVIDENCE WHICH CANNOT BE ACCORDED GREATER EVIDENTIARY WEIGHT THAN THE DECLARATION OF CREDIBLE WITNESSES WHO TESTIFIED ON AFFIRMATIVE MATTERS.— [T]he Court has held before that uncorroborated denial and alibi are inherently weak defenses and constitute self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testified on affirmative matters.

5. CRIMINAL LAW; QUALIFIED RAPE; CRIME COMMITTED WHEN THE VICTIM IS A MINOR AND THE OFFENDER IS HER FATHER; PENALTY OF *RECLUSION PERPETUA* IN LIEU OF DEATH, PROPER IN CASE AT BAR.— We, however, find it proper to modify the nomenclature used by the trial court in designating the crime from "rape" to "qualified rape" considering that the minority of the victim and her relationship with the accused-appellant were sufficiently alleged in the Informations and proved during trial. As such, the courts *a quo* correctly imposed the penalty of *reclusion perpetua* in lieu of death in accordance with Article 266-B, in relation to Republic Act No. 9346.

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

For our consideration is an Appeal[1] filed by XXX (accused-appellant), assailing the Decision[2] dated September 16, 2015 of the Court of Appeals (CA) in CA-G.R. CR HC No. 06737, which affirmed with modification, only as to the amount of the damages awarded, the Judgment[3] dated March 13, 2014 of the Regional Trial Court (RTC) of Ligao City, Albay in Criminal Case Nos. 6555, 6556, 6557, and 6558, finding accused-appellant guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 266-A and Article 266-B of the Revised Penal Code.

Four separate Informations were filed against accused-appellant, charging him of qualified rape committed against his then 15-year-old daughter on four different occasions as follows:

Criminal Case No. 6555

That on or about 11 o'clock in the morning of January 14, 2012[,] in YYY, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, through force, threats and intimidation with the use of a bolo, did then and there wilfully, unlawfully and feloniously, have carnal knowledge of his biological daughter, AAA, a fifteen (15) year old minor, against her will and without her consent, to her damage and prejudice.

CONTRARY TO LAW.

Criminal Case No. 6556

That on or about 3:00 o'clock in the afternoon of January 14, 2012[,] in YYY, Province of Albay, Philippines and within the jurisdiction

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[1] *Rollo*, pp. 15-16.

[2] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Japar B. Dimaampao and Carmelita Salandanan Manahan, concurring; *id.* at 2-14.

[3] Penned by Judge Ignacio C. Barcillano, Jr.; CA *rollo*, pp. 22-40.

of this Honorable Court, the above-named accused, through force, threats and intimidation with the use of a bolo, did then and there wilfully, unlawfully and feloniously, have carnal knowledge of his biological daughter, AAA, a fifteen (15) year old minor, against her will and without her consent, to her damage and prejudice.

CONTRARY TO LAW.

Criminal Case No. 6557

That on or about 11:00 o'clock in the morning of January 18, 2012[,] in YYY, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, through force, threats and intimidation with the use of a bolo, did then and there wilfully, unlawfully and feloniously, have carnal knowledge of his biological daughter, AAA, a fifteen (15) year old minor, against her will and without her consent, to her damage and prejudice.

CONTRARY TO LAW.

Criminal Case No. 6558

That on or about 3:00 o'clock in the afternoon of January 21, 2012[,] in YYY, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, through force, threats and intimidation with the use of a bolo, did then and there wilfully, unlawfully and feloniously, have carnal knowledge of his biological daughter, AAA, a fifteen (15) year old minor, against her will and without her consent, to her damage and prejudice.

CONTRARY TO LAW.[4]

The prosecution's evidence consists mainly of the testimonies of the victim (AAA)[5] and Dr. Jeremias T. Rebueno (Dr. Rebueno), the medico-legal doctor who conducted physical examination on AAA, AAA's certificate of live birth, and the Medico-Legal Certificate.

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[4] *Id*. at 23.

[5] *The real name of the victim, her personal circumstances and other information which tend to establish or* compromise her identity, as well as those of her immediate family or household members shall not be disclosed to protect her privacy and fictitious initials shall instead be used in accordance with *People v. Cabalquinto*, 533 Phil. 703 (2006) and A.M. No. 04-11-09 SC dated September 19, 2006.

AAA's minority and relationship with the accused-appellant were established and undisputed.[6]

AAA testified that on January 14, 2012, at around 11:00 in the morning, she was at home with accused-appellant and her siblings. Their mother was in the centro of the barangay at that time. Accused-appellant told AAA's siblings to go to the cornfield to pull out weeds. When accused- appellant was finally alone with AAA, he dragged her to the living room, took off her shorts and underwear, went on top of her, and forced his penis into her vagina. AAA tried not to open her thighs as much as possible while crying angrily to prevent her father's penis to get in her vagina but she still felt the pain in there. Accused-appellant threatened AAA with a *bolo* and told her that he will kill her if she shouts. Accused-appellant had a hard time trying to penetrate AAA's vagina but he kept going until he ejaculated. AAA could not do anything but cry because of her father's threat. Accused-appellant threatened AAA that he will kill her and her mother if she tells the latter about the incident.[7]

The next incident happened on the same day around 3:00 in the afternoon as AAA was still alone with accused-appellant. Again, she was dragged into the living room, undressed, and molested in the same manner. She pleaded to her father but he did not stop until he ejaculated. AAA could only cry the whole time as she could not fight back against her father who had a *bolo* with him.[8]

The third incident happened a few days thereafter. On January 18, 2012, at around 11:00 in the morning, accused-appellant again dragged AAA in the living room, removed her clothes, and went on top of her. AAA tried again to close her thighs for her father's penis not to get inside her vagina and pleaded for her father to stop as she still felt the pain in her vagina. Accused-appellant continued until he ejaculated. Like in the previous

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[6] CA *rollo*, p. 24.

[7] *Rollo*, pp. 3-4.

[8] *Id*. at 4.

incident, AAA was not able to do anything but cry as accused-appellant had a *bolo* with him.[9]

On January 21, 2012, at around 3:00 in the afternoon, accused-appellant took advantage of AAA again. Accused-appellant told AAA to go to the house of her grandmother on the mountain to purportedly get sweet potatoes. However, when she arrived thereat, nobody was there. Little did she know that accused-appellant followed her. When she got in the house, accused-appellant came right after her and closed the door behind him. She told her father that they should go back home but he pushed her towards the post. While standing against the post, accused-appellant removed AAA's shorts and underwear. AAA tried to push accused-appellant away but the latter was holding on to the post, pinning her against it. Accused-appellant inserted his penis into AAA's vagina. After ejaculating, accused-appellant put AAA's shorts back on. Thereafter, AAA ran away.[10]

On January 31, 2012, AAA was able to go to her auntie and grandmother and told them her harrowing experiences in the hands of accused-appellant. She was then accompanied to the police station.[11]

The following day, AAA was examined by Dr. Rebueno, who found an intact hymenal membrane, no laceration, no abrasion or hematoma on AAA's body and vaginal canal. Dr. Rebueno, however, testified that such findings and the allegation of rape are not inconsistent from each other because according to the detailed history he got from AAA, an "inter labial sex" occurred between her and accused-appellant on several occasions. He explained that in inter labial sex, the penis is inserted in the vagina but only up to a point where it touches the labia of the vagina without penetrating the vaginal orifice.[12]

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[9] *Id*.

[10] *Id*.

[11] *Id*. at 5.

[12] *Id*.

Full penetration was prevented because the male organ was in between the victim's legs.[13]

The defense, on the other hand, offered the sole testimony of accused-appellant consisting merely of denial and alibi.[14]

On March 13, 2014, the RTC issued a Judgment, finding accused-appellant guilty beyond reasonable doubt of all the charges and thereby imposed the penalty of *reclusion perpetua*, without eligibility of parole with all the accessories provided under the law, and ordered him to pay the victim ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages.[15]

The trial court found AAA's testimony consistent and credible. According to the RTC, force, threat, or intimidation was established through AAA's testimony stating that accused-appellant was holding a *bolo* while molesting her, and that accused-appellant made verbal threats that he will kill her or her mother.[16]

As to the lack of laceration wound in the vagina, the RTC ruled that such fact does not negate sexual intercourse. Citing jurisprudence, the RTC explained that rape is consummated even "by the slightest penetration of the female organ, *i.e.*, [the] touching of either the labia or the pudendum by the penis."[17] From the evidence gathered in this case, the tip of accused-appellant's penis touched the opening of her vagina.[18] This was also consistent with the testimony of Dr. Rebueno.[19] The RTC disposed, thus:

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[13] CA *rollo*, pp. 37-38.

[14] *Rollo*, pp. 5-6.

[15] CA *rollo*, p. 83.

[16] *Id.* at 77.

[17] *Id.* at 78.

[18] *Id.* at 79.

[19] *Id.* at 80.

WHEREFORE, foregoing premises considered, judgment is hereby rendered finding [accused-appellant] XXX GUILTY beyond reasonable doubt in Criminal Case No. 6555; GUILTY beyond reasonable doubt in Criminal Case No. 6556; GUILTY beyond reasonable doubt in Criminal Case No. 6557[;] and also GUILTY beyond reasonable doubt in Criminal Case No. 6558, all of the crime of rape as charged in the respective informations. For each count, [accused-appellant] is sentenced to suffer the penalty of RECLUSION PERPETUA, without eligibility for parole and with all the accessories provided for by law, and to pay the victim Php50,000.00 as civil indemnity *ex delicto*; Php50,000.00 as moral damages and Php25,000.00 as exemplary damages.

Costs against the accused.

SO ORDERED.[20]

In its assailed Decision, the CA affirmed the RTC's finding of conviction with modification only as to the award of damages, thus:

WHEREFORE, in view of the foregoing, the instant appeal is hereby **DENIED**. The assailed Judgment dated March 13, 2014[,] rendered by the Ligao City, Albay Regional Trial Court, Branch 13 in Criminal Case Nos. 6555, 6556, 6557, and 6558[,] is hereby **AFFIRMED** with **MODIFICATIONS** by increasing in each case the award of civil indemnity from [₱]50,000.00 to [₱]150,000.00; moral damages from [₱]50,000.00 to [₱]150,000.00, and exemplary damages from [₱]25,000.00 to [₱]100,000.00 and holding accused XXX liable for interest of 6% *per annum* on the monetary awards reckoned from the finality of this decision until fully paid.

All other aspects of the *fallo* of the assailed Judgment, stand.

SO ORDERED.[21]

Before this Court, accused-appellant merely reiterates his argument regarding the credibility of AAA's testimony. According to him, it was highly improbable for him to have perpetrated the rape in the living room of their family home,

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[20] *Id.* at 83.

[21] *Rollo*, pp. 13-14.

as well as in the house of AAA's grandmother, during daytime without risk of apprehension. Accused-appellant raises again the fact that no laceration or abrasion was found on AAA's body and vagina and argues that such findings indicate the absence of abuse and sexual intercourse.

We find no merit in this appeal.

Jurisprudence is replete with cases where the Court ruled that questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of witnesses' deportment on the stand while testifying, which is denied the appellate courts. The trial judge has the advantage of actually examining both real and testimonial evidence including the demeanor of the witnesses. Hence, the judge's assessment of the witnesses' testimonies and findings of fact are accorded great respect on appeal. In the absence of any substantial reason to justify the reversal of the trial court's assessment and conclusion, as when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings. The rule is even more stringently applied if the appellate court has concurred with the trial court.[22]

In this case, we find no cogent reason to deviate from the findings and conclusion of the RTC, as affirmed by the CA, especially with regard to the credibility of AAA's testimony. The RTC, as affirmed by the CA, correctly ruled that the elements of qualified rape through force, threat and intimidation were clearly established in this case, to wit: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under 18 years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.[23]

Accused-appellant's claim that the situations alleged by AAA were highly improbable for rape to be perpetrated should be

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[22] *People v. Agudo*, 810 Phil. 918, 928 (2017).

[23] *People v. Buclao*, 736 Phil. 325, 336 (2014).

given scant consideration. Jurisprudence instructs us that lust is no respecter of time or place; rape defies constraint of time and space. Rapists are not deterred from committing the odious act of sexual abuse by mere inconvenience or awkwardness of the situation or even by the presence of people or family members nearby. Rape is committed not exclusively in seclusion.[24]

We are neither swayed by accused-appellant's persistent argument that the medical findings negate AAA's allegation of rape considering that there was no laceration or hematoma found in her body and especially in her hymen.

As correctly held by the courts *a quo*, the slightest penetration of the labia of the female victim's genitalia consummates the crime of rape. Full penile penetration that causes hymenal laceration is not necessary for the prosecution of rape to prosper. In the case of *People v. Besmonte*,[25] the Court explained:

> Carnal knowledge, the other essential element in consummated statutory rape, does not require full penile penetration of the female. In *People v. Campuhan*, the Court made clear that the mere touching of the external genitalia by a penis capable of consummating the sexual act is sufficient to constitute carnal knowledge. All that is necessary to reach the consummated stage of rape is for the penis of the accused capable of consummating the sexual act to come into contact with the lips of the pudendum of the victim. This means that the rape is consummated once the penis of the accused capable of consummating the sexual act touches either labia of the pudendum. And *People v. Bali-Balita* instructed that the touching that constitutes rape does not mean mere epidermal contact, or stroking or grazing of organs, or a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the mons pubis, but rather the erect penis touching the labias or sliding into the female genitalia. Consequently, the conclusion that touching the labia majora or the labia minora of the pudendum constitutes consummated rape proceeds from the physical fact that the labias are physically situated beneath the mons pubis or the vaginal surface, such that for the penis to touch either of them is to attain some degree of penetration beneath the surface of the female

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[24] *People v. Agudo*, *supra* note 22.

[25] 735 Phil. 234, 247-248 (2014).

genitalia. It is required, however, that this manner of touching of the labias must be sufficiently and convincingly established. (Citations omitted)

At any rate, as elucidated by this Court in a number of cases, medical findings suggest that it is possible for the victim's hymen to remain intact despite repeated sexual intercourse. Hence, this Court has, in several cases, affirmed the conviction of the accused for rape despite the absence of laceration in the victim's hymen. In any case, this Court has previously stated that a medical examination and a medical certificate, albeit corroborative of the commission of rape, are not indispensable to a successful prosecution for rape. It is settled that the absence of physical injuries or fresh lacerations does not negate rape, and although medical results may not indicate physical abuse or hymenal lacerations, rape can still be established since medical findings or proof of injuries are not among the essentia1 elements in the prosecution for rape.[26]

In this case, AAA's testimony, found credible by the RTC and the CA, corroborated by the testimony of Dr. Rebueno as an expert witness, are convincing and sufficient proof of the commission of rape. AAA categorically testified in open court that in the four incidents of molestation, the tip of her father's penis touched the opening of her vagina. During AAA's cross examination, AAA was asked to demonstrate how the incidents of molestation happened by using counsel's hands to represent her vagina and a pen to represent accused-appellant's penis, thus:

COURT: Let the counsel for the [accused-appellant] propound the question. x x x To the witness...What do you mean when you pointed that pentel pen to the wrists portion of the arms of Fiscal Rebueno, ***are you trying to say that the tip of the male organ of your father touched the opening of your vagina?***

WITNESS (Gemma): ***Yes, Your Honor****.*

ATTY. LOZANO: x x x

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[26] *People v. Lagbo,* 780 Phil. 834, 845-846 (2016).

COURT: ***So, you were not able really to feel a pain since it only touched the outer part of your vagina?***

WITNESS: ***I felt slight pain.***

ATTY. LOZANO: ***Which was painful, was that the legs or what part was painful?***

WITNESS: ***In my vagina, when he was forcing his penis to get inside my vagina.***

ATTY. LOZANO: And how long would your father do that?

WITNESS: Maybe around one (1) minute.

ATTY LOZANO: And what else did he do while he was trying to insert his penis?

WITNESS: Nothing. I told him to stop. I told him "enough" but he said "not yet".

ATTY LOZANO: Where you able to notice that something came out from him from your father?

WITNESS: Yes, sir.

ATTY. LOZANO: And what was that?

WITNESS: The thing that comes out from the penis and then after that he wiped it. (TSN, Oct. 21, 2013, pages, 8-10, emphasis supplied)[27]

This clear and categorical statement from the minor victim, corroborated by the testimony of the expert witness who examined the victim, both found credible by the RTC and the CA, indeed, sufficiently proved that accused-appellant's penis had gone beyond the victim's *mons pubis* and had reached her *labias*, consummating thus, the crime of rape.

We find no reason to deviate from the RTC and CA's ruling to lend credence to the young and immature rural girl's version of what transpired. As we have held, time and again:

x x x [n]o young girl would usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and

[27] CA *rollo*, pp. 79-80.

inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her.[28]

To this Court's mind, "not even the most ungrateful and resentful daughter would push her own father to the wall as the fall guy in any crime unless the accusation against him is true."[29]

On the other hand, the Court has held before that uncorroborated denial and alibi are inherently weak defenses and constitute self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testified on affirmative matters.[30]

We, however, find it proper to modify the nomenclature used by the trial court in designating the crime from "rape" to "qualified rape" considering that the minority of the victim and her relationship with the accused-appellant were sufficiently alleged in the Informations and proved during trial. As such, the courts *a quo* correctly imposed the penalty of *reclusion perpetua* in lieu of death in accordance with Article 266-B, in relation to Republic Act No. 9346.

Pursuant to the Court's ruling in *People v. Jugueta*,[31] we also find it proper to modify the awards of civil indemnity and moral damages from ₱150,000.00 to ₱100,000.00 each, while the increase of the award for exemplary damages from ₱25,000.00 to ₱100,000.00, as well as the imposition of legal interest on all the damages awarded from the date of the finality of this Decision until fully paid shall be sustained.

WHEREFORE, premises considered, the Decision dated September 16, 2015 of the Court of Appeals in CA-G.R. CR

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[28] *People v. Barberan*, 788 Phil. 103, 110 (2016).

[29] *People v. Buclao*, *supra* note 23.

[30] *Id.*

[31] 783 Phil. 806, 848 (2016).

HC No. 06737 is hereby **AFFIRMED with MODICATIONS** as follows: accused-appellant XXX is found guilty beyond reasonable doubt of four (4) counts of **Qualified Rape** in Criminal Cases Nos. 6555, 6556, 6557, and 6558, and is thereby sentenced to suffer the penalty of *reclusion perpetua*, in lieu of death, for each count of qualified rape. Accused-appellant is further **ORDERED** to pay the victim the amounts of **₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages**, and ₱100,000.00 as exemplary damages for each count. All monetary awards shall earn an interest at the rate of six percent (6%) per annum to be computed from the finality of the judgment until fully paid.

SO ORDERED.

Caguioa (*Acting Chairperson*), *Lazaro-Javier*, and *Zalameda, JJ.*, concur.

Carpio, S.A.J. (*Chairperson*), on official leave.

SECOND DIVISION

[G.R. No. 227550. August 14, 2019]

UNIVERSITY OF MANILA, represented by EMILY DE LEON as President, doing business under the name and style BENGUET PINES TOURIST INN, *petitioner, vs.* **JOSEPHINE P. PINERA,[*] YOLANDA A. CALANZA and LEONORA P. SONGALIA,[**]** *respondents.*

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[*] As shown in her Unified Multi-Purpose ID (*rollo*, p. 646), but also referred to as "Josephine P. Piñera" in some parts of the *rollo*.

[**] Also referred to as "Leonora P. Songalla" in some parts of the *rollo*.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; TWIN REQUIREMENTS TO JUSTIFY A VALID DISMISSAL FROM EMPLOYMENT; ENUMERATED.—** Under the Labor Code, there are twin requirements to justify a valid dismissal from employment: (a) the dismissal must be for any of the causes provided in Article 282 of the Labor Code (substantive aspect); and (b) the employee must be given an opportunity to be heard and to defend himself (procedural aspect). The *onus* of proving the validity of dismissal lies with the employer.

2. **ID.; ID.; ID.; BREACH OF TRUST AND CONFIDENCE, AS A GROUND; A DISMISSAL BASED ON WILLFUL BREACH OF TRUST OR LOSS OF TRUST AND CONFIDENCE ENTAILS THE PRESENCE OF TWO CONDITIONS; EXPLAINED.—** A dismissal based on willful breach of trust or loss of trust and confidence entails the presence of two conditions. First. Breach of trust and confidence must be premised on the fact that the employee concerned holds a position of trust and confidence, where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. The essence of the offense for which an employee is penalized is the betrayal of such trust. In the case of *Wesleyan University Phils. v. Reyes*, employees vested with trust and confidence were divided into two classes: (a) the managerial employees; and (b) the fiduciary rank-and-file employees. x x x Second. There must be some basis for the loss of trust and confidence. The employer must present clear and convincing proof of an actual breach of duty committed by the employee by establishing the facts and incidents upon which the loss of confidence in the employee may fairly be made to rest. This means that "the employer must establish the existence of an act justifying the loss of trust and confidence." Otherwise, employees will be left at the mercy of their employers. A more stringent degree of proof is required in terminating fiduciary rank-and-file employees.

3. **ID.; ID.; ID.; PROCEDURAL DUE PROCESS; THERE IS PROCEDURAL DUE PROCESS IN TWO (2) WRITTEN**

NOTICES AND A HEARING OR OPPORTUNITY TO BE HEARD IF REQUESTED BY THE EMPLOYEE BEFORE TERMINATING THE EMPLOYMENT.— There is procedural due process in termination of employment for just cause if the employer gives the employee two written notices and a hearing or opportunity to be heard if requested by the employee before terminating the employment. Specifically, there should be a notice specifying the grounds for which dismissal is sought, a hearing or an opportunity to be heard, and after hearing or opportunity to be heard, a notice of the decision to dismiss.

4. ID.; ID.; ID.; WILLFUL DISOBEDIENCE OR INSUBORDINATION AS GROUNDS; REQUISITES; NOT ESTABLISHED IN CASE AT BAR.— In order for willful disobedience or insubordination to be a valid cause for dismissal, it necessitates the concurrence of at least two requisites, namely: (a) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (b) 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. x x x It is safe then to conclude that the allegation of insubordination on the part of respondents was merely a fabrication made by petitioner to justify respondents' dismissal from employment. It bears stressing that not every case of insubordination or willful disobedience by an employee of a lawful work-related order of the employer or its representative is reasonably penalized with dismissal. There must be reasonable proportionality between, on the one hand, the willful disobedience by the employee and, on the other hand, the penalty imposed therefor. Here, the act of respondents in defying the transfer order is justified because the transfer order itself was issued with grave abuse of discretion. Clearly, there was a notable disparity between the alleged insubordination and the penalty of dismissal meted out by petitioner. The fundamental guarantees of security of tenure and due process dictate that no worker shall be dismissed except for just and authorized cause provided by law and after due process. In the instant case, petitioner was not able to establish the existence of causes justifying the dismissal of respondents and the observance of due process in effecting the dismissal.

5. ID.; ID.; ID.; ILLEGAL DISMISSAL; WHILE IT IS THE PREROGATIVE OF THE MANAGEMENT TO TRANSFER AN EMPLOYEE FROM ONE OFFICE TO ANOTHER WITHIN THE BUSINESS ESTABLISHMENT BASED ON ITS ASSESSMENT AND PERCEPTION OF THE EMPLOYEE'S QUALIFICATIONS, APTITUDES AND COMPETENCE, AND IN ORDER TO ASCERTAIN WHERE HE CAN FUNCTION WITH MAXIMUM BENEFIT TO THE COMPANY IS NOT WITHOUT LIMIT; CASE AT BAR.— While it is the prerogative of the management to transfer an employee from one office to another within the business establishment based on its assessment and perception of the employee's qualifications, aptitudes and competence, and in order to ascertain where he can function with maximum benefit to the company, this prerogative is not without limit. As explained by the Court: The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. x x x After the transfer order, petitioner immediately withheld the respondents' salary, coerced and forcefully evicted them from their living quarters in BPTI, as shown by the photographs, police blotters and certifications. The CA then has strong basis for its conclusion that the transfer was not prompted by legitimate business purpose, but merely a retaliatory move against the respondents — specifically for the alleged anomalous acts committed by them despite not having been proven by competent evidence and for allegedly siding with Atty. Delos Santos. Under such questionable circumstances, respondents had a valid reason to refuse the Manila transfer.

APPEARANCES OF COUNSEL

Clarence J. Villanueva for petitioner.
Tacardon & Partners for respondents.

D E C I S I O N

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

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court from the August 24, 2015 Decision[1] and the October 10, 2016 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 127660, which respectively, reversed and set aside the Decision of the National Labor Relations Commission (NLRC) and denied petitioner's Motion for Reconsideration.

Petitioner University of Manila (petitioner) is an educational institution established by the Delos Santos Family. It is also engaged in the business of operating hotels and restaurants, which include among others, Benguet Pines Tourist Inn (BPTI).

Respondents Yolanda Calanza (Calanza), Josephine Pinera (Pinera) and Leonora P. Songalia (Songalia) were all hired by Atty. Ernesto Delos Santos (Atty. Delos Santos) and his mother Cordelia Delos Santos (Cordelia), to work in BPTI as receptionists and all-around employees, in 1984, 1993 and 1999, respectively. The late spouses Virgilio and Cordelia Delos Santos (spouses Delos Santos) were then the owners of the petitioner University. During the lifetime of the spouses Delos Santos, BPTI was under the management of Atty. Delos Santos. Upon the death of Cordelia, Dr. Emily De Leon (De Leon) became the current University President.

Sometime in December 2010, Calanza, who was then assigned as front desk clerk in BPTI, was verbally informed by the personnel of the petitioner that 25 booklets of unused official receipts (with No. 86251-87500) were allegedly missing. Petitioner insists that Calanza has custody over the booklets

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[1] Penned by Associate Justice Eduardo B. Peralta, with Associate Justices Noel G. Tijam (now a retired Member of the Court) and Francisco P. Acosta, concurring; *rollo*, pp. 24-38.

[2] *Id.* at 49-54.

and was accountable for the loss. Calanza claims that she did not receive any written notice at all requiring her to explain the said missing booklets of official receipts.[3]

On January 19, 2011, petitioner released a letter-memorandum[4] signed by the petitioner's Chairman of the Board and Vice-President for Finance, Dr. Ma. Corazon Ramona Delos Santos (Delos Santos) concerning the reshuffling of BPTI employees allegedly "to avoid anomalies." The letter mentioned about the 25 missing unused booklets of official receipts and for this reason, reshuffling of the employees is necessary and only assigned personnel are allowed to work at BPTI. Respondents were informed about the said letter-memorandum.

On January 31, 2011, Calanza received a letter[5] from Delos Santos of her impending transfer to Manila. Due to her refusal to be transferred to Manila, Calanza was informed through a letter[6] dated March 3, 2011 that by virtue of a Board Resolution, her service was already terminated on the ground of insubordination.

Pinera, on the other hand, received a letter[7] from De Leon on June 15, 2011 requiring her to report for work in the University of Manila within 48 hours from receipt of the letter. Due to Pinera's refusal to be transferred to Manila, petitioner stopped the payment of her salary from June 1-15, 2011. On June 22, 2011, security guards of the BPTI, upon instruction of De Leon went to see Pinera and asked for the keys of their room in BPTI.[8] When she refused, the guards destroyed the door knob of the locked room, stormed in, illegally removed Pinera's personal belongings and dumped them outside the room.[9]

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[3] *Id.* at 142.

[4] *Id.* at 239.

[5] *Id.* at 240.

[6] *Id.* at 241.

[7] *Id.* at 242.

[8] *Id.* at 80.

[9] *Id.*

Songalia, for her part received a letter[10] dated May 31, 2011, requiring her to explain why she was reporting to Dely's Inn, a small inn conveniently located at the back of BPTI and owned by Atty. Delos Santos. Another letter dated June 15, 2011[11] was sent to Songalia reiterating the order for her to report to the University of Manila. Just like Pinera, her salaries were also withheld starting June 15, 2011.

However, sometime in the end of July 2011, petitioner offered to give respondents Calanza, Pinera and Songalia their 13th month pay which were refused by all of them.

Aggrieved, respondents filed an illegal dismissal case against petitioner. On March 22, 2012, the Labor Arbiter rendered a Decision[12] in favor of respondents, ordering petitioner to pay respondents separation pay, full backwages and the deficiency in 13th month pay, in the total amount of ₱863,422.00.

Petitioner appealed the case to the NLRC. The NLRC found that there was no illegal dismissal to speak about. Respondents were dismissed on the ground of unlawful insubordination to the lawful order of petitioner for their refusal to transfer to Manila although the procedural due process was not observed. The dispositive portion of the NLRC's Resolution reads:

> WHEREFORE, premises considered, the appeal is partly GRANTED and the Decision dated [22] March 2012 is ordered VACATED and SET ASIDE.
>
> A new one is issued finding that complainant-appellee Calanza was validly dismissed but for failure to observe the notice requirement of the law, respondents-appellants are ordered to pay complainant-appellee Calanza nominal damages in the amount of ₱10,000.00. The complaint for illegal dismissal filed by complainants-appellees Pinera and Songalia are dismissed for lack of merit.
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> SO ORDERED.[13]

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[10] *Id*. at 386.

[11] *Id*. at 387.

[12] *Id.* at 142-150.

[13] *Id.* at 336.

Respondents moved to reconsider but the NLRC denied its motion in a Resolution dated September 12, 2012.[14]

The adverse Decision of the NLRC prompted respondents to file a Petition for *Certiorari* with the CA, ascribing grave abuse of discretion on the part of NLRC in declaring that Calanza was validly dismissed on the ground of willful disobedience or loss of trust and in finding that Pinera and Songalia failed to establish the fact of their illegal dismissal.

In the appealed Decision dated August 24, 2015, the CA reversed the findings of the NLRC and reinstated that of the Labor Arbiter. It ruled that there was no just cause for the dismissal of respondents and that procedural due process was not observed. The dispositive portion of the CA Decision reads:

> **WHEREFORE**, premises considered, the instant Petition for [*Certiorari*] is hereby **GRANTED**. Hence, the NLRC's dispositions on September 12, 2012 and July 9, 2012 are hereby **SET ASIDE** and we **AFFIRM** the Labor Arbiter's Decision on March 22, 2012.[15]

It appears that the CA debunked the NLRC's findings of breach of trust and confidence and insubordination or willful disobedience. The order given by petitioner is for the respondents to transfer their workplace from Baguio to Manila. The CA found that said transfer order was a retaliatory move or a punishment for the unproven transgressions committed by Calanza — for losing the 25 booklets of official receipts (causing the breach of trust and confidence) and by Pinera and Songalia for allegedly working at Dely's Inn while employed with BPTI and for allowing Atty. Delos Santos to commit theft of supplies against BPTI. The Motion for Reconsideration was denied in a Resolution dated October 10, 2016.

Hence, petitioner filed the instant Petition arguing that the CA Decision is not in accord with law and/or jurisprudence

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[14] *Id.* at 348.

[15] *Id.* at 38.

and is based on misapprehension of facts, grounded on speculations or conjectures.[16]

Under the Labor Code, there are twin requirements to justify a valid dismissal from employment: (a) the dismissal must be for any of the causes provided in Article 282 of the Labor Code (substantive aspect); and (b) the employee must be given an opportunity to be heard and to defend himself (procedural aspect).[17] The *onus* of proving the validity of dismissal lies with the employer. Thus:

> The burden of proof rests upon the employer to show that the disciplinary action was made for lawful cause or that the termination of employment was valid. In administrative and quasi-judicial proceedings, the quantum of evidence required is substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Thus, unsubstantiated suspicions, accusations, and conclusions of the employer do not provide legal justification for dismissing the employee. When in doubt, the case should be resolved in favor of labor pursuant to the social justice policy of our labor laws and the 1987 Constitution.[18]

As records would show, respondents were dismissed on the grounds of (a) willful breach of trust and confidence, specifically for losing the 25 booklets of unused official receipts during her duty as a front desk officer (for Calanza) and for working at Dely's Inn while employed with BPTI and for not reporting and tolerating the act of Atty. Delos Santos of getting supplies from BPTI; and (b) insubordination or willful disobedience of company rules specifically for not complying with petitioner's order for respondents to transfer workplace from Baguio to Manila.

A dismissal based on willful breach of trust or loss of trust and confidence entails the presence of two conditions.

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[16] *Id.* at 7.

[17] *Colegio de San Juan de Letran-Calamba v. Villas*, 447 Phil. 692, 698 (2003).

[18] *Maula v. Ximex Delivery Express, Inc.*, 804 Phil. 365, 378 (2017).

First. Breach of trust and confidence must be premised on the fact that the employee concerned holds a position of trust and confidence, where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected.[19] The essence of the offense for which an employee is penalized is the betrayal of such trust.[20]

In the case of *Wesleyan University Phils. v. Reyes*,[21] employees vested with trust and confidence were divided into two classes: (a) the managerial employees; and (b) the fiduciary rank-and-file employees. As explained by the Court:

> To the first class belong the managerial employees or those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. The second class includes those who in the normal and routine exercise of their functions regularly handle significant amounts of money or property. Cashiers, auditors, and property custodians are some of the employees in the second class.[22]

Second. There must be some basis for the loss of trust and confidence. The employer must present clear and convincing proof of an actual breach of duty committed by the employee by establishing the facts and incidents upon which the loss of confidence in the employee may fairly be made to rest.[23] This means that "the employer must establish the existence of an act justifying the loss of trust and confidence."[24] Otherwise, employees will be left at the mercy of their employers.[25]

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[19] *Philippine Auto Components, Inc. v. Jumadla*, 801 Phil. 170, 182 (2016).

[20] *Matis v. Manila Electric Co.*, 795 Phil. 311, 322 (2016).

[21] 740 Phil. 297, 311 (2014).

[22] *Lagahit v. Pacific Concord Container Lines*, 778 Phil. 168, 185 (2016).

[23] *Id.* at 186.

[24] *Bravo v. Urios College*, 810 Phil. 603, 621 (2017).

[25] *Id.*

A more stringent degree of proof is required in terminating fiduciary rank-and-file employees. The Court explained in *Caoile v. National Labor Relations Commission*:[26]

> [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. But, as regards a managerial employee, mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.

To determine whether Calanza falls within the first or second class of employees, the actual work that she performed, not her job title, must be considered.[27]

Petitioner averred that Calanza was an all-around in the small hotel that they operate. At the time the 25 booklets of unused official receipts were missing, respondent Calanza was the front desk clerk who is in-charge of the money being paid by hotel guests and for the properties of BPTI, including the said missing booklets of unused official receipts. Verily, Calanza is considered to belong to the fiduciary rank-and-file entrusted with the money and properties of BPTI.

While normally, the mere existence of the basis for believing that the managerial employee breached the trust reposed by the employer would suffice to justify a dismissal, we should desist from applying this norm against an employee who was not a managerial employee.[28] The employer must present a more stringent proof of the employee's actual breach of trust and

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[26] *Caoile v. National Labor Relations Commission*, 359 Phil. 399, 406 (1998).

[27] *Lagahit v. Pacific Concord Container Lines*, *supra* note 22, at 186.

[28] *Id.*

her involvement in the incident pertaining to the missing unused booklets of official receipts.

Set against this guideline, we cannot hold as sufficient the evidence submitted by petitioner to establish Calanza's involvement on the missing booklets of unused official receipts. Said evidence consists of the affidavit of a certain Nieves G. Gomez (Gomez) who attested that the missing booklets of unused official receipts happened during the watch of Calanza. Apart from the fact that said affidavit is self-serving as Gomez works for BPTI, it was not adequately explained how the booklets of unused official receipts were kept, who handled them and whether there were other personnel who were involved in safekeeping the said receipts. There was uncertainty then if indeed Calanza has anything to do with the missing booklets of unused official receipts. In short, the affidavit failed to show how Calanza had willfully betrayed her employer's trust.

The same principle is true in the case of Pinera and Songalia. The willful breach of trust on their part was predicated on the petitioner's belief that they were working at Dely's Inn during working hours and that they consented to the stealing of electricity and water by Atty. Delos Santos from BPTI (for which the latter was now indicted for qualified theft) and allowed Atty. Delos Santos to pirate hotel guests and take supplies like soap, tissues, rice, etc. from BPTI to Dely's Inn. Again, the involvement of Pinera and Songalia in these alleged acts of theft by Atty. Delos Santos were not sufficiently established. It was likewise not adequately proven that Pinera and Songalia were working at Dely's Inn during office hours. They admitted that they were going to Dely's Inn only to help because it was just adjacent to BPTI, but never to work full-time. What was clear from the records is the apparent conflict between the owners and the members of the Board of Trustees and that said conflict has affected even the employees. Petitioner, through De Leon, has assumed that Pinera and Songalia had sided with Atty. Delos Santos, as he was the one who previously hired them.

Records likewise show that respondents were not accorded due process. There is procedural due process in termination of

employment for just cause if the employer gives the employee two written notices and a hearing or opportunity to be heard if requested by the employee before terminating the employment.[29] Specifically, there should be a notice specifying the grounds for which dismissal is sought, a hearing or an opportunity to be heard, and after hearing or opportunity to be heard, a notice of the decision to dismiss.[30]

Petitioner firmly grasped on its belief that it was Calanza who was responsible for the missing booklets of unused official receipts and verbally informed Calanza about it. She was not formally charged nor investigated before she was terminated. Verbal notice is not enough. She was not even furnished any written notice particularly stating the offense which she might have been charged with. As correctly concluded by the CA, Calanza was not given the opportunity to defend herself as she was not fully and correctly informed of the charges against her which petitioner intended to prove. She was simply and summarily served a notice of termination unmindful of her right to due process and security of tenure.

As to Pinera and Songalia, while they were made to explain why they were reporting to Dely's Inn, the due process requirement was not completely complied with. No hearing or conference was conducted in order for respondents to vent their side and that the second notice was not sent containing the decision to dismiss and the reasons that justify the dismissal.

Instead of complying with the notice requirement, Calanza was sent a letter ordering her to report to Manila to explain about the missing booklets of unused official receipts. When she failed, she was charged with insubordination and willful disobedience. Pinera and Songalia, on the other hand, were sent office orders/letters directing them to transfer workplace from Baguio to Manila. When they refused to be transferred, they were likewise charged with insubordination and willful disobedience.

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[29] *Divine Word College of San Jose v . Aurelio*, 548 Phil. 413, 426 (2007).

[30] *Id*.

In order for willful disobedience or insubordination to be a valid cause for dismissal, it necessitates the concurrence of at least two requisites, namely: (a) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (b) 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]

Here, the order alleged to be violated is the order to transfer workplace from Baguio to Manila. Petitioner justified the transfer as a legitimate business strategy in order to avert the continuous anomaly going on in the company. The anomaly referred to herein was the case of the missing booklets of unused official receipts being blamed against Calanza, and the allegations that all respondents were reporting to nearby Dely's Inn during office hours and their failure to report the alleged theft of supplies committed by Atty. Delos Santos.

While it is the prerogative of the management to transfer an employee from one office to another within the business establishment based on its assessment and perception of the employee's qualifications, aptitudes and competence, and in order to ascertain where he can function with maximum benefit to the company, this prerogative is not without limit.[32] As explained by the Court:

> The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. In particular, the employer must be able to show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits.[33] x x x

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[31] *Sta. Isabel v. Perla Compañia De Seguros, Inc.*, 798 Phil. 165, 175 (2016).

[32] *Blue Dairy Corp. v. National Labor Relations Commission*, 373 Phil. 179, 185-186 (1999).

[33] *Id*. at 186.

The transfer order, while in the guise of legitimate business prerogative, was issued with grave abuse of discretion.

First, it smacks of unreasonableness. As can be gleaned from the Letters[34] to respondents Pinera and Songalia both dated June 15, 2011, the directive indicates that the transfer must be done within 48 hours upon receipt of the letter, a herculean and inconvenient task for employees who have been working and who have established family life in Baguio for a considerable length of time.

Second, it was issued without regard to due process. It was not sufficiently explained to them why they were being transferred. If the reason is because of the missing booklets of unused official receipts and their alleged moonlighting, then respondents were clearly not given an opportunity to explain their sides and to defend themselves.

Third, it was not shown that the transfer was work-related or would give maximum benefit to the company. The transfer order was silent as to what particular task will be given to respondents in the University considering that they have no definite tasks in the hotel.

After the transfer order, petitioner immediately withheld the respondents' salary, coerced and forcefully evicted them from their living quarters in BPTI, as shown by the photographs,[35] police blotters and certifications.[36]

The CA then has strong basis for its conclusion that the transfer was not prompted by legitimate business purpose, but merely a retaliatory move against the respondents — specifically for the alleged anomalous acts committed by them despite not having been proven by competent evidence and for allegedly siding with Atty. Delos Santos. Under such questionable circumstances, respondents had a valid reason to refuse the Manila transfer.

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[34] *Rollo*, pp. 104 and 432.

[35] *Id.* at 107-110.

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

It is safe then to conclude that the allegation of insubordination on the part of respondents was merely a fabrication made by petitioner to justify respondents' dismissal from employment. It bears stressing that not every case of insubordination or willful disobedience by an employee of a lawful work-related order of the employer or its representative is reasonably penalized with dismissal.[37] There must be reasonable proportionality between, on the one hand, the willful disobedience by the employee and, on the other hand, the penalty imposed therefor.[38] Here, the act of respondents in defying the transfer order is justified because the transfer order itself was issued with grave abuse of discretion. Clearly, there was a notable disparity between the alleged insubordination and the penalty of dismissal meted out by petitioner.

The fundamental guarantees of security of tenure and due process dictate that no worker shall be dismissed except for just and authorized cause provided by law and after due process.[39] In the instant case, petitioner was not able to establish the existence of causes justifying the dismissal of respondents and the observance of due process in effecting the dismissal.

WHEREFORE, the instant Petition is **DENIED**. The questioned Decision dated August 24, 2015 and the Resolution dated October 10, 2016 of the Court of Appeals in CA-G.R. SP No. 127660 are **AFFIRMED**.

SO ORDERED.

Caguioa (*Acting Chairperson*),[***] *Lazaro-Javier*, and *Zalameda, JJ.*, concur.

Carpio, S.A.J. (*Chairperson*), on official leave.

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[37] *Gold City Integrated Port Services, Inc. (INPORT) v. National Labor Relations Commission*, 267 Phil. 863, 873 (1990).

[38] *Id.*

[39] *Cosep v. National Labor Relations Commission*, 353 Phil. 148, 157 (1998).

[***] Per Special Order No. 2688 dated July 30, 2019.

THIRD DIVISION

[G.R. No. 227755. August 14, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NOEL LITA and ROMULO MALINIS,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY; FACTUAL FINDINGS OF THE TRIAL COURT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE ACCORDED GREAT RESPECT ON APPEAL.— The factual findings of the Regional Trial Court, as affirmed by the Court of Appeals, are likewise affirmed by this Court. The Regional Trial Court had the opportunity to personally observe the witnesses during their testimonies. Thus, its assignment of probative value to testimonial evidence will not be disturbed except when significant matters were overlooked. A reversal of its findings becomes even less likely when affirmed by the Court of Appeals.

2. ID.; ID.; ID.; MINOR INCONSISTENCIES IN WITNESSES' TESTIMONIES MAY INDICATE A LACK OF COACHING AND, THUS, SPONTANEITY AND TRUTHFULNESS; AN INCONSISTENCY, WHICH HAS NOTHING TO DO WITH THE ELEMENTS OF A CRIME, IS NOT A GROUND TO REVERSE A CONVICTION; CASE AT BAR.— Granted, Nonilon's testimony had inconsistencies with Dr. Tan's medical findings, but they do not disprove that Hipolito was shot eight (8) times. Quite the contrary, minor inconsistencies in witnesses' testimonies may indicate a lack of coaching and, thus, spontaneity and truthfulness. In *People v. Nelmida*: It is axiomatic that slight variations in the testimony of a witness as to minor details or collateral matters do not affect his or her credibility as these variations are in fact indicative of truth and show that the witness was not coached to fabricate or dissemble. *An inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction.* Thus, the actual locations of Hipolito's wounds, as found in the *postmortem* examination,

do not detract from Nonilon's eyewitness account that accused-appellants were present and aiding the commission of the crime.

3. CRIMINAL LAW; REVISED PENAL CODE; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; ESSENCE OF VOLUNTARY SURRENDER IS SPONTANEITY AND THE INTENT OF THE ACCUSED TO GIVE HIMSELF UP AND SUBMIT HIMSELF UNCONDITIONALLY TO THE AUTHORITIES EITHER BECAUSE HE ACKNOWLEDGES HIS GUILT OR HE WISHES TO SAVE THE AUTHORITIES THE TROUBLE AND EXPENSE THAT MAY BE INCURRED FOR HIS SEARCH AND CAPTURE; CASE AT BAR.— Neither is there merit to accused-appellants' allegations that the mitigating circumstance of voluntary surrender should apply to their case. In *People v. Garcia*: The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself unconditionally to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture. Here, after accused-appellant Malinis had been informed that accused-appellant Lita was a suspect in Hipolito's killing, both appeared at the municipal hall and were later detained. Upon arraignment, they both pleaded not guilty to the charge of murder and continue to maintain their innocence. Thus, it cannot be said that they surrendered themselves as an acknowledgment of guilt. Without this element, the surrender cannot be deemed spontaneous and, thus, falls short of establishing their supposed voluntary surrender as a mitigating circumstance.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

The trial court's determination of witness credibility will seldom be disturbed on appeal unless significant matters were overlooked. A reversal of these findings becomes even more inappropriate when affirmed by the Court of Appeals.[1]

This Court resolves the appeal from the Decision[2] of the Court of Appeals, which affirmed the Regional Trial Court Decision[3] finding Noel Lita (Lita) and Romulo Malinis (Malinis) guilty beyond reasonable doubt of the murder of Hipolito Rementilla (Hipolito).[4]

In an Information, Lita and Malinis, along with Barangay Chair Benito Moncada (Barangay Chair Moncada), Sebastian Requitud (Requitud), Joselito Piliin (Piliin), Benigno Obrador (Obrador), Inosencio Pondano (Pondano), Felicisimo Amada (Amada), and Julian Consul (Consul), were charged with the murder of Hipolito.[5]

The Information read:

That on or about 12:10 in the early morning of December 21, 1998 at Brgy. Paagahan, Municipality of Mabitac, Province of Laguna, Philippines, and within the jurisdiction off this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping

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[1] *People v. Dimapilit*, 816 Phil. 523, 540-541 (2017) [Per *J.* Leonen, Second Division].

[2] *Rollo*, pp. 2-22. The Decision dated December 10, 2015 in CA-G.R. C.R.-H.C. No. 06341 was penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Ramon A. Cruz and Renato C. Francisco of the Special Sixteenth Division, Court of Appeals, Manila.

[3] CA *rollo*, pp. 69-92. The Decision dated April 10, 2013 in Criminal Case No. 99-177074 was penned by Former Acting Presiding Judge Thelma Bunyi-Medina of Branch 18, Regional Trial Court, Manila.

[4] *Id*. at 91.

[5] *Rollo*, pp. 2-3.

one another, under one common design and purpose, by means of treachery, evident premeditation, with intent to kill, while conveniently armed with unlicensed cal. 45 pistols and .38 revolver, did then and there willfully, unlawfully, and feloniously attack, assault, and sho[o]t Brgy. Council an HIPOLITO E. REMENTILLA with the said weapons thereby causing fatal gunshot wounds on the different parts of the body of the victim which caused his instantaneous death, to the damage and prejudice of the surviving heirs of the said victim.

That in the commission of the offense, the following aggravating circumstances of nighttime and use of superior strength attended the killing of HIPOLITO E. REMENTILLA.

Contrary to law[.][6]

The events leading to Hipolito's killing happened around the time that the Christmas party in Barangay Paagahan, Mabitac, Laguna took place on the night of December 20, 1998. All of the accused, except Barangay Chair Moncada, who was then large, pleaded not guilty to the crime charged.[7]

Trial ensued.

For the prosecution, Ma. Socorro Banyon (Banyon) testified that sometime in the afternoon of December 20, 1998 in Barangay Paagahan,[8] she saw Amada, Barangay Chair Moncada, and Requitud standing on the road leading to Hipolito's house. They were pointing to Hipolito's house while talking.[9]

Nonilon Rementilla (Nonilon) testified that at around 11:50 p.m. that same day, upon seeing his uncle Hipolito walking home from the barangay Christmas party, he offered to accompany him. When his uncle refused the offer, Nonilon still followed him, fearing for his safety.[10]

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[6] *Id*. at 3. In the trial court Decision, Hipolito Rementilla's middle initial in the Information was S.

[7] *Id*. at 3 and CA *rollo*, p. 71.

[8] CA *rollo*, p. 71.

[9] *Id*. at 73.

[10] *Id.* at 72.

While he was following Hipolito, Nonilon saw Consul come "from the rear right side of his uncle"[11] and shoot Hipolito twice. Then, he saw Amada emerge from his uncle's left rear side to shoot him once more. Amada would shoot Hipolito five (5) more times as he was already lying "supine on the pavement."[12]

As this happened, Nonilon saw Lita and Malinis "nearby, holding their guns, seemingly acting as look outs (*sic*)."[13] When Nonilon realized that he had been spotted by the assailants, he ran away towards the highway.[14]

The assailants later fled the scene, allowing Nonilon to return to his uncle's side. As Hipolito lay on the ground, Nonilon heard him utter, "*Si Fely, si Puti at sina . . .*"[15] which Nonilon understood to mean Amada and Lita, whose nickname was Puti.[16] Hipolito's wife Zenaida and several others who had heard the gunshots arrived at the scene a few minutes later. They were able to bring Hipolito to the hospital, but he was pronounced dead on arrival.[17]

The prosecution also presented Benedicto Sayaman (Sayaman), who testified that on December 20, 1998, he attended a meeting at Barangay Chair Moncada's house, where all the accused gathered to discuss the killing of Hipolito and several others. The meeting began at around 10:00 p.m. with Barangay Chair Moncada announcing "the 'work' he intends to be accomplished[.]"[18]

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[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

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

[17] *Id.* at 73.

[18] *Id.* at 71.

Sayaman testified that according to Barangay Chair Moncada's plan, Hipolito would be killed while he was on his way home from the barangay Christmas party. Consul would shoot Hipolito first and Amada would ensure that the plan was accomplished while the other accused would serve as lookouts. Barangay Chair Moncada provided the group with weapons.[19]

Sayaman testified that all except him agreed with the plan, but out of fear of reprisal, he kept his disagreement to himself.[20] When the group dispersed, Sayaman went home and stayed put. At about past midnight, he heard several gunshots.[21]

Dr. Winston Tan (Dr. Tan), the physician who conducted Hipolito's *postmortem* examination testified that Hipolito sustained eight (8) gunshot wounds: three (3) on the front and five (5) on the back of his body.[22]

Police Inspector Lorenzo Sabug, who testified on the ballistic examination of the .45 caliber bullet and eight (8) .45 caliber fired cartridges recovered from the crime scene, concluded that all these items were fired from a colt .45 caliber firearm.[23]

The defense interposed various denials and alibis.

Malinis testified that on the night of the incident, he was at home sleeping when police officers came to their house looking for his brother, Lita, and one "Onyok." When he located Lita and Onyok the following day, he accompanied them to the municipal hall. However, upon orders from the Mayor of Mabitac, Malinis was also charged with killing Hipolito. He said that CIS Investigator Arvin Evangelista told him to point to Barangay Chair Moncada as the crime's mastermind. When he refused, as he allegedly had no knowledge of the crime,

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[19] *Id.*

[20] *Id.*

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

[22] *Id.* at 73.

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

Malinis was detained.[24] Malinis also admitted that his house was a mere walking distance from Hipolito's house.[25]

Meanwhile, Lita testified that on the night of the incident, he was watching the Christmas party at the barangay plaza with Bino Garcia (Garcia), Onyok Aklan (Aklan), and Willy Bocod (Bocod). Later that night, they all decided to have a drinking session at Bocod's house, which was about half a kilometer from the plaza. Their drinking spree had lasted until past 3:00 a.m. before he, Garcia, and Aklan went to his nipa hut, and there slept. The following morning, Lita found out about Hipolito's death from his brother, Malinis.[26]

Both Malinis and Lita expressed suspicions that they were implicated in the crime for refusing to testify against Barangay Chair Moncada.[27]

The other accused interposed similar denials. Requitud, the barangay captain of Barangay Inapayan, was allegedly helping with preparations for their Christmas party. When he was done, he went home, passing by a neighbor's house along the way.[28] Requitud's testimony was corroborated by Florentino Dela Cruz, who saw him fixing Christmas lights at the Barangay Paagahan hall, and Luciano Albitos, who said that Requitud passed by his house to help him slaughter a pig.[29] Requitud speculated that he was implicated in the crime for refusing to testify against Barangay Chair Moncada when Mayor Sarayot, Hipolito's nephew, asked him to testify around a week after Hipolito's burial.[30]

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[24] *Id.* at 74.

[25] *Id.* at 75.

[26] *Id.* at 78-79.

[27] *Id.* at 74 and 79.

[28] *Id.* at 76.

[29] *Id.* at 77.

[30] *Id.* at 76.

Meanwhile, Amada testified that he left the Christmas party at around 11:00 p.m. and proceeded home to watch a movie with his family until around 1:00 a.m.[31]

For his part, Pondano testified that after holding a vigil for his recently departed wife, he slept from 8:00 p.m. of December 20, 1998 until the next morning. He also testified that Hipolito was his "*kumpare*[.]"[32] Pondano's testimony was corroborated by his daughter.[33]

Piliin, meanwhile, testified that on the night of the incident, he was at his home in Barangay San Miguel, which was about eight (8) kilometers from Barangay Paagahan. He admitted that he owned a motorcycle that could travel this distance. He also admitted that earlier that night, at around 7:00 p.m., he had visited Mayor Sarayot's house in Barangay Paagahan to purchase cow meat.[34]

Consul had initially denied any participation but subsequently recanted. He testified having met with Barangay Chair Moncada during the Christmas party. At the meeting, it was agreed that he and one Luisito San Juan would follow Hipolito home from the Christmas party, and whoever was able to approach Hipolito first would be the first to shoot him. Consul said that he was able to fire successive shots at Hipolito from his super .38 gun before running away himself. He heard several more gunshots afterwards, but he was not sure who fired them.[35]

Consul testified that he never saw any of his co-accused before, during, or after the incident, aside from Requitud, whom he allegedly saw while he was incarcerated at the provincial jail.[36]

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[31] *Id.* at 77.

[32] *Id.* at 80.

[33] *Id.* at 81.

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

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

[36] *Id.* at 76.

Pending trial, Amada, Consul, Piliin, and Obrador died.[37]

In its April 10, 2013 Decision,[38] the Regional Trial Court found Lita and Malinis guilty of murder.

Despite Nonilon's relationship with the victim, his testimony was given credence by the trial court for being a "straightforward and categorical eyewitness account"[39] of what had transpired, and for his generally cordial relationship with the accused. According to the trial court, the lack of animosity between them negated any supposed familial bias.[40] His familiarity with the accused, his reasonable distance from the events as they transpired, and the presence of sufficient lighting from a nearby tamarind tree rendered his identification of the accused believable.[41] Moreover, Consul's subsequent admission to shooting Hipolito bolstered Nonilon's version of events.[42]

Moreover, the trial court found that Dr. Tan's testimony that Hipolito suffered gunshot wounds "at the back of the right chest"[43] and "at the back portion of the right arm"[44] was consistent with Nonilon's recollection of where and how many times Consul shot Hipolito. The physician's findings that entry points were also found "at the back portion, and middle third of the left thigh," also jived with Nonilon's placement of Amada, at the rear left side of Hipolito.[45]

However, the trial court recognized the inconsistency between the two (2) testimonies. Nonilon testified that since he saw

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[37] *Id.* at 69.

[38] *Id.* at 69-92.

[39] *Id.* at 81.

[40] *Id.* at 83.

[41] *Id.* at 85.

[42] *Id.* at 83.

[43] *Id.*

[44] *Id.* at 84.

[45] *Id.*

Hipolito get shot five (5) times as he lay face-up, there must have been five (5) wounds in the front of his body. Meanwhile, Dr. Tan's *postmortem* examination found that Hipolito had five (5) entry wounds in the back, and only three (3) in the front. Despite this, the trial court dismissed any dissonance between the two (2) testimonies, theorizing that Hipolito may have been squirming in pain while being shot and "may have turned his back against his assailant until he has finally ended up supine."[46]

As to the presence of conspiracy, the trial court doubted Sayaman's credibility after he had admitted that some of the targets were his relatives. It found it hard to believe that Sayaman would be trusted with incriminating information on a criminal plot against his own kin.[47] However, it held that Nonilon's testimony was sufficient to establish concerted action among the accused:

> Obviously, from his (Nonilon) narration of facts, accused [Consul] fired two shots for the initial execution of the scheme to liquidate the victim. It was followed by the accused [Amada], who fired another shot and subsequently discharged five more slugs towards the victim. Palpably, these are concerted steps aimed at accomplishing the intended purpose of ending the life of the victim. The presence of accused [Piliin], [Lita] and [Malinis] very near the crime scene was far from passive. Each of them was carrying a gun, acting as lookouts. In the mind of this court, these acts exhibited by them could reasonably be inferred as they were ready to assist the two (2) assailants, should anybody stand in the way in accomplishing this goal of taking the life of the victim.
>
> Thus, drawn from the convergence of these acts is the inescapable conclusion that these acts were complimentary (*sic*) to one another and geared toward the attainment of the ultimate objective of claiming the life of the victim.[48]

As to the presence of treachery, the trial court found that Nonilon's testimony established the use of means that would

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[46] *Id.* at 85.

[47] *Id.* at 87-88.

[48] *Id.* at 86-87.

deprive Hipolito of a chance to defend himself. The *postmortem* examination showed posterior entry wounds, meaning Hipolito was shot in the back. The trial court then theorized that the wounds in the front could have been inflicted while Hipolito was writhing on the ground. Evident premeditation was also appreciated in view of Consul's admission that there was a prior plot to kill Hipolito, which they eventually carried out. Thus, the accused were determined to carry on with the killing.[49]

The trial court did not rule on the other alleged aggravating circumstances of nighttime and use of superior strength. Neither did the prosecution present evidence establishing these circumstances.

The trial court imposed on Lita and Malinis the penalty of *reclusion perpetua* without eligibility for parole, in view of Republic Act No. 9346 proscribing capital punishment.[50] Meanwhile, it acquitted Obrador, Requitud, and Pondano, reasoning that even if Sayaman's testimony were true, the three (3) accused were merely present at the meeting but did not participate in furthering the plan of killing Hipolito. Neither was it proven that they acquiesced to the plan.[51]

Lita and Malinis appealed their conviction, alleging in their Brief[52] that their guilt was not proven beyond reasonable doubt. They questioned the existence of a conspiracy, which they claimed should have been proven by facts and not by "mere inferences and presumption."[53] They cited Consul's admission of shooting Hipolito and emphasized his categorical statement that neither of them was present during the shooting or the meeting with Barangay Chair Moncada.[54]

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

[50] *Id.* at 91.

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

[52] *Id.* at 51-68.

[53] *Id.* at 62.

[54] *Id.*

Even assuming that they were present at the shooting, Lita and Malinis questioned the veracity of Nonilon's account of their roles as lookouts. They also questioned the credibility of Nonilon's testimony, claiming that he acted contrary to human experience when he did nothing to stop the attack.[55]

Lita and Malinis also cited inconsistencies in the testimonies of Nonilon and Dr. Tan as to where and how many times Hipolito was shot. They claimed that the trial court's theory that Hipolito squirmed on the ground while being shot contradicted Nonilon's testimony that he last saw his uncle "lying supine on the ground."[56]

Lita and Malinis alleged that they should be acquitted in view of the equipoise doctrine.[57] Assuming that the convictions were valid, they argued that the trial court failed to consider the mitigating circumstance of voluntary surrender, pointing out that they had voluntarily appeared at the municipal hall the day after the incident.[58]

Finally, Lita and Malinis argued that not all denials and alibis are fabricated, and that the rule on positive testimony trumping negative testimony should not be deemed ironclad.[59] They claimed that "[a] lying witness can make as positive an identification as a truthful witness can."[60]

On the other hand, the Office of the Solicitor General argued in its Brief[61] that all the elements of murder were duly established by Nonilon's eyewitness testimony, as corroborated by Consul's admission.[62]

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[55] *Id.* at 63.

[56] *Id.* at 64.

[57] *Id.*

[58] *Id.* at 65.

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

[60] *Id.* at 66.

[61] *Id.* at 101-124.

[62] *Id.* at 110-114.

The Office of the Solicitor General further argued that Nonilon's testimony was credible, invoking the rule that the "factual findings of the trial court should be given full faith and credit unless there is a showing of a misinterpretation of material facts or grave abuse of discretion."[63] It opined that the trial court is in the best position to assign "values to declarations on the witness stand, . . . having heard the witness and observed his demeanor, conduct[,] and attitude under grueling examination."[64] It maintained that in this case, the trial court carefully weighed the evidence and even disregarded Sayaman's testimony for being contrary to human experience.[65]

The Office of the Solicitor General further argued that the trial court did not misapprehend Nonilon's testimony *vis-a-vis* Dr. Tan's testimony. It maintained that "[t]he trial court pieced together the testimonial evidence by eyewitness Nonilo[n] with the physical evidence of the *post-mortem* examination"[66] and arrived at a logical conclusion.[67]

As to conspiracy, the Office of the Solicitor General argued that no direct proof is needed to establish its existence since "it may be inferred from the acts of the accused before, during[,] or after the commission of the crime[,]"[68] as in this case. That both Lita and Malinis were seen at the crime scene, holding weapons and acting as lookouts while Hipolito was being shot,[69] allegedly established their unity in criminal design.[70]

The Office of the Solicitor General also argued that Lita and Malinis failed to establish the elements of voluntary surrender

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[63] *Id*. at 114.

[64] *Id*.

[65] *Id*. at 115.

[66] *Id*. at 117.

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

[68] *Id*. at 118.

[69] *Id*.

[70] *Id*. at 119.

as a mitigating circumstance. It asserted that, even if voluntary surrender could mitigate the penalty imposed, the existence of evident premeditation and treachery would cancel this out.[71]

Finally, the Office of the Solicitor General alleged that Lita and Malinis may not rely on their alibis when these were not even corroborated by any other witness. It maintained that as long as "there is least chance for the accused to be present that the crime scene, the defense of alibi must fail."[72] Since both Lita and Malinis "failed to exclude the slightest chance of [their] presence"[73] at the crime scene, the Office of the Solicitor General claimed that their defenses lacked merit.[74]

In its December 10, 2015 Decision,[75] the Court of Appeals affirmed the Regional Trial Court Decision *in toto*. It found Lita and Malinis' objections to Nonilon's credibility untenable, as there was no reason for Nonilon to falsely testify against them despite his relationship with the victim. It upheld the trial court's factual findings and its weighing of the parties' evidence.[76]

Moreover, the Court of Appeals did not give credence to Lila and Malinis' defense of alibi, noting that they both admitted being in the vicinity of the crime scene, apart from their alibis not being corroborated by any other witness.[77] The Court of Appeals noted that an accused's alibi is "often viewed with caution not only because it is inherently weak and unreliable but also because it is easy to fabricate."[78]

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[71] *Id*. at 120.

[72] *Id*. at 121.

[73] *Id*. at 122.

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

[75] *Rollo*, pp. 2-22.

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

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

[78] *Id.* at 13.

As to the existence of conspiracy, the Court of Appeals held that it "may be proved by direct evidence or circumstantial evidence."[79] It held that the overt acts of Lita and Malinis—as witnessed by Nonilon and corroborated by Zenaida, Sayaman, and Consul, along with Hipolito's dying declaration identifying Amada and Lita as the assailants—exhibited a unity of purpose and execution.[80]

The Court of Appeals likewise upheld the trial court's finding of treachery and evident prebeditation. Consul's admitted shooting of Hipolito from behind deprived him of the opportunity to defend himself. The five (5) succeeding gunshots after Hipolito had fallen to the ground ensured the execution of the accused's intent. Likewise, Consul admitted to a prior plot to kill Hipolito when he was invited to a meeting by Barangay Chair Moncada. Thus, a sufficient interval passed from the time they agreed to kill Hipolito up to the time of his actual shooting.[81]

Finally, the Court of Appeals rejected Lita and Malinis' theory on their voluntary surrender. It held that a mere allegation, without proof on how they satisfied the elements of the mitigating circumstance, was insufficient.[82]

On January 19, 2016, Lita and Malinis filed a Notice of Appeal before the Court of Appeals.[83] The Court of Appeals gave due course to the appeal in a January 28, 2016 Resolution.[84]

The parties were directed to submit supplemental briefs, but both manifested that they were adopting the same arguments in their respective Briefs before the Court of Appeals.[85]

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[79] *Id.* at 14.

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

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

[82] *Id.* at 20.

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

[84] *Id.* at 26.

[85] *Id.* at 32-41.

The issue for this Court's resolution is whether or not the Court of Appeals committed reversible error in affirming the conviction of accused-appellants Noel Lita and Romulo Malinis for the crime of murder.

This Court dismisses the appeal.

The factual findings of the Regional Trial Court, as affirmed by the Court of Appeals, are likewise affirmed by this Court. The Regional Trial Court had the opportunity to personally observe the witnesses during their testimonies. Thus, its assignment of probative value to testimonial evidence will not be disturbed except when significant matters were overlooked. A reversal of its findings becomes even less likely when affirmed by the Court of Appeals.[86]

Here, the Regional Trial Court found Nonilon's testimony "straightforward and categorical[.]"[87] His account was further corroborated by the testimonies of Zenaida, Banyon, and Dr. Tan, coupled with Consul's admissions.[88] Based on these testimonies, the Regional Trial Court found accused-appellants guilty beyond reasonable doubt of killing Hipolito. It also held that the prosecution witnesses' testimonies established accused-appellants' agreement to kill Hipolito, and detailed the concerted actions to carry out the agreement.

On appeal, the Court of Appeals affirmed the trial court's findings on the witnesses' credibility and maintained that the prosecution evidence was sufficient to maintain the conviction. On the other hand, accused-appellants' alibis and denials, while not automatically unmeritorious, were not even corroborated.[89] This, despite accused-appellants' similar claims that they were with companions at the time the killing was taking place.[90]

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[86] *People v. Dimapilit*, 816 Phil. 523, 540-541 (2017) [Per J. Leonen, Second Division].

[87] CA *rollo*, pp. 81-82.

[88] *Rollo*, pp. 14-16.

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

[90] CA *rollo*, pp. 74-75 and 78-79.

They also failed to satisfy the requirements for a valid alibi, as laid down by prior judicial precedents. Both accused-appellants admitted that they were reasonably within the vicinity where Hipolito was killed.[91]

Granted, Nonilon's testimony had inconsistencies with Dr. Tan's medical findings, but they do not disprove that Hipolito was shot eight (8) times. Quite the contrary, minor inconsistencies in witnesses' testimonies may indicate a lack of coaching and, thus, spontaneity and truthfulness. In *People v. Nelmida*:[92]

> It is axiomatic that slight variations in the testimony of a witness as to minor details or collateral matters do not affect his or her credibility as these variations are in fact indicative of truth and show that the witness was not coached to fabricate or dissemble. *An inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction.*[93] (Emphasis supplied, citation omitted)

Thus, the actual locations of Hipolito's wounds, as found in the *postmortem* examination, do not detract from Nonilon's eyewitness account that accused-appellants were present and aiding the commission of the crime.

Neither is there merit to accused-appellants' allegations that the mitigating circumstance of voluntary surrender should apply to their case. In *People v. Garcia*:[94]

> The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself unconditionally to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture.[95] (Citation omitted)

Here, after accused-appellant Malinis had been informed that accused-appellant Lita was a suspect in Hipolito's killing, both

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[91] *Id.*

[92] 694 Phil. 529 (2012) [Per J. Perez, *En Banc*].

[93] *Id.* at 559.

[94] 577 Phil. 483 (2008) [Per J. Brion, *En Banc*].

[95] *Id.* at 505.

appeared at the municipal hall and were later detained. Upon arraignment, they both pleaded not guilty to the charge of murder and continue to maintain their innocence. Thus, it cannot be said that they surrendered themselves as an acknowledgment of guilt. Without this element, the surrender cannot be deemed spontaneous and, thus, falls short of establishing their supposed voluntary surrender as a mitigating circumstance.[96]

The lower courts correctly gave credence to the prosecution's version of events. In light of accused-appellants' failure to institute any valid defenses or point to any significant matters overlooked by the lower courts, the Court of Appeals correctly affirmed their conviction.

Accused-appellants are, therefore, guilty beyond reasonable doubt of murder. The penalty for murder is *reclusion perpetua*, in view of Republic Act No. 9346 proscribing the imposition of capital punishment. Accused-appellants' civil indemnity will be subject to determination in the separate civil action filed by the victim's daughter and docketed as Civil Case No. 99-92647.[97]

WHEREFORE, the December 10, 2015 Decision of the Court of Appeals in CA-G.R. C.R.-H.C. No. 06341 is **AFFIRMED**. Accused-appellants Noel Lita and Romulo Malinis are guilty beyond reasonable doubt of murder as defined and penalized under Article 248 of the Revised Penal Code, as amended. They are sentenced to suffer the penalty of *reclusion perpetua*, with all the accessory penalties provided by law.

SO ORDERED.

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

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[96] *Id.*

[97] CA *rollo*, p. 69.

THIRD DIVISION

[G.R. No. 228516. August 14, 2019]

RICARDO P. CARNIYAN and among other real parties in interest similarly situated *bona fide* residents, *petitioners, vs.* **HOME GUARANTY CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MAY BE RESORTED TO ONLY IN THE ABSENCE OF APPEAL OR ANY PLAIN, SPEEDY, AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW; EXCEPTIONS; CASE AT BAR.— A petition for *certiorari* under Rule 65 of the Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy, and adequate remedy in the ordinary course of law. x x x **Considering that Judge Villordon, through the March 18, 2011 Order, denied the petitioners' motion to dismiss, the appropriate remedy was to file an answer, proceed to trial, and, in the event of an adverse judgment, interpose an appeal, assigning as errors the grounds stated in the motion to dismiss**. For this reason, *certiorari* did not lie as a remedy in the proceedings *a quo*. To allow such recourse would not only delay the already-lethargic administration of justice, but also unduly burden the courts and further clog their dockets. Moreover, the said order could not have been the proper subject of an appeal due to its interlocutory nature. Clearly, then, the petitioners committed a fatal procedural lapse when they sought relief before the CA *via certiorari*. Jurisprudence, however, provides exceptions to the rule that an order denying a motion to dismiss is not the proper subject of a petition for *certiorari*. When such orders are issued without or in excess of jurisdiction, or when their issuance is tainted with grave abuse of discretion, *certiorari* lies as a remedy. x x x None of the exceptions apply in this case. To be sure, the issuance of the March 18, 2011 Order was done in accordance with the rules and established jurisprudence.

2. ID.; ID.; ID.; ID.; AN ORDER DENYING A MOTION TO DISMISS IS CLASSIFIED AS AN INTERLOCUTORY ORDER; INTERLOCUTORY ORDER DISTINGUISHED FROM A FINAL JUDGMENT OR ORDER; CASE AT BAR.— An order denying a motion to dismiss is classified as an interlocutory, as opposed to a final, order. This classification is vital because it is determinative of the remedy available to the aggrieved party. In *Denso (Phils.), Inc. v. Intermediate Appellate Court*, the difference between a final and an interlocutory order was stated in the following manner: A "final" judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, *e.g.*, an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res judicata* or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. **Nothing more remains to be done by the Court except to await the parties' next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment** once it becomes "final" or, to use the established and more distinctive term, "final and executory." x x x Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory," *e.g.*, an order denying a motion to dismiss under Rule 16 of the Rules, or granting a motion for extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for postponement, or production or inspection of documents or things, etc. **Unlike a "final" judgment or order, which is appealable, as above pointed out, an "interlocutory" order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case**.

3. ID.; CIVIL PROCEDURE; JURISDICTION; CONFERRED BY LAW AND DETERMINED BY THE ALLEGATIONS IN THE PLEADINGS; PRESENTATION OF A TORRENS

TITLE IS NOT A CONDITION PRECEDENT TO THE VESTING OF JURISDICTION TO THE TRIAL COURT, AS IN CASE AT BAR.— Contrary to the petitioners' stance, the submission of a certified true copy of TCT No. 262715 was not a condition precedent to vest the Quezon City RTC with jurisdiction over HGC's complaint. Jurisdiction is conferred by law and determined by the allegations in the pleadings. In arguing that it is dependent on the presentation of evidence, the petitioners seem to have overlooked a rudiment of civil procedure—a motion to dismiss is filed before the parties have an opportunity to offer and present their evidence. Under the rules, the defendant in a civil case is allowed to file such a motion before responding to the complaint. x x x Therefore, the petitioners' argument that the trial court had no jurisdiction over HGC's complaint *sans* a certified true copy of TCT No. 262715 has no legal leg to stand on, and, for the same reason, no grave abuse of discretion can be attributed to Judge Villordon in denying the motion to archive the case. Clearly, the presentation of a Torrens title was not a condition precedent to the vesting of jurisdiction in the Quezon City RTC. Couched in general terms, a motion to dismiss based on lack of jurisdiction is not dependent on the evidence (or the lack thereof) of the parties.

4. ID.; ID.; DECLARATION OF DEFAULT; TWO REQUISITES THAT MUST BE MET IN ORDER THAT ORDER OF DEFAULT MAY BE LIFTED; *CERTIORARI* IS NOT A PROPER REMEDY; CASE AT BAR.— [T]he second challenged trial court order contained a directive to the petitioners to file an answer to HGC's complaint within a non-extendible period of 10 days from notice. However, the records reveal that the petitioners never complied with the same. Consequently, on August 23, 2012, HGC filed a motion to declare them in default, which Judge Villordon granted through the third challenged trial court order, dated October 31, 2012. The petitioners assailed the October 31, 2012 Order via *certiorari* before the CA. In arguing that the same was tainted with grave abuse of discretion, they maintained that the order was prematurely issued by Judge Villordon. Again, *certiorari* was the improper remedy. A cursory reading of Section 3 (b) of Rule 9 of the Rules of Court will reveal that one of the defending party's remedies against an order of default is to file a motion

under oath to set it aside on the ground of fraud, accident, mistake, or excusable negligence. Additionally, the defending party must append to the said motion an affidavit showing that he or she has a meritorious defense. x x x Verily, so that an order of default may be lifted, the following requisites must be met: (a) that a motion be filed under oath by one who has knowledge of the facts; (b) that the defending party's failure to file answer was due to fraud, accident, mistake, or excusable negligence; and (c) that the defending party shows the existence of a meritorious defense through an affidavit of merit. x x x As discussed above, resort may be had to a petition for *certiorari* only in the absence of an appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. **Considering that no judgment had yet been rendered *a quo*, the petitioners, pursuant to Section 3(b) of Rule 9 of the Rules of Court, should have filed a motion to lift the order declaring them in default**. Failing to do so, their recourse to the CA via a petition for *certiorari* was improper.

5. ID.; ID.; ID.; ALTERNATIVE REMEDIES OF DEFENDANT WHO FAILS TO FILE AN ANSWER.— In addition to a motion to lift the order of default, jurisprudence provides several other remedies at the disposal of the defendant who fails to file an answer. These were enumerated in *Lina v. CA, et al*. The availability of these alternative remedies, however, depends on when the defending party discovers that he or she has been declared in default, or whether the judgment in the suit is contrary to law, jurisprudence, or the evidence on record, thus: b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37; c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 of Rule 38; and d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him. (Sec. 2, Rule 41)

6. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WILL PROSPER ONLY IF THE ACT OR OMISSION CONSTITUTING GRAVE ABUSE OF DISCRETION ON THE PART OF THE JUDGE IS ALLEGED AND PROVEN; CASE AT BAR.— As a consequence of declaring the petitioners

in default, Judge Villordon allowed HGC to present its evidence *ex parte* before the branch clerk of court. Originally, the reception of evidence was set to take place on December 9, 2012. However, since that date fell on a Sunday, the presiding judge, through the last challenged trial court order, rescheduled the same to Friday, December 14, 2012. According to the petitioners, such scheduling and rescheduling of the *ex parte* hearing were the result of Judge Villordon's hasty and preemptive action on HGC's complaint, which was tantamount to further grave abuse of discretion.

APPEARANCES OF COUNSEL

Engracio Icasiano for petitioners.
Sherley Mae Tabangcura-Dasco for respondent.

D E C I S I O N

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

Assailed in this petition for review on *certiorari*[1] are the August 26, 2016 Decision[2] and November 28, 2016 Resolution[3] rendered by the Court of Appeals (CA) in CA-G.R. SP No. 127693, both of which upheld the orders dated March 18, 2011,[4] February 8, 2012,[5] October 31, 2012,[6] and November 21, 2012[7] (the challenged trial court orders), all issued by Hon. Tita Marilyn Payoyo-Villordon (Judge Villordon), Presiding Judge of Branch 224 of the Regional Trial Court (RTC) of Quezon City, in Civil Case No. Q-09-64015.

[1] *Rollo*, pp. 14-80.

[2] Associate Justice Leoncia Real-Dimagiba penned the challenged decision, in which Associate Justices Ramon R. Garcia and Jhosep Y. Lopez concurred; *id*. at 85-91.

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

[4] *Id*. at 213-215.

[5] *Id*. at 234-235.

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

[7] *Id*. at 146.

The Factual Antecedents

On September 7, 2010, Home Guaranty Corporation (HGC) filed before the Quezon City RTC a complaint for recovery of possession against Edilberto P. Carniyan, Ricardo P. Carniyan, and Sherly R. Carniyan (the petitioners), seeking their eviction from a portion of a 7,113-square meter parcel of land situated in Constitution Hills, Quezon City, covered by Transfer Certificate of Title (TCT) No. 262715.[8] The complaint was docketed as Civil Case No. Q-09-64015 and raffled to Judge Villordon of Branch 224.

Instead of filing an answer, the petitioners filed a Motion to Dismiss[9] dated October 8, 2010 and, subsequently, a Motion to Archive the Case as May Be Possible in Lieu of Dismissal[10] dated December 10, 2010. In the former, the petitioners argued that the RTC had no jurisdiction to resolve the complaint (1) due to the fact that HGC has not yet acquired ownership over the contested property; and (2) because the assessed value thereof fell below ₱400,000.00, the alleged jurisdictional amount of civil actions filed in Metro Manila.[11] On the other hand, in the latter motion, they essentially sought to hold in abeyance the proceedings in Civil Case No. Q-09-64015 until HGC submitted a certified true copy of TCT No. 262715, among other things.[12]

The Challenged Trial Court Orders

On March 18, 2011, Judge Villordon issued the first of the challenged trial court orders. She ruled, for one, that the petitioners' contention as to the jurisdictional amount was misplaced. Since the case was an action involving title to or possession of real property, and because the subject property had an assessed value of ₱50,000.00, it was held that the trial

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[8] *Id*. at 147-153.

[9] *Id*. at 155-182.

[10] *Id.* at 185-207.

[11] *Id*. at 213.

[12] *Id.* at 205-206.

court was possessed of the requisite jurisdiction to take cognizance of the complaint.[13] Next, she likewise denied the motion to archive the case on the ground that the said motion was merely dilatory.[14] The *fallo* of the March 18, 2011 Order reads:

> WHEREFORE, premises considered, the xxx Motion to Dismiss and Motion to Archive The Case As Maybe Possible in Lieu of Dismissal filed by the defendants are hereby DENIED for lack of merit.
>
> SO ORDERED.[15]

On June 29, 2011, the petitioners filed a Motion to Expunge/ Rescind the Interlocutory Order Dated March 18, 2011 with Motion for Inhibition.[16] First, they contended that the trial court failed to pass upon their allegation on the non-existence of a cause of action on the part of HGC. Second, they asserted that their previous motions were not intended to delay the resolution of the issues in the case.[17] The petitioners therefore prayed that Judge Villordon inhibit herself from hearing the motion to expunge and that the records of the case be returned to the Executive Judge of the Quezon City RTC for re-raffle to another branch thereof.[18]

It appears, however, that the petitioners had previously sought Judge Villordon's inhibition, only to be denied through an earlier order dated August 2, 2010.

On February 8, 2012, Judge Villordon issued the second challenged order. In denying the petitioners' motion to expunge, she ruled that the same was essentially a motion for reconsideration of the March 18, 2011 order, the merits of which

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[13] *Id*. at 214.

[14] *Id*.

[15] *Id*. at 215.

[16] *Id.* at 216-233.

[17] *Id*. at 234.

[18] *Id*. at 233.

had already been thoroughly passed upon. Anent the motion for inhibition, she simply reiterated her position in the said August 2, 2010 order.[19] She then disposed of the motions and directed the petitioners to file their answer within a non-extendable period often (10) days, *viz*.:

> WHEREFORE, premises considered, the defendants' Motion To expunge/Rescind the Interlocutory Order dated March 18, 2011 with Motion for Inhibition are DENIED for lack of merit.
>
> Meanwhile, the Court notes that the defendants have not yet filed their Answer to the plaintiffs Amended Complaint. Hence, defendants are hereby given the non-extendable period of 10 days from receipt of this Order within which to file their Answer to the plaintiffs Amended Complaint.
>
> SO ORDERED.[20]

Despite Judge Villordon's directive, the petitioners failed to file an answer within the allotted period. Consequently, on August 23, 2012, HGC moved to declare the petitioners in default.[21]

Meanwhile, before the RTC resolved HGC's motion, the petitioners filed a Motion to Amend the February 8, 2012 Order to Resolve the Actual Controversy and to Judiciously Resolve the Instant Motion for Inhibition Upon Receipt Hereof (In the Higher Interests of Justice and Equity) dated October 8, 2012,[22] which was set for hearing on October 19, 2012, along with the motion to declare them in default.[23]

On October 31, 2012, Judge Villordon issued the third challenged order, denying the petitioners' motion and declaring them in default. She ruled that the said motion partook of the nature of a second motion for inhibition, which is proscribed

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[19] *Id*. at 235.

[20] *Id*.

[21] *Id*. at 86.

[22] *Id*. at 236-288.

[23] *Id*. at 144.

under A.M. No. 11-6-10-SC. Hence, the same was held to be a mere scrap of paper, and was stricken from the records. On the other hand, HGC's motion was held to be impressed with merit. Despite proper service of summons and the trial court's earlier order, the petitioners never filed an answer in due time.[24] For this reason, HGC was allowed to present its evidence *ex parte* before the branch clerk of court on December 9, 2012. The *fallo* of the October 31, 2012 Order reads:

> WHEREFORE, premises considered, the defendants' "Motion to Amend xxx" is denied due course for being dilatory. The "Motion for Inhibition" is denied for violating AM. No. No. 11-6-1 0-SC. Both motions are considered mere scrap of paper and ordered stricken from the records of this case.
>
> The plaintiff's "Motion to Declare Defendant in Default" is GRANTED. As prayed for, the defendants are declared in default. As further prayed for, the plaintiff is allowed to present its evidence ex-parte before the branch clerk of this Court on December 9, 2012 at 2:00 in the afternoon.
>
> SO ORDERED.[25]

Finally, on November 21, 2012, Judge Villordon issued the last of the challenged trial court orders, rescheduling the *ex parte* presentation of HGC's evidence, *viz*.:

> It appearing that the December 9, 2012 ex-parte hearing schedule falls on a Sunday, the same is cancelled and re-scheduled to December 14, 2012 at 2:00P.M. Notify the parties of the said ex-parte hearing.
>
> SO ORDERED.[26]

Aggrieved, the petitioners challenged the four aforesaid trial court orders before the CA via a Petition for *Certiorari*, Prohibition, and *Mandamus*,[27] arguing that Judge Villordon had acted with grave abuse of discretion in issuing the same.

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[24] *Id*.

[25] *Id*. at 145.

[26] *Id*. at 146.

[27] *Id.* at 93-143.

The CA's Ruling

On August 26, 2016, the CA promulgated the herein assailed decision, denying the said petition on the ground that the same was an inappropriate remedy. The appellate court ruled that the petitioners should have instead filed a motion under oath to set aside the order of default and shown that they had a meritorious defense through an affidavit of merit. Moreover, the CA held that the petitioners' failure to file an answer was attributable solely to their own negligence.[28] The appellate court disposed of the case, thus:

> **WHEREFORE**, premises considered, the instant petition is hereby **DISMISSED** for being the wrong or improper remedy. The Orders of the Regional Trial Court in Civil Case No. Q-09-64015, are **AFFIRMED**.
>
> **SO ORDERED.**[29]

The petitioners, after their motion for reconsideration was denied in the assailed November 28, 2016 Resolution, sought the present recourse before the Court.

The Issue

Whether or not the challenged trial court orders dated March 18, 2011, February 8, 2012, October 31, 2012, and November 21, 2012 were issued with grave abuse of discretion.[30]

The Court's Ruling

The petition lacks merit.

Judge Villordon, through the first challenged trial court order, dated March 18, 2011, denied the petitioners' motions to dismiss and archive the case. According to the petitioners, the trial court had no jurisdiction over the complaint considering that HGC never submitted a copy of TCT No. 262715. They

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

[29] *Id.* at 91.

[30] *Id.* at 54-56.

contended that, in actions for recovery of possession, the identity of the subject land must be established through the presentation of a certificate of title. They, therefore, prayed for the dismissal of the complaint and, later, that the same be held in abeyance until HGC presented a certified true copy of TCT No. 262715.[31] Upon the denial of their motions, they sought relief before the CA through a petition for *certiorari*.

A petition for *certiorari* under Rule 65 of the Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy, and adequate remedy in the ordinary course of law.[32]

An order denying a motion to dismiss is classified as an interlocutory, as opposed to a final, order. This classification is vital because it is determinative of the remedy available to the aggrieved party.[33] In *Denso (Phils.), Inc. v. Intermediate Appellate Court*,[34] the difference between a final and an interlocutory order was stated in the following manner:

> A "final" judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, *e.g.*, an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res judicata* or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. **Nothing more remains to be done by the Court except to await the parties' next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and**

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[31] *Id.* at 62-65.

[32] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC, et al.*, 716 Phil. 500, 512 (2013).

[33] *G.V. Florida Transport, Inc. v. Tiara Commercial Corporation*, G.R. No. 201378, October 18, 2017, 842 SCRA 576, 589.

[34] 232 Phil. 256 (1987).

ultimately, of course, to cause the execution of the judgment once it becomes "final" or, to use the established and more distinctive term, "final and executory."

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Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory," *e.g.*, an order denying a motion to dismiss under Rule 16 of the Rules, or granting a motion for extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for postponement, or production or inspection of documents or things, etc. **Unlike a "final" judgment or order, which is appealable, as above pointed out, an "interlocutory" order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.**[35] (Emphasis and underscoring supplied)

Considering that Judge Villordon, through the March 18, 2011 Order, denied the petitioners' motion to dismiss, the appropriate remedy was to file an answer, proceed to trial, and, in the event of an adverse judgment, interpose an appeal, assigning as errors the grounds stated in the motion to dismiss.[36] For this reason, *certiorari* did not lie as a remedy in the proceedings *a quo*. To allow such recourse would not only delay the already-lethargic administration of justice, but also unduly burden the courts and further clog their dockets.[37] Moreover, the said order could not have been the proper subject of an appeal due to its interlocutory nature. Clearly, then, the petitioners committed a fatal procedural lapse when they sought relief before the CA *via certiorari*.

Jurisprudence, however, provides exceptions to the rule that an order denying a motion to dismiss is not the proper subject of a petition for *certiorari*. When such orders are issued without

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[35] *Id.* at 263-264.

[36] *G.V. Florida Transport, Inc. v. Tiara Commercial Corporation*, *supra* note 33, at 589.

[37] *Bañez, Jr. v. Judge Concepcion, et al.*, 693 Phil. 399, 409 (2012).

or in excess of jurisdiction, or when their issuance is tainted with grave abuse of discretion, *certiorari* lies as a remedy.[38] In *Emergency Loan Pawnshop, Inc. v. Court of Appeals*,[39] the Court held:

> The remedy of the aggrieved party is to file an answer to the complaint and to interpose as defenses the objections raised in his motion to dismiss, proceed to trial, and in case of an adverse decision, to elevate the entire case by appeal in due course. However, the rule is not ironclad. Under certain situations, recourse to *certiorari* or *mandamus* is considered appropriate, that is, (a) when the trial court issued the order without or in excess of jurisdiction; (b) where there is patent grave abuse of discretion by the trial court; or, (c) appeal would not prove to be a speedy and adequate remedy as when an appeal would not promptly relieve a defendant from the injurious effects of the patently mistaken order maintaining the plaintiff's baseless action and compelling the defendant needlessly to go through a protracted trial and clogging the court dockets by another futile case.[40] (Citation omitted;)

None of the exceptions apply in this case.

To be sure, the issuance of the March 18, 2011 Order was done in accordance with the rules and established jurisprudence. The petitioners' motion to dismiss was grounded on the RTC's alleged lack of jurisdiction, which, according to them, was a result of HGC's failure to submit a certified true copy of TCT No. 262715. The petitioners postulated that, absent a Torrens title, the trial court was bereft of jurisdiction to hear HGC's complaint.[41]

The contention fails to impress.

Contrary to the petitioners' stance, the submission of a certified true copy of TCT No. 262715 was not a condition precedent to vest the Quezon City RTC with jurisdiction

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[38] *Id*. at 410.

[39] 405 Phil. 524 (2001).

[40] *Id*. at 530.

[41] *Rollo*, pp. 62-65.

over HGC's complaint. Jurisdiction is conferred by law and determined by the allegations in the pleadings.[42] In arguing that it is dependent on the presentation of evidence, the petitioners seem to have overlooked a rudiment of civil procedure—a motion to dismiss is filed before the parties have an opportunity to offer and present their evidence. Under the rules, the defendant in a civil case is allowed to file such a motion before responding to the complaint, *viz*.:

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[.][43]

Assuming that the motion is denied, the defendant is then given the opportunity to file an answer within the remainder of the prescribed reglementary period, but in no case less than five days, computed from notice of the motion's denial.[44] Then, after the defendant files an answer and the parties serve on each other their respective pleadings, the case may proceed to pre-trial, *viz*.:

Section 1. *When conducted*.—After the last pleading has been served and filed, it shall be the duty of the plaintiff to promptly move *ex parte* that the case be set for pre-trial.[45]

Upon the termination of the pre-trial, the clerk of court enters the case in the trial calendar. It is only when the case reaches trial that the parties have an opportunity to substantiate their claims and defenses through evidence duly presented, *viz*:

Section 5. *Order of trial*. — Subject to the provisions of Section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:

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[42] *City of Dumaguete v. Philippine Ports Authority*, 671 Phil. 610, 629 (2011).

[43] RULES OF COURT, Rule 16, Sec. 1.

[44] RULES OF COURT, Rule 16, Sec. 4.

[45] RULES OF COURT, Rule 18, Sec. 1.

(a) The plaintiff shall adduce evidence in support of his complaint;

b) The defendant shall then adduce evidence in support of his defense, counterclaim, cross-claim and third-party complaint;

(c) The third-party defendant, if any, shall adduce evidence of his defense, counterclaim, cross-claim and fourth-party complaint;

(d) The fourth-party, and so forth, if any, shall adduce evidence of the material facts pleaded by them;

(e) The parties against whom any counterclaim or cross-claim has been pleaded, shall adduce evidence in support of their defense, in the order to be prescribed by the court;

(f) The parties may then respectively adduce rebutting evidence only, unless the court, for good reasons and in the furtherance of justice, permits them to adduce evidence upon their original case; and

(g) Upon admission of the evidence, the case shall be deemed submitted for decision, unless the court directs the parties to argue or to submit their respective memoranda or any further pleadings.

If several defendants or third-party defendants, and so forth, having separate defenses appear by different counsel, the court shall determine the relative order of presentation of their evidence.[46]

Therefore, the petitioners' argument that the trial court had no jurisdiction over HGC's complaint *sans* a certified true copy of TCT No. 262715 has no legal leg to stand on, and, for the same reason, no grave abuse of discretion can be attributed to Judge Villordon in denying the motion to archive the case. Clearly, the presentation of a Torrens title was not a condition precedent to the vesting of jurisdiction in the Quezon City RTC. Couched in general terms, a motion to dismiss based on lack of jurisdiction is not dependent on the evidence (or the lack thereof) of the parties.

Moving on to the second challenged trial court order, dated February 8, 2012, the Court remains unconvinced that Judge

[46] RULES OF COURT, Rule 30, Sec. 5.

Villordon gravely abused her discretion in issuing the same. A perusal of the motion that occasioned the said order (*i.e.*, the petitioners' Motion to Expunge/Rescind the Interlocutory Order Dated March 18, 2011 with Motion for Inhibition) reveals that the petitioners sought the presiding judge's inhibition and, essentially, reconsideration of the previous March 18, 2011 Order.

Anent the motion for inhibition, the record discloses that the petitioners had previously moved that Judge Villordon inhibit herself from hearing the case. The previous motion, however, was denied through an order dated August 2, 2010. Pertinently, A.M. No. 11-6-10-SC, which finds particular application to litigations in Quezon City trial courts, specifically prohibits the filing of multiple motions for inhibition by one party, *viz*.:

> 9. *Inhibitions*.—Each party shall only be allowed to file one motion for inhibition in any case strictly on grounds provided for under Rule 137 of the Rules of Court.[47]

Since A.M. No. 11-6-10-SC explicitly proscribed the filing by the petitioners of the Motion to Expunge/Rescind the Interlocutory Order Dated March 18, 2011 with Motion for Inhibition insofar as Judge Villordon's inhibition was concerned, hardly any grave abuse of discretion can be imputed to her in denying the same through the second challenged trial court order.

At this juncture, it bears noting that the second challenged trial court order contained a directive to the petitioners to file an answer to HGC's complaint within a non-extendible period of 10 days from notice. However, the records reveal that the petitioners never complied with the same. Consequently, on August 23, 2012, HGC filed a motion to declare them in default, which Judge Villordon granted through the third challenged trial court order, dated October 31, 2012.

The petitioners assailed the October 31, 2012 Order via *certiorari* before the CA. In arguing that the same was tainted

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[47] A.M. No. 11-6-10-SC dated February 21, 2012.

with grave abuse of discretion, they maintained that the order was prematurely issued by Judge Villordon.

Again, *certiorari* was the improper remedy.

A cursory reading of Section 3 (b) of Rule 9 of the Rules of Court will reveal that one of the defending party's remedies against an order of default is to file a motion under oath to set it aside on the ground of fraud, accident, mistake, or excusable negligence. Additionally, the defending party must append to the said motion an affidavit showing that he or she has a meritorious defense.[48] Section 3 (b) of Rule 9 relevantly provides:

> (b) *Relief from order of default.* — A party declared in default may at any time after notice thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice.[49]

Verily, so that an order of default may be lifted, the following requisites must be met: (a) that a motion be filed under oath by one who has knowledge of the facts; (b) that the defending party's failure to file answer was due to fraud, accident, mistake, or excusable negligence; and (c) that the defending party shows the existence of a meritorious defense through an affidavit of merit.[50]

In addition to a motion to lift the order of default, jurisprudence provides several other remedies at the disposal of the defendant who fails to file an answer. These were enumerated in *Lina v. CA, et al.*[51] The availability of these alternative remedies, however, depends on when the defending party discovers that he or she has been declared in default, or whether the judgment in the suit is contrary to law, jurisprudence, or the evidence on record, thus:

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[48] *Spouses Manuel v. Ong*, 745 Phil. 589, 602 (2014).

[49] RULES OF COURT, Rule 9, Sec. 3(b).

[50] *Sps. Delos Santos v. Judge Carpio*, 533 Phil. 42, 55-56 (2006).

[51] 220 Phil. 311 (1985).

b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section1(a) of Rule 37;

c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 of Rule 38; and

d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him. (Sec. 2, Rule 41)[52]

As discussed above, resort may be had to a petition for *certiorari* only in the absence of an appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. **Considering that no judgment had yet been rendered *a quo*, the petitioners, pursuant to Section 3(b) of Rule 9 of the Rules of Court, should have filed a motion to lift the order declaring them in default.** Failing to do so, their recourse to the CA via a petition for *certiorari* was improper. As aptly ruled by the appellate court:

Petitioners cannot mask their failure to file a Motion under Oath to Set Aside the Order of Default by the mere expedient of conjuring grave abuse of discretion to avail of a Petition for *Certiorari*. Clearly, the instant remedy sought by petitioners is premature considering that a plain, speedy, and adequate remedy in the ordinary course of law was still available.[53]

As a consequence of declaring the petitioners in default, Judge Villordon allowed HGC to present its evidence *ex parte* before the branch clerk of court.[54] Originally, the reception of evidence was set to take place on December 9, 2012. However, since that date fell on a Sunday, the presiding judge, through the last challenged trial court order, rescheduled the same to

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[52] *Id.* at 316-317.

[53] *Rollo*, p. 89.

[54] **Rules of Court, Rule 9:**

EFFECT OF FAILURE TO PLEAD

Friday, December 14, 2012. According to the petitioners, such scheduling and rescheduling of the *ex parte* hearing were the result of Judge Villordon's hasty and preemptive action on HGC's complaint, which was tantamount to further grave abuse of discretion.[55]

However, aside from their bare allegation, the petitioners miserably failed to show any circumstance indicative of grave abuse of discretion on the part of Judge Villordon. It is well-settled that a petition for *certiorari* will prosper only if the act or omission constituting grave abuse of discretion is alleged and proved.[56] Hence, the petitioners were duty-bound to show that the presiding judge exercised her official power in an "arbitrary or despotic manner by reason of passion, prejudice, or personal hostility"[57] when she rescheduled HGC's *ex parte* presentation of evidence. Without such a showing, the Court is left with no alternative other than to uphold the CA's denial of their petition for *certiorari*.

WHEREFORE, the petition is **DENIED**. The August 26, 2016 Decision and November 28, 2016 Resolution rendered by the Court of Appeals in CA G.R. SP No. 127693 are hereby **AFFIRMED.**

SO ORDERED.

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

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Section 3. *Default; declaration of.* — If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. **Such reception of evidence may be delegated to the clerk of court.** (Emphasis and underscoring supplied)

[55] *Rollo*, p. 47.

[56] *Beluso v. COMELEC*, 635 Phil. 436, 443-444 (2010).

[57] *Tagle v. Equitable PCI Bank, et al.*, 575 Phil. 384, 397 (2008).

SECOND DIVISION

[G.R. No. 228958. August 14, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EUTIQUIO BAER @ "TIKYO",** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS UNDER SECTION 11, ARTICLE II THEREOF; ELEMENTS.—** Illegal possession of dangerous drugs under Section 11, Article II of RA 9165 has the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.

2. **ID.; ID.; ID.; ID.; POSSESSION INCLUDES NOT ONLY ACTUAL POSSESSION BUT ALSO CONSTRUCTIVE POSSESSION; ACTUAL POSSESSION AND CONSTRUCTIVE POSSESSION, DISTINGUISHED; CONSTRUCTIVE POSSESSION, NOT ESTABLISHED IN CASE AT BAR.—** Jurisprudence holds that possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. In the instant case, it is not disputed whatsoever that the alleged seized drug specimens were not actually possessed by accused-appellant Baer. The transparent plastic bags and sealed decks allegedly containing *shabu* were not found on the person of accused-appellant Baer. As held by the CA, the drug specimens were considered to have been under the **constructive possession** of accused-appellant Baer. Based on the evidence on record, the Court disagrees with the findings of the RTC and CA. The Court finds that the supposed drug specimens were ***NOT*** constructively possessed by accused-appellant Baer. x x x In the assailed Decision, the CA cites the cases of *People*

of the Philippines v. Torres, People of the Philippines v. Tira, and *Abuan v. People of the Philippines*, holding that "[i]n all those cases, the accused were held to be in constructive possession of illegal drugs since they were shown to enjoy dominion and control over the premises where these drugs were found." But what the CA failed to see was that in these cases, the drug specimens retrieved were readily accessible in the places under the control of the accused persons. The same cannot be said in instant case. The retrieved drug specimens, while allegedly found in the rented stall leased by accused-appellant Baer, was located in a locked and sealed receptacle that was not owned, controlled, and subject to the dominion of the accused-appellant. x x x Therefore, **the Court finds that accused-appellant Baer *did not constructively possess* the supposed drug specimens retrieved by the authorities**. On this point alone, the Court finds sufficient reason to acquit accused-appellant Baer on the crime charged.

3. ID.; ID.; ID.; CHAIN OF CUSTODY, DEFINED; PROCEDURE THAT POLICE OPERATIVES MUST FOLLOW TO MAINTAIN THE INTEGRITY OF THE CONFISCATED DRUGS USED AS EVIDENCE.— Even assuming *arguendo* that accused-appellant Baer constructively possessed the drug specimens, all the same, the Court acquits accused-appellant Baer because there is serious doubt in the mind of the Court with respect to the integrity and evidentiary value of the drug specimens retrieved. In cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law. While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires **strict compliance** with procedures laid down by it to ensure that rights are safeguarded. In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that

the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt. In this connection, **Section 21, Article II of RA 9165**, the applicable law at the time of the commission of the alleged crimes, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) **the seized items be inventoried and photographed immediately after seizure or confiscation**; (2) **that the physical inventory and photographing must be done in the presence of:** (a) **the accused or his/her representative or counsel**, (b) **an elected public official**, (c) **a representative from the media**, and (d) **a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof**. x x x In the instant case, it cannot be denied that the authorities seriously and, in a wholesale manner, swept aside the compulsory procedures mandated under Section 21 of RA 9165.

4. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF INNOCENCE OF CRIME; 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; CASE AT BAR.— Regrettably, both the RTC and CA seriously overlooked the long-standing legal tenet that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent. 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, 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. 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.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002);

NONCOMPLIANCE WITH THE REQUIREMENTS OF SECTION 21 OF THE IMPLEMENTING RULES AND REGULATIONS THEREOF UNDER JUSTIFIABLE GROUNDS, AS LONG AS THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED, SHALL NOT RENDER VOID AND INVALID THE SEIZURES AND CUSTODY OVER THE SAID ITEMS.— 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**. 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.

6. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS UNDER SECTION 11, ARTICLE II THEREOF; ELEMENTS; THIRD ELEMENT THAT ACCUSED FREELY AND CONSCIOUSLY POSSESSES THE ILLEGAL DRUG, ABSENT IN CASE AT BAR.— [T]he Court finds that the third element of the crime of illegal possession under Section 11 of RA 9165 is also wanting. The third element requires that the accused freely and consciously possesses the illegal drug. In the instant case, accused-appellant Baer testified under oath that he was approached by Notarte, who brought with him a steel box, and that the latter requested accused-appellant Baer to allow Notarte to leave his steel box at the former's rented stall in the public market. Accused-appellant Baer further testified that he refused Notarte's request, but the latter left the steel box anyway on top of the table of accused-appellant Baer's rented stall. Because Notarte had already left, accused-appellant Baer decided to bring the steel box inside his stall so that it would not get lost. **The Court notes that this testimony was duly corroborated by another witness of the defense, Raul Solante (Solante), who testified that he**

> **saw Notarte, who brought with him the steel box and asked permission from them to leave the said box with accused-appellant Baer. Solante corroborated accused-appellant Baer's testimony that Notarte hurriedly left the steel box with accused-appellant Baer because the latter refused to accept the same upon request from Notarte. Considering that criminal cases are heavily construed in favor of the accused, the RTC and CA committed a serious error in simply brushing aside the corroborated testimony of accused-appellant Baer**. Strikingly, even the RTC itself, in its evaluation of the evidence on record, found that the owner of the steel box was Notarte and not accused-appellant Baer. Further, to emphasize once more, the evidence on record establish without any doubt that accused-appellant Baer had no knowledge whatsoever as to the contents of the steel box and was not capable of opening the same as he was not the owner of the container and had no access whatsoever to the key of the steel box. Therefore, the Court is convinced that accused-appellant Baer did not freely and consciously possess illegal drugs. At most, he consciously, but hesitantly, possessed Notarte's steel box, the contents of which he had no knowledge, control, and access to whatsoever. But clearly, the evidence on record does not lead to the conclusion that accused-appellant Baer freely and consciously possessed *shabu*.

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 Eutiquio Baer @ "Tikyo" (accused-appellant Baer),

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[*] Designated Acting Chairperson per Special Order No. 2688 dated July 30, 209.

[1] See Notice of Appeal dated September 23, 2016, CA *rollo*, pp. 177-179.

assailing the Decision[2] dated August 31, 2016 (assailed Decision) of the Court of Appeals-Cebu City Eighteenth Division (CA) in CA-G.R. CEB-CR. HC No. 01343, which affirmed the Decision[3] dated January 12, 2009 rendered by Branch 18, Regional Trial Court of Hilongos, Leyte, (RTC) in Criminal Case No. H-1176, titled *People of the Philippines v. Eutiquio Baer @ "Tikyo,"* finding accused-appellant Baer guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002,"[4] as amended.

While the RTC's Decision dated January 12, 2009 convicted accused-appellant Baer for violating Section 11, Article II of RA 9165, the RTC acquitted accused-appellant Baer for illegal sale of dangerous drugs under Section 5, Article II, of RA 9165 for failure of the prosecution to prove his guilt beyond reasonable doubt.

The Facts and Antecedent Proceedings

As narrated by the CA in the assailed Decision, and as culled from the records of the instant case, the essential facts and antecedent proceedings of the instant case are as follows:

> In two separate *Information*, accused-appellant [Baer] was charged for violation of Sections 5 and 11 (illegal sale and possession of dangerous drugs, respectively), Article II of R.A. No. 9165. The *Information* respectively alleged:
>
> **Criminal Case No. H-1176**
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> "That on or about the 3rd day of December 2002, at around 5:45 o'clock in the afternoon, in the Municipality of Bato,

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[2] *Rollo*, pp. 4-14. Penned by then CA Associate Justice Germano Francisco D. Legaspi with Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap concurring.

[3] CA *rollo*, pp. 41-50. Penned by Presiding Judge Ephrem S. Abando.

[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.

Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did, then and there willfully, unlawfully and knowingly have in his possession and control Seven (7) heat-sealed transparent plastic bags of Methamphetamine Hydrochloride locally known as "SHABU", a dangerous drug weighing 25.6 grams; One (1) small heat-sealed transparent plastic bag of Methamphetamine Hydrochloride weighing 1.6 grams and One Hundred Forty Two (142) decks of small heat sealed transparent plastic sachets of Methamphetamine Hydrochloride weighing 4.26 grams, with a total weight of 31.46 grams.

CONTRARY TO LAW."

Criminal Case No. H-1177

"That on or about the 3rd day of December, 2002 at around 5:42 o'clock in the afternoon, in the Municipality of Bato, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did, then and there, willfully, unlawfully, knowingly and criminally sell, dispense one (1) deck of Methamphetamine Hydrochloride locally known as "SHABU" a dangerous drug, placed inside a small heat-sealed transparent plastic sachet weighing .04 gram to a poseur buyer worth One Hundred Pesos (₱100.00) with Serial No. EQ986769 used as mark money.

CONTRARY TO LAW."

During his arraignment on May 29, 2003, accused-appellant [Baer] entered a plea of not guilty. Accused-appellant [Baer] was detained at the Hilongos, Sub-Provincial Jail while the case was pending before the trial court. Pre-trial conference was conducted and a Pre-Trial Order was issued by the trial court on July 9, 2003.

Thereafter, trial ensued.

Evidence for the Prosecution

The evidence of the prosecution, taken together, presented the following relevant facts:

On December 3, 2002, at around 5:45 in the afternoon, SPO[1] Agustin dela Cruz [(dela Cruz)], SPO4 Alfredo Ortiz (Ortiz) and PO3

Eufracio Tavera [(Tavera)], together with other members of the Provincial Anti-Narcotics Unit (PANU) and barangay officials Cerilo Gaviola [(Gaviola)] and Marcelo Estoque, went to Brgy. Iniguihan, Bato, Leyte to serve a search warrant against accused-appellant [Baer]. Upon arriving at accused-appellant [Baer]'s place, they saw accused-appellant [Baer] and introduced themselves as members of PANU. They told him that they will search his rented stall inside the public market by virtue of a search warrant, the contents of which they read to accused-appellant [Baer].

In the presence of the police officers and barangay officials, accused-appellant [Baer] admitted that there were prohibited drugs in his place. Thereafter he escorted the team to his bedroom, retrieved a locked steel box under his bed and gave it to the team. Since the steel box was locked, a member of the team obtained a key from Virgilio Notarte (Notarte), who was detained at the municipal building. When the box was opened, it was found to contain seven big plastic sachets and 142 sealed decks of suspected shabu. The police officers confiscated those articles and made an inventory of the seized items, signed by accused-appellant [Baer] and the witnesses to the search. A certification of search was also prepared.

After the search, the team brought accused-appellant [Baer] and the seized items to the municipal building where the confiscated items were marked (the seven big plastic sachets were marked "AD ET-1" to "AD ET-7," the small plastic sachet was marked with "D-476-2002 AD ET 1" while the 142 decks of shabu were marked "C-l" to "C-142."). Thereafter, the seized items were forwarded to the PNP Crime Laboratory for qualitative examination. PSI Pinky Sayson Acog conducted a laboratory examination of the subject specimens and issued Chemistry Report No. D-476-2002, showing that the subject specimens tested positive for methamphetamine hydrochloride or shabu, a dangerous drug.

Evidence for the Defense

On the other hand, the testimonies of the defense witnesses, accused-appellant [Baer] and Raul Solante, presented a different version of the events.

In the afternoon of December 2, 2002, accused-appellant was standing near the door of his stall at the public market, watching a basketball game. While doing so, Notarte alias "Ondo" approached

accused-appellant [Baer] and requested if Notarte could leave the steel box he was carrying at accused-appellant [Baer]'s stall. Accused-appellant [Baer] refused Notarte's request since they just knew each other. Nevertheless, Notarte placed the steel box on top of a table and departed. Because Notarte had already left, accused-appellant [Baer] brought the steel box inside his rented stall. He then left to go fishing with his employer. However, when he was about to cross the basketball court, several police officers approached him and asked if he was aware of the steel box left by Notarte. Accused-appellant [Baer] answered in the affirmative and escorted them to his place and surrendered the steel box. All the while, the police officers did not present any document or search warrant to accused-appellant [Baer], nor inform him of the consequences of surrendering the steel box.

Because the steel box was locked, the police officers went to the municipal hall and obtained the key from Notarte. When the steel box was opened, it was found to contain several items that looked like "*tawas*." The police officers immediately listed the contents of the box, took a [one-hundred-peso] bill from accused-appellant [Baer] and placed it on the table. After the incident, accused-appellant [Baer] was brought to the municipal hall and placed inside a prison cell where Notarte was also detained.[5]

The Ruling of the RTC

On January 12, 2009, the RTC rendered its Decision convicting accused-appellant Baer for illegal possession of dangerous drugs under Section 11, Article II of RA 9165, while acquitting him of the charge of illegal sale of dangerous drugs under Section 5, Article II of RA 9165. The dispositive portion of the RTC's Decision reads:

WHEREFORE, in view of the foregoing, accused **EUTIQUIO BAER** is hereby found **GUILTY in Violation of Sec. 11 ART. II R.A. 9165 (Possession of Dangerous Drug Under Criminal Case No. H-1176) Beyond Reasonable Doubt and hereby sentenced to suffer LIFE IMPRISONMENT and a fine of Four Hundred Thousand Pesos (₱400,000.00). Cost against the accused**.

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[5] *Rollo*, pp. 4-8; emphasis in the original.

For failure of the prosecution to prove the guilt of the accused beyond reasonable doubt in Criminal Case No. H-1177 accused **EUTIQUIO BAER** is hereby **ACQUITTED**.

In the service of his sentence accused is hereby credited with the full time of his preventive imprisonment if he agreed to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, he will only be entitled to 4/5 of the same.

SO ORDERED.[6]

Feeling aggrieved, accused-appellant Baer filed an appeal before the CA.

The Ruling of the CA

In the assailed Decision, the CA affirmed the RTC's conviction of accused-appellant Baer. The dispositive portion of the assailed Decision reads:

WHEREFORE, the appeal is **DENIED**. The 12 January 2009 Decision of Branch 18 of the RTC of Hilongos, Leyte in Criminal Case No. H-1176 is **AFFIRMED**.

SO ORDERED.[7]

In sum, the CA held that since the steel box where the alleged drug specimens were supposedly retrieved was located in the rented stall belonging to accused-appellant Baer, the latter had constructive possession of the allegedly seized illegal drugs. Further, the CA found that the integrity and evidentiary value of the allegedly seized drug specimens were duly preserved by the prosecution.

Hence, the instant appeal.

Issue

Stripped to its core, for the Court's resolution is the issue of whether the RTC and CA erred in convicting accused-appellant Baer for violating Section 11, Article II of RA 9165.

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

[7] *Rollo*, p. 13.

The Court's Ruling

The appeal is meritorious. The Court acquits accused-appellant Baer for failure of the prosecution to prove his guilt beyond reasonable doubt.

Accused-appellant Baer was charged with the crime of illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of RA 9165.

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.[8]

The first element of illegal possession of dangerous drugs is wanting; there is no constructive possession of illegal drugs on the part of accused-appellant Baer.

Jurisprudence holds that possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found.[9]

In the instant case, it is not disputed whatsoever that the alleged seized drug specimens were not actually possessed by accused-appellant Baer. The transparent plastic bags and sealed decks allegedly containing *shabu* were not found on the person

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[8] *People v. Fernandez*, G.R. No. 198875 (Notice), June 4, 2014.

[9] *People v. Lagman*, 593 Phil. 617, 625 (2008), citing *People v. Tira*, 474 Phil. 152 (2004).

of accused-appellant Baer. As held by the CA, the drug specimens were considered to have been under the **constructive possession** of accused-appellant Baer.

Based on the evidence on record, the Court disagrees with the findings of the RTC and CA. The Court finds that the supposed drug specimens were ***NOT*** constructively possessed by accused-appellant Baer.

According to the testimony of the prosecution's witness, SPO1 dela Cruz, seven big sachets and 142 sealed decks of *shabu* were found inside the **locked steel box** retrieved from the place where the search warrant was executed.

On cross-examination, SPO1 dela Cruz readily admitted that when the authorities confronted accused-appellant Baer as to the locked steel box, accused-appellant Baer made it clear to the apprehending team that the said box was not his. He had no knowledge as to the contents of the steel box and was not capable of opening the said container because it was owned by one Ondo Notarte (Notarte).[10] **The prosecution does not refute or contest that the steel box which allegedly contained the supposed confiscated drug specimen was owned by Notarte and not owned by accused-appellant Baer, and that the latter was not capable of opening the same**.

In fact, much emphasis must be placed on the admitted fact that it was the members of the PANU who were able to open the steel box, considering that accused-appellant Baer did not own the container and that the latter had no ability to open it. The key that was used to open the steel box did not come from accused-appellant Baer. Strikingly, as testified under oath by SPO1 dela Cruz, the key that was used to open the steel box came from the authorities and not accused-appellant Baer:

Q - Were you able to get the key of the steel box?
A - Eufracio was ordered to get the key from the police station.

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[10] Transcript and Stenographic Notes (TSN) dated November 12, 2003, pp. 11-12.

Q - Were you able to get the key?
A - Yes, when he came back bringing the key.

Q - Were you able to open the steel box?
A - Yes.

Q - Who open? (sic)
A - PANU members.[11]

Further, the prosecution's witness, Gaviola, who witnessed the search, testified under oath that the key used to open the steel box did not come from accused-appellant Baer, as it came from the authorities:

Q. Who handed the key [that was used to open the steel box]?
A. A Police Officer.[12]

In fact, as testified by another witness for the prosecution, PO3 Tavera, when the search was being conducted inside the rented stall, accused-appellant Baer was not even inside the same, creating even more doubt as to accused-appellant Baer's supposed control and dominion over the steel box:

Q. While the search was going on[,] where was Eutiquio Baer then?
A. He was outside the store.[13]

In the assailed Decision, the CA cites the cases of *People of the Philippines v. Torres*,[14] *People of the Philippines v. Tira*,[15] and *Abuan v. People of the Philippines*,[16] holding that "[i]n all those cases, the accused were held to be in constructive possession of illegal drugs since they were shown to enjoy

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[11] *Id.* at 12.

[12] TSN dated January 17, 2006, p. 15; underscoring supplied.

[12] TSN dated June 1, 2005, p. 21.

[14] 533 Phil. 227 (2006).

[15] 474 Phil. 152 (2004).

[16] 536 Phil. 672 (2006).

dominion and control over the premises where these drugs were found."[17] But what the CA failed to see was that in these cases, the drug specimens retrieved were readily accessible in the places under the control of the accused persons. The same cannot be said in instant case. The retrieved drug specimens, while allegedly found in the rented stall leased by accused-appellant Baer, was located in a locked and sealed receptacle that was not owned, controlled, and subject to the dominion of the accused-appellant.

Therefore, there is no doubt in the mind of the Court that accused-appellant Baer cannot be considered as having constructively possessed the receptacle where the allegedly confiscated drug specimens were found, considering the admitted fact that he does not own the steel box and absolutely had no control over its contents.

To reiterate, constructive possession exists only when the illegal drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. The Court finds that the alleged drug specimens retrieved were not under the dominion and control of accused-appellant Baer. The container where such specimens were supposedly found, *i.e.*, the steel box owned by Notarte, was likewise not under the dominion and control of accused-appellant Baer. Therefore, **the Court finds that accused-appellant Baer *did not constructively possess* the supposed drug specimens retrieved by the authorities**. On this point alone, the Court finds sufficient reason to acquit accused-appellant Baer on the crime charged.

There is reasonable doubt as to the integrity and evidentiary value of the seized drug specimen.

Even assuming *arguendo* that accused-appellant Baer constructively possessed the drug specimens, all the same, the

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[17] *Rollo*, p. 11.

Court acquits accused-appellant Baer because there is serious doubt in the mind of the Court with respect to the integrity and evidentiary value of the drug specimens retrieved.

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

In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.[20] The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt.[21]

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

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[18] *People v. Guzon*, 719 Phil. 441, 450-451 (2013).

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

[20] *People v. Guzon, supra* note 18 at 451, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

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

[22] The said section reads as follows:

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

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**; (2) **that the physical inventory and photographing must be done in the presence of:** (a) **the accused or his/her representative or counsel**, (b) **an elected public official**, (c) **a representative from the media**, and (d) **a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof**.

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

Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same ***immediately after seizure and confiscation***. The said inventory must be done in the presence of the aforementioned required witness, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. The phrase "immediately after seizure and confiscation" means that **the physical inventory and**

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

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

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

photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the apprehending team reaches the nearest police station or the nearest office of the apprehending officer/team.[24] In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — **a requirement that can easily be complied with by the apprehending team considering that the operation was a planned activity**. In fact, prior to the operation, the team was able to procure a search warrant. Verily, the authorities had more than enough time to gather and bring with them the said witnesses and ensure the strict observance of Section 21 of RA 9165.

In the instant case, it cannot be denied that the authorities seriously and, in a wholesale manner, swept aside the compulsory procedures mandated under Section 21 of RA 9165.

First and foremost, as factually found by the CA itself in the assailed Decision, the inventory and marking of the evidence allegedly retrieved were not done immediately after the seizure of the drug specimens. The CA found that there was "failure [on the part] of the police officers to immediately mark the prohibited drugs after they were seized from accused-appellant's rented stall[.]"[25] To stress once more, Section 21 of RA 9165 requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same *immediately after seizure and confiscation*.

Second, the CA likewise factually found that the inventory was not conducted at or near the place of the apprehension, as required under Section 21 of RA 9165. The CA found that the "accused-appellant and the seized drugs were brought to the municipal building, where the inventory was prepared."[26] The

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

[25] *Rollo*, p. 12.

[26] *Id.*

CA attempted to justify this serious procedural flaw by holding that the conducting of the inventory in the public market would supposedly jeopardize the operation. **Such excuse is a hollow one, considering that the prosecution does not even assert whatsoever that the holding of the inventory in the public market would pose any danger to the operations.**

Further, even assuming for the sake of argument that the authorities were justified in holding the inventory elsewhere, to reiterate, the IRR of RA 9165 allows the inventory and photographing to be done as soon as the apprehending team reaches the nearest police station or the nearest office of the apprehending officer/team.[27] As factually found by the CA, the inventory and marking were done in the municipal building and *not* in the nearest police station or the nearest office of the apprehending officer/team.

Third, the evidence on record readily reveals that the authorities did not photograph the evidence allegedly seized. The testimonies of the prosecution's witnesses are completely silent as to the photographing of the drug specimen. In fact, no photographs of the operation nor the drug specimens were offered into evidence.

Fourth, as provided by the evidence of the prosecution, the operation was conducted only "[i]n the presence of the police officers and barangay officials[.]"[28] It is not disputed that there were no representatives from the media and the DOJ to witness the operation. The prosecution failed to acknowledge and, more so, justify this clear infraction of the law.

Fifth, as acknowledged by the CA itself, the "Receipt of Confiscated Articles was also prepared, signed by the police officers and the barangay officials who witnessed the search. As regards accused-appellant's contention that he and his family members were not given a copy of the inventory receipt, We hold that no such requirement is provided in the law and the

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

[28] *Rollo*, p. 6.

rules."[29] Such is a blatant and explicit disregard of Section 21 of RA 9165, which requires that the certificate of inventory should also be signed by the accused or his/her representative, and that the latter be given a copy of the same. For the CA to say that such requirement is not provided in the law and in the rules is *sheer ignorance of the law*.

Sixth, as testified by SPO1 dela Cruz, he marked the confiscated sachets by inscribing only his initials, *i.e.*, AD, and signature.

Under the 1999 Philippine National Police Drug Enforcement Manual (PNPDEM), the conduct of buy-bust operations requires the following:[30]

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 [get] hold of the same and his

[29] *Id.* at 12.

[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.

palm/s contaminated with the powder before giving the pre-arranged signal and arresting the suspects;

g. In pre-positioning of the team members, the designated arresting elements must clearly and actually observe the negotiation/transaction between suspect and the poseur-buyer;

h. Arrest suspect in a defensive manner anticipating possible resistance with the use of deadly weapons which maybe concealed in his body, vehicle or in a place within 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]

While the aforementioned procedural rules pertain to buy-bust operations, as the integrity of the seized drug specimens

[31] *Id*.; emphasis and underscoring supplied.

must also be preserved in searches conducted with search warrants, the rule on proper marking should be similarly observed.

In the instant case, the date, time, and place of the operation were not indicated on the markings, in clear contravention of the PNP's own set of procedures. Simply stated, the marking of the evidence was irregularly done, to say the least.

It is apparent from the foregoing that *virtually every procedural requirement mandated under Section 21 of RA 9165 was violated by the authorities in the instant case*. Hence, how the CA can hold that the integrity and evidentiary value of the seized drug specimens were duly preserved by the prosecution is totally beyond comprehension.

The Court must again stress that the procedural requirements laid down in Section 21 of RA 9165 is ***mandatory***, and that the law imposes these requirements to serve an essential purpose. In *People v. Tomawis*,[32] the Court explained that these requirements are crucial in safeguarding the integrity and credibility of the seizure and confiscation of the evidence:

> The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People vs. Mendoza*[33], without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.[34]

The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless**

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[32] G.R. No. 228890, April 18, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/6424>.

[33] 736 Phil. 749 (2014).

[34] *Id*. at 764.

arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation".[35] (Emphasis in the original)

Regrettably, both the RTC and CA seriously overlooked the long-standing legal tenet that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent.[36] 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,[37] by proving each and every element

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[35] *Supra* note 32.

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

[37] 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)

of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[38] 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*:[39]

> We should remind ourselves that we cannot presume that the accused committed the crimes they have been charged with. **The State must fully establish that for us.** If the imputation of ill motive to the lawmen is the only means of impeaching them, then that would be the end of our dutiful vigilance to protect our citizenry from false arrests and wrongful incriminations. We are aware that there have been in the past many cases of false arrests and wrongful incriminations, and that should heighten our resolve to strengthen the ramparts of judicial scrutiny.
>
> **Nor should we shirk from our responsibility of protecting the liberties of our citizenry just because the lawmen are shielded by the presumption of the regularity of their performance of duty. The presumed regularity is nothing but a purely evidentiary tool intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime.**[40] (Emphasis and underscoring supplied)

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[38] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

[39] 745 Phil. 237 (2014).

[40] *Id.* at 250-251.

To stress, the accused can rely on his right to be presumed innocent. It is thus immaterial, in this case or in any other cases involving dangerous drugs, that the accused put forth a weak defense.

Concededly, Section 21 of the IRR of RA 9165 provides that "noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items."

For this provision to be effective, however, the prosecution must first (1) recognize any lapse on the part of the police officers and (2) be able to justify the same.[41] **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**.

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.[42] As the Court explained in *People v. Reyes*:[43]

> 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.

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

[42] See *People v. Sumili*, 753 Phil. 342, 350 (2015).

[43] 797 Phil. 671 (2006).

The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*. With the chain of custody having been compromised, the accused deserves acquittal.[44] (Emphasis supplied)

In *People v. Umipang*,[45] the Court dealt with the same issue where the police officers involved did not show any genuine effort to secure the attendance of the required witness before the buy-bust operation was executed. In the said case, the Court held:

> Indeed, the absence of these representatives during the physical inventory and the marking of the seized items does not *per se* render the confiscated items inadmissible in evidence. However, we take note that, in this case, the SAID-SOTF did not even attempt to contact the *barangay* chairperson or any member of the *barangay* council. There is no indication that they contacted other elected public officials. Neither do the records show whether the police officers tried to get in touch with any DOJ representative. Nor does the SAID-SOTF adduce any justifiable reason for failing to do so — especially considering that it had sufficient time from the moment it received information about the activities of the accused until the time of his arrest.
>
> Thus, we find that there was no genuine and sufficient effort on the part of the apprehending police officers to look for the said representatives pursuant to Section 21 (1) of R.A. 9165. **A sheer statement that representatives were unavailable — without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances — is to be regarded as a flimsy excuse. <u>We stress that it is the prosecution who has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21 (1) of R.A. 9165, or that there was a justifiable ground for failing to do so.</u>**[46] (Emphasis and underscoring supplied)

It must be emphasized that Section 21 RA 9165 and its IRR apply both to buy-busy operations and searches with or without warrant.

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[44] *Id.* at 690.

[45] 686 Phil. 1024 (2012).

[46] *Id.* at 1052-1053.

The third element of illegal possession of dangerous drugs is also absent.

Lastly, the Court finds that the third element of the crime of illegal possession under Section 11 of RA 9165 is also wanting. The third element requires that the accused freely and consciously possesses the illegal drug.

In the instant case, accused-appellant Baer testified under oath that he was approached by Notarte, who brought with him a steel box, and that the latter requested accused-appellant Baer to allow Notarte to leave his steel box at the former's rented stall in the public market. Accused-appellant Baer further testified that he refused Notarte's request, but the latter left the steel box anyway on top of the table of accused-appellant Baer's rented stall. Because Notarte had already left, accused-appellant Baer decided to bring the steel box inside his stall so that it would not get lost. **The Court notes that this testimony was duly corroborated by another witness of the defense, Raul Solante (Solante), who testified that he saw Notarte, who brought with him the steel box and asked permission from them to leave the said box with accused-appellant Baer. Solante corroborated accused-appellant Baer's testimony that Notarte hurriedly left the steel box with accused-appellant Baer because the latter refused to accept the same upon request from Notarte. Considering that criminal cases are heavily construed in favor of the accused, the RTC and CA committed a serious error in simply brushing aside the corroborated testimony of accused-appellant Baer**.

Strikingly, even the RTC itself, in its evaluation of the evidence on record, found that the owner of the steel box was Notarte and not accused-appellant Baer.[47] Further, to emphasize once more, the evidence on record establish without any doubt that accused-appellant Baer had no knowledge whatsoever as to the contents of the steel box and was not capable of opening

[47] CA *rollo*, p. 49.

the same as he was not the owner of the container and had no access whatsoever to the key of the steel box.

Therefore, the Court is convinced that accused-appellant Baer did not freely and consciously possess illegal drugs. At most, he consciously, but hesitantly, possessed Notarte's steel box, the contents of which he had no knowledge, control, and access to whatsoever. But clearly, the evidence on record does not lead to the conclusion that accused-appellant Baer freely and consciously possessed *shabu*.

In sum, the Court acquits accused-appellant Baer of the offense of illegal possession of dangerous drugs under Section 11 of RA 9165 because the prosecution seriously failed to establish the existence of the elements of the crime charged and failed to preserve the integrity and evidentiary value of the evidence supposedly seized during the operation.

As a final note, despite the blatant and wholesale disregard of the mandatory requirements provided under RA 9165, the RTC, as affirmed by the CA, haphazardly convicted accused-appellant Baer. The dire consequences of the RTC and CA's blunder in the instant case cannot be overstated — the incarceration of an innocent man for almost 17 years. While the Court now reverses this grave injustice by ordering the immediate release of the accused-appellant, there is truth in the time-honored precept that *justice delayed is justice denied*.

Therefore, the Court *sternly* reminds the trial and appellate courts to exercise *extra vigilance* in trying drug cases, and *directs the Philippine National Police to conduct an investigation on this incident* and other similar cases, lest an innocent person be made to suffer the unusually severe penalties for drug offenses.

The Court likewise exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward**. 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]

The Court believes that the menace of illegal drugs must be curtailed with resoluteness and determination. Our Constitution declares that the maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.[49]

Nevertheless, by thrashing basic constitutional rights as a means to curtail the proliferation of illegal drugs, instead of protecting the general welfare, oppositely, the general welfare is viciously assaulted. In other words, by disregarding the Constitution, the war on illegal drugs becomes a self-defeating and self-destructive enterprise. **A battle waged against illegal drugs that resorts to short cuts and tramples on the rights of the people is not a war on drugs; *it is a war against the people***.

The sacred and indelible right to presumption of innocence enshrined under our Constitution, fortified further under statutory law, should not be sacrificed on the altar of expediency. Otherwise, by choosing convenience over the rule of law, the nation loses its very soul. This desecration of the rule of law is impermissible.

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[48] See *People v. Jugo*, G.R. No. 231792, January 29, 2018, 853 SCRA 321, 337-338.

[49] CONSTITUTION, Art. II, Sec. 5.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated August 31, 2016 of the Court of Appeals-Cebu City in CA-G.R. CEB-CR. HC No. 01343 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Eutiquio Baer @ "Tikyo" is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the Leyte Regional Prison, Abuyog, Leyte, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

Further, let a copy of this Decision be furnished the Chief of the Philippine National Police and the Provincial Director of the Philippine National Police, Leyte. The Philippine National Police is **ORDERED** to **CONDUCT AN INVESTIGATION** on the blatant violation of Section 21 of RA 9165 and other violations of the law committed by the authorities, as well as other similar incidents, and **REPORT** to this Court within thirty (30) days from receipt of this Decision the action taken.

SO ORDERED.

Reyes, J. Jr., Lazaro-Javier, and *Zalameda, JJ.,* concur.

Carpio, S.A.J. (*Chairperson*), on official leave.

SECOND DIVISION

[G.R. No. 232161. August 14, 2019]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SHAGER LACDAN *y* PARTO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY RULE; LINKS THAT MUST BE ESTABLISHED IN THE CHAIN OF CUSTODY; CASE AT BAR.— In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court. To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody. ***People v. Gayoso*** enumerates the **links** in the chain of custody that must be shown for the successful prosecution of illegal sale of dangerous drugs, *i.e.* ***first,*** the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; ***second*****,** the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third,*** the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth,*** the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise. The ***first link*** speaks of seizure and marking which should be done immediately at the place of arrest and seizure. It also includes the physical inventory and photograph of the seized or confiscated drugs which should be done in the presence of the accused, a media representative, a representative from the Department of Justice (DOJ), and an elected public official. x x x PO2 Gallega's testimony, on its face, bears how the *first link* in the chain of custody had been breached. Only media representative Ding Bermudez was present during the

inventory. But DOJ representative and an elected public official were not around. PO2 Gallega also failed to explain why these two (2) representatives were not found during the inventory. x x x The ***second link*** pertains to the turnover of the illegal drug seized by the apprehending officer to the investigating officer. None of the prosecution witnesses testified to whom the seized items were turned over at the police station. PO2 Gallega and PO2 Vergara merely said that PO2 Gallega was in possession of the plastic sachet from the time it was seized. It was not clear whether the same was turned over to the investigating officer at all, if there was any. Surely, this is another breach of the chain of custody. The ***third link*** pertains to the turnover by the investigating officer to the forensic chemist of the illegal drug for laboratory examination. x x x PO2 Gallega testified that he turned over the plastic sachet to the receiving clerk of the crime laboratory, who, nonetheless, was never named, let alone presented in court. The utter lack of proof on how the seized drug was handled from receipt thereof by the clerk until it got retrieved by Forensic Chemist Huelgas for examination. Undeniably, the seized item was then again open to tampering and switching, for which reason, the integrity and identity of the seized item cannot be deemed to have been preserved. x x x Lastly, the ***fourth link*** pertains to the turnover and submission of the seized item from the forensic chemist to the court. Here, after Forensic Chemist Huelgas examined the specimen, she claimed to have returned the same to the evidence custodian and later retrieved it from the latter for presentation in court. It was not shown, however, how the evidence custodian handled and stored the seized item before the same was retrieved for presentation in court. This indubitably is another breach of the chain of custody rule.

2. ID.; ID.; ID.; FAILURE TO COMPLY WITH THE CHAIN OF CUSTODY OR WHERE NO JUSTIFIABLE REASON EXISTS FOR NON-COMPLIANCE THEREWITH, THE COURT IS DUTY-BOUND TO OVERTURN THE VERDICT OF CONVICTION; CASE AT BAR.— In ***People v. Año***, the Court decreed that if the chain of custody procedure had not been complied with, or no justifiable reason exists for its non-compliance, then it is the Court's duty to overturn the verdict of conviction. Indeed, the multiple violations of the chain of custody rule here cast serious uncertainty on the identity and

integrity of the *corpus delicti*. The metaphorical chain did not link at all, albeit, it unjustly restrained appellant's right to liberty. Verily, therefore, a verdict of acquittal is in order.

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 September 15, 2016[1] of the Court of Appeals in CA-G.R. CR-HC No. 07794, affirming the conviction of appellant Shager Parto Lacdan for violation of Section 5, Article II of Republic Act 9165 (RA 9165)[2] and imposing on him life imprisonment and Five Hundred Thousand Pesos (₱500,000.00) fine.

The Proceedings Before the Trial Court

Appellant Shager P. Lacdan was charged with violation of Section 5, Article II, RA 9165 under the following Information:

> That on or about March 3, 2013, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously sell, pass and deliver to PO2 ALEXANDER GALLEGA, one (1) plastic sachet containing METHAMPHETAMINE HYDROCHLORIDE commonly known as "shabu", a dangerous drug, weighing zero point zero four (0.04) gram.
>
> CONTRARY TO LAW.[3]

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[1] Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Jane Aurora C. Lantion and Carmelita Salandanan Manahan, CA *rollo*, pp. 110-121.

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

[3] Record, p. 1.

On arraignment, appellant pleaded not guilty.[4] Trial ensued.

PO2 Alexander Gallega, PO2 Emeterio Vergara,[5] and Forensic Chemist Donna Villa Huelgas testified for the prsecution. On the other hand, appellant alone testified for the defense.

Version of the Prosecution

On March 2, 2013, around 5 o'clock in the afternoon, PO2 Alexander Gallega received a report from a confidential informant that appellant Shager Lacdan was involved in illegal drug activities on Calle 11, Barangay Cuyab, San Pedro, Laguna. PO2 Gallega relayed this information to their team leader, P/Insp. Limue1 Sigua. In turn, P/Insp. Sigua reported the information to P/Supt. Chito G. Bersaluna, who ordered PO2 Gallega to verify the report.[6]

PO2 Gallega did a surveillance and confirmed the reported illegal drug activities of appellant Shager Lacdan at Calle 11, Barangay Cuyab, San Pedro, Laguna. He reported his findings to P/Supt. Bersaluna, who formed a buy-bust team composed of PO2 Gallega as poseur buyer, PO2 Emeterio Vergara as arresting officer, and P/Insp. Sigua, SPO4 Dela Peña, and the rest of the team as back up. They also sent a coordination form and pre-operation report to the Philippine Drug Enforcement Agency (PDEA).[7]

Around 12:40 o'clock in the morning of March 3, 2013, the buy-bust team proceeded to Calle 11, Barangay Cuyab, San Pedro, Laguna where appellant resided. PO2 Gallega and the confidential informant saw appellant standing outside his residence. The confidential informant introduced PO2 Gallega to appellant and said "*Tol, dos lang*." PO2 Gallega gave the marked money to appellant who, in turn, handed one plastic sachet of suspected *shabu* to PO2 Gallega. While the confidential

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[4] Record, p. 31.

[5] Earlier referred in the records as "PO1" Emeterio Vergara.

[6] TSN, February 26, 2014, pp. 3-4.

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

informant and appellant were conversing, PO2 Gallega rang up PO2 Vergara to signal that the sale had been consummated.[8]

On signal, the back-up team immediately closed in. PO2 Gallega held appellant and introduced himself as a police officer. PO2 Vergara frisked appellant and recovered from the latter the buy-bust money. PO2 Gallega remained in possession of the plastic sachet, which he marked with "SL-B" ("Shager Lacdan—Buy[-B]ust").[9]

The buy-bust team brought appellant and the seized items to the police station. There, the team conducted a physical inventory of the items in the presence of appellant and media representative. Photographs of the same were also taken. The team prepared a request for laboratory examination of the contents of the plastic sachet and request for appellant's drug test. PO2 Gallega and PO2 Vergara personally brought appellant and the plastic sachet to the crime laboratory. PO2 Gallega handed the plastic sachet to the receiving clerk. Forensic Chemist Donna Villa Huelgas received the plastic sachet and appellant's urine sample from the receiving clerk.[10]

Per Chemistry Report No. D-154-13, Forensic Chemist Huelgas found the specimens positive for methamphetamine hydrochloride (*shabu*), a Dangerous drug.[11]

The prosecution offered the following exhibits: Exhibits "A" to "A-1-A" - PO2 Gallega's *Sinumpaang Salaysay* dated March 3, 2013[12]; Exhibits "B" to "B-1-A" - PO2 Emeterio Vergara's *Sinumpaang Salaysay* dated March 3, 2013[13]; Exhibit "C" — Request for Laboratory Examination dated March 3, 2013[14];

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

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

[10] TSN, February 26, 2014, pp. 9 and 11-12; TSN, September 24, 2014, pp. 5-6; TSN, November 13, 2013, p. 4.

[11] TSN, November 13, 2013, pp. 3-5.

[12] Record, pp. 6-7.

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

[14] *Id.* at 10.

Exhibit "D" — Chemistry Report No. D-154-13[15] ; Exhibit "D-1" one heat sealed transparent plastic sachet containing white crystalline substance, marked "SL-B"; Exhibit "E" — Request for Drug Test dated March 3, 2013[16]; Exhibit "F"— Chemistry Report No. CRIMDT-277-13[17]; Exhibit "G" — Chain of Custody Form dated March 3, 2013[18]; Exhibit "H" — Pre-Operation Report March 2, 2013[19]; Exhibit "I" — Coordination Form March 2, 2013[20]; Exhibit "J" - Certification of Inventory[21] ; Exhibits "K" and "K-1" – Photographs[22] ; and Exhibit "L" to "L-1"- two marked ₱100.00 bills.[23]

Version of the Defense

On March 3, 2013, around 6 o'clock in the evening, while seated outside his house on Calle 11, Barangay Cuyab, San pedro, Laguna, he noticed a motorcycle roaming around the area, looking for a certain Jerome Dedala. One of the passengers, whom he later identified as PO2 Gallega, shouted to him "*tol wag kang aalis dyan*." They also asked him on Jerome Dedala's whereabouts. When he could not tell them, they handcuffed and brought him to the police station.[24]

He did not execute any counter affidavit because he was prevented from doing so. He did not file any case against the police officers who arrested him. He did not know these police officers before he got arrested.[25]

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[15] *Id.* at 11.

[16] *Id.* at 12.

[17] *Id.* at 13.

[18] *Id.* at 14.

[19] *Id.* at 15.

[20] *Id.* at 16.

[21] *Id.* at 17.

[22] *Id.* at 18.

[23] *Id.* at 19.

[24] TSN, March 24, 2015, pp. 3-7.

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

The defense did not offer any documentary evidence.

The Trial Court's Ruling

By Judgment dated September 23, 2015,[26] the trial court found appellant guilty as charged, *viz*:

> WHEREFORE, judgment is hereby rendered finding accused Shager Lacdan y Parto GUILTY beyond reasonable doubt of violation of Section 5, Article II of RA 9165 and is hereby sentenced to suffer the penalty of life imprisonment and to pay a tine of Five Hundred Thousand (₱500,000.00) Pesos without subsidiary imprisonment in case of insolvency.
>
> The period of his preventive imprisonment should be given full credit.
>
> Let the plastic sachet of shabu weighing 0.04 gram subject matter of this case be immediately forwarded to the Philippine Drug Enforcement Agency for its disposition as provided by law. The ₱200.00 buy-bust money is ordered forfeited in favour of the government and deposited in the National Treasury through the Office of the Clerk of Court.
>
> SO ORDERED.[27]

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for rendering the verdict of conviction. He essentially argued: (1) the prosecution failed to prove with moral certainty the identity and integrity of the alleged seized drugs because the arresting officers failed to properly comply with the chain of custody rule; (2) the inventory and photograph were done only at the police station sans the required witnesses; and (3) the certificate of inventory did not bear his signature.[28]

For its part, the Office of the Solicitor General (OSG), through Assistant Solicitor General Renan E. Ramos and Associate

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[26] CA *rollo*, pp. 72-78; Record, pp. 94-100.

[27] CA *rollo*, p. 77; Record, p. 99.

[28] See Appellant's Brief dated April 13, 2016, CA *rollo*, pp. 53-70.

Solicitor Gift S. Mohametano, countered, in the main: (a) the presumption of regularity in the performance of official duties in favor of the arresting officers can prevail over appellant's unsubstantiated denial; (b) PO2 Gallega detailed the transaction during the buy bust operation; (c) the prosecution was able to establish the whereabouts of the seized item from the time it was confiscated until it was brought to the crime laboratory and eventually presented in court; and (d) strict compliance with Section 21 of the Implementing Rules and Regulation of RA 9165 is not necessary so long as the identity and integrity of the seized items were preserved.[29]

The Court of Appeals' Ruling

By its assailed Decision dated September 15, 2016,[30] the Court of Appeals affirmed.

The Present Appeal

Appellant now seeks affirmative relief from the Court and pleads anew for his acquittal.

For the purpose of this appeal, both appellant and the OSG, manifested that in lieu of supplemental briefs, they were adopting their respective briefs filed before the Court of Appeals.[31]

Issue

Was the chain of custody rule complied with?

Ruling

Appellant was charged with illegal sale of dangerous drugs allegedly committed on March 3, 2013. The applicable law is RA 9165 before its amendment in 2014.

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

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[29] See the People's Brief dated July 14, 2016, CA *rollo*, pp. 91-104.

[30] CA *rollo*, pp. 110-121.

[31] *Rollo*, pp. 29-31 and 34-36.

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

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

x x x x x x x x x

The IRR of RA 9165 further commands:

x x x x x x x x x

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 or 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 or the inventory and be given a copy thereof: x x x Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items; (Underscoring supplied)

x x x x x x x x x

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

establish that the substance illegally possessed by the accused is the same substance presented in court.[32]

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody. ***People v. Gayoso***[33] enumerates the **links** in the chain of custody that must be shown for the successful prosecution of illegal sale of dangerous drugs, *i.e.* ***first,*** the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; ***second*****,** the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third,*** the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth,*** the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.[34]

The ***first link*** speaks of seizure and marking which should be done immediately at the place of arrest and seizure. It also includes the physical inventory and photograph of the seized or confiscated drugs which should be done in the presence of the accused, a media representative, a representative from the Department of Justice (DOJ), and an elected public official.

Here, PO2 Gallega testified:

x x x x x x x x x

Q65. Where were you when you put (the) markings on this item?
A. At the place of incident while Vergara was holding Shager Lacdan, sir.

Q66. What markings did you place?
A. "SL-B", sir.

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[32] *People v. Barte*, 806 Phil. 533, 542 (2017).

[33] See 808 Phil. 19, 31 (2017).

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

Q67. What is the meaning of this "SL-B"?
A. Shager Lacdan-Buy bust, sir.

Q68. After you made the markings, what transpired next if any?
A. We immediately brought Shager Lacdan to the police station and informed his rights, sir.[35]

x x x x x x x x x

Q78. Can you still recall what did you do, if any after you arrived at the police station?
A. I prepared the request for crime laboratory, chain of custody form, and certification of inventory, sir.[36]

x x x x x x x x x

Q80. What else did you(r) office do after you prepared those?
A. We brought the item and the suspect to the crime laboratory for his urine and the item to be examined, sir.[37]

x x x x x x x x x

PO2 Gallega's testimony, on its face, bears how the *first link* in the chain of custody had been breached. Only media representative Ding Bermudez was present during the inventory. But DOJ representative and an elected public official were not around.

PO2 Gallega also failed to explain why these two (2) representatives were not found during the inventory.

In ***People v. Seguiente***,[38] the Court acquitted the accused because there was no showing at all that a representative from the DOJ was present during the inventory and photograph. The Court keenly noted that the prosecution failed to recognize this particular deficiency. The Court, thus, concluded that this lapse, among others, effectively produced serious doubts on the

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[35] TSN, February 26, 2014, p. 9.

[36] *Id.* at 11.

[37] *Id.*

[38] G.R. No. 218253, June 20, 2018.

integrity and identity of the *corpus delicti* especially in the face of allegation of frame up.

In ***People v. Rojas***,[39] the Court likewise acquitted the accused because the presence of representatives from the DOJ and the media was not obtained despite the fact that buy-bust operation on the accused was supposedly pre-planned. The prosecution, too, did not acknowledge, let alone, explain this deficiency.

Recently, in ***People v. Vistro***,[40] the Court acquitted the accused in light of the arresting team's non-compliance with the three-witness rule during the physical inventory and photograph of dangerous drugs.

The ***second link*** pertains to the turnover of the illegal drug seized by the apprehending officer to the investigating officer.[41] None of the prosecution witnesses testified to whom the seized items were turned over at the police station. PO2 Gallega and PO2 Vergara merely said that PO2 Gallega was in possession of the plastic sachet from the time it was seized. It was not clear whether the same was turned over to the investigating officer at all, if there was any. Surely, this is another breach of the chain of custody.

The ***third link*** pertains to the turnover by the investigating officer to the forensic chemist of the illegal drug for laboratory examination. PO2 Gallega testified:

Q88. While you were at the office, Mr. Witness who was in possession of the item you bought from the accused?
A. I, sir.

Q89. You mentioned that after the preparation of the document, you proceeded to the crime laboratory for examination of the item as well as the urine sample of the accused?
A. Yes, sir.

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[39] G.R. No. 222563, July 23, 2018.

[40] G.R. No. 225744, March 6, 2019.

[41] See *People of the Philippines v. Myrna Gayoso*, *supra* note 33, at 32.

Q90. Who was in possession of the item while you were in transit going to the crime laboratory?
A. I, sir.

Q91. When you arrived at the crime laboratory who personally handed the request and the item to the receiving clerk of the crime laboratory?
A. I, sir.[42]

PO2 Gallega testified that he turned over the plastic sachet to the receiving clerk of the crime laboratory, who, nonetheless, was never named, let alone presented in court. The utter lack of proof on how the seized drug was handled from receipt thereof by the clerk until it got retrieved by Forensic Chemist Huelgas for examination. Undeniably, the seized item was then again open to tampering and switching, for which reason, the integrity and identity of the seized item cannot be deemed to have been preserved.

In ***People v. Gayoso***,[43] the Court acquitted appellant therein because of the absence of proof of how the seized drug was handled during the second and third links. The Court ruled that considering these series of intervening gaps, it cannot reasonably be concluded that the confiscated item was the same one presented for laboratory examination and eventually presented in court.

Lastly, the ***fourth link*** pertains to the turnover and submission of the seized item from the forensic chemist to the court. Here, after Forensic Chemist Huelgas examined the specimen, she claimed to have returned the same to the evidence custodian and later retrieved it from the latter for presentation in court.[44] It was not shown, however, how the evidence custodian handled and stored the seized item before the same was retrieved for presentation in court. This indubitably is another breach of the chain of custody rule.

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[42] TSN, February 26, 2014, p. 12.

[43] See *supra* note 33, at 33-34.

[44] TSN, November 13, 2013, p. 4.

In the landmark case of ***Mallillin v. People***,[45] the Court pronounced:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain**, from the moment the item was picked up to the time it is offered into evidence, **in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.** These witnesses would then describe the **precautions taken to ensure that there had been no change** in the condition of the item **and no opportunity for someone not in the chain to have possession of the same.**[46] (Emphasis supplied)

In ***People v. Año***,[47] the Court decreed that if the chain of custody procedure had not been complied with, or no justifiable reason exists for its non-compliance, then it is the Court's duty to overturn the verdict of conviction.

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

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated September 15, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07794 is **REVERSED AND SET ASIDE**. Appellant Shager Lacdan *y* Parto is **ACQUITTED** of violation of Section 5, Article II of Republic Act 9165.

The Court further **DIRECTS** the Director of the Bureau of Corrections, Muntinlupa City: (a) to cause the immediate release

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

[46] *Id*. at 587.

[47] *People v. Año*, G.R. No. 230070, March 14, 2018.

of Shager Lacdan *y* Parto from custody unless he is being held for some other lawful cause; and (b) to inform the Court of the action taken within five (5) days from notice.

Let entry of judgment immediately issue.

SO ORDERED.

Caguioa (*Acting Chairperson*), *Reyes, J. Jr.,* and *Zalameda, JJ.,* concur.

Carpio. S.A.J. (Chairperson), on official leave.

SECOND DIVISION

[G.R. No. 232393. August 14, 2019]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSEPH PAGKATIPUNAN *y* CLEOPE,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; ELEMENTS.— Paragraph 1, Article 266-A of the RPC provides for the modes when rape is committed: (a) through force, threat or intimidation; (b) when the offended party is deprived of reason or is otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; or (d) when the offended party is under twelve (12) years of age or is demented. Where the victim is below twelve (12) years old, a case of statutory rape, the only subject of inquiry is whether carnal knowledge took place. Proof of force, threat, or intimidation is unnecessary.

2. ID.; AGGRAVATING CIRCUMSTANCES; DWELLING; DWELLING AGGRAVATES A FELONY IF IT IS

COMMITTED IN THE VICTIM'S HOME WITHOUT THE LATTER'S PROVOCATION; CASE AT BAR.— Dwelling aggravates a felony if it is committed in the victim's home without the latter's provocation. It is an aggravating circumstance because of the sanctity of privacy which the law accords to the human abode. Here, it was amply established that Pagkatipunan just barged into the dwelling of AAA and her family, took advantage of the moment while his neighbors' minor daughter was sleeping alone in the *sala*, and sexually ravaged her right there and then. His blatant violation of the sanctity of AAA and her family's dwelling aggravated the crime of rape. For the commission of a crime in another's dwelling shows worse perversity and produces graver harm. *He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere*.

3. **ID.; PENALTIES; SINGLE INDIVISIBLE PENALTY; WHEN 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.—** Article 63 of the RPC, nonetheless, provides that "[i]n 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." Thus, although the aggravating circumstance of dwelling was alleged and proven here, the appropriate penalty would still be *reclusion perpetua*.

4. **ID.; SPECIAL PROTECTION AGAINST CHILD ABUSE; EXPLOITATION AND DISCRIMINATION ACT (RA 7610); SEXUAL ABUSE UNDER SECTION 5 OF RA 7610; ELEMENTS.—** To sustain a verdict of conviction under Section 5 (b) of RA 7610, the following elements must be proved: (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.; ACTS OF LASCIVIOUSNESS; ELEMENTS.—** The elements of acts of lasciviousness under Article 336 of the RPC

are: (a) the offender commits any act of lasciviousness or lewdness upon another person of either sex; and (b) the act of lasciviousness or lewdness is committed either (i) by using force or intimidation; or (ii) when the offended party is deprived of reason or is otherwise unconscious; or (iii) when the offended party is under twelve (12) years of age. Lewd is defined as obscene, lustful, indecent, lecherous; it signifies that form of immorality that has relation to moral impurity.

6. **ID.; ID.; BEFORE AN ACCUSED CAN BE CONVICTED OF CHILD ABUSE THROUGH LASCIVIOUS CONDUCT ON A MINOR BELOW TWELVE (12) YEARS OF AGE, THE REQUISITES OF ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 OF THE REVISED PENAL CODE MUST BE PRESENT IN ADDITION TO THE REQUISITES OF SEXUAL ABUSE UNDER SECTION 5 OF RA 7610.—** In the recent case of *People v. Tulagan,* the Court decreed that when the victim is under twelve (12) years of age at the time the offense was committed, as here, the offense shall be designated as Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 of RA 7610. Thus, before an accused can be convicted of child abuse through lascivious conduct on a minor below twelve (12) years of age, the requisites of acts of lasciviousness under Article 336 of the RPC must be present in addition to the requisites of sexual abuse under Section 5 of RA 7610.

7. **ID.; ID.; IMPOSABLE PENALTY IN CASE AT BAR.—** The imposable penalty for Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 of RA 7610, if the victim is below twelve (12) years old when the offense was committed, is *reclusion temporal* in its medium period. Considering the presence of the aggravating circumstance of dwelling, the penalty shall be imposed in its maximum period. Applying the Indeterminate Sentence Law, the Court of Appeals correctly sentenced appellant to thirteen (13) years, nine (9) months and one (1) day of *reclusion temporal* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum.

8. **REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE TRIAL COURT; ACCORDED RESPECT, IF NOT CONCLUSIVE EFFECT, ESPECIALLY WHEN IT CARRIES FULL CONCURRENCE OF THE COURT OF**

APPEALS.— [T]he trial court's factual findings on the credibility of witnesses are accorded high respect, if not conclusive effect. This is because the trial court has the unique opportunity to observe the witnesses' demeanor, and is in the best position to discern whether they are telling the truth or not. This rule becomes more compelling when such factual findings carry the full concurrence of the Court of Appeals, as in this case.

9. ID.; DENIAL AND ALIBI; BOTH DEFENSES ARE WEAK WHICH CANNOT PREVAIL OVER THE POSITIVE AND CREDIBLE TESTIMONY OF THE PROSECUTION WITNESS THAT THE ACCUSED COMMITTED THE CRIME.— Against AAA's positive testimony, Pagkatipunan only offered denial and alibi. We have pronounced time and again that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial on the other, the former is generally held to prevail.

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 November 25, 2016[1] of the Court of Appeals in CA-G.R. CR-HC No. 07357 affirming, with modification, the trial court's twin verdicts of conviction against appellant Joseph Pagkatipunan *y* Cleope for rape and child abuse.

The Proceedings Before the Trial Court

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

The Charges

In Crim. Case No. 06-32724, appellant Joseph Pagkatipunan *y* Cleope was charged with rape under Article 266-A of the Revised Penal Code (RPC),[2] *viz*:

That on or about the 16th day of October 2006, in the Municipality of Cainta, Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threat and intimidation and with the attendance of the aggravating circumstance of dwelling, did then and there willfully, unlawfully and feloniously have sexual intercourse with the offended party AAA, eight (8) years old, a minor, at the time of commission of the crime against her will and without her consent to her damage and prejudice.

CONTRARY TO LAW.[3]

In Crim. Case No. 06-32725, Pagkatipunan was charged, this time, with child abuse under Section 5 (b), Article III of RA 7610,[4] *viz*:

That on or about the 18th day of October 2006, in the Municipality of Cainta, Province of Rizal, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused did then and there willfully, unlawfully, feloniously and with the attending circumstance of dwelling, sexually abuse the person of the offended party AAA, eight (8) years old, a minor at that time of the commission of the crime by licking her vagina, against her will and without her consent, which act debases, degrades and demeans her intrinsic worth as human being, to her damage and prejudice.

CONTRARY TO LAW.[5]

The cases were raffled to the Regional Trial Court-Br. 72, Antipolo City.

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[2] As amended by RA 8353 otherwise known as the *Anti-Rape Law of 1997.*

[3] *Rollo*, p. 3.

[4] Otherwise known as the *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.*

[5] *Rollo*, p. 3.

On arraignment, Pagkatipunan pleaded not guilty to both charges.[6] Joint trial ensued.

The Prosecution's Version

On October 16, 2006, eight-year old AAA was sleeping alone in the *sala* of their house in Cainta, Rizal. She was awakened when Pagkatipunan barged into the house, undressed her, and then ordered her to keep quiet. She was frightened. Pagkatipunan forced her to lie down on a chair and inserted his penis in her vagina. After consummating his lust, he left. She did not tell anyone in her family about her traumatic experience.[7]

Two (2) days later, on October 18, 2006, AAA was again left alone in the house when Pagkatipunan once more barged in and ordered her this time to sit on the *sala*. He further commanded her to undress[8] then he spread her legs and licked her vagina.[9]

He was doing the act when AAA's father, BBB, arrived. Enraged by what he saw, BBB rushed straight and punched Pagkatipunan who nonetheless managed to flee. Wasting no time, BBB immediately reported the incident to the barangay officials who caused Pagkatipunan's arrest.[10]

Chief Inspector Jesille C. Baluyot examined AAA and found a shallow healed hymenal laceration at the 6 o'clock position.[11]

The Defense's Version

Pagkatipunan denied the accusations against him. He admitted though that AAA and BBB were his neighbors. He testified that on October 16, 2006, he just stayed home and did the chores.

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[6] *Id.*

[7] *Id.* at 4.

[8] CA *rollo*, p. 68.

[9] *Rollo*, p. 11.

[10] *Id.* at 4.

[11] *Id.*

On October 18, 2006, he went to AAA's house around noontime to watch over her while her parents were at work.[12]

The Trial Court's Ruling

As borne in its two (2) separate Decisions dated October 9, 2014,[13] the trial court found Pagkatipunan guilty of both charges, thus:

Crim. Case No. 06-32724

WHEREFORE, finding the accused GUILTY beyond reasonable doubt of the crime of Rape, he is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA* and ordering him to pay the victim ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages.

SO ORDERED.[14]

Crim. Case No. 06-32725

WHEREFORE, finding the accused JOSEPH PAGKATIPUNAN *y* CLEOPE guilty beyond reasonable doubt for Violation of Section 5(b), 2nd and 3rd phrases of Article III of R.A. No. 7610 in rel. to Article 14, No. 3 of the Revised Penal Code, as amended and in further rel. to Section 5 (a) of R.A. 8369 he is hereby ordered to suffer the penalty of eight (8) years and one (1) day of prision mayor as minimum to fourteen (14) years and one (1) day of reclusion temporal as maximum. Accused is ordered to pay the victim the amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

SO ORDERED.[15]

The trial court gave full weight and credence to AAA's positive and categorical testimony pointing to Pagkatipunan as the person who raped and sexually abused her. It noted that AAA, a minor, would not concoct a story of defloration, allow

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

[13] Penned by Judge Ruth D. Cruz-Santos; CA *rollo*, pp. 61-72.

[14] CA *rollo*, p. 66.

[15] *Id.* at 72.

her private parts to be examined, and subject herself to shame if the same were not true.[16] The finding that AAA sustained shallow hymenal lacerations only did not negate the fact that AAA was raped. For the slightest penetration of the male organ into the *labia minora* is sufficient.[17]

The Proceedings Before the Court of Appeals

On appeal, Pagkatipunan faulted the trial court for giving full weight and credence to AAA's purportedly inconsistent and incredible testimony. Too, he argued that carnal knowledge was not proven in view of AAA's alleged failure to categorically state that he inserted his penis in her vagina.[18]

The Court of Appeals' Ruling

Under Decision dated November 25, 2016,[19] the Court of Appeals affirmed with modification, *viz*:

> ***WHEREFORE***, the appeal filed by Joseph Pagkatipunan y Cleope is **DISMISSED**.
>
> The Decision of the Regional Trial Court of Antipolo City, Branch 72 in Criminal Case No. 06-32724 is **AFFIRMED with MODIFICATION** that Joseph Pagkatipunan y Cleope is **ORDERED** to pay Thirty Thousand Pesos (₱30,000.00) as exemplary damages.
>
> The Decision of the Regional Trial Court of Antipolo City, Branch 72 in Criminal Case No. 06-32735 is **AFFIRMED** with the following **MODIFICATIONS**: Joseph Pagkatipunan y Cleope is sentenced to an indeterminate penalty of 13 years, 9 months and 1 day of reclusion temporal as minimum to 17 years and 4 months of reclusion temporal as maximum. He is **ORDERED** to pay a fine of Fifteen Thousand Pesos (₱15,000.00); Twenty Thousand Pesos (₱20,000.00) as civil

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

[17] *Id.* at 65.

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

[19] Penned by Associate Justice Ricardo R. Rosario with Associate Justices Edwin D. Sorongon and Marie Christine Azcarraga-Jacob concurring; *rollo*, pp. 2-17.

indemnity; Fifteen Thousand Pesos (₱15,000.00) as moral damages; and Fifteen Thousand Pesos (₱15,000.00) as exemplary damages.

Joseph Pagkatipunan y Cleope is **ORDERED** to pay interest on all monetary awards for damages in both cases at the rate of six percent (6%) per annum from the date of finality of this Decision until full satisfaction thereof.

SO ORDERED.[20]

The Court of Appeals held that the prosecution was able to establish that on October 16, 2006, Pagkatipunan had carnal knowledge of AAA and on October 18, 2006, he sexually abused AAA by licking her private part. It found that AAA, a child of eight (8) years when the harrowing incidents happened and merely twelve (12) years old when she took the witness stand, would not have fabricated such charges so humiliating to herself and her family had she not been truly subjected to the painful experiences of rape and sexual abuse.[21]

The Present Appeal

Pagkatipunan now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution dated October 2, 2017,[22] Pagkatipunan and the Office of the Solicitor General manifested that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.[23]

Issue

Did the Court of Appeals err in affirming the verdicts of conviction for rape and child abuse against Pagkatipunan?

Ruling

Crim. Case No. 06-32724

Paragraph 1, Article 266-A of the RPC provides for the modes when rape is committed: (a) through force, threat or intimidation;

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[20] *Rollo,* pp. 16-17.

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

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

[23] *Id.* at 27-29 and 35-36.

(b) when the offended party is deprived of reason or is otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; or (d) when the offended party is under twelve (12) years of age or is demented.

Where the victim is below twelve (12) years old, a case of statutory rape, the only subject of inquiry is whether carnal knowledge took place. Proof of force, threat, or intimidation is unnecessary.[24]

Here, it is undisputed that AAA was only eight (8) years old when the incident happened.[25] The only remaining question is "*did Pagkatipunan have carnal knowledge of AAA?*" On this score, AAA testified:

Q Okay, when you were sleeping on October 16, 2006, what happened?
A **Joseph inserted his penis in my vagina, sir.**

Q Do you know how Joseph was able to enter your house?
A Yes, sir. He opened our door, sir.

Q Were you already awake when Joseph opened your door?
A No, sir.

Q And at what point did you wake up?
A When he took off my clothes, sir.

Q Can you still remember what were you wearing then?
A I don't recall, sir.

Q When Joseph took off your clothes, what did you do?
A I was awakened, sir.

Q And what did you do after that?
A I stood up, sir.

Q What did Joseph do when he saw you standing?
A He told me to keep quiet and not to report the incident, sir.

Q How did you feel when Joseph told you that?
A I got frightened, sir.

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[24] *People v. Araojo,* 616 Phil. 275, 287 (2009).

[25] *Rollo,* p. 6.

Q Why were you frightened?
A I was afraid that he might harm me, sir.

Q When Joseph threatened you, what did you do after that?
A Nothing, sir.

Q And what did he do after that?
A **That was the time he inserted his penis in my vagina, sir.**

Q What did you feel?
A I was in pain, sir.

Q After that what did he do?
A Nothing else, sir.

Q And did he leave your house?
A Yes, sir.[26] (emphases supplied)

As it was, AAA's testimony did not stand alone. The trial court also considered Chief Inspector Baluyot's corroborative medical finding of a shallow healed laceration of AAA's hymen at the six o'clock position. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. When the forthright testimony of a rape victim is consistent with medical findings, as in this case, the essential requisites of carnal knowledge are deemed to have been sufficiently established.[27]

Appellant, nevertheless, attempts to discredit AAA because the latter allegedly admitted not seeing what exactly got inserted in her vagina.[28] To put things in perspective, We quote AAA's relevant testimony, thus:

Q When Joseph entered his penis in your vagina you were seated properly? What was your position?
A I was seated, sir.

Q Where was your thigh located, pressed on the seat itself or in upward position?

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

[27] See *People v. Sabal*, 734 Phil. 742, 746 (2014), citing *People v. Perez*, 595 Phil. 1232, 1258 (2008).

[28] CA *rollo*, pp. 51-52.

A Seated properly on the chair, sir.

Q Was your thigh wide apart or pressed together? [sic]
A Pressed together, sir.

Q When the accused here, you said his penis entered your vagina, were your thigh[s] pressed together or separated?
A He spread it, sir. [sic]

Q Were you able to see his penis?
A No, sir.

Q Why?
A I did not look at it, sir.

Q Where are you looking at?
A Looking at him, sir.

Q Okay, and were you able to see his hands?
A Yes, sir.

Q Where was it located? His right hand where is it located?
A In my thigh, sir. [sic]

Q How about his left hand?
A In the chair, sir.[29] [sic]

Based on AAA's up and close encounter with appellant, she invariably testified it was appellant's penis, and no other, which appellant himself inserted in her vagina.[30]

Penalty in Crim. Case No. 06-32724

The Information alleged that the aggravating circumstance of dwelling attended the commission of rape.

Dwelling aggravates a felony if it is committed in the victim's home without the latter's provocation.[31] It is an aggravating circumstance because of the sanctity of privacy which the law accords to the human abode. Here, it was amply established that Pagkatipunan just barged into the dwelling of AAA and

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

[30] *Id.* at 9.

[31] *People v. Jugueta*, 783 Phil. 806, 849 (2016).

her family, took advantage of the moment while his neighbors' minor daughter was sleeping alone in the *sala*, and sexually ravaged her right there and then. His blatant violation of the sanctity of AAA and her family's dwelling aggravated the crime of rape. For the commission of a crime in another's dwelling shows worse perversity and produces graver harm.[32] *He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere.*[33]

Article 63 of the RPC, nonetheless, provides that "[i]n 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." Thus, although the aggravating circumstance of dwelling was alleged and proven here, the appropriate penalty would still be *reclusion perpetua*. As for the civil indemnity and damages, in accordance with prevailing jurisprudence,[34] the award of **exemplary damages** should be increased from ₱30,000.00 to **₱75,000.00, moral damages** from ₱50,000.00 to **₱75,000.00**, and **civil indemnity** from ₱50,000.00 to **₱75,000.00**. These amounts shall earn six percent (6%) interest *per annum* from finality of this decision until fully paid.

Crim. Case No. 06-32725

To sustain a verdict of conviction under Section 5 (b) of RA 7610, the following elements must be proved: (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.[35]

In the recent case of *People v. Tulagan*,[36] the Court decreed that when the victim is under twelve (12) years of age at the

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[32] *People v. Kalipayan*, G.R. No. 229829, January 22, 2018.

[33] See *People v. Bringcula*, G.R. No. 226400, January 24, 2018.

[34] See *People v. Belen*, 803 Phil. 751, 774 (2017) and *People v. Jugueta*, 783 Phil. 806, 849 (2016).

[35] *People v. Monroyo*, 811 Phil. 802, 812 (2017).

[36] G.R. No. 227363, March 12, 2019.

time the offense was committed, as here, the offense shall be designated as Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 of RA 7610.[37] Thus, before an accused can be convicted of child abuse through lascivious conduct on a minor below twelve (12) years of age, the requisites of acts of lasciviousness under Article 336 of the RPC must be present in addition to the requisites of sexual abuse under Section 5 of RA 7610.[38]

The elements of acts of lasciviousness under Article 336 of the RPC are: (a) the offender commits any act of lasciviousness or lewdness upon another person of either sex; and (b) the act of lasciviousness or lewdness is committed either (i) by using force or intimidation; or (ii) when the offended party is deprived of reason or is otherwise unconscious; or (iii) when the offended party is under twelve (12) years of age. Lewd is defined as obscene, lustful, indecent, lecherous; it signifies that form of immorality that has relation to moral impurity.[39]

Here, all the elements of lascivious conduct under RA 7610 and acts of lasciviousness under Article 336 of the RPC were clearly established. Records bear AAA's detailed narration of the incident when their neighbor Pagkatipunan entered the house of AAA and her family and ordered her to sit in the *sala*. There, he further ordered her to undress, and as soon as she did, he licked her vagina. According to AAA, she could not do anything because she was afraid of him.[40]

She recounted what he did to her just two (2) days after he inserted his penis in her vagina, thus:

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[37] This finds support in the first *proviso* in Section 5 (b) of RA 7610 which requires that "*when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be*."

[38] *People v. Caoili*, G.R. Nos. 196342 & 196848, August 8, 2017, 835 SCRA 107, 152-153.

[39] *Lutap v. People*, G.R. No. 204061, February 5, 2018.

[40] CA *rollo*, p. 68.

Q And when Joseph Pagkatipunan spread your legs, what did he do?
A That was the moment he licked my vagina, sir.

Q What was your reaction then?
A I was afraid, sir.

Q Did he say anything to you?
A None, sir.

Q While he was doing that, what happened?
A My father saw it, sir.

Q By the way, other than you said licking your private part, did he do anything else?
A Yes, sir.

Q What is that?
A He inserted his penis in my vagina, sir.

Q When was that?
A That was October 16, sir.

Q You said [awhile ago] that while Joseph was licking your private part your father arrived, what happened when your father arrived?
A My father punched him, sir.[41]

AAA's testimony was positive, straightforward and categorical. Her father BBB corroborated her testimony. BBB testified that on October 18, 2006, around 1 o'clock in the afternoon, he got home from work and saw with his own eyes Pagkatipunan down on his knees licking AAA's vagina. He rushed straight and punched Pagkatipunan who managed to run out and escape.[42]

As in the first case, the trial court gave credence to AAA's testimony for being positive, straightforward and categorical. Indeed, the trial court's factual findings on the credibility of witnesses are accorded high respect, if not conclusive effect. This is because the trial court has the unique opportunity to

[41] *Rollo*, p. 11.

[42] *Id.* at 4.

observe the witnesses' demeanor, and is in the best position to discern whether they are telling the truth or not.[43] This rule becomes more compelling when such factual findings carry the full concurrence of the Court of Appeals, as in this case.[44]

Against AAA's positive testimony, Pagkatipunan only offered denial and alibi. We have pronounced time and again that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial on the other, the former is generally held to prevail.[45]

Penalty in Crim. Case No. 06-32725

Clearly, Pagkatipunan should be convicted of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 of RA 7610.

The Information in Crim. Case No. 06-32725 likewise alleged that the aggravating circumstance of dwelling attended the commission of the felony. Records show that AAA was alone in the house when Pagkatipunan barged in.[46] He knew that AAA's father BBB was at work.[47] Yet again, he took advantage of this fact and committed acts of lasciviousness on AAA merely two (2) days after raping her.

One's dwelling place is a "sanctuary worthy of respect."[48] Our laws regard our homes with much respect, so much so that dwelling is considered an aggravating circumstance in

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[43] See *People v. Nelmida*, 694 Phil. 529, 556 (2012).

[44] See *People v. Regaspi*, 768 Phil. 593, 598-599 (2015).

[45] *People of the Philippines v. Jordan Batalla*, G.R. No. 234323, January 7, 2019.

[46] *Rollo*, p. 11.

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

[48] *People v. Villaros y Caranto*, G.R. No. 228779, October 8, 2018.

determining the exact liability in criminal prosecutions.[49] Here, it is clear that Pagkatipunan purposely intended to commit his bestial act while AAA was alone in their house. His downright disrespect of the privacy and sanctity of his neighbors' home aggravates the crime he committed.

The imposable penalty for Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 of RA 7610, if the victim is below twelve (12) years old when the offense was committed, is *reclusion temporal* in its medium period.[50] Considering the presence of the aggravating circumstance of dwelling, the penalty shall be imposed in its maximum period.[51] Applying the Indeterminate Sentence Law,[52] the Court of Appeals correctly sentenced appellant to thirteen (13) years, nine (9) months and one (1) day of *reclusion temporal* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum. The imposition of ₱15,000.00 as fine in accordance with Section 31 (f) of RA 7610[53] is also proper. In accordance with our pronouncement in *People v. Tulagan*,[54] however, the

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[49] *Id.*

[50] *Ramilo v. People*, G.R. No. 234841, June 3, 2019.

[51] See *People v. Delantar*, 543 Phil. 107, 125-126 (2007).

[52] 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.)

[53] SECTION 31. Common Penal Provisions.

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(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.

[54] G.R. No. 227363, March 12, 2019.

awards of **civil indemnity** should be increased from ₱20,000.00 to **₱50,000.00**, **moral damages** from ₱15,000.00 to **₱50,000.00**, and **exemplary damages** from ₱15,000.00 to **₱50,000.00**. These amounts shall earn six percent (6%) interest *per annum* from finality of this decision until fully paid.

ACCORDINGLY, the appeal is **DENIED**. The Decision of the Court of Appeals dated November 25, 2016 in CA-G.R. CR-HC No. 07357 is **AFFIRMED with MODIFICATION**.

In **Crim. Case No. 06-32724**, **JOSEPH PAGKATIPUNAN *y* CLEOPE** is found **GUILTY** of **Rape**. He is sentenced to ***Reclusion Perpetua*** and ordered to **PAY** ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages.

In **Crim. Case No. 06-32725**, **JOSEPH PAGKATIPUNAN *y* CLEOPE** is found **GUILTY** of **Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5 (b) of Republic Act No. 7610**. He is sentenced to the indeterminate penalty of thirteen (13) years, nine (9) months and one (1) day of *reclusion temporal* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum. He is further ordered to **PAY** ₱15,000.00 as fine; ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱50,000.00 as exemplary damages.

These amounts, except for the fine, shall earn six percent (6%) interest per annum from finality of this Decision until fully paid.

SO ORDERED.

Caguioa,[*] *Reyes, J. Jr.,* and *Zalameda, JJ.*, concur.

Carpio, S.A.J. (*Chairperson*), on official leave.

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[*] Acting Second Division Chairperson

SECOND DIVISION

[G.R. No. 232888. August 14, 2019]

JULIETA T. VERZONILLA, *petitioner, vs.* **EMPLOYEES' COMPENSATION COMMISSION,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; EMPLOYEES' COMPENSATION; SICKNESS, DEFINED; TO BE ENTITLED TO COMPENSATION, A CLAIMANT MUST SHOW THAT THE SICKNESS IS EITHER A RESULT OF AN OCCUPATIONAL DISEASE LISTED UNDER ANNEX "A" OF THE AMENDED RULES ON EMPLOYEES' COMPENSATION OR IF NOT SO LISTED, THAT THE RISK OF CONTRACTING THE DISEASE IS INCREASED BY THE WORKING CONDITIONS.— Article 165 (l) of Title II, Book IV on Employees' Compensation and State Insurance Fund of the Labor Code, as amended by Section 1, PD 626, as amended, defines **"sickness"** as **"any illness definitely accepted as an occupational disease listed by the Commission, or any illness caused by employment, subject to proof that the risk of contracting the same is increased by working conditions."** x x x To be entitled to a compensation, a claimant must show that the sickness is either: (1) a result of an occupational disease listed under Annex "A" of the Amended Rules on EC under the conditions Annex A sets forth; or (2) if not so listed, that the risk of contracting the disease is increased by the working conditions.

2. ID.; ID.; ID.; CLAIMANT HAS THE BURDEN OF PROOF TO SHOW, BY SUBSTANTIAL EVIDENCE, THAT ANY OF THE CONDITIONS FOR COMPENSABILITY IS MET; CASE AT BAR.— [F]or the sickness and resulting disability or death to be compensable, the claimant has the burden of proof to show, by substantial evidence, that the conditions for compensability is met. Hence, in the present case, the fact that cardiovascular disease is listed as an occupational disease does not mean automatic compensability. Julieta must show, by substantial evidence, that any of the conditions in item number

18 of the Amended Rules on EC was satisfied or that the risk of Reynaldo in contracting his disease was increased by his working conditions. x x x [T]he CA pronounced that "although cardiovascular disease is a listed occupational disease, its compensability, nonetheless, requires compliance with all [the] conditions set forth in the rules," giving the impression that Julieta is bound to prove the concurrence of ALL of the conditions in item number 18. This is mistaken. A simple reading of the law shows that a claimant is required to prove merely the existence of "**any"** of the conditions mentioned in the subject item, hence, only at least one thereof. Indeed, it appears that the CA failed to appreciate whether Reynaldo's case falls under the paragraphs of Item 18 other than paragraph (c) thereof. Of particular importance is paragraph (b) which speaks of a situation wherein the strain of work of the employee which caused an attack was severe and was followed within 24 hours by signs of a cardiac insult. To the Court's mind, if the CA considered the foregoing, it would have not been so precipitate in dismissing Julieta's claim.

3. ID.; ID.; ID.; ID.; IT IS NOT NECESSARY THAT THE EMPLOYMENT BE THE SOLE FACTOR IN THE GROWTH, DEVELOPMENT, OR ACCELERATION OF A CLAIMANT'S ILLNESS TO ENTITLE HIM TO COMPENSATION BENEFITS; IT IS ENOUGH THAT CLAIMANT'S EMPLOYMENT CONTRIBUTED, EVEN IN A SMALL DEGREE, TO THE DEVELOPMENT OF THE DISEASE.— In arriving at this conclusion, the Court stresses that in determining the compensability of an illness, it is not necessary that the employment be the sole factor in the growth, development, or acceleration of a claimant's illness to entitle him to compensation benefits. **It is enough that his employment contributed, even in a small degree, to the development of the disease.** Moreover, the degree of proof in establishing at least a small work-connection is merely substantial evidence.

4. POLITICAL LAW; 1987 CONSTITUTION; SOCIAL JUSTICE; A LIBERAL ATTITUDE IN FAVOR OF EMPLOYEES' CLAIM FOR COMPENSABILITY IS GUARANTEED BY THE CONSTITUTION, IN LIGHT OF THE COMPASSIONATE POLICY TOWARDS LABOR.— [I]t is well to recall that the constitutional guarantee of social

justice towards labor demands a liberal attitude in favor of the employee in deciding claims for compensability. This holds true despite PD 626's abandonment of the presumption of compensability under the previous Workmen's Compensation Act. The Court has ruled, thus: Presidential Decree No. 626, as amended, is said to have abandoned the presumption of compensability and the theory of aggravation prevalent under the Workmens Compensation Act. **Despite such abandonment, however, the present law has not ceased to be an employees' compensation law or a social legislation; hence, the liberality of the law in favor of the working man and woman still prevails**, and the official agency charged by law to implement the constitutional guarantee of social justice should adopt a liberal attitude in favor of the employee in deciding claims for compensability, especially in light of the compassionate policy towards labor which the 1987 Constitution vivifies and enhances.

APPEARANCES OF COUNSEL

Office of the Solicitor General for respondent.

R E S O L U T I O N

CAGUIOA,[*] *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated October 28, 2016 (Assailed Decision) and Resolution[3] dated July 6, 2017 (Assailed Resolution) of the Court of Appeals (CA) Special Tenth Division and Former Special Tenth Division, respectively, in CA-G.R. SP No. 134846.

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[*] Designated Acting Chairperson per Special Order No. 2688 dated July 30, 2019.

[1] *Rollo*, pp. 9-32.

[2] *Id*. at 34-40; Penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Florito S. Macalino and Leoncia R. Dimagiba concurring.

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

Facts

Reynaldo I. Verzonilla (Reynaldo) was employed as a Special Operations Officer (SOO) III in the Quezon City Department of Public Order and Safety since June 1, 1999 until his death on July 5, 2012. As such, he performed the following functions:

1. Assist the Special Operations Officer V in conducting seminars, training and [dry runs] on disaster preparedness and first aid techniques relative to rescue and relief operations.

2. Assist the immediate supervisor in enhancing public awareness on disaster preparedness through tri-media information campaign.

3. Conduct hazard, vulnerability, and risk assessment within the city.

4. Attend meetings, seminars, and trainings on disaster prevention and preparedness.

5. Render fieldwork in times of urgent need and coordinate with other government agencies/offices.[4]

Pursuant to a Memorandum dated June 29, 2012, Reynaldo attended the training "on the use of the Rapid Earthquake Damage Assessment System (REDAS) software" on July 1-6, 2012 in Tagaytay City. Prior to this, he attended several other seminars.[5]

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[4] *Id*. at 72.

[5] Including the following:

September 19-23, 2011	-PH-US Balikatan 2012 CPX Initial Planning Conference and the Actual Exercise
February 28-29, 2012	-Bahn Communications, Inc. eGIS Planning and Kick-off Workshop
March 21-23, 2012	-ASEAN Training Course on Disaster Risk Reduction (DRR) and Climate Change Adaptation (CCA)
March 8, 2012	-Info Bahn Communications, Inc. eGIS Orientation (Capability Building Training)
March 27-29, 2012	-PH-US Balikatan 2012 - Unilateral Exercise
April 16-27, 2012	-PH-US Balikatan 2012 CPX
May 16-18, 2012	-3-Day Training of Trainers (TOT): Philippine Disaster Risk Reduction and Management System
June 8, 2012	- ER Hardcore Core Concepts of the Basics

On July 5, 2012, Reynaldo died due to "cardio pulmonary arrest, etiology undetermined" at UniHealth-Tagaytay Hospital and Medical Center, Inc. (UTHMCI). His Discharge Summary/ Clinical Abstract[6] shows that he complained of abdominal pain and chest pain. Records show that Reynaldo was previously diagnosed with hypertension in 2002.[7]

Thereafter, petitioner Julieta Verzonilla (Julieta), the surviving spouse of Reynaldo, filed a claim for compensation benefits before the Government Service Insurance System (GSIS) under Presidential Decree (PD) 626.[8] In a letter dated April 26, 2013,[9] the GSIS denied the claim of Julieta, stating that based on the documents submitted, the ailment of Reynaldo was not connected to his work and that no evidence was found that his duties as SOO III increased the risk of contracting said ailment.[10] Julieta moved for a reconsideration of the denial but the same was denied in the GSIS decision dated May 24, 2013.[11]

Julieta elevated her claims to the Employees' Compensation Commission (ECC). In a decision dated August 7, 2013,[12] the

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June 18-20, 2012	- Forum on Partnership Building for DRRM & CCA
July 1-6, 2012	- Mainstreaming Disaster Risk Reduction into Local Development Planning Process through the Provision and Training on the Use of REDAS Software. (*Id*. at 75-76)
June 18, 19 and 20, 2012	- DILG Forum on Partnership Build for Disaster, Risk Reduction and Management and Climate Change in Tagaytay City (*Id*. at 11-12)

[6] *Id*. at 98.

[7] *Id*. at 101.

[8] FURTHER AMENDING CERTAIN ARTICLES OF PRESIDENTIAL DECREE NO. 442 ENTITLED "LABOR CODE OF THE PHILIPPINES," dated December 27, 1974.

[9] *Rollo*, p. 96.

[10] *Id*.

[11] *Id.* at 97.

[12] *Id.* at 59-62.

ECC affirmed the decision of the GSIS, noting that while cardiovascular disease is listed as an occupational disease under Annex "A" of the Amended Rules on Employees Compensation (EC), it is still subject to the conditions therein set. According to the ECC, Julieta failed to satisfy these conditions. Further, the ECC held that Julieta failed to provide substantial evidence to show reasonable connection between the cause of death of Reynaldo and his work and working conditions.[13]

Hence, Julieta filed a Petition for Review with the CA. In the Assailed Decision, the CA agreed with the ECC that Julieta failed to prove, by substantial evidence, that the conditions for compensability of cardiovascular diseases were met[14] or that Reynaldo's risk of contracting the disease was increased by his working conditions.[15] The CA noted that while Reynaldo was diagnosed to be hypertensive, no evidence was submitted to show that this hypertension was controlled or that his heart disease worsened by the nature of his work.[16] The CA held as well that there was no showing that Reynaldo was performing strenuous activities prior to his death.[17] The CA, thus, disposed of the case as follows:

WHEREFORE, premises considered, the instant *Appeal* is **DENIED**. The appealed *Decision* dated August 7, 2013 by the Employees' Compensation Commission in ECC Case No. GM-19162-0705-13 is hereby **AFFIRMED**.

SO ORDERED.[18]

Julieta filed a motion for reconsideration but the same was denied in the Assailed Resolution. Hence, the present recourse.

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[13] *Id.* at 61.

[14] *Id.* at 38.

[15] *Id.* at 39.

[16] *Id.*

[17] *Id.*

[18] *Id.* at 40.

In assailing the findings of the CA, Julieta avers that: 1) there is a reasonable work connection between Reynaldo's hypertension, cardiac arrest and abdominal pain, on the one hand, and the pressures of his work, on the other;[19] 2) PD 626 is a social legislation, the purpose of which is to provide meaningful protection to the working class,[20] hence, doubts on compensability must be resolved in favor of labor;[21] and 3) Annex "A" of the Amended Rules on EC requires the concurrence of only one of the conditions set forth and that paragraphs (a) and (b) of said conditions were satisfied in the present case.[22]

Issue

Whether the CA erred in affirming the ECC's denial of Julieta's claim for EC benefits in connection with the death of her late husband Reynaldo.

Ruling

There is merit in the petition.

Article 165 (1) of Title II, Book IV on Employees' Compensation and State Insurance Fund of the Labor Code, as amended by Section 1, PD 626, as amended, defines "**sickness**" as "**any illness definitely accepted as an occupational disease listed by the Commission, or any illness caused by employment, subject to proof that the risk of contracting the same is increased by working conditions**."

This is reiterated in the Amended Rules on EC, which implements PD 626 and which requires that, "for the sickness and the resulting disability or death to be compensable, the sickness must be the result of an occupational disease listed under Annex "A" of [the] Rules with the conditions set therein satisfied, otherwise, proof must be shown that the risk of contracting the disease is increased by the working conditions."[23]

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[19] *Id.* at 19-20.

[20] *Id.* at 20.

[21] *Id.* at 27-28.

[22] *Id.* at 23-26.

[23] Amended Rules on Employees' Compensation, Rule III, Section 1 (b).

In plainer terms, to be entitled to compensation, a claimant must show that the sickness is either: (1) a result of an occupational disease listed under Annex "A" of the Amended Rules on EC under the conditions Annex A sets forth; or (2) if not so listed, that the risk of contracting the disease is increased by the working conditions.[24]

Annex "A" of the Amended Rules on EC lists cardiovascular disease as an "Occupational and Work-Related Disease" subject to certain conditions, thus:

18. CARDIO-VASCULAR DISEASES. **Any** of the following conditions:

a. If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his/her work.

b. The strain of work that brings about an acute attack must be of sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute causal relationship.

c. If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac impairment during the performance of his/her work and such symptoms and signs persisted, it is reasonable to claim a causal relationship subject to the following conditions:

1. If a person is a known hypertensive, it must be proven that his hypertension was controlled and that he was compliant with treatment.

2. If a person is not known to be hypertensive during his employment, his previous health examinations must show normal results in all of the following, but not limited to: blood pressure, chest X-ray, electrocardiogram (ECG)/ treadmill exam, CBC and urynalysis.

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[24] *GSIS v. Raoet*, 623 Phil. 690, 698-699 (2009); see also *GSIS v. Vicencio*, 606 Phil. 120, 125-126 (2009) and *GSIS v. Capacite*, 744 Phil. 170, 176 (2014).

d. A history of substance abuse must be totally ruled out. (Emphasis supplied)

It is well to recall that the first law on workmen's compensation, Act No. 3428, worked upon the presumption of compensability which means that if the injury or disease arose out of and in the course of employment, it was presumed that the claim for compensation fell within the provisions of the law. PD 626 abandoned this presumption.[25] Hence, for the sickness and resulting disability or death to be compensable, the claimant has the burden of proof to show, by substantial evidence, that the conditions for compensability is met.[26]

Hence, in the present case, the fact that cardiovascular disease is listed as an occupational disease does not mean automatic compensability. Julieta must show, by substantial evidence, that any of the conditions in item number 18 of the Amended Rules on EC was satisfied or that the risk of Reynaldo in contracting his disease was increased by his working conditions.

Julieta hinges her claim on paragraphs (a) and (b) of item number 18 of the ECC Board Resolution. She does not dispute that Reynaldo had a pre-existing hypertension, having been diagnosed with such in 2002. However, she claims that this illness, as well as the abdominal pain that Reynaldo suffered, was aggravated by the strenuous conditions of his work as SOO III, which ultimately led to his death.[27]

To support her claim, Julieta lays down the series of alleged strenuous work Reynaldo was subjected to, quoting thus:

x x x Mr. Verzonilla comes (sic) from Manila as his death certificate would show. He therefore had to travel in perhaps about two (2) hours or more including traffic, to get to Tagaytay. Starting July 1, he started attending that day-long seminar. It cannot be denied that seminars, especially one for earthquake assessment, would also involve some physical activities. Then on the 4th day, Mr. Verzonilla and company

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[25] *GSIS v. Cuanang*, 474 Phil. 727, 738 (2004).

[26] See *Gatus v. SSS*, 655 Phil. 550, 558 (2011).

[27] *Rollo*, pp. 22-23.

went to at least five (5) different places in Tagaytay for the use of the [Global Positioning System (GPS)] system. Inclusive of travel, this activity lasted for at least two and a half hours (2 1/2 hours). Thereafter, he continued on with attending the lectures for that day until 7:30 p.m. [a]nd then this was followed by a program which lasted at least until 10:00 [p.m.] Not long after, he suffered a cardiac arrest and at 1:25 a.m. of July 5, 2012, he died. His death occurred in less than x x x 24 hours since his last strenuous activities in that seminar.

And prior to this particular seminar, Mr. Verzonilla was also made to attend a Seminar on Partnership Build for Disaster, Risk Reduction and Management Climate Change also in Tagaytay City which lasted from June 18-20, 2012.[28]

The CA, in affirming the ECC decision denying the claim of Julieta, ruled out paragraph (c), item 18 of the ECC Board Resolution, thus:

Here, though it was shown that Reynaldo was diagnosed to be hypertensive, it also appears that his last consultation with Dr. Alonso was on December 22, 2003. There was no evidence adduced to show that his hypertension was controlled and that he was compliant with the treatment given, if any.[29]

Moreover, the CA pronounced that "although cardiovascular disease is a listed occupational disease, its compensability, nonetheless, requires compliance with all [the] conditions set forth in the rules,"[30] giving the impression that Julieta is bound to prove the concurrence of ALL of the conditions in item number 18. This is mistaken. A simple reading of the law shows that a claimant is required to prove merely the existence of "**any**" of the conditions mentioned in the subject item, hence, only at least one thereof.

Indeed, it appears that the CA failed to appreciate whether Reynaldo's case falls under the paragraphs of Item 18 other than paragraph (c) thereof. Of particular importance is paragraph

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[28] *Id.* at 25.

[29] *Id.* at 39.

[30] *Id.*

(b) which speaks of a situation wherein the strain of work of the employee which caused an attack was severe and was followed within 24 hours by signs of a cardiac insult. To the Court's mind, if the CA considered the foregoing, it would have not been so precipitate in dismissing Julieta's claim.

Julieta makes a valid point that from the evidence presented, substantial proof was shown that Reynaldo's cardiac arrest falls under, at least, paragraph (b) of item 18. This merely requires that: 1) the strain of work that brings about an acute attack must be of sufficient severity and 2) it must be followed within 24 hours by the clinical signs of a cardiac insult. The series of strenuous activities Reynaldo underwent prior to his heart attack is undisputed. Likewise, that the cardiac arrest and the resulting death happened within 24 hours from such strain of work is clearly shown.

There is likewise substantial proof to support that Reynaldo's pre-existing heart disease was exacerbated by the stresses of his work. Part of Reynaldo's job was to conduct and attend trainings and seminars and conduct hazard, vulnerability and risk assessments.[31] His job required him to render several hours of field work and, hence, spend stressful and long hours travelling. Barely two weeks prior to his death, he attended a two-day out-of-town seminar. He, in fact, died while in Tagaytay City, on the last day of a five-day seminar. He spent his last living hours going to five different places and enduring hours of travel time. Upon his return to the hotel, he had to conduct another lecture and attend a program which ended at about 10:00 p.m. About three hours thereafter, he suffered the cardiac arrest which took his life.[32] Hence, up to his death, Reynaldo was continuously exposed to stresses of his work which, at least, contributed to his death.

In arriving at this conclusion, the Court stresses that in determining the compensability of an illness, it is not necessary that the employment be the sole factor in the growth,

[31] *Id.* at 72.

[32] *Id.* at 25.

development, or acceleration of a claimant's illness to entitle him to compensation benefits.[33] **It is enough that his employment contributed, even in a small degree, to the development of the disease.**[34] Moreover, the degree of proof in establishing at least a small work-connection is merely substantial evidence. The Court has pronounced in *GSIS v. Capacite*:[35]

> x x x the case of *GSIS v. Vicencio* x x x particularly states:
>
> **It is well-settled that the degree of proof required under P.D. No. 626 is merely substantial evidence, which means, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. What the law requires is a reasonable work-connection and not a direct causal relation.** It is enough that the hypothesis on which the workman's claim is based is probable. Medical opinion to the contrary can be disregarded especially where there is some basis in the facts for inferring a work-connection. **Probability, not certainty, is the touchstone. It is not required that the employment be the sole factor in the growth, development or acceleration of a claimant's illness to entitle him to the benefits provided for. It is enough that his employment contributed, even if to a small degree, to the development of the disease.**[36] (Emphasis supplied)

In sum, the Court is convinced that Julieta was able to adduce substantial evidence to support her claims for compensation benefits in relation to her late husband's death.

On a final note, it is well to recall that the constitutional guarantee of social justice towards labor demands a liberal attitude in favor of the employee in deciding claims for compensability.[37] This holds true despite PD 626's abandonment

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[33] *GSIS v. Raoet, supra* note 24 at 703.

[34] *Id.*

[35] *Supra* note 24.

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

[37] See *GSIS v. Vicencio, supra* note 24 at 126.

of the presumption of compensability under the previous Workmen's Compensation Act. The Court has ruled, thus:

> Presidential Decree No. 626, as amended, is said to have abandoned the presumption of compensability and the theory of aggravation prevalent under the Workmens Compensation Act. **Despite such abandonment, however, the present law has not ceased to be an employees' compensation law or a social legislation; hence, the liberality of the law in favor of the working man and woman still prevails**, and the official agency charged by law to implement the constitutional guarantee of social justice should adopt a liberal attitude in favor of the employee in deciding claims for compensability, especially in light of the compassionate policy towards labor which the 1987 Constitution vivifies and enhances.[38] (Emphasis and underscoring supplied)

WHEREFORE, premises considered, the petition is **GRANTED**. The Assailed Decision dated October 28, 2016 and Resolution dated July 6, 2017 of the Court of Appeals in CA-G.R. SP No. 134846 are **REVERSED**. The respondent Employees' Compensation Commission is hereby ordered to award death benefits due petitioner in relation to the death of Reynaldo I. Verzonilla. The award of death benefits shall earn interest at the rate of 6% per annum from the date of extrajudicial demand until finality of this Resolution and the total amount thereof as of the finality of this Resolution shall earn 6% interest per annum from such date until full payment.

SO ORDERED.

Reyes, J. Jr., Lazaro-Javier, and *Zalameda, JJ.,* concur.

Carpio (*Chairperson*), *J.*, on official leave.

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[38] *Castor-Garupa v. ECC*, 521 Phil. 311, 321 (2006).

THIRD DIVISION

[G.R. No. 233470. August 14, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALAN BANDING *y* ULAMA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW: EVIDENCE; PROOF BEYOND REASONABLE DOUBT; REQUIRED TO SUPPORT A CONVICTION IN CRIMINAL CASES; FAILURE OF THE PROSECUTION TO PROVE BEYOND REASONABLE DOUBT THAT THE ACCUSED IS GUILTY OF THE OFFENSE CHARGED, THE PRESUMPTION OF INNOCENCE PREVAILS AND, ULTIMATELY THE ACCUSED SHALL BE ACQUITTED.— Proof beyond reasonable doubt is required to support a conviction in criminal cases. The prosecution bears the burden of proving beyond reasonable doubt that an accused is guilty of the offense charged. Should it fail, the presumption of innocence prevails and, ultimately, the accused shall be acquitted. Requiring proof beyond reasonable doubt is consistent with our constitutionally guaranteed rights: This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved." "Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution." Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS .— To sustain an accused's conviction for the illegal sale of dangerous drugs, the following elements must 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."

3. ID.; ID.; SECTION 21 THEREOF; THIRD-PARTY WITNESS RULE.— On the element of *corpus delicti*, Section 21 of Republic Act No. 9165 establishes the procedural requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. x x x The exactitude that Section 21 of Republic Act No. 9165 requires was later relaxed through the amendments that Republic Act No. 10640 introduced, particularly as to the required third-party witnesses during the seizure, inventory, and photographing. *Lescano v. People* summarized the present rule: 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.

4. ID.; ID.; ID.; STRICT COMPLIANCE THEREWITH ENSURES OBSERVANCE OF THE FOUR LINKS IN THE CONFISCATED ITEM'S CHAIN OF CUSTODY; NON-COMPLIANCE WITH SECTION 21 AND THE CHAIN OF CUSTODY RULE, WITHOUT ANY JUSTIFIABLE REASON, IS TANTAMOUNT TO A FAILURE TO PRESERVE THE *CORPUS DELICTI*'S INTEGRITY AND EVIDENTIARY VALUE.— Despite such amendment, Section 21 remains couched in a specific, mandatory language that commands strict compliance. The accuracy it requires goes into the covertness of buy-bust operations and the very nature of narcotic substances. x x x Strict compliance with Section 21 ensures observance of the four (4) links in the confiscated item's chain of custody, as enumerated in *People v. Nandi*: Thus, the 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. The prosecution must establish these links. Any deviation would cast serious doubts on the identity of the seized item and its "actual connection with the transaction involved and with the parties thereto." Accordingly, this Court has ruled in a catena of cases that noncompliance with Section 21's requirements and the chain of custody rule, without any justifiable reason, is tantamount to a failure to preserve the *corpus delicti's* integrity and evidentiary value. Without the *corpus delicti*, there is no offense of illegal sale of dangerous drug committed.

5. ID.; ID.; ID.; WHEN NON-COMPLIANCE WITH THE REQUIREMENTS MAY BE EXCUSED.— From the language of Section 21, the mandate to conduct inventory and take photographs "immediately after seizure and confiscation" necessarily means that these shall be accomplished *at the place of arrest*. When this is impracticable, the Implementing Rules and Regulations of Republic Act No. 9165 allows for two (2) other options: 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[.] To sanction noncompliance, the prosecution must prove that the inventory was conducted in either practicable place. x x x Section 21(a) of the Implementing Rules and Regulations of Republic Act No. 9165 sanctions noncompliance when there are justifiable grounds. x x x [T]he prosecution must establish two (2) requisites: "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."

6. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; APPLIES WHEN NOTHING IN THE RECORD SUGGESTS THAT THE LAW ENFORCERS DEVIATED FROM THE STANDARD CONDUCT OF OFFICIAL DUTY REQUIRED BY LAW; CASE AT BAR.— We cannot dismiss as mere "clerical error" the discrepancies between the inventory receipt and chemistry reports. The inventory receipt labeled the seized

item as marijuana, while the chemistry reports indicate it was *shabu*. Irregularities are also glaring in the marking and the weight of the seized item—all of which are utterly inexcusable and cast serious doubts on the origin of the item supposedly confiscated from accused-appellant. x x x The prosecution's contention that all of these are mere clerical errors, along with its insistence on the presumption of regularity, is patently unmeritorious and deserves scant consideration. The discrepancies are blatant irregularities that cast serious doubts on the seized items' identity. They completely defeat the police officers' self-serving assertions that the integrity and evidentiary value of the seized drug were preserved. Gross irregularities like these cannot be downplayed as mere clerical errors. Nor can the prosecution find solace in a blanket invocation of the presumption of regularity in the conduct of the officers' duties. As elucidated in *People v. Kamad*: 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 obviously wrong when they relied on the presumption of regularity in the performance of official duty.

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.*:

The constitutional rights of those who stand to be deprived of life, liberty, and property in a criminal charge involving illegal drugs demand fidelity to the chain of custody rule. To this end, no conviction may ensue where there is reasonable doubt on the confiscated drugs' identity.

This Court resolves an appeal[1] assailing the Court of Appeals Decision.[2] The Court of Appeals upheld the Regional Trial Court Decision[3] finding Alan Banding *y* Ulama (Banding) guilty beyond reasonable doubt of violating Article II, Section 5 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

An Information was filed before the Regional Trial Court, charging Banding with violation of Article II, Section 5 of Republic Act No. 9165, for the illegal sale of dangerous drugs. It read:

> That on or about the 20th day of September, 2010, in Quezon City, Philippines, the said accused, without lawful authority did then and there wilfully and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in the said transaction, a dangerous drug, to wit: 4.35 (four point thirty five) grams of white crystalline substance containing Methamphetamine Hydrochloride also known as "shabu", a dangerous drug.
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> Contrary to law.[4]

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[1] *Rollo*, pp. 14-16.

[2] *Id.* at 2-13-A. The Decision dated February 17, 2017 in CA-G.R. CR-HC No. 07900 was penned by Associate Justice Rodil V. Zalameda (now a member of this Court) and concurred in by Associate Justices Sesinando E. Villon and Pedro B. Corales of the Eleventh Division, Court of Appeals, Manila.

[3] CA *rollo*, pp. 64-75. The Decision dated October 22, 2015 in Criminal Case No. Q-10-166398 was penned by Presiding Judge Felino Z. Elefante of Branch 103, Regional Trial Court, Quezon City.

[4] *Id.* at 64.

On arraignment, Banding pleaded not guilty to the crime charged. Trial then ensued.[5]

The prosecution presented four (4) witnesses: (1) Police Officer 2 Ofelia Inway (PO2 Inway); (2) Senior Police Officer 4 Jose Fernandez (SPO4 Fernandez); (3) PO3 Wilfredo Corona (PO3 Corona); and (4) Police Chief Inspector Maridel Rodis (Chief Inspector Rodis).[6]

According to the prosecution, at around 1:00 p.m. on September 19, 2010, a confidential informant apprised PO2 Inway about the illegal drug activities of a certain "Al." Acting on the tip, police officers formed a buy-bust team designating PO2 Inway as the poseur-buyer, SPO4 Fernandez as the arresting officer, and PO3 Blanco, PO2 Valdez, and PO3 Palimar as backup. PO2 Inway received ₱27,000.00 as boodle money and, as buy-bust money, two (2) pieces of ₱500.00 bills, on which she placed her initials "OI."[7]

In the morning of September 20, 2010, the team headed to a Mercury Drug Store branch in Barangay Lagro, Quezon City, where the informant was supposed to meet "Al." Soon after, a man whom they later identified as Banding arrived. The confidential informant introduced PO2 Inway as a prospective buyer of *shabu*. PO2 Inway handed the boodle money to Banding and in exchange, Banding gave her a transparent plastic sachet containing white crystalline substance.[8]

Upon receipt of the sachet, PO2 Inway executed the pre-arranged signal, prompting SPO4 Fernandez to arrest Banding. In the same place, PO2 Inway then marked the seized item, "AB-20-09-10."[9]

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[5] *Rollo*, p. 4.

[6] *Id*.

[7] *Id*. at 4 and CA *rollo*, pp. 64-65.

[8] *Id*. at 5.

[9] *Id*. at 5 and CA *rollo*, p. 65.

To step away from the commotion in the area, the team proceeded to their station in Camp Karingal, Quezon City for the physical inventory. While in transit, PO2 Inway took custody of the seized item.[10]

At the police station, PO2 Inway and SPO4 Fernandez immediately turned over the seized item and the buy-bust money to PO3 Corona. PO3 Corona conducted the physical inventory of the seized item in the presence of Banding, the rest of the buy-bust team, and a media personnel.[11] He also took photographs of Banding, the seized item, and the buy-bust money.[12] He prepared the inventory receipt for "one small heat-sealed transparent plastic sachet containing undetermined quantity of alleged marijuana fruiting tops with marking JS 20-09-10[.] (*sic*)"[13]

PO2 Inway then submitted the seized item, along with requests for laboratory examination and drug tests, to Engineer Leonard M. Jabonillo (Engr. Jabonillo) of the Quezon City Police District Crime Laboratory Station Office 10 in Kamuning, Quezon City.[14]

Engr. Jabonillo's Chemistry Report No. D-346-2010 indicated that the seized item with marking "AB 20-09-10" yielded positive results for *shabu*.[15] This was confirmed by Chief Inspector Rodis, the forensic chemist who testified that she reexamined the same specimen upon Engr. Jabonillo's death.[16] Their reports referred to "one (1) heat-sealed transparent plastic sachet with markings AB 20-09-10 containing 4.35 gms. of white crystalline substance[.] (*sic*)"[17]

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[10] *Id.*

[11] CA *rollo*, p. 65. PO3 Corona testified that despite his prior request for an elected public official's presence, no one came to witness the inventory and photographing of the seized drugs.

[12] *Rollo*, p. 5.

[13] CA *rollo*, p. 66.

[14] *Rollo*, pp. 5-6.

[15] *Id.* at 6.

[16] CA *rollo*, p. 68.

[17] *Rollo*, pp. 6 and 10.

Banding testified in his defense. He recalled that in the morning of September 19, 2010, he was waiting for a ride to his sister's house when a vehicle stopped near him, from which five (5) armed persons alighted. These strangers poked their guns at him and forced him to board their vehicle, accusing him of selling illegal drugs. He was brought to a Mercury Drug Store branch in Lagro, Quezon City, and later to a vacant lot in Novaliches, where they demanded ₱50,000.00 from him.[18]

Since Banding could not produce the amount, the police officers brought him to Camp Karingal. A police officer, later identified as PO3 Corona, took a photo of him as he was forced to point to a plastic sachet on top of a table. Banding claimed that he complied with the police officers' order out of fear.[19]

In its October 22, 2015 Decision,[20] the Regional Trial Court found Banding guilty of illegal sale of dangerous drugs:

> **ACCORDINGLY**, in view of the foregoing, judgment is hereby rendered finding the accused Alan Banding y Ulama @ "Al" ***GUILTY*** beyond reasonable doubt of the offense charged, and he is hereby sentenced to suffer a jail term of life imprisonment and ordered to pay a fine of Five Hundred Thousand (₱500,000.00) Pesos.
>
> The Branch Clerk of Court is hereby ordered to turn over the subject specimen covered by Chemistry Report No. RD-04-11 to the PDEA Crime Laboratory in order that they be included in its next scheduled date of burning and destruction.
>
> So Ordered.[21] (Emphasis in the original)

Giving credence to the prosecution witnesses' testimonies, the trial court ruled that the prosecution was able to establish that a valid buy-bust operation took place and that the integrity and evidentiary value of the seized item were properly preserved.[22] Among others, it held that a clerical error—

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[18] CA *rollo*, pp. 68-69.

[19] *Id.* at 69.

[20] *Id.* at 64-75.

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

[22] *Id.* at 74.

particularly, writing marijuana instead of *shabu*—in the inventory receipt does not tarnish the police officers' credibility.[23] It also found that though the police officers inventoried and photographed the evidence without an elected official and a Department of Justice representative, such lapse was justified since the "illegal drug was never altered or tampered."[24]

On appeal, the Court of Appeals, in its February 17, 2017 Decision,[25] affirmed the Regional Trial Court Decision. It held that "[t]he integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with."[26] Sustaining the presumption of regularity of the police officers, it found that Banding failed to show that they did not properly discharge their duties.[27]

The Court of Appeals modified the penalty:

> **WHEREFORE**, premises considered, the instant Appeal is **DENIED** and the Decision dated 22 October 2015 rendered by Branch 103, Regional Trial Court of the Quezon City, is hereby **AFFIRMED with MODIFICATION**, to read as follows:
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> "x x x x x x x x x
>
> ACCORDINGLY, in view of the foregoing, judgment is hereby rendered finding the accused Alan Banding y Ulama @ "Al" GUILTY beyond reasonable doubt of the offense charged, and he is hereby sentenced to suffer a jail term of life imprisonment and ordered to pay a fine of Five Hundred Thousand (₱500,000.00) Pesos **without eligibility for parole**.
>
> x x x x x x x x x"
>
> **SO ORDERED.**[28] (Emphasis in the original)

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[23] *Id.* at 72.

[24] *Id.* at 74.

[25] *Rollo*, pp. 2-13-A.

[26] *Id.* at 11.

[27] *Id.*

[28] *Id.* at 13.

Thus, Banding filed a Notice of Appeal.[29] The Court of Appeals gave due course to it in an April 24, 2017 Resolution.[30]

On October 9, 2017, this Court required the parties to file their respective supplemental briefs.[31]

Both the Office of the Solicitor General, on behalf of plaintiff-appellee People of the Philippines,[32] and accused-appellant[33] manifested that they would no longer file supplemental briefs. These were noted by this Court in its February 19, 2018 Resolution.[34]

In his Brief,[35] accused-appellant argues that the police officers should have conducted the inventory and photographing at the place of the arrest. He asserts that although the rules permit flexibility, allowing for the inventory to be done at the nearest police station or the arresting team's nearest office, the prosecution did not show that Camp Karingal was the nearest police station from where the item was allegedly seized.[36] Moreover, he points out that only a media representative was present with him to witness the inventorying and photographing.[37]

Accused-appellant also stresses that Chief Inspector Rodis reexamined the seized item and issued the required certification seven (7) months after the supposed buy-bust operation. He argues that the lack of explanation as to how the seized item was stored and preserved during that period shows "a clear and unexplained break in the chain of custody."[38]

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

[30] *Id.* at 17.

[31] *Id.* at 19-20.

[32] *Id.* at 23-27.

[33] *Id.* at 28-32.

[34] *Id.* at 33-34.

[35] CA *rollo*, pp. 41-63.

[36] *Id.* at 51.

[37] *Id.* at 52.

[38] *Id.* at 54.

Finally, accused-appellant claims that the glaring discrepancies between the inventory receipt and the chemistry reports impair the integrity and evidentiary value of the seized item.[39] Since there are nagging doubts on the seized drug's identity, accused-appellant maintains that his conviction cannot be sustained.[40]

On the other hand, the Office of the Solicitor General counters in its Brief[41] that since the chain of custody was sufficiently established, the integrity and evidentiary value of the seized item were preserved.[42] It maintains that absent clear and convincing evidence of bad faith or ill will, the police officers are presumed to have acted in a regular manner, and their testimonies must be given full faith and credit.[43]

The Office of the Solicitor General underscores that the police officers requested the presence of an elected official, but "due to circumstances not within their control, the police officers were unable to strictly adhere to the said procedure."[44] Nevertheless, it argues that jurisprudence had sanctioned failure to strictly comply with the requirements under Section 21 of the Comprehensive Dangerous Drugs Act under varied conditions.[45]

As to the discrepancy in the inventory receipt and the chemistry reports, the Office of the Solicitor General asserts that the police officers amply explained that it was a mere clerical error.[46]

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[39] *Id.* at 56.

[40] *Id.* at 59.

[41] *Id.* at 87-102.

[42] *Id.* at 95.

[43] *Id.* at 93.

[44] *Id.* at 97.

[45] *Id.*

[46] *Id.* at 96-97.

For this Court's resolution is the lone issue of whether or not the discrepancy in the inventory receipt and chemistry reports, as well as the absence of an elective official and a representative from the Department of Justice during the buy-bust operation, warrants accused-appellant Alan Banding y Ulama's acquittal.

This Court grants the appeal and acquits accused-appellant of the charge.

I

Proof beyond reasonable doubt is required to support a conviction in criminal cases.[47] The prosecution bears the burden of proving beyond reasonable doubt that an accused is guilty of the offense charged. Should it fail, the presumption of innocence prevails and, ultimately, the accused shall be acquitted. Requiring proof beyond reasonable doubt is consistent with our constitutionally guaranteed rights:

> This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved." "Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution." Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted. As explained in *Basilio v. People of the Philippines*:
>
> We ruled in *People v. Ganguso*:
>
> > An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable

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[47] RULES OF COURT, Rule 133, Sec. 2 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.

> doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction *except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged*. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. 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.
>
> Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. *The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence*.[48] (Emphasis supplied)

To sustain an accused's conviction for the illegal sale of dangerous drugs, the following elements must 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."[49]

On the element of *corpus delicti*, Section 21 of Republic Act No. 9165 establishes the procedural requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia:

> 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. — . . .

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[48] *Macayan, Jr. v. People*, 756 Phil. 202, 213-214 (2015) [Per *J*. Leonen, Second Division] citing *Basilio v. People of the Philippines*, 591 Phil. 508, 548 (2008) [Per *J*. Velasco, Jr., Second Division].

[49] *People v. Royol*, G.R. No. 224297, February 13, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65005> [Per *J*. Leonen, Third Division] citing *People v. Morales*, 630 Phil. 215, 228 (2010) [Per *J*. Del Castillo, Second Division].

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

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, *shall be issued within twenty-four (24) hours after the receipt of the subject item/s*: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued on the completed forensic laboratory examination on the same *within the next twenty-four (24) hours*[.] (Emphasis supplied)

The exactitude that Section 21 of Republic Act No. 9165 requires was later relaxed through the amendments that Republic Act No. 10640 introduced, particularly as to the required third-party witnesses during the seizure, inventory, and photographing.[50] *Lescano v. People*[51] summarized the present rule:

Moreover, Section 21 (1) requires at least three (3) persons to be present during the physical inventory and photographing. These persons

[50] *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 520-521 [Per J. Leonen, Third Division].

[51] 778 Phil. 460 (2016) [Per J. Leonen, Second Division].

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.[52]

Despite such amendment, Section 21 remains couched in a specific, mandatory language that commands strict compliance. The accuracy it requires goes into the covertness of buy-bust operations and the very nature of narcotic substances. In *Mallillin v. People*:[53]

> A unique characteristic of narcotic substances is that *they are not readily identifiable* as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, ***a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with***.[54] (Emphasis supplied)

Strict compliance with Section 21 ensures observance of the four (4) links in the confiscated item's chain of custody, as enumerated in *People v. Nandi*:[55]

> Thus, the following links should be established in the chain of custody of the confiscated item: *first*, the seizure and marking, if

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[52] *Id*. at 475.

[53] 576 Phil. 576 (2008) [Per *J*. Tinga, Second Division].

[54] *Id.* at 588-589.

[55] 639 Phil. 134 (2010) [Per *J*. Mendoza, Second Division].

practicable, of the illegal drug recovered from the accused 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.[56] (Emphasis in the original)

The prosecution must establish these links. Any deviation would cast serious doubts on the identity of the seized item and its "actual connection with the transaction involved and with the parties thereto."[57]

Accordingly, this Court has ruled in a catena of cases[58] that noncompliance with Section 21's requirements and the chain of custody rule, without any justifiable reason, is tantamount to a failure to preserve the *corpus delicti's* integrity and evidentiary value. Without the *corpus delicti*, there is no offense of illegal sale of dangerous drug committed.

II

Here, the arrest having been effected on September 20, 2010, the applicable law is Republic Act No. 9165, as originally worded.

From the language of Section 21, the mandate to conduct inventory and take photographs "immediately after seizure and confiscation" necessarily means that these shall be accomplished *at the place of arrest*. When this is impracticable, the Implementing Rules and Regulations of Republic Act No. 9165 allows for two (2) other options:

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[56] *Id*. at 144-145 citing *People v. Kamad*, 624 Phil. 289 (2010) [Per J. Brion, Second Division].

[57] *People v. Belocura*, 693 Phil. 476, 496 (2012) [Per J. Bersamin, First Division].

[58] See *People v. Belocura*, 693 Phil. 476 (2012) [Per J. Bersamin, First Division]; *People v. Holgado*, 741 Phil. 78 (2014) [Per J. Leonen, Third Division]; *People v. Caiz*, 790 Phil. 183 (2016) [Per J. Leonen, Second Division]; and *People v. Royol*, G.R. No. 224297, February 13, 2019, <http://sc.judiciary.gov.ph/2658/5> [Per J. Leonen, Third Division].

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[.][59] (Emphasis supplied)

To sanction noncompliance, the prosecution must prove that the inventory was conducted in either practicable place.

Here, the prosecution witnesses testified that the physical inventory and the taking of photographs were conducted in their office[60] in Camp Karingal.[61] They opted to go there for two (2) reasons: (1) because accused-appellant "is a notorious drug pusher";[62] and (2) because a commotion was brewing at the place of the arrest.[63]

However, there was no showing that Camp Karingal was the nearest police station or office from the Mercury Drug Store branch in Barangay Lagro, where the prohibited drug was allegedly confiscated—much less that it was practical. This Court takes judicial notice that Camp Karingal is *more than a 17-kilometer car ride away* from the place of arrest and seizure.[64] *People v. Que*[65] underscored the immediacy requirement:

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[59] Implementing Rules and Regulations of Republic Act No. 9165 (2002), Sec. 21 (a).

[60] CA *rollo*, p. 51.

[61] *Id.* at 65.

[62] *Id.* at 67.

[63] *Id.* at 66.

[64] See Google Maps, Distance from "Mercury Drug - Lagro Hilltop Branch, Quirino Hwy, Novaliches, Quezon City, Metro Manila" to Camp Karingal, https://www.google.com/maps/dir/Mercury+Drug+ +Lagro+ Hilltop+Branch,+ Quirino+Hwy,+Novaliches,+Quezon+ City,+Metro+Manila/ Camp+Caringal, +Makadios, +Diliman,+Quezon+City, +Metro+Manila/@14.6650505, 121.0133635, 12.38z/ data= !4m13!4m12! 1m5!1ml! 1s0x3397b071c 9a9bd8d: 0x2bb8b5b 87b3 eeacc!2 m2!1d121. 069924! 2d14.7355884!1m5!1ml! 1s0x3397b79 dc59944ab:0xeb3c459 ee2a 42dc3!2m2!1d121.0631857!2d14.638139>.

[65] *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487 [Per *J.* Leonen, Third Division].

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. . . .

Section 21 (1)'s requirements are designed to make the first and second links foolproof. Conducting the inventory and photographing immediately after seizure, exactly where the seizure was done, or at a location as practicably close to it, *minimizes, if not eliminates, room for adulteration or the planting of evidence*.[66] (Emphasis supplied)

Furthermore, the prosecution witnesses testified that only a media representative was present during the physical inventory and the taking of photographs. Although they requested the presence of a barangay official, their invitation was allegedly unheeded.[67] They invoke substantial compliance with the rule, as there was an effort to secure the attendance of an elected official.[68]

Section 21 (a) of the Implementing Rules and Regulations of Republic Act No. 9165 sanctions noncompliance when there are justifiable grounds:

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[.]

From these, the prosecution must establish two (2) requisites: "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."[69]

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[66] *Id.* at 518-519.

[67] *Rollo*, p. 5.

[68] CA *rollo*, p. 97.

[69] *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 523 [Per *J.* Leonen, Third Division].

People v. Lim[70] enumerates some justifiable grounds:

> (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.[71] (Emphasis supplied, citation omitted)

While the list in *Lim* is not exclusive, it illustrates excusable instances. To justify the arresting officers' deviation from Section 21's requirements, the prosecution must prove that they exerted *earnest efforts* to comply.

This Court underscores that this was not a spontaneous arrest, but rather, a pre-planned and organized buy-bust operation. Yet, even the arresting team's supposed attempt to secure the presence of a barangay official remained *unsubstantiated* at this stage. Self-serving guarantees that they exerted effort shall not be sanctioned. There was also no such effort to secure a Department of Justice representative at all.

Additionally, the prosecution itself admitted that accused-appellant did not sign the inventory receipt.[72] This casts doubt that the dangerous drug allegedly seized from accused-appellant was the same drug delivered to PO3 Corona for documentation.

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[70] G.R. No. 231989, September 4, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400> [Per *J.* Peralta, *En Banc*].

[71] *Id.*

[72] CA *rollo*, p. 66.

Further destroying the prosecution's case is the lack of proof as to how the prosecution handled the seized item for *seven (7) months after confiscation*. It is not for this Court to speculate on how the law enforcers dealt with the seized item during this appreciable amount of time until Chief Inspector Rodis reexamined it.

We cannot dismiss as mere "clerical error" the discrepancies between the inventory receipt and chemistry reports. The inventory receipt labeled the seized item as marijuana, while the chemistry reports indicate it was *shabu*. Irregularities are also glaring in the marking and the weight of the seized item—all of which are utterly inexcusable and cast serious doubts on the origin of the item supposedly confiscated from accused-appellant.

To recall, the inventory receipt indicated that the officers seized "*one (1) pc of small* heat sealed transparent plastic sachet containing undetermined quantity of alleged dried *marijuana fruiting tops, with JS 20-09-1 marking*[,] (*sic*)"[73] while the chemistry reports refer to "one (1) heat-sealed transparent plastic sachet with markings *AB 20-09-10 containing 4.35 gms. of white crystalline substance*[.] (*sic*)"[74]

SPO4 Fernandez attempted to defend these fatal infirmities when he testified: "*Nagkamali po yung investigator sir. Nagkasabay kami sa paggawa ng papeles sa crime lab kaya yung word na shabu siguro sa computer naisulat na marijuana*.[75] There was no word on the different markings. He even admitted signing the documents presented by PO3 Corona without reading them.[76]

The prosecution's contention that all of these are mere clerical errors, along with its insistence on the presumption of regularity,[77]

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[73] *Rollo*, p. 10.

[74] *Id.*

[75] CA *rollo*, p. 67.

[76] *Id.*

[77] *Id.* at 97.

is patently unmeritorious and deserves scant consideration. The discrepancies are blatant irregularities that cast serious doubts on the seized items' identity. They completely defeat the police officers' self-serving assertions that the integrity and evidentiary value of the seized drug were preserved.

Gross irregularities like these cannot be downplayed as mere clerical errors. Nor can the prosecution find solace in a blanket invocation of the presumption of regularity in the conduct of the officers' duties. As elucidated in *People v. Kamad*:[78]

> 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 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.[79] (Emphasis supplied, citation omitted)

This Court, as the last bastion of civil liberties, cannot sanction gross violations of the law's requirements. We reiterate that the burden rests on the prosecution to prove an accused's guilt beyond reasonable doubt, not on the accused to prove his or her innocence. Here, absent proof of accused-appellant's guilt beyond reasonable doubt, acquittal ensues.

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[78] 624 Phil. 289 (2010) [Per *J.* Brion, Second Division].

[79] *Id.* at 311.

WHEREFORE, the Court of Appeals' February 17, 2017 Decision in CA-G.R. CR-HC No. 07900 is **REVERSED** and **SET ASIDE**. Accused-appellant Alan Banding *y* Ulama 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.

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 judgment be issued immediately.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 234346. August 14, 2019]

MARLOW NAVIGATION PHILS., INC., MARLOW NAVIGATION NETHERLANDS B.V., and CAPTAIN LEOPOLDO C. TENORIO, *petitioners, vs.* **PRIMO D. QUIJANO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; 2010 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); SECTION 20 (A) OF THE 2010 POEA-SEC, WHICH IS DEEMED INCORPORATED IN EVERY SEAFARER'S CONTRACT OF EMPLOYMENT, PROVIDES FOR THE PROCEDURE AS TO HOW THE SEAFARER CAN LEGALLY DEMAND AND CLAIM DISABILITY BENEFITS FROM THE EMPLOYER/MANNING AGENCY FOR AN INJURY OR ILLNESS SUFFERED; APPLICATION IN CASE AT BAR.— Entitlement to disability benefits by seamen on overseas work is a matter governed not only by medical findings but also by Philippine law and by the contract between the parties. Section 20 (A) of the 2010 POEA-SEC, which is deemed incorporated in every seafarer's contract of employment, provides for the procedure as to how the seafarer can legally demand and claim disability benefits from the employer/manning agency for an injury or illness suffered, x x x The person who claims entitlement to the benefits provided by law must establish his or her right thereto by substantial evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In this case, the PVA, as well as the CA, were consistent in holding that Quijano was able to substantially prove his entitlement to total and permanent disability benefits, considering that: (*a*) he was medically repatriated on January 30, 2014 and reported to petitioners' office within the mandated three (3)-day period for post-medical examination; (*b*) he was suffering from liver abscess, cholecystitis with cholelithiasis, diabetes mellitus, type II, and panophthalmitis, which were deemed work-related illnesses being listed occupational diseases under the 2010 POEA-SEC; and (*c*) there was non-compliance by the company-designated physician of the required final and definite assessment within the 120/240-day treatment period resulting in the *ipso jure* grant to the seafarer of permanent and total disability benefits.

2. ID.; ID.; IT IS ESTABLISHED THAT A NON-LISTED ILLNESS IS WORK-RELATED, AND THE BURDEN RESTS UPON THE EMPLOYER TO OVERCOME THE DISPUTABLE PRESUMPTION; CASE AT BAR.— With

respect to the work-relatedness of Quijano's diagnosed illnesses, his liver abscess, cholecystitis with cholelithiasis, and panophthalmitis, while not specifically listed as such under Section 32 of the 2010 POEA-SEC, these nonetheless fall under the categories "abdomen" and "eyes." On the other hand, the fact that Quijano was also diagnosed as having diabetes mellitus is of no moment since the incidence of a listed occupational disease, whether or not associated with a non-listed ailment, is enough basis for compensation. Besides, Section 20 (A) (4) thereof explicitly establishes a disputable presumption that a non-listed illness is work-related, and the burden rests upon the employer to overcome the statutory presumption, which petitioners failed to discharge.

3. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; CASE LAW STATES THAT WHERE THE EMPLOYEE IS FORCED TO LITIGATE AND INCUR EXPENSES TO PROTECT HIS RIGHT AND INTEREST, HE IS ENTITLED TO AN AWARD OF ATTORNEY'S FEES.— [T]he Court sustains the award of attorney's fees pursuant to Article 2208 of the New Civil Code which grants the same in actions for indemnity under the workmen's compensation and employer's liability laws. It is also recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest, as in this case. Case law states that "[w]here an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to [ten percent] of the award." In this regard, since petitioners have deposited before the NCMB the judgment award in the amount of ₱6,631,231.20 representing the equivalent of the adjudged total and permanent disability benefits in the amount of US$127,932.00 and 10% attorney's fees, the excess payment made must be returned, for to hold otherwise would unjustly benefit Quijano to the prejudice and expense of the former.

APPEARANCES OF COUNSEL

Luzvie T. Gonzaga for petitioners.
F.M. Linsangan Law Office for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated March 29, 2017 and the Resolution[3] dated September 15, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 145056 which affirmed the Decision[4] dated January 27, 2016 of the National Conciliation and Mediation Board-NCR Office of the Panel of Voluntary Arbitrators ordering petitioners Marlow Navigation Phils., Inc., Marlow Navigation Netherlands, B.V., and Captain Leopoldo C. Tenorio (collectively; petitioners) to jointly and severally pay respondent Primo D. Quijano (Quijano) permanent and total disability benefits in the amount of US$127,932.00 and 10% attorney's fees.

The Facts

On July 11, 2013, Quijano was hired as Cook by petitioner Marlow Navigation Phils., Inc., for its principal Marlow Navigation Netherlands B.V., on board the vessel M/V Katharina Schepers, for a period of six (6) months.[5] After undergoing the required pre-employment medical examination where Quijano was declared fit for sea duty[6] by the company designated physician, the former boarded the vessel on August 18, 2013.[7]

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[1] *Rollo*, pp. 11-38.

[2] *Id.* at 46-56. Penned by Associate Justice Socorro B. Inting with Associate Justices Romeo F. Barza and Maria Filomena D. Singh, concurring.

[3] *Id.* at 58-59.

[4] *Id.* at 115-128. Signed by Chairman Norberto M. Alensuela, Sr. and Member Romeo C. Cruz, Jr. Member Leonardo B. Saulog issued a Dissenting Opinion.

[5] See *id.* at 47 and 115. See also Contract of Employment dated July 11, 2013, *id.* at 156.

[6] See *id.* at 116 and 162. See also Medical Certificate for Service at Sea, *id.* at 238.

[7] See *id.* at 162. See also OFW Info, *id.* at 177.

On January 30, 2014, Quijano was signed off from the vessel purportedly due to completion of his employment contract. On February 3, 2014, he reported at petitioners' office and was paid the balance of his final wages for the period January 1 to 30, 2014,[8] and underwent interview for de-briefing[9] purposes. Thereafter, Quijano was hired anew for the same position, this time, under a 10-month Contract of Employment[10] dated March 5, 2014. However, his employment did not materialize due to his confinement at the East Avenue Medical Center (EAMC) on March 18, 2014, where his independent physician diagnosed him to be suffering from liver abscess, cholecystitis with cholelithiasis, diabetes mellitus, type II, and panophthalmitis, right.[11]

Claiming that his illnesses were acquired during his last employment and that petitioners refused to grant his request for medical assistance when he reported on February 3, 2014, Quijano filed against the latter a complaint for disability benefits, sickness allowance, medical reimbursement, damages, and attorney's fees, pursuant to the IBF-AMOSUP IMEC/TCCC Collective Bargaining Agreement (CBA),[12] of which he was a member, before the National Conciliation and Mediation Board (NCMB), Office of the Panel of Voluntary Arbitrators (PVA), docketed as MVA-078-RCMB-NCR-070-04-07-2015.

Quijano alleged that due to hostile working conditions on board M/V Katharina Schepers, he experienced body weakness, easy fatigability, poor eye sight, and severe low back pain, which he reported to the Chief Officer and Captain.[13] He was relieved from his post with his contract cut short to 5½ months. Quijano added that upon repatriation, he attempted to report

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[8] See *id*. at 116. See also Final Wages Accounts, *id*. at 159.

[9] See *id*. at 157-158.

[10] *Id*. at 242.

[11] See *id*. at 117. See also Medical Certificate, *id*. at 247.

[12] *Id.* at 178-236.

[13] See Position Paper, *id*. at 163.

for post-employment medical examination and treatment but was unjustly refused, prompting him to seek medical attention at his own expense at the EAMC on February 3, 2014,[14] where he was diagnosed by his independent physician, Dr. Tito Garrido (Dr. Garrido), to have "T/C Liver Pathology with Possible Gallbladder Disease."[15] On March 18, 2014, Quijano was brought again to EAMC due to fever and chills and confined thereat until April 16, 2014,[16] after undergoing ultrasound guided percutaneous liver abscess drain, among others.[17] Considering that his illnesses rendered him incapable of resuming work that resulted in his total and permanent disability, he filed the complaint.

For their part, petitioners denied Quijano's claims contending that the latter disembarked due to expiration of his employment contract and that he was able to finish the same without any issue, accident or illness while on board the vessel.[18] They likewise denied that Quijano requested for medical assistance, contending that the latter did not disclose his alleged medical condition when he accomplished the de-briefing questionnaire[19] and even accepted payment of his remaining wages and benefits without complain. Lastly, they argued that Quijano did not present himself for a post-employment medical examination before the company-designated physician as mandated under the POEA-SEC, and hence, not entitled to claim disability benefits.[20]

PVA Ruling

In a Decision[21] dated January 27, 2016, the PVA found Quijano entitled to total and permanent disability benefits, and

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[14] See *id*. at 48.

[15] See Medical Certificate, *id*. at 241.

[16] See *id*. at 163-164. See also Discharge Summary, *id*. at 245.

[17] *Id*. at 246.

[18] *Id*. at 49 and 120.

[19] See *id*. at 157.

[20] *Id.* at 130-131.

[21] *Id.* at 115-128.

accordingly, ordered petitioners to solidarily pay him US$127,932.00 in accordance with the CBA, and 10% attorney's fees.[22] The PVA gave more credence to Quijano's claim that the latter was denied medical assistance, pointing out that his 6-month contract was pre-terminated without any reason, and that after his repatriation when he reported for post-employment medical examination, he was merely paid his remaining wage in the total amount of US$3,297.46 and not referred to a company-designated physician.[23] Furthermore, it pointed out that since the company-designated physician failed to arrive at a definite assessment of Quijano's fitness to work or degree of disability within the 120/240-day period, the latter's disability was deemed total and permanent by operation of law.[24]

Undaunted, petitioners filed a petition for review[25] before the CA asserting that Quijano was not medically repatriated and that he failed to comply with the mandated post-employment medical examination in claiming disability benefits.

In the meantime, a writ of execution was issued constraining petitioners to deposit the judgment award of US$127,932.00 plus 10% attorney's fees equivalent to ₱6,631,231.20 in favor of Quijano before the NCMB.[26]

The CA Ruling

In a Decision[27] dated March 29, 2017, the CA agreed with the findings of the PVA that Quijano was entitled to total and permanent disability benefits, ruling that Quijano cannot be faulted in consulting an independent physician for his post-employment medical examination considering that petitioners

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[22] *Id.* at 127-128.

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

[24] *Id.* at 125.

[25] With Very Urgent Prayer for the Issuance of a Temporary Restraining Order and/or a Writ of Preliminary Injunction; *id.* at 84-109.

[26] *Id.* at 83.

[27] *Id.* at 46-56.

abandoned him when they denied his request for medical assistance. It held that petitioners' failure to explain the pre-termination of respondent's contract supports the claim that he was medically repatriated, and that there was substantial evidence to show that Quijano was suffering from a work-related illness. Lastly, it ruled that since respondent's position as Cook was supervisory in nature, he was correctly classified as a junior officer and not a mere rating in determining his disability compensation under the CBA.

Petitioners' motion for reconsideration[28] was denied in a Resolution[29] dated September 15, 2017; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in upholding the finding that Quijano is entitled to total and permanent disability benefits.

The Court's Ruling

The petition is partly meritorious.

Entitlement to disability benefits by seamen on overseas work is a matter governed not only by medical findings but also by Philippine law and by the contract between the parties. Section 20 (A) of the 2010 POEA-SEC, which is deemed incorporated in every seafarer's contract of employment, provides for the procedure as to how the seafarer can legally demand and claim disability benefits from the employer/manning agency for an injury or illness suffered, to wit:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness **during the term of his contract** are as follows:

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[28] *Id.* at 60-78.

[29] *Id.* at 58-59.

x x x x x x x x x

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

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

x x x x x x x x x

For this purpose, the seafarer shall **submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance**. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. **Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.**

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphases supplied)

The person who claims entitlement to the benefits provided by law must establish his or her right thereto by substantial

evidence,[30] or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[31]

In this case, the PVA, as well as the CA, were consistent in holding that Quijano was able to substantially prove his entitlement to total and permanent disability benefits, considering that: (*a*) he was medically repatriated on January 30, 2014 and reported to petitioners' office within the mandated three (3)-day period for post-medical examination; (*b*) he was suffering from liver abscess, cholecystitis with cholelithiasis, diabetes mellitus, type II, and panophthalmitis, which were deemed work-related illnesses being listed occupational diseases under the 2010 POEA-SEC; and (*c*) there was non-compliance by the company-designated physician of the required final and definite assessment within the 120/240-day treatment period resulting in the *ipso jure* grant to the seafarer of permanent and total disability benefits. Anent this last point, case law states:

> Failure of the company-designated physician to comply with his or her duty to issue a definite assessment of the seafarer's fitness or unfitness to resume work within the prescribed period shall transform the latter's temporary total disability into one of total and permanent by operation of law x x x.
>
> x x x x x x x x x
>
> 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. x x x The consequence for non-compliance within the extended period

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[30] See *Dizon v. Naess Shipping Philippines, Inc.*, 786 Phil. 90, 101 (2016).

[31] See *id*. See also Section 5, Rule 133 of the Rules of Court.

of the required assessment is likewise the *ipso jure grant to the seafarer of permanent and total disability benefits, regardless of any justification*.[32] (Emphases and italics supplied)

That Quijano was not able to report for post-employment medical examination, and hence, disqualified from claiming disability benefits, is belied by the records which show that on February 3, 2014, or within the mandated three (3)-day period from repatriation, he reported to petitioners' office not primarily for de-briefing purposes but to actually request for medical assistance and treatment from the company-designated physician which, however, was rejected causing him to seek treatment from other doctors. In particular, Quijano claimed to have reported the following day after his repatriation, or on January 31, 2014, and on February 3, 2014 for post-employment medical examination but was refused by petitioners at both instance.[33] For this reason, on February 3, 2014, Quijano proceeded to EAMC where he was seen by Dr. Garrido in view of his right upper quadrant pain (abdominal pain) that lasted for 2-3 days and was found with "positive right upper quadrant (abdomen) tenderness and fever."[34] He was diagnosed with "T/C Liver Pathology with possible Gallbladder Disease" and was prescribed medication with a further advise to undergo ultrasound of the Hepatobi1iary Tract including the pancreas.[35] Logically, Quijano's resort to an independent physician to check on his condition on February 3, 2014 was most likely due to the company's rejection of his plea for medical assistance and treatment. Besides, under the rules on evidence, as between Quijano's claim that his request for medical examination and treatment was rejected and petitioners' bare denial of the same, the former's positive assertion is generally entitled to more

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[32] *Pastor v. Bibby Shipping Philippines, Inc.*, G.R. No. 238842, November 19, 2018.

[33] See *rollo*, p. 163.

[34] See *id*.

[35] See *id.* at 241.

weight.[36] In *Interorient Maritime Enterprises, Inc. v. Remo*,[37] the Court ruled that "the absence of a post-employment medical examination cannot be used to defeat respondent's claim since the failure to subject the seafarer to this requirement was not due to the seafarer's fault but to the inadvertence or deliberate refusal of [his employers]."[38]

In the same vein, it is untrue that Quijano was repatriated due to expiration of contract. A perusal of the records would show that Quijano's Contract of Employment dated July 11, 2013 commenced only when he departed for M/V Katharina Schepers on August 18, 2013, in accordance with Section 2 (A)[39] of the 2010 POEA-SEC. Since Quijano's contract of service was for a period of six (6) months, reckoned from his actual departure from the point of hire or until February 18, 2014, his sign-off from the vessel on January 30, 2014 was clearly short of the said contracted period. Accordingly, absent any justification for the contract's pre-termination, the Court cannot give credence to petitioners' claim that Quijano was repatriated due to expiration or completion of his employment contract.

With respect to the work-relatedness of Quijano's diagnosed illnesses, his liver abscess, cholecystitis with cholelithiasis, and panophthalmitis, while not specifically listed as such under Section 32 of the 2010 POEA- SEC, these nonetheless fall under the categories "abdomen" and "eyes." On the other hand, the fact that Quijano was also diagnosed as having diabetes mellitus

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[36] See *Paleracio v. Sealanes Marine Services, Inc.*, G.R. No. 229153, July 9, 2018.

[37] 636 Phil. 240 (2010).

[38] *Id.* at 250-251.

[39] Section 2. COMMENCEMENT/DURATION OF CONTRACT

A. The employment contract between the employer and the seafarer shall **commence upon actual departure of the seafarer from the Philippine airport or seaport in the point of hire** and with a POEA approved contract. It shall be effective until the seafarer's date of arrival at the point of hire upon termination of his employment pursuant to Section 18 of this Contract. (Emphasis supplied)

is of no moment since the incidence of a listed occupational disease, whether or not associated with a non-listed ailment, is enough basis for compensation.[40] Besides, Section 20 (A) (4) thereof explicitly establishes a disputable presumption that a non-listed illness is work-related, and the burden rests upon the employer to overcome the statutory presumption, which petitioners failed to discharge.

At this juncture, it bears to stress that factual findings of the PVA, which were affirmed by the CA, are binding and will not be disturbed, absent any showing that they were made arbitrarily or were unsupported by substantial evidence.[41] Since petitioners failed to show any semblance of arbitrariness or that the PVA's and CA's rulings were not supported by substantial evidence, the Court is inclined to uphold the same.

However, even if Quijano is entitled to permanent and total disability benefits by operation of law, the Court deems it proper to adjust the amount awarded in his favor. A perusal of the CBA discloses that the scale of compensation for disability is classified into three (3) groups, namely, ratings, junior officers, and senior officers, with the last group to compose of Master, Chief Officer, Chief Engineer, and 2nd Engineer.[42] No similar compositions were made with respect to the remaining two (2) classifications. Other than Quijano's bare allegation that his position is a junior officer, no evidence was presented to substantiate the same. On the other hand, petitioners submitted a Certification[43] dated April 7, 2016, signed by the legal officer of the Associate Marine Officers' and Seamen's Union of the Philippines, a party to the subject CBA, stating that the position/rank of a Chief Cook is considered "Rating" for the vessel M/V Katharina Schepers. Even if the said certification was belatedly

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[40] See *Bautista v. Elburg Shipmanagement Philippines, Inc.*, 767 Phil. 488, 500 (2015).

[41] *Magsaysay Mol Marine, Inc. v. Altraje*, G.R. No. 229192, July 23, 2018.

[42] See *rollo*, p. 222.

[43] *Id*. at 291.

submitted before the CA, technical rules should not prevent courts from exercising their duties to determine and settle, equitably and completely, the rights and obligations of the parties.[44] Thus, the documentary evidence submitted by petitioners should have been given weight and credence by the CA.

Accordingly, since Quijano's total and permanent disability is categorized as Impediment Grade 1 under the 2010 POEA-SEC, he shall likewise be entitled to the same grading as provided under Articles 20.1.3.3 and 20.1.3.4,[45] in relation to Appendix E of the CBA; thus, the correct amount of disability benefits granted should be US$95,949.00 for ratings, and not US$127,932.00 as affirmed by the CA.

Finally, the Court sustains the award of attorney's fees pursuant to Article 2208 of the New Civil Code which grants the same in actions for indemnity under the workmen's compensation and employer's liability laws. It is also recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest,[46] as in this case. Case law states that "[w]here an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to [ten percent] of the award."[47]

In this regard, since petitioners have deposited before the NCMB the judgment award in the amount of ₱6,631,231.20 representing the equivalent of the adjudged total and permanent disability benefits in the amount of US$127,932.00 and 10% attorney's fees, the excess payment made must be returned, for to hold otherwise would unjustly benefit Quijano to the prejudice and expense of the former.

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[44] *Semblante v. CA*, 671 Phil. 213, 220 (2011).

[45] See *rollo*, p. 200.

[46] *Deocariza v. Fleet Management Services Philippines, Inc.*, G.R. No. 229955, July 23, 2018.

[47] *Atienza v. Orophil Shipping International Co., Inc.*, G.R. No. 191049, August 7, 2017, 834 SCRA 363, 392.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated March 29, 2017 and the Resolution dated September 15, 2017 of the Court of Appeals in CA-G.R. SP No. 145056 are **AFFIRMED with MODIFICATION** reducing the award of total and permanent disability benefits in favor of respondent Primo D. Quijano from US$127,932.00 to US$95,949.00, or its equivalent amount in Philippine currency at the time of payment, in accordance with Appendix E of the IBF-AMOSUP IMEC/TCCC Collective Bargaining Agreement. The rest of the decision stands.

The case is hereby remanded to the National Conciliation and Mediation Board (NCMB) for a re-computation of respondent's monetary award and for the return to petitioners of the amount in excess of what they had deposited before the NCMB, if so warranted.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 234670-71. August 14, 2019]

OMAR ERASMO GONOWON AMPONGAN, *petitioner, vs.* **HON. SANDIGANBAYAN, PEOPLE OF THE PHILIPPINES, and OMBUDSMAN SPECIAL PROSECUTOR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A MOTION FOR RECONSIDERATION IS

A CONDITION *SINE QUA NON* FOR THE FILING OF A *CERTIORARI* PETITION IN ORDER TO GRANT AN OPPORTUNITY FOR THE COURT TO CORRECT ANY ACTUAL OR PERCEIVED ERROR ATTRIBUTED TO IT BY THE RE-EXAMINATION OF THE LEGAL AND FACTUAL CIRCUMSTANCES OF THE CASE; EXCEPTIONS; ESTABLISHED IN CASE AT BAR.— Preliminarily, we note that petitioner failed to file a motion for reconsideration before resorting to the instant petition for *certiorari*. Concededly, the settled rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*. Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. The rule is, however, circumscribed by well-defined exceptions, such as: (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved. In this petition for *certiorari*, petitioner reiterates the same arguments raised in his Motion to Quash Informations which were passed upon by the Sandiganbayan, and the issues involved are pure questions of law; hence, we find the petition falling under the above-stated exceptions (b) and (i).

2. ID.; CRIMINAL PROCEDURE; JURISDICTION; AS A RULE, JURISDICTION OF A COURT TO TRY A CRIMINAL CASE IS TO BE DETERMINED AT THE TIME OF THE INSTITUTION OF THE ACTION, NOT AT THE TIME

OF THE COMMISSION OF THE OFFENSE; IN CASES INVOLVING VIOLATIONS OF REPUBLIC ACT NO. 3019, THE RECKONING PERIOD TO DETERMINE THE JURISDICTION OF THE SANDIGANBAYAN IS THE TIME OF THE COMMISSION OF THE OFFENSE; CASE AT BAR.— Generally, the jurisdiction of a court to try a criminal case is to be determined at the time of the institution of the action, not at the time of the commission of the offense. In this case, the Informations were filed on July 14, 2017, for petitioner's violations of Section 3(e) of R.A. No. 3019 and Article 171(2) of the Revised Penal Code, allegedly committed on November 3, 2014 or sometime prior or subsequent thereto. While R.A. No. 10660 which took effect on May 5, 2015 is the law in force at the time of the institution of the action, such law is not applicable to petitioner's cases. R.A. No. 10660 provides that the reckoning period to determine the jurisdiction of the Sandiganbayan in cases involving violations of R.A. No. 3019 is the time of the commission of the offense. x x x It is clear from the transitory provision of R.A. No. 10660 that the amendment introduced regarding the jurisdiction of the Sandiganbayan shall apply to cases arising from offenses committed after the effectivity of the law. Consequently, the new paragraph added by R.A. No. 10660 to Section 4 of Presidential Decree (*P.D.*) No. 1606, as amended, transferring the exclusive original jurisdiction to the RTC of cases where the information: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos, applies to cases which arose from offenses committed after the effectivity of R.A. No. 10660. In this case, while the Informations were filed on July 14, 2017, the alleged offenses were committed by petitioner on November 3, 2014, which was six months before the effectivity of R.A. No. 10660 on May 5, 2015. Hence, the Sandiganbayan did not abuse its discretion when it denied the motion to quash the Informations since R.A. No. 10660 finds no application to petitioner's case. Therefore, the applicable law to petitioner's cases is R.A. No. 8249, which took effect on February 23, 1997.

3. ID.; ID.; REPUBLIC ACT NO. 8249 (AN ACT FURTHER AMENDING THE JURISDICTION OF THE

SANDIGANBAYAN); SANDIGANBAYAN; EXCLUSIVE ORIGINAL JURISDICTION; POSITION OF VICE MAYOR, AMONG OTHERS, IS WITHIN THE EXCLUSIVE ORIGINAL JURISDICTION OF THE SANDIGANBAYAN IF THE PUBLIC OFFICIAL COMMITS CRIMES INVOLVING VIOLATIONS OF R.A. NO. 3019, AS AMENDED, R.A. NO. 1379, AND CHAPTER II, SECTION 2, TITLE VII OF THE REVISED PENAL CODE, AND OTHER OFFENSES OR FELONIES COMMITTED IN RELATION TO THEIR OFFICE; CASE AT BAR.— To stress, Section 4(a) of P.D. No. 1606, as amended by R.A. No. 8249, provides, among others, that officials of the executive branch occupying positions of regional director and higher, otherwise classified as Grade 27 and higher, of the Compensation and Position Classification Act of 1989 and those specifically enumerated positions therein, *i.e.*, without regard to salary grade, which include the position of, among others, Vice Mayors, are within the exclusive original jurisdiction of the Sandiganbayan if these public officials commit crimes involving: (a) violations of R.A. No. 3019, as amended, R.A. No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code; and (b) other offenses or felonies committed in relation to their office. In this case, petitioner was charged with violation of Section 3(e) of R.A. No. 3019 and Falsification of Public Document under Article 171(2) of the Revised Penal Code which he allegedly committed when he was the Vice Mayor of Iriga City. Violation of R.A. No. 3019 is one of those offenses, when committed by the public official enumerated in the law, to be under the Sandiganbayan's jurisdiction. While the charge of falsification is not specifically included in the enumeration of crimes over which the Sandiganbayan has jurisdiction, however, such crime falls under the category of other offenses committed in relation to the office of the public official enumerated under the law. x x x In this case, the Information for Falsification of Public Document under Article 171(2) of the Revised Penal Code alleged that petitioner, being the Vice Mayor of Iriga City, in such capacity, committed the offenses in relation to his office and, while in the performance of his official functions, had taken advantage of his position when he committed the falsification, as he made it appear or cause it to appear in the Civil Service Commission appointment paper (KSS Porma Blg. 33) of Dimaiwat as Secretary to the *Sangguniang*

Panlungsod of Iriga City, a public document, that "the appointee has been screened and found qualified by the Promotion/ Personnel Selection Board," when in truth and in fact, as accused well knew, the Iriga City Personnel Selection Board did not conduct a screening or deliberation on the qualifications of the candidates to the said position, nor did the selection board convene, participate or deliberate on the qualifications of Dimaiwat for the same position. The jurisdiction of a court is determined by the allegations in the complaint or information. Considering the allegations in the Information, the Sandiganbayan did not commit any grave abuse of discretion in finding that it has jurisdiction over petitioner and over the offenses charged.

APPEARANCES OF COUNSEL

Real Brotarlo & Real Law Office for petitioner.
Office of the Special Prosecutor for respondents.

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for *certiorari* under Rule 65 of the Rules of Court, filed by petitioner Omar Erasmo Gonowon Ampongan, seeking to annul and set aside the Order[1] dated September 29, 2017 issued by the Sandiganbayan in SB-17-CRM-1429 and SB-17-CRM-1430.

The antecedent facts are as follows:

On July 14, 2017, the Office of the Ombudsman, through the Office of the Special Prosecutor, filed two Informations with the Sandiganbayan charging petitioner with (1) violation of Section 3(e) of Republic Act (*R.A.*) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act; and (2) violation of Article 171, paragraph 2 of the Revised Penal Code,

[1] *Rollo*, pp. 26-27. Penned by Associate Justice Oscar C. Herrera, Jr., and concurred in by Associate Justices Michael Frederick L. Musngi and Geraldine Faith A. Econg.

in connection with the appointment of one Edsel Dimaiwat to the vacant position of Secretary to the *Sangguniang Panlungsod* of Iriga City in 2014. At the time of the commission of the alleged offenses, petitioner was the Vice Mayor of Iriga City, Camarines Sur, with salary grade 26 as classified under R.A. No. 6758.[2]

The accusatory portion for the charge of violation of Section 3(e) of R.A. No. 3019 reads:

> That on 3 November 2014, or sometime prior or subsequent thereto, in Iriga City, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, accused OMAR ERASMO GONOWON AMPONGAN, a high-ranking public officer, being the City Vice-Mayor of Iriga City, in such capacity, committing the crime in relation to office and while in the performance of his official functions, acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give unwarranted benefits, advantage or preference to Edsel S. Dimaiwat by appointing the latter to the vacant position of Secretary to the Sangguniang Panlungsod of Iriga City without the Iriga City Personnel Selection board having conducted a screening or deliberation on the qualifications of the candidates to the said vacant position, to the damage and prejudice of the public interest.
>
> CONTRARYTO LAW.[3]

And the charge for Falsification of Public Document, as defined and penalized under Article 171, paragraph 2 of the Revised Penal Code, was committed as follows:

> That on 3 November 2014, or sometime prior or subsequent thereto, in Iriga City, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, accused OMAR ERASMO GONOWON AMPONGAN, a high-ranking public officer, being the City Vice-Mayor of Iriga City, in such capacity, committing the offense in relation to office and while in the performance of his official functions, and taking advantage of his position, did then and there willfully, unlawfully and feloniously make it appear or cause it to appear in the Civil Service

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[2] Compensation and Position Classification Act of 1989.

[3] *Rollo*, pp. 28-29. Docketed as SB-17-CRM-1429.

Commission (CSC) appointment paper (KSS Porma Blg. 33) of Edsel S. Dimaiwat as Secretary to the Sangguniang Panlungsod of Iriga City, a public document, that "the appointee has been screened and found qualified by the Promotion/Personnel Selection Board", when in truth and in fact, as accused well knew, that the Iriga City Personnel Selection Board did not conduct a screening or deliberation on the qualifications of the candidates to the said position, nor did the selection board convene, participate or deliberate on the qualifications of Dimaiwat for the same position, to the damage and prejudice of public interest.

CONTRARY TO LAW.[4]

Petitioner filed a motion[5] to quash the Informations for lack of jurisdiction. He claimed that since the Informations did not allege any damage to the government or any bribery, or that granting without admitting that the damage had been suffered by the government, the Informations did not allege that the government suffered any damage in excess of One million pesos, hence, the jurisdiction is vested with the proper Regional Trial Court (*RTC*) as provided under Section 2 of R.A. No. 10660.[6] Assuming that R.A. No. 8249, the law governing the jurisdiction of the Sandiganbayan at the time of the commission of the offense, is applicable, still petitioner, as Vice Mayor with salary grade 26, is not within the jurisdiction of the Sandiganbayan.

On September 29, 2017, the Sandiganbayan, during a scheduled hearing, issued the assailed Order[7] as follows:

When these cases were called for arraignment today, accused Omar Erasmo Gonowon Ampongan, through counsel, Atty. Emmanuel Brotardo, moved for the de deferment of the arraignment on the ground that he has filed a Motion to Quash Information on September 25,

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[4] *Id.* at 31-32. Docketed as SB-17-CRM-1430.

[5] *Id.* at 34-43

[6] AN ACT STRENGTHENING FURTHER THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE SANDIGANBAYAN, FURTHER AMENDING PRESIDENTIAL DECREE NO. 1606, AS AMENDED AND APPROPRIATING FUNDS THEREFOR.

[7] *Rollo*. pp. 26-27.

2017 based on the following grounds: (1) that the Court has no jurisdiction because there is no allegation of damage to the government in the amount of more than One Million, and (2) that as City Vice-Mayor, he holds a position equivalent to Salary Grade 26. The Court denied the Motion to Quash Informations for the reason that the requirement of allegation of damage to the government is (*sic*) an amount of more than One Million Pesos for the Sandiganbayan to have jurisdiction applies only to cases arising from offenses committed after May 15, 2015, while his, the alleged dated (*sic*) of commission of the offense is 2014. And the second, the position of City Vice-Mayor is among those enumerated in the provisions of R.A. 8249, reiterated in R.A. 1[0]660, over which the Court has jurisdiction.

The Court proceeded with the arraignment of accused Ampongan. The Informations were read to him in open Court. After the reading of the Informations, the accused, assisted by Atty. Brotardo, informed the Court that he understands the nature and cause of the accusations against him, but refuse (*sic*) to enter a plea. The Court ordered that the plea of not guilty be entered for the accused in the two (2) criminal cases.

The pre-trial of these cases is set on October 27, 2017 at 1:30 o'clock (*sic*) in the afternoon.

SO ORDFRED.[8]

Aggrieved, petitioner files the instant petition for *certiorari* alleging that:

THE PUBLIC RESPONDENT SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT HELD THAT IT HAS JURISDICTION TO TRY THE SUBJECT CASES.[9]

The issue for resolution is whether the Sandiganbayan has jurisdiction over the offenses allegedly committed by petitioner and over his person.

Preliminarily, we note that petitioner failed to file a motion for reconsideration before resorting to the instant petition for

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[8] *Id.*

[9] *Id.* at 9.

certiorari. Concededly, the settled rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*. Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case.[10]

The rule is, however, circumscribed by well-defined exceptions, such as: (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.[11]

In this petition for *certiorari*, petitioner reiterates the same arguments raised in his Motion to Quash Informations which were passed upon by the Sandiganbayan, and the issues involved are pure questions of law; hence, we find the petition falling under the above-stated exceptions (b) and (i).

We now tackle the substantive issue raised, regarding the jurisdiction of the Sandiganbayan.

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[10] *Rep. of the Phils. v. Bayao, et al.*, 710 Phil. 279, 287 (2013).

[11] *Id.* at 287-288.

In *Serana v. Sandiganbayan, et al.*,[12] we have discussed a brief history of the law creating the Sandiganbayan, to wit:

The Sandiganbayan was created by P.D. No. 1486, promulgated by then President Ferdinand E. Marcos on June 11, 1978. It was promulgated to attain the highest norms of official conduct required of public officers and employees, based on the concept that public officers and employees shall serve with the highest degree of responsibility, integrity, loyalty and efficiency and shall remain at all times accountable to the people.

P.D. No. 1486 was, in turn, amended by P.D. No. 1606 which was promulgated on December 10, 1978. P.D. No. 1606 expanded the jurisdiction of the Sandiganbayan.

P.D. No. 1606 was later amended by P.D. No. 1861 on March 23, 1983, further altering the Sandiganbayan jurisdiction. R.A. No. 7975 approved on March 30, 1995 made succeeding amendments to P.D. No. 1606, which was again amended on February 5, 1997 by R.A. No. 8249. Section 4 of R.A. No. 8249 further modified the jurisdiction of the Sandiganbayan.[13] (Citations omitted.)

R.A. No. 8249 was later amended by R.A. No. 10660 which took effect on May 5, 2015. Section 2 of R.A. No. 10660 amends the jurisdiction of the Sandiganbayan and which we quote the pertinent portions thereof, to wit:

Section 2. Section 4 of the same decree, as amended, is hereby further amended to read as follows:

"SEC. 4. *Jurisdiction*. — The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

"a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

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[12] 566 Phil. 224 (2008).

[13] *Id.* at 240-241.

"(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

"(a) Provincial governors, vice-governors, members of the sangguniang panlalawigan, and provincial treasurers, assessors, engineers, and other provincial department heads[;]

"(b) City mayors, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors, engineers, and other city department heads;

x x x x x x x x x

"b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a of this section in relation to their office.

"c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

"*Provided*, That the Regional Trial Court shall have exclusive original jurisdiction where the information: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (₱1,000,000.00).

"Subject to the rules promulgated by the Supreme Court, the cases falling under the jurisdiction of the Regional Trial Court under this section shall be tried in a judicial region other than where the official holds office.

"In cases where none of the accused are occupying positions corresponding to Salary Grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended." (Emphasis supplied.)

Petitioner contends that based on Section 2 of R.A. No. 10660, which is the law at the time of the institution of the actions, the Sandiganbayan has no jurisdiction over his cases since the Informations filed against him do not allege any damage to the government or any bribery; or the Informations allege damage to the government in an amount not exceeding One million pesos, hence, the cases fall under the jurisdiction of the RTC.

We are not persuaded.

Generally, the jurisdiction of a court to try a criminal case is to be determined at the time of the institution of the action, not at the time of the commission of the offense.[14] In this case, the Informations were filed on July 14, 2017, for petitioner's violations of Section 3(e) of R.A. No. 3019 and Article 171(2) of the Revised Penal Code, allegedly committed on November 3, 2014 or sometime prior or subsequent thereto. While R.A. No. 10660 which took effect on May 5, 2015 is the law in force at the time of the institution of the action, such law is not applicable to petitioner's cases. R.A. No. 10660 provides that the reckoning period to determine the jurisdiction of the Sandiganbayan in cases involving violations of R.A. No. 3019 is the time of the commission of the offense, to wit:

> SEC. 4. *Jurisdiction* — The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:
>
> a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense[.]

And more importantly, the transitory provision of R.A. No. 10660 provides:

> Section 5. *Transitory Provision*. — This Act shall apply to all cases pending in the Sandiganbayan over which trial has not begun:

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[14] *People v. Sandiganbayan (Third Div.), et al.*, 613 Phil. 407, 418 (2009), citing *Subido, Jr. v. Sandiganbayan*, 334 Phil. 346 (1997).

Provided, That: (a) Section 2, amending Section 4 of Presidential Decree No. 1606, as amended, on "Jurisdiction"; and (b) Section 3, amending Section 5 of Presidential Decree No. 1606, as amended, on "Proceedings, How Conducted; Decision by Majority Vote" shall apply to cases arising from offenses committed after the effectivity of this Act.

It is clear from the transitory provision of R.A. No. 10660 that the amendment introduced regarding the jurisdiction of the Sandiganbayan shall apply to cases arising from offenses committed after the effectivity of the law. Consequently, the new paragraph added by R.A. No. 10660 to Section 4 of Presidential Decree (*P.D.*) No. 1606, as amended, transferring the exclusive original jurisdiction to the RTC of cases where the information: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos, applies to cases which arose from offenses committed after the effectivity of R.A. No. 10660.

In this case, while the Informations were filed on July 14, 2017, the alleged offenses were committed by petitioner on November 3, 2014, which was six months before the effectivity of R.A. No. 10660 on May 5, 2015. Hence, the Sandiganbayan did not abuse its discretion when it denied the motion to quash the Informations since R.A. No. 10660 finds no application to petitioner's case.

Therefore, the applicable law to petitioner's cases is R.A. No. 8249,[15] which took effect on February 23, 1997. Section 4 of R.A. No. 8249, which contains the same provision as found in Section 2 of R.A. No. 7975 which took effect on May 6, 1995, pertinently provides:

Section 4. Section 4 of the same decree is hereby further amended to read as follows:

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[15] AN ACT FURTHER DEFINING THE JURISDICTION OF THE SANDIGANBAYAN, AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 1606, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

"a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

"(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

x x x x x x x x x

"(b) City mayors, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors[,] engineers and other city department heads;

x x x x x x x x x

"b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a of this section in relation to their office.

"c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

"In cases where none of the accused are occupying positions corresponding to salary grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military or PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court and municipal circuit trial court as the case may be, pursuant to their respective jurisdiction as provided in Batas Pambansa Blg. 129, as amended."

Petitioner claims that even under R.A. No. 8249, the Sandiganbayan has no jurisdiction over him since he was then occupying the position of Vice Mayor with a salary grade of 26.

The argument deserves scant consideration.

In *Inding v. Sandiganbayan*,[16] where the issue presented was whether the Sandiganbayan has original jurisdiction over the petitioner therein, a member of the *Sangguniang Panlungsod* of Dapitan City with salary grade 26, who was charged with violation of Section 3(e) of R.A. No. 3019, we answered in the affirmative and held:

Section 2 of Rep. Act No. 7975 expanded the jurisdiction of the Sandiganbayan as defined in Section 4 of P.D. No. 1606, thus:

> Sec. 4. Jurisdiction. The Sandiganbayan shall exercise original jurisdiction in all cases involving:
>
> a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code, where one or more of the principal accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:
>
> (1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as grade 27 and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:
>
> (a) Provincial governors, vice-governors, members of the sangguniang panlalawigan, and provincial treasurers, assessors, engineers, and other provincial department heads;
>
> (b) City mayors, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors, engineers. and other city department heads;
>
> (c) Officials of the diplomatic service occupying the position of consul and higher;
>
> (d) Philippine army and air force colonels, naval captains, and all officers of higher rank;
>
> (e) PNP chief superintendent and PNP officers of higher rank;
>
> (f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

[16] 478 Phil. 506 (2004).

(g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations;

(2) Members of Congress and officials thereof classified as Grade "27" and up under the Compensation and Position Classification Act of 1989;

(3) Members of the judiciary without prejudice to the provisions of the Constitution;

(4) Chairmen and members of Constitutional Commissions, without prejudice to the provisions of the Constitution; and

(5) All other national and local officials classified as Grade "27" and higher under the Compensation and Position Classification Act of 1989.

b. Other offenses or felonies committed by the public officials and employees mentioned in subsection (a) of this section in relation to their office.

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A.

In cases where none of the principal accused are occupying positions corresponding to salary grade "27" or higher, as prescribed in the said Republic Act No. 6758, or PNP officers occupying the rank of superintendent or higher, or their equivalent, exclusive jurisdiction thereof shall be vested in the proper Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court, and Municipal Circuit Trial Court, as the case may be, pursuant to their respective jurisdiction as provided in Batas Pambansa Blg. 129.

A plain reading of the above provision shows that, for purposes of determining the government officials that fall within the original jurisdiction of the Sandiganbayan in cases involving violations of Rep. Act No. 3019 and Chapter II, Section 2, Title VII of the Revised Penal Code, Rep. Act No. 7975 has grouped them into five categories, to wit:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as grade and higher[;]

(2) Members of Congress and officials thereof classified as Grade "27" and up under the Compensation and Position Classification Act of 1989;

(3) Members of the judiciary without prejudice to the provisions of the Constitution;

(4) Chairmen and members of Constitutional Commissions, without prejudice to the provisions of the Constitution; and

(5) All other national and local officials classified as Grade "27" and higher under the Compensation and Position Classification Act of 1989.

With respect to the first category, *i.e.*, officials of the executive branch with SG 27 or higher. Rep. Act No. 7975 further specifically included the following officials as falling within the original jurisdiction of the Sandiganbayan:

(a) Provincial governors, vice-governors, members of the sangguniang panlalawigan, and provincial treasurers, assessors, engineers, and other provincial department heads:

(b) City mayors, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors, engineers, and other city department heads;

(c) Officials of the diplomatic service occupying the position of consul and higher;

(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

(e) PNP chief superintendent and PNP officers of higher rank;

(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

(g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations[.]

The specific inclusion of the foregoing officials constitutes an exception to the general qualification relating to officials of the executive branch as "occupying the positions of regional director

and higher, otherwise classified as grade 27 and higher, of the Compensation and Position Classification Act of 1989." In other words, violation of Rep. Act No. 3019 committed by officials in the executive branch with SG 27 or higher, and the officials specifically enumerated in (a) to (g) of Section 4 a.(1) of P.D. No. 1606, as amended by Section 2 of Rep. Act No. 7975, regardless of their salary grades, likewise fall within the original jurisdiction of the Sandiganbayan.

Had it been the intention of Congress to confine the original jurisdiction of the Sandiganbayan to violations of Rep. Act No. 3019 only to officials in the executive branch with SG 27 or higher, then it could just have ended paragraph (1) of Section 4 a. of P.D. No. 1606, as amended by Section 2 of Rep. Act No. 7975, with the phrase "officials of the executive branch occupying the positions of regional director and higher, otherwise classified as grade 27 and higher, of the Compensation and Position Classification Act of 1989." Or the category in paragraph (5) of the same provision relating to "[a]ll other national and local officials classified as Grade '27' and up under the Compensation and Classification Act of 1989" would have sufficed. Instead, under paragraph (1) of Section 4 a. of P.D. No. 1606, as amended by Section 2 of Rep. Act No. 7975, Congress included specific officials, without any reference as to their salary grades. Clearly, therefore, Congress intended these officials, regardless of their salary grades, to be specifically included within the Sandiganbayan's original jurisdiction, for had it been otherwise, then there would have been no need for such enumeration. It is axiomatic in legal hermeneutics that words in a statute should not be construed as surplusage if a reasonable construction which will give them some force and meaning is possible.

That the legislators intended to include certain public officials, regardless of their salary grades, within the original jurisdiction of the Sandiganbayan is apparent from the legislative history of both Rep. Acts Nos. 7975 and 8249. In his sponsorship speech of Senate Bill No. 1353, which was substantially adopted by both Houses of Congress and became Rep. Act No. 7975, Senator Raul S. Roco, then Chairman of the Committee on Justice and Human Rights, explained:

Senate Bill No. 1353 modifies the present jurisdiction of the Sandiganbayan such that only those occupying high positions in the government and the military fall under the jurisdiction of the court.

As proposed by the Committee, the Sandiganbayan shall exercise original jurisdiction over cases assigned to it only in instances where one or more of the principal accused are officials occupying the positions of regional director and higher or are otherwise classified as Grade 27 and higher by the Compensation and Classification Act of 1989, whether in a permanent, acting or interim capacity at the time of the commission of the offense. The jurisdiction, therefore, refers to a certain grade upwards, which shall remain with the Sandiganbayan.

The President of the Philippines and other impeachable officers such as the justices of the Supreme Court and constitutional commissions are not subject to the original jurisdiction of the Sandiganbayan during their incumbency.

The bill provides for an extensive listing of **other public officers** who will be subject to the original jurisdiction of the Sandiganbayan. It includes, among others, Members of Congress, judges and justices of all courts.

More instructive is the sponsorship speech, again, of Senator Roco, of Senate Bill No. 844, which was substantially adopted by both Houses of Congress and became Rep. Act No. 8249. Senator Roco explained the jurisdiction of the Sandiganbayan in Rep. Act No. 7975, thus:

SPONSORSHIP OF SENATOR ROCO

x x x x x x x x x

By way of sponsorship, Mr. President - we will issue the full sponsorship speech to the members because it is fairly technical — may we say the following things:

To speed up trial in the Sandiganbayan, Republic Act No. 7975 was enacted for that Court to concentrate on the "larger fish" and leave the "small fry" to the lower courts. This law became effective on May 6, 1995 and it provided a two-pronged solution to the clogging of the dockets of that court, to wit:

It divested the Sandiganbayan of jurisdiction over public officials whose salary grades were at Grade "26" or lower, devolving thereby these cases to the lower courts, and retaining the jurisdiction of the Sandiganbayan only over public officials whose salary grades were at Grade "27" or higher and over

other specific public officials holding important positions in government regardless of salary grade;

Evidently, the officials enumerated in (a) to (g) Section 4 a.(1) of P.D. No. 1606, amended Section 2 of Rep. Act No. 7975, were specifically included within the original jurisdiction of the Sandiganbayan because the lawmakers considered them "big fish" and their positions regardless of their salary grades.

This conclusion is further bolstered by the fact that some of the officials enumerated in (a) to (g) are not classified as SG 27 or higher under the Index of Occupational Services, Position Titles and Salary Grades issued by the Department of Budget and Management in 1989, then in effect at the time that Rep. Act No. 7975 was approved. x x x

x x x x x x x x x

Noticeably, the vice mayors, members of the Sangguniang Panlungsod and prosecutors, without any distinction or qualification, were specifically included in Rep. Act No. 7975 as falling within the original jurisdiction of the Sandiganbayan. Moreover, the consuls, city department heads, provincial department heads and members of the Sangguniang Panlalawigan, albeit classified as having salary grades 26 or lower, were also specifically included within the Sandiganbayan's original jurisdiction. As correctly posited by the respondents, Congress is presumed to have been aware of, and had taken into account, these officials' respective salary grades when it deliberated upon the amendments to the Sandiganbayan jurisdiction. Nonetheless, Congress passed into law Rep. Act No. 7975, specifically including them within the original jurisdiction of the Sandiganbayan. By doing so, it obviously intended cases mentioned in Section 4 a. of P.D. No. 1606, as amended by Section 2 of Rep. Act No. 7975, when committed by the officials enumerated in (1)(a) to (g) thereof, regardless of their salary grades, to be tried by the Sandiganbayan.

Indeed, it is a basic precept in statutory construction that the intent of the legislature is the controlling factor in the interpretation of a statute. From the congressional records and the text of Rep. [Act Nos.] 7975 and 8249, the legislature undoubtedly intended the officials enumerated in (a) to (g) of Section 4 a.(1) of P.D. No. 1606, as amended by the aforesaid subsequent laws, to be included within the original jurisdiction of the Sandiganbayan.

Following this disquisition, the paragraph of Section 4 which provides that if the accused is occupying a position lower than SG 27, the proper trial court has jurisdiction, can only be properly interpreted as applying to those cases where the principal accused is occupying a position lower than SG 27 and not among those specifically included in the enumeration in Section 4 a. (1)(a) to (g). Stated otherwise, except for those officials specifically included in Section 4 a. (1)(a) to (g), regardless of their salary grades, over whom the Sandiganbayan has jurisdiction, all other public officials below SG 27 shall be under the jurisdiction of the proper trial courts "where none of the principal accused are occupying positions corresponding to SG 27 or higher." By this construction, the entire Section 4 is given effect. The cardinal rule, after all, in statutory construction is that the particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. And courts should adopt a construction that will give effect to every part of a statute, if at all possible. *Ut magis valeat quam pereat* or that construction is to be sought which gives effect to the whole of the statute — its every word.[17] (Citations omitted; underscores supplied.)

To stress, Section 4(a) of P.D. No. 1606, as amended by R.A. No. 8249, provides, among others, that officials of the executive branch occupying positions of regional director and higher, otherwise classified as Grade 27 and higher, of the Compensation and Position Classification Act of 1989 and those specifically enumerated positions therein, *i.e.*, without regard to salary grade, which include the position of, among others, Vice Mayors, are within the exclusive original jurisdiction of the Sandiganbayan if these public officials commit crimes involving: (a) violations of R.A. No. 3019, as amended, R.A. No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code; and (b) other offenses or felonies committed in relation to their office.

In this case, petitioner was charged with violation of Section 3(e) of R.A. No. 3019 and Falsification of Public Document under Article 171(2) of the Revised Penal Code which he

[17] *Id.* at 517-527.

allegedly committed when he was the Vice Mayor of Iriga City. Violation of R.A. No. 3019 is one of those offenses, when committed by the public official enumerated in the law, to be under the Sandiganbayan's jurisdiction. While the charge of falsification is not specifically included in the enumeration of crimes over which the Sandiganbayan has jurisdiction, however, such crime falls under the category of other offenses committed in relation to the office of the public official enumerated under the law.

In *Alarilla v. Sandiganbayan*,[18] where one of the issues raised was whether the crime of grave threats was committed by petitioner Municipal Mayor in relation to his office and, therefore, within the jurisdiction of the Sandiganbayan, we held in the affirmative and said:

The Court has held that an offense is deemed to be committed in relation to the accused's office when such office is an element of the crime charged or when the offense charged is intimately connected with the discharge of the official functions of accused. This was our ruling in *Cunanan v. Arceo* wherein the Court explained several decisions dealing with the Sandiganbayan's jurisdiction. The Court held —

> In *Sanchez v. Demetriou* [227 SCRA 627 (1993)], the Court elaborated on the scope and reach of the term "offense committed in relation to Lan accused's] office" by referring to the principle laid down in *Montilla v. Hilario* [90 Phil 49 (1951)], and to an exception to that principle which was recognized in *People v. Montejo* [108 Phil 613 (1960)]. The principle set out in *Montilla v. Hilario* is that an offense may be considered as committed in relation to the accused's office if "the offense cannot exist without the office" such that "the office [is] a constituent element of the crime x x x." In *People v. Montejo*, the Court, through Chief Justice Concepcion, said that "*although public office is not an element of the crime of murder in [the] abstract*," the facts in a particular case may show that
>
> > "x x x the offense therein charged is *intimately connected* with [the accused's] respective offices and was *perpetrated*

[18] 393 Phil. 143 (2000).

> *while they were in the performance*, though improper or irregular, of *their official functions*. Indeed, [the accused] had *no personal motive to commit the crime and they would not have committed it had they not held their aforesaid offices*."[19] (Citations omitted; italics in the original.)

In this case, the Information for Falsification of Public Document under Article 171(2) of the Revised Penal Code alleged that petitioner, being the Vice Mayor of Iriga City, in such capacity, committed the offenses in relation to his office and, while in the performance of his official functions, had taken advantage of his position when he committed the falsification, as he made it appear or cause it to appear in the Civil Service Commission appointment paper (KSS Porma Blg. 33) of Dimaiwat as Secretary to the *Sangguniang Panlungsod* of Iriga City, a public document, that "the appointee has been screened and found qualified by the Promotion/Personnel Selection Board,"[20] when in truth and in fact, as accused well knew, the Iriga City Personnel Selection Board did not conduct a screening or deliberation on the qualifications of the candidates to the said position, nor did the selection board convene, participate or deliberate on the qualifications of Dimaiwat for the same position. The jurisdiction of a court is determined by the allegations in the complaint or information.[21] Considering the allegations in the Information, the Sandiganbayan did not commit any grave abuse of discretion in finding that it has jurisdiction over petitioner and over the offenses charged.

WHEREFORE, premises considered, the petition for *certiorari* is **DISMISSED**. The Order dated September 29, 2017 issued by the Sandiganbayan in SB-17-CRM-1429 and SB-17-CRM-1430 is hereby **AFFIRMED**.

SO ORDERED.

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

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[19] *Id.* at 156-157.

[20] *Rollo*, p. 31.

[21] *Alarilla v. Sandiganbayan, supra* note 18, at 157 (citation omitted).

SECOND DIVISION

[G.R. No. 235785. August 14, 2019]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOEY NABUA *y* CAMPOS,** *accused-appellant.*

SYLLABUS

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

2. ID.; ID.; ID.; ID.; THE FAILURE OF THE ARRESTING OFFICERS TO GIVE ANY JUSTIFIABLE EXPLANATION FOR THE ABSENCE OF THE REQUIRED WITNESSES, AND TO PERFORM THEIR POSITIVE DUTY TO SECURE THROUGH EARNEST EFFORTS THE PRESENCE OF THESE REPRESENTATIVES IS A SERIOUS LAPSE OF

PROCEDURE.— Section 21 of RA 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases x x x. Here, the inventory and photograph of seized items were only made in the presence of appellant and three barangay officials, *i.e.*, —Edgar Cabunias (barangay tanod), Victor Lopez (barangay tanod) and Eduardo Peralta (barangay chairman). This fact was confirmed by SPO1 Vargas and SPO1 Ofiaza in their testimony before the trial court x x x. [N]o media representative and DOJ representative were present during the inventory and photograph of the seized items. The arresting officers failed to give any justifiable explanation for the absence of these witnesses. The insulating presence of such witnesses would have preserved an unbroken chain of custody. More, they failed to performed their positive duty to secure through earnest efforts the presence of these representatives. This is certainly a serious lapse of procedure. In ***People v. Abelarde***, the accused was acquitted for violation of Section 5, Article II of RA 9165 because there was no evidence that the inventory and photograph of seized dangerous drugs, if at all, were done in the presence of a media representative, a DOJ representative, and an elected public official.

3. ID.; ID.; ID.; ID.; THE ABSENCE OF EVIDENCE ON HOW THE SEIZED DRUG WAS STORED, PRESERVED, LABELED OR WHO HAD CUSTODY THEREOF BEFORE IT WAS PRESENTED IN COURT IS FATAL TO THE PROSECUTION'S CASE.— Another gap in the chain of custody happened when the seized drug was delivered to the crime laboratory. There was nothing on record here showing how the seized drug was handled before, during, and after it came to the custody of forensic chemist PSI Manuel's possession. The parties merely stipulated that PSI Manuel received the specimens and found the same positive for methamphetamine hydrochloride, a dangerous drug. But as to how PSI Manuel took precautionary steps in preserving the integrity and evidentiary value of the seized drug while it remained in her possession and prior to its presentation in court, no evidence was ever presented. In ***People v. Hementiza***, the Court acquitted the accused for illegal sale of drugs because records were bereft of any evidence on how the illegal drugs were brought to the court. The forensic chemist therein merely testified that she made a report confirming the substance contained in the sachets

brought to her was positive for *shabu*. As in this case, there was no evidence how the shabu was stored, preserved, labeled or who had custody thereof before it was presented in court.

4. ID.; ID.; ID.; ID.; UNEXPLAINED BREACHES IN THE CHAIN OF CUSTODY RULE ARE FATAL FLAWS WHICH DESTROY THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI*.— The breaches in chain of custody rule here were fatal flaws effectively destroying the integrity and evidentiary value of the *corpus delicti*. We have clarified that a perfect chain of custody may be impossible to obtain at all times because of varying field conditions. Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165 offers a saving clause allowing leniency under justifiable grounds. There are twin conditions for the saving clause to apply; a) the prosecution must explain the reasons behind the procedural lapses; and, b) the integrity and value of seized evidence had been preserved. A justifiable ground for non-compliance must be proven as fact. Here, prosecution utterly failed to offer any explanation which would otherwise excuse the buy-bust team's failure to comply with the chain of custody rule. Thus, the condition for the saving clause to apply was not complied with.

5. ID.; ID.; ID.; ID.; THERE CAN BE NO PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS WHEN RECORDS ARE REPLETE WITH DETAILS OF THE POLICE OFFICERS' SERIOUS LAPSES, FOR TO ALLOW THE PRESUMPTION TO PREVAIL NOTWITHSTANDING CLEAR ERRORS ON THE PART OF THE POLICE OFFICERS IS TO NEGATE THE SAFEGUARDS PLACED BY LAW TO ENSURE THAT NO ABUSE IS COMMITTED.— Suffice it to state that the presumption of regularity in the performance of official functions cannot substitute for compliance and mend the broken links. There can be no presumption of regularity in this case when records were replete with details of the policemen's serious lapses. For to allow the presumption to prevail notwithstanding clear errors on the part of the police is to negate the safeguards precisely placed by law to ensure that no abuse is committed. Here, the presumption was amply overturned by compelling evidence of the serious breaches 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 assails the Decision[1] dated August 17, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08586 entitled "*People of the Philippines v. Jose Nabua y Campos,*" affirming the conviction of Jose Nabua for violation of Section 5, Article II of Republic Act (RA) No. 9165.[2]

The Proceedings Before the Trial Court

The Charge

By Information[3] dated October 22, 2013, in Criminal Case No. A-6360, appellant Jose Nabua and his co-accused Paul Saturnino and Gideon Baltazar were charged with violation of Section 5, Article II of RA 9165, *viz*:

That on or about the 20th day of October 2013, in the Municipality of Rosario, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually aiding each other, did then and there willfully, unlawfully and knowingly sell and deliver to a police officer who acted as a "poseur buyer" a heat sealed plastic sachet containing "shabu" or methamphetamine hydrochloride for and in consideration of ₱500.00, more or less, without any lawful authority.

CONTRARY TO LAW.

[1] Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Leoncia R. Dimagiba and Henri Jean Paul B. Inting (now a member of this Court) all members of the Twelfth Division, *rollo*, pp. 2-18.

[2] Comprehensive Dangerous Drugs Acts of 2002.

[3] Record, p. 33.

The case was raffled to the Regional Trial Court (RTC) – Branch 31, Agoo, La Union.

Accused Saturnino and Baltazar jointly filed a Motion to Dismiss on the ground that their mere presence at the alleged crime scene did not automatically make them co-conspirators in the alleged illegal sale transaction.[4] The trial court granted[5] the motion. Consequently, they were dropped from the charge.

The case, nonetheless, proceeded against appellant. On arraignment, he pleaded "not guilty."[6] Trial ensued.

During the trial, SPO1 Roberto V. Vargas, SPO1 Reynaldo B. Ofiaza, and PO1 Tony S. Fernandez, Jr., members of the Intelligence Operatives of Rosario Police Station, Rosario La Union, testified for the prosecution. The defense, on the other hand, presented appellant as its lone witness.

The Prosecution's Evidence

SPO1 Roberto V. Vargas, SPO1 Reynaldo B. Ofiaza, and PO1 Tony S. Fernandez, Jr. identified and confirmed[7] the contents of their Joint Affidavit of Arrest[8] dated October 21, 2013.

On October 20, 2013, around 5 o'clock in the afternoon, Police Chief Inspector (P/C Insp.) Orly Z. Pagaduan received a report from a confidential informant that a certain "alias Boyet" of Barangay Rabon, Rosario La Union was selling illegal drugs.[9] P/C Insp. Pagaduan briefed the members of the Intelligence Operatives Office and organized a buy bust operation.[10] SPO1 Vargas got assigned as poseur buyer while SPO1 Ofiaza and

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[4] *Id.* at 39.

[5] *Id.* at 43.

[6] *Id.*

[7] TSN, August 5, 2014, p. 23; TSN, October 7, 2014, pp. 7-8.

[8] Record, pp. 1-3.

[9] CA *rollo*, p. 78.

[10] Record, p. 1.

PO1 Fernandez as immediate back-up. They agreed on the pre-arranged signal: SPO1 Vargas will scratch his neck indicating the sale has been consummated.[11]

Per SPO1 Ofiaza's instruction, the informant told appellant that he found a buyer of *shabu* and to meet around 5 o'clock of even date at Barangay Rabon, Rosario La Union, particularly in front of Ortega's store, for the sale transaction.[12]

The team proceeded to Brgy. Rabon at Rosario, La Union. SPO1 Ofiaza and PO1 Fernandez went inside Ortega's store while SPO1 Vargas and the informant waited for appellant outside. Appellant texted the informant that he was on his way to their meeting place. The team then saw appellant alight from a white Mitsubishi L-300 cab which halted 20 meters away from the store. Appellant walked toward SPO1 Vargas and informant.[13]

The informant introduced SPO1 Vargas to appellant as the person interested in buying *shabu*. Appellant asked SPO1 Vargas about the money but the latter requested to see the *shabu* first. Appellant then handed to SPO1 Vargas one (1) heat sealed transparent plastic sachet containing white crystalline substance. SPO1 Vargas, in turn, gave appellant buy-bust money who slipped the money to his pocket. SPO1 Vargas scratched his neck to signal the other team members that the sale had been consummated.[14]

PO1 Fernandez immediately closed in, informed appellant of his constitutional rights, and arrested him. Meantime, SPO1 Vargas and SPO1 Ofiaza ran toward appellant's vehicle where they saw Saturnino and Baltazar on board. The latter alighted from the vehicle and got frisked. The search, however, yielded nothing.

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[11] *Id.*

[12] TSN, February 24, 2015, pp. 4-7.

[13] CA *rollo*, p. 79.

[14] Record, p. 1.

SPO1 Vargas also searched appellant and recovered from the latter the buy-bust money and another sachet of suspected *shabu*.

At the *situs criminis*, SPO1 Vargas marked the seized plastic sachets with "RVV-1" (sachet brought from appellant) and "RVV-2" (another sachet recovered from appellant). SPO1 Vargas also prepared an inventory of the seized items in the presence of Barangay Captain Eduardo Peralta and two (2) Barangay Tanods Edgar Cabunias and Victor Lopez.

SPO1 Vargas, thereafter, brought the seized items to the Regional Crime Laboratory Office 1, Parian, San Fernando City, La Union for examination.[15] Forensic Chemist PSI Ma. Theresa Amor C. Manuel received the request and specimens and conducted a qualitative examination thereon. Per Report No. D-107-2013, the specimens were found positive for methamphetamine hydrochloride, a dangerous drug.[16]

The prosecution submitted the following evidence: 1) two (2) plastic sachets marked as RVV-1 (sold *shabu*) with date 10-20-2013 and RVV-2 (possessed *shabu*) with date 10-20-2013;[17] 2) buy bust money consisting of five (5) twenty peso bills with serial numbers XB087542, RE282571, ND526434, EC527233, and UW00911, and four (4) one hundred peso bills with serial numbers DA957022, DA880462, FD881192 and BK539242;[18] 3) Certificate of Inventory dated October 20, 2013;[19] 4) Pictures taken during the inventory;[20] 5) Request for Laboratory Examination;[21] 6) Initial and Final Laboratory

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[15] TSN, November 11, 2014, p. 13.

[16] Record, pp. 6 and 24.

[17] *Id.* at 6.

[18] Record, pp. 25-28, Exhibit B.

[19] *Id.* at 17-19, Exhibit C.

[20] *Id.* at 29-31a, Exhibit D.

[21] *Id.* at 6, Exhibit E.

Report;[22] 7) Certificate of Coordination;[23] 8) Chain of Custody Form;[24] 9) Joint Affidavit of Arrest;[25] and 10) Police Report.[26]

The Defense's Evidence

Appellant testified that on October 20, 2013, from 8 o'clock in the morning until 5 o'clock in the afternoon, he was performing his duty as traffic enforcer in San Fabian, Pangasinan.[27]

On his way home, Saturnino and Baltazar invited him to buy pigeons. They boarded a white L-300 white van on their way to Barangay Rabon, Rosario.[28] His companions asked him to alight from the vehicle and to look for the person selling pigeons.[29] As he walked toward the store, he saw SPO1 Vargas in civilian clothes. SPO1 Vargas asked him if he was "Boyet" to which he said "no."[30] SPO1 Vargas suddenly poked a gun at him while two (2) other men arrested him.

He was brought outside the store where the seized items were marked and inventoried in the presence of two barangay tanods Edgar Cabunias and Victor Lopez, and the barangay captain Eduardo Peralta. Police Inspector Edgar Carlos took photographs during the marking and inventory.[31] Thereafter, he and his companions were handcuffed, brought to Rosario Police Station,[32] and charged with violation of Section 5, Article II of RA 9165.

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[22] *Id.* at 24, Exhibit F.

[23] *Id.* at 23, Exhibit H.

[24] *Id.* at 10.

[25] *Id.* at 1-3, Exhibit I.

[26] *Id.* at 5, Exhibit J.

[27] TSN, June 30, 2015, pp. 3 and 5.

[28] *Id.* at 5.

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

[30] *Id.* at 7.

[31] TSN, August 5, 2014, p. 17.

[32] *Id.* at p. 10.

The Trial Court's Ruling

By Decision[33] dated July 13, 2016, the trial court found appellant guilty as charged, *viz:*

> WHEREFORE, premises considered, judgment is hereby rendered finding accused JOEY NABUA y CAMPOS **GUILTY** beyond reasonable doubt of the crime of violation of Section 5, Article II of Republic Act No. 9165 (Sale of Dangerous Drug), and is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and ordered to pay a fine of **FIVE HUNDRED THOUSAND PESOS** (₱500,000.00).
>
> The dangerous drugs and drug paraphernalia obtained from the persons of the accused and subject of the Information are hereby ordered delivered forthwith to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.
>
> SO ORDERED.[34]

It ruled there was a valid buy-bust operation resulting in the purchase of 0.0289 gram of "*shabu*" (marked RVV-1). The prosecution had established the integrity and identity of the *corpus delicti* from the time it was seized until it was presented as evidence in court. It further held the presence of the media and DOJ representatives for the inventory and photograph of seized items was not indispensable for the prosecution of the crime.[35]

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court when it allegedly overlooked fatal omissions of the police team during the supposed buy-bust operation, *viz:* the marking was not done immediately upon the seizure of the alleged dangerous drug; and the seized items were not placed in a separate container nor sealed before its transfer to the crime laboratory. Also, except for her receipt of the request for laboratory examination and the results of

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[33] CA *rollo*, pp. 50-64; Penned by Executive Judge Romeo M. Atillo, Jr.

[34] *Id.* at 64.

[35] *Id.* at 62.

the same, there was no showing how forensic chemist PSI Manuel actually handled the specimen before, during, and after the examination. Therefore, there was no proof that the specimen received for chemical examination was the same substance tested, stored, and presented in court as evidence.[36]

For its part, the People, through Assistant Solicitor General Derek R. Puertollano and Associate Solicitor Andres S. Jose Jr., countered in the main: 1) the elements of illegal sale of dangerous drugs were all sufficiently established; 2) the presumption of regularity in the performance of official functions and duties in favor of the buy-bust team prevails over appellant's denial; 3) the marking, inventory, and photography in the presence of appellant and the three (3) barangay officials substantially complied with the requirements of the chain of custody rule; and 4) the integrity and evidentiary value of seized items were properly preserved.[37]

The Court of Appeals' Ruling

By Decision[38] dated August 17, 2017, the Court of Appeals affirmed. It held that there was a valid buy-bust operation leading to appellant's arrest and confiscation of the dangerous drugs in question. It also found that the arresting officers substantially complied with the chain of custody rule and the integrity of the *corpus delicti* was duly preserved.

The Present Appeal

Appellant now seeks affirmative relief from the Court and pleads anew for his acquittal.

For the purpose of this appeal, both appellant and the People adopted, in lieu of supplemental briefs, their respective briefs filed before the Court of Appeals.[39]

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[36] *Id.* at 39-45.

[37] *Id.* at 81-87.

[38] *Rollo,* pp. 2-18.

[39] The People's Manifestation, *rollo,* pp. 30-32; Appellant's Manifestation, *rollo,* pp. 26-27.

Issue

Did the Court of Appeals err when it affirmed appellant's conviction for violation of Section 5, Article II of RA 9165?

Ruling

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court.[40]

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody:[41] ***first***, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; ***second,*** the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third,*** the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth,*** the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[42]

This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.[43]

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[40] *People v. Barte*, 806 Phil. 533, 542 (2017).

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

x x x x x x x x x

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

x x x x x x x x x

[42] *People v. Dahil*, 750 Phil. 212, 231 (2015).

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

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

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

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

x x x x x x x x x

The Implementing Rules and Regulations of RA 9165 further commands:

Section 21. (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof:** Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/ team, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by**

the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. (emphases added)

Here, the inventory and photograph of seized items were only made in the presence of appellant and three barangay officials, *i.e.*, –Edgar Cabunias (barangay *tanod*), Victor Lopez (barangay *tanod*) and Eduardo Peralta (barangay chairman).[44] This fact was confirmed by SPO1 Vargas and SPO1 Ofiaza in their testimony before the trial court, thus:

SPO1 Vargas

Q: So you were the person who also conducted the inventory?

A: yes, sir.

x x x x x x x x x

Q: And who was present during the inventory you conducted?

A: Brgy. Officials of Brgy. Rabon, sir.

x x x x x x x x x

Q: No representative from the DOJ?

A: None, sir.

Q: No representative from the media?

A: No, sir.

Q: Why?

A: I do not know, sir, from our chief of police.[45] (Underscoring and emphasis supplied)

SPO1 Ofiaza:

Q: And you had been conducted (sic) several buy bust operation?

A: yes, sir.

Q: And you know very well that the requirements was that there was (sic) be a media, a DOJ representative and barangay officials?

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[44] Record, pp. 9, 15, 17-20.

[45] TSN, August 5, 2014, pp. 12-13.

A: Yes, sir.

Q: So from the time you decided to conduct an entrapment up to 4:30 in the afternoon you have all the time to coordinate with these agencies, is it not?

A: Yes, sir.

Q: But you testified awhile (sic) ago that you did not coordinate with the DOJ?

A: I did not coordinate with the DOJ, sir.[46]

(Emphasis supplied)

Evidently, no media representative and DOJ representative were present during the inventory and photograph of the seized items. The arresting officers failed to give any justifiable explanation for the absence of these witnesses. The insulating presence of such witnesses would have preserved an unbroken chain of custody.[47] More, they failed to perform their positive duty to secure through earnest efforts the presence of these representatives. This is certainly a serious lapse of procedure.

In ***People v. Abelarde,***[48] the accused was acquitted for violation of Section 5, Article II of RA 9165 because there was no evidence that the inventory and photograph of seized dangerous drugs, if at all, were done in the presence of a media representative, a DOJ representative, and an elected public official.

In ***People v. Macud,***[49] the buy-bust team similarly failed to secure the presence of a media representative, a DOJ representative, and any elected public official to witness the inventory and photograph of the seized drugs. For this, the Court rendered a verdict of acquittal.

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[46] TSN, February 24, 2015, pp. 23-24.

[47] See *People v. Cabezudo,* G.R. No. 232357, November 28, 2018 citing *People v. Mendoza,* 736 Phil. 749, 764 (2014).

[48] See G.R. No. 215713, January 22, 2018.

[49] See G.R. No. 219175, December 14, 2017, 849 SCRA 294, 311-312.

Finally in ***People v. Año,***[50] the prosecution offered no explanation to justify the absence of representatives from the media and the DOJ during the inventory and photograph of seized dangerous drugs. The Court ruled that the unjustified gaps in the chain of custody went against the finding of guilt against the accused.

Another gap in the chain of custody happened when the seized drug was delivered to the crime laboratory. There was nothing on record here showing how the seized drug was handled before, during, and after it came to the custody of forensic chemist PSI Manuel's possession. The parties merely stipulated that PSI Manuel received the specimens and found the same positive for methamphetamine hydrochloride, a dangerous drug. But as to how PSI Manuel took precautionary steps in preserving the integrity and evidentiary value of the seized drug while it remained in her possession and prior to its presentation in court, no evidence was ever presented.

In ***People v. Hementiza,***[51] the Court acquitted the accused for illegal sale of drugs because records were bereft of any evidence on how the illegal drugs were brought to the court. The forensic chemist therein merely testified that she made a report confirming the substance contained in the sachets brought to her was positive for *shabu*. As in this case, there was no evidence how the *shabu* was stored, preserved, labeled or who had custody thereof before it was presented in court.

The breaches in chain of custody rule here were fatal flaws effectively destroying the integrity and evidentiary value of the *corpus delicti*.

We have clarified that a perfect chain of custody may be impossible to obtain at all times because of varying field conditions.[52] Section 21 (a), Article II of the Implementing Rules

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[50] See G.R. No. 230070, March 14, 2018.

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

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

and Regulations (IRR) of RA 9165[53] offers a saving clause allowing leniency under justifiable grounds. There are twin conditions for the saving clause to apply: a) the prosecution must explain the reasons behind the procedural lapses; and, b) the integrity and value of seized evidence had been preserved. A justifiable ground for non-compliance must be proven as fact.[54]

Here, prosecution utterly failed to offer any explanation which would otherwise excuse the buy-bust team's failure to comply with the chain of custody rule. Thus, the condition for the saving clause to apply was not complied with.

People v. Crispo[55] is apropos:

An examination of the records reveals that while the inventory and photography of the seized items were made in the presence of two (2) elected public officials, *i.e.,* Barangay Kagawads Ramon Amtolim and Helen Tolentino, as evidenced by their signatures on

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[53] Section 21(a) of the Implementing Rules and Regulations of RA 9165 provides:

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

x x x x x x x x x

[54] See *People v. Jugo,* G.R. No. 231792, January 29, 2018, 853 SCRA 321, 333.

[55] See G.R. No. 230065, March 14, 2018.

the Receipt of Property/Evidence Seized, **the same were not done in the presence of representatives from either the DOJ and the media.**

x x x x x x x x x

In this case, **despite the non-observance of the witness requirement, no plausible explanation was given by the prosecution.**

Verily, the procedural lapses committed by the arresting officers, which were unfortunately left unjustified, militate against a finding of guilt beyond reasonable doubt against Crispo, as the **integrity and evidentiary value of the *corpus delicti* had been compromised,** xxx **As such, since the prosecution failed to provide justifiable grounds for noncompliance with the aforesaid provision, Crispo's acquittal is perforce in order.**

x x x x x x x x x

(Emphasis and underscoring supplied)

So must it be.

Suffice it to state that the presumption of regularity in the performance of official functions[56] cannot substitute for compliance and mend the broken links. There can be no presumption of regularity in this case when records were replete with details of the policemen's serious lapses. For to allow the presumption to prevail notwithstanding clear errors on the part of the police is to negate the safeguards precisely placed by law to ensure that no abuse is committed.[57] Here, the presumption was amply overturned by compelling evidence of the serious breaches of the chain of custody rule.

ACCORDINGLY, the appeal is **GRANTED.** The Decision dated August 17, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08586 is **REVERSED** and **SET ASIDE**. Appellant Joey Nabua *y* Campos is **ACQUITTED** in Criminal Case No. A-6360.

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

[57] See *People v. Macud,* G.R. No. 219175, December 14, 2017, 849 SCRA 294, 323.

The Court **DIRECTS** the Director of the Bureau of Corrections: a) to cause the immediate release of Joey Nabua *y* Campos from custody unless he is being held for some other lawful cause; and b) to inform the Court of the action taken within five (5) days from notice.

The Court further orders that the corresponding entry of judgment be immediately issued.

SO ORDERED.

Caguioa (Chairperson), Reyes, J. Jr., and *Zalameda, JJ.,* concur.

Carpio, S.A.J. (*Chairperson*), on official leave.

SECOND DIVISION

[G.R. No. 237334. August 14, 2019]

CICL XXX,[*] *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and GLENN REDOQUERIO,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; REVISED RULE ON CHILDREN IN CONFLICT WITH THE LAW; WHEN A CHILD IN CONFLICT WITH THE LAW (CICL) IS CHARGED WITH A CRIME, IT CANNOT BE PRESUMED THAT HE OR SHE ACTED WITH DISCERNMENT; THE PROSECUTION MUST SPECIFICALLY PROVE AS A SEPARATE CIRCUMSTANCE THAT THE CICL

[*] Real identity of the Child in Conflict with the Law (CICL) is withheld in accordance with Republic Act No. 9344, or the Juvenile Justice and Welfare Act of 2006, as amended, and A.M. No. 02-1-18-SC, or the Revised Rule on Children in Conflict with the Law.

COMMITTED THE ALLEGED CRIME WITH DISCERNMENT.— In the case of *Dorado v. People*, the Court had the occasion to state that "when a minor above fifteen (15) but below eighteen (18) years old is charged with a crime, **it cannot be presumed that he or she acted with discernment.** During the trial, the prosecution must specifically prove as a separate circumstance that the CICL XXX committed the alleged crime with discernment." x x x. The Court in *Dorado* acquired the 16-year-old accused therein because: (1) the prosecution did not make an effort to prove that the accused acted with discernment at the time of the commission of the crime, and (2) the decision of the RTC convicting the accused therein simply stated that a privileged mitigating circumstance of minority must be appreciated in favor of the accused. The Court therein noted that there was no discussion at all on whether the accused therein acted with discernment when he committed the crime imputed against him. The foregoing ruling is applicable to CICL XXX's case. In the present case, neither the RTC nor the CA discussed whether CICL XXX acted with discernment.

2. ID.; ID.; ID.; A CICL IS EXEMPT FROM CRIMINAL LIABILITY EVEN IF HE WAS A CO-CONSPIRATOR WHERE THE PROSECUTION FAILED TO REBUT THE PRESUMPTION OF NON-DISCERNMENT ON HIS PART BY VIRTUE OF HIS AGE.— Both the RTC and the CA erred in convicting CICL XXX, as they both equated "intent to kill" — which was admittedly established through the evidence presented by the prosecution — with acting with discernment, which, on the contrary, was not proved by the prosecution. The prosecution, in fact, never endeavored to prove that CICL XXX acted with discernment. This is highlighted by the prosecution's cross-examination of CICL XXX, which focused only on whether Redoquerio had the motive to falsely accuse CICL XXX of committing a crime, and whether CICL XXX's father owned a gun. The testimonies of the prosecution witnesses, on the other hand, established only CICL XXX's supposed participation in the mauling of Redoquerio. To reiterate, these pieces of evidence only establish CICL XXX's intent, instead of his having acted with discernment. Furthermore, even if he was a co-conspirator, he would still be exempt from criminal liability as the prosecution failed to rebut the presumption of non-discernment on his part by virtue of his age. It is well to emphasize that: [f]or a minor

at such an age to be criminally liable, the **prosecution is burdened to prove beyond reasonable doubt, by direct or circumstantial evidence,** that he acted with discernment, meaning that he knew what he was doing and the it was wrong. Such circumstantial evidence may include the utterances of the minor; his overt acts before during and after the commission of the crime relative thereto; the nature of the weapon used in the commission of the crime; his attempt to silence a witness; his disposal of evidence or his hiding the *corpus delicti*." Again, there are no such pieces of evidence in the case at bar. As the presumption that CICL XXX acted without discernment was not successfully controverted, he must perforce be acquitted of the charge.

3. ID.; HOMICIDE; ELEMENTS. — To successfully prosecute the crime of homicide, the following elements must be proved beyond reasonable doubt: (1) that a person was killed; (2) that the accused killed that person without any justifying circumstance; (3) that the accused had the intention to kill, which is presumed; and (4) that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide. Moreover, the offender is said to have performed all the acts of execution if the wound inflicted on the victim is mortal and could cause the death of the victim without medical intervention or attendance.

4. ID.; FRUSTRATED FELONY; ELEMENTS. — [T]he essential elements of a frustrated felony are as follows: (1) the offender performs all the acts of execution; (2) all the acts performed would produce the felony as a consequence; (3) but the felony is not produced; and (4) by reason of causes independent of the will of the perpetrator.

5. ID.; ID.; THE LOWER COURT ERRED IN FINDING THAT THE INJURIES WERE FATAL AND THAT THE VICTIM WOULD HAVE DIED IF NOT FOR THE TIMELY MEDICAL ASSISTANCE HE RECEIVED WHERE THE PROSECUTION FAILED TO SUFFICIENTLY ESTABLISH THE NATURE AND EXTENT OF THE INJURIES SUSTAINED BY THE VICTIM.— A perusal of the records, x x x, reveals that the extent of the injuries sustained by Redoquerio was not fully established. The medical records of Redoquerio were admitted into evidence only through the testimony of Luague, the Administrative Officer 1 of East Avenue

Medical Center who had custody of the medical records. However, as he was not a medical doctor, both parties stipulated that Luague could not: (1) "testify as to the nature and gravity of the wound sustained by the private complainant;" and (2) "testify whether or not the alleged wound sustained by the private complainant is fatal in nature." Thus, while Redoquerio's medical records — the *Clinical Abstract*, *Operating Room Record*, and *Discharged Summary* — are part of the evidence on record, there is no testimonial evidence on record explaining to the Court the medical findings which would have established the nature and extent of the injuries that Redoquerio sustained. To the mind of the Court, it was not absolutely necessary for Dr. Zorilla, Redoquerio's attending physician, to have testified. Any medical doctor, however, who was competent to interpret Dr. Zorilla's findings, as indicated in Redoquerio's medical records, could have testified in his stead to establish the nature and extent of the injuries. As the nature and extent of the injuries were not sufficiently established, it was error for the lower courts to conclude that the injuries were fatal and that Redoquerio would have died if not for the timely medical assistance he received. In the final analysis, it was therefore error for the courts to conclude that the crime committed was Frustrated Homicide instead of Attempted Homicide.

6. ID.; RULES REGARDING CIVIL LIABILITY IN CERTAIN CASES; A CHILD IN CONFLICT WITH THE LAW (CICL) WHO IS NOT CRIMINALLY LIABLE FOR HIS ACTS AS THE PRESUMPTION THAT HE ACTED WITH DISCERNMENT WAS NOT OVERCOME, IS STILL CIVILLY LIABLE FOR THE INJURIES SUSTAINED BY THE VICTIM; DAMAGES AWARDED, MODIFIED.— While CICL XXX is not criminally liable for his acts because the presumption that he acted without discernment was not overcome, he is still civilly liable for the injuries sustained by Redoquerio. It is well-settled that "[e]very person criminally liable is also civilly liable x x x. However, it does not follow that a person who is not criminally liable is also free from civil liability. Exemption from criminal liability does not always include exemption from civil liability." x x x. [I]n light of the Court's ruling in *People v. Jugueta*, the award of civil indemnity and moral damages should be reduced to ₱25,000.00 each, and an award of exemplary damages amounting to ₱25,000.00 should likewise be imposed.

7. ID.; ID.; ID.; ID.; THE PARENTS ARE DIRECTLY AND PRIMARILY LIABLE FOR THE CIVIL LIABILITY ARISING FROM CRIMINAL OFFENSES COMMITTED BY THE CICL UNDER THEIR LEGAL AUTHORITY OR CONTROL, OR WHO LIVE IN THEIR COMPANY, UNLESS IT IS PROVEN THAT THE FORMER ACTED WITH THE DILIGENCE OF A GOOD FATHER OF A FAMILY TO PREVENT SUCH DAMAGES.— The x x x liability is imposed upon CICL XXX's parents because Article 101 of the Revised Penal Code provides that: ARTICLE 101. *Rules Regarding Civil Liability in Certain Cases*.— The exemption from criminal liability established in subdivision 1,2,3,5, and 6 of article 12 and in subdivision 4 of article 11 of this Code does not include exemption from civil liability, which shall be enforced subject to the following rules: *First*. In cases of subdivisions 1, 2, and 3 of article 12, **the civil liability for acts committed by** an imbecile or insane person, and by **a person** under nine years of age, or by one over nine but under fifteen years of age, **who has acted without discernment, shall devolve upon those having such person under their legal authority or control,** unless it appears that there was no fault or negligence on their part. x x x. In *Libi v. Intermediate Appellate Court*, the Court *en banc* interpreted the above provision to mean that the civil liability of parents for criminal offenses committed by their minor children is **direct** and **primary**. The Court said: Accordingly, just like the rule in Article 2180 of the Civil Code, under the foregoing provision **the civil liability of the parents for crimes committed by their minor children is likewise direct and primary,** and also subject to the defense of lack of fault or negligence on their part, that is, the exercise of the diligence of a good father of a family. Under the foregoing considerations, therefore, we hereby rule that the parents are and should be held primarily liable for the civil liability arising from criminal offenses committed by their minor children under their legal authority or control, or who live in their company, unless it is proven that the former acted with the diligence of a good father of a family to prevent such damages. x x x. Article 101 of the RPC, however, provides that the foregoing liability of CICL XXX's parents is subject to the defense that they acted without fault or negligence. Thus, the civil aspect of this case is remanded to the trial court, and it is ordered to

implead CICL XXX's parents for reception of evidence on their fault or negligence.

APPEARANCES OF COUNSEL

Jaromay Laurente Pamaos Law Offices for petitioner.
Office of the Solicitor General for public respondents.

D E C I S I O N

CAGUIOA,[*] *J.*:

Before the Court is a Petition for Review on *Certiorari* filed by the accused-appellant CICL XXX assailing the Decision[1] dated September 5, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 39177, which affirmed the Decision[2] dated September 2, 2016 of Regional Trial Court (RTC) of Quezon City, Branch 94 in Criminal Case No. Q-12-175544, finding CICL XXX guilty beyond reasonable doubt of the crime of Frustrated Homicide.

The Facts

An Information was filed against CICL XXX, the accusatory portion of which reads:

That on or about the 1st day of January 2010 in Quezon City, Philippines, the above-named accused [CICL XXX], a minor, 17 years old, but acting with discernment conspiring together, confederating with CHRISTOPHER PUYO AND JAYJAY NARAG and mutually helping one another, did, then and there willfully, unlawfully and feloniously[,] with intent to kill, attack, assault and employ personal violence upon the person of one GLENN REDOQUERIO by then and there mauling him and hitting him in the head with a piece of

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[*] Designated Acting Chairperson per Special Order No. 2688 dated July 30, 2019.

[1] *Rollo*, pp. 34-52. Penned by Associate Justice Magdangal M. De Leon with Associate Justices Franchito N. Diamante and Zenaida T. Galapate-Laguilles concurring.

[2] *Id*. at 216-221. Penned by Presiding Judge Roslyn M. Rabara-Tria.

stone, thereby inflicting upon him serious and grave wounds, the offender thus performing all the acts of execution that would produce the crime of homicide as a consequence but which nevertheless did not produce it by reason or cause independent of the will of the perpetrator, that is, by the timely and able medical attendance rendered to said GLENN REDOQUERIO, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.[3]

During the arraignment, CICL XXX pleaded not guilty.[4] Pre-trial and trial thereafter ensued.

The prosecution presented private complainant Glenn Redoquerio (Redoquerio), Michael de los Santos (de los Santos), and Reginaldo Luague (Luague) as witnesses. The version of the prosecution, as summarized by the RTC, is as follows:

At around 12:30 in the morning on January 1, 2010, private complainant Glenn Redoquerio (Redoquerio) was sent by his mother Lolita Redoquerio to buy iced tea powder from a store located in VVV, WWW, Quezon City. While he was at the store, Glenn heard somebody say "Yan si Glenn anak ni Purok Leader na humuli sa atin nuon." He looked back and saw CICL XXX, Christopher Puyo (Puyo) and Jayjay Narag (Narag). CICL XXX suddenly poked a gun at the face of Redoquerio. The gun was only about six (6) inches away from R.edoquerio's face. CICL XXX pulled the trigger several times but the gun did not fire. CICL XXX then hit (hinataw) the left temple and top of the head of Redoquerio with the gun. Puyo and Narag held the arms of Redoquerio while CICL XXX punched him several times. Puyo then hit the head of Redoquerio with a stone causing the latter to loss (*sic*) consciousness. Redoquerio was in coma for 7 days while he was confined at the East Avenue Medical Center.

Redoquerio incurred expenses for the treatment of his injuries as shown by various receipts.

The incident was witnessed by Michael Delos Santos (Delos Santos) who was buying cigarettes from the store at that time.

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[3] *Id*. at 55.

[4] *Id*. at 36.

During the hearing on June 16, 2014, the prosecution and the defense entered into stipulations on the intended testimony of Reginaldo D. Luague, as follows:

1. That Reginaldo D. Luague is the Administrative Officer I of the East Avenue Medical Center (EAMC)
2. In his official capacity, he has in his custody the medical records of one Glenn Redoquerio, the private complainant in this case, who was admitted at the EAMC from January 1, 2010 to January 13, 2010
3. That he brought with him the following medical records: (a) medical certificate dated March 19, 2010 prepared and signed by Dr. Zorilla marked as Exhibit "F" & "F-1"; (b) the patient data sheet number 679300 of one Glenn Redoquerio y Camba containing the following pertinent data such as the name of the patient, admitting diagnosis, the date of admission and date of discharge as well as the signature of the attending resident physician Dr. Zorilla marked as Exhibit "I" & "I-1"
4. The discharge summary marked as Exhibit "J" & "J-1"
5. The clinical abstract marked as Exhibit "K" & "K-1"
6. The operating room record of one Glenn Redoquerio which were all signed by Dr. Zorilla marked as Exhibit "L" & "L-1"
7. That Reginaldo Luague knows and is familiar with the signature of the attending resident physician Dr. Zorilla
8. That Reginaldo Luague has personal knowledge of the fact that Dr. Zorilla has completed two years internship at the EAMC and is no longer available to take the witness stand
9. That if and when called to the witness stand, Reginaldo Luague will be able to identify the said documents
10. That he will testify on the existence and due execution of the said documents
11. That Reginaldo Luague cannot testify as to the nature and the gravity of the wound sustained by the private complainant
12. That he cannot testify whether or not the alleged wound sustained by the private complainant is fatal in nature.[5]

[5] *Rollo*, pp. 217-218.

On the other hand, the version of the defense, as also summarized by the RTC, is as follows:

> CICL XXX denied the allegations against him. At around 2:00 in the morning on January 1, 2010, he and his family were having a celebration for the New Year in their residence in WWW, Quezon City. They heard a commotion outside and they were told that there was a mauling incident that was happening. His mother YYY went out first and then he, his siblings and their visitors followed to the corner of Cotabato Street. CICL XXX saw Redoquerio and De los Santos mauling Narag. Thereafter, De los Santos ran away while Narag boxed Redoquerio who fell on his back. He did not know what happened next because YYY already called for him and they went home. He and his family were surprised when they were called by the barangay authorities because he was implicated in the mauling of Redoquerio. He surmised that the reason why he was implicated in this case is that Redoquerio did not really know who mauled him.[6]

Ruling of the RTC

After trial on the merits, in its Decision[7] dated September 2, 2016, the RTC convicted CICL XXX of the crime of Frustrated Murder. The dispositive portion of the said Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding CICL XXX guilty beyond reasonable doubt of the crime of frustrated homicide and is sentenced to suffer an indeterminate penalty of 4 months of *arresto mayor* as minimum, to 2 years and 4 months of *prision correccional* as maximum and to pay the costs.
>
> CICL XXX is also liable to pay private complainant Glenn Redoquerio actual damages in the total amount of ₱18,922.90, ₱30,000.00 as civil indemnity and ₱30,000.00 as moral damages.
>
> x x x x x x x x x
>
> SO ORDERED.[8]

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[6] *Id.* at 218.

[7] *Supra* note 2.

[8] *Rollo*, pp. 220-221.

The RTC held that CICL XXX's defense of denial could not outweigh the positive testimony and identification made by Redoquerio himself, and the eyewitness de los Santos.

Aggrieved, CICL XXX appealed to the CA.

Ruling of the CA

In the assailed Decision[9] dated September 5, 2017, the CA affirmed the RTC's conviction of CICL XXX.

The CA concluded, based on the evidence presented, that CICL XXX was in conspiracy with Christopher Puyo (Puyo) and Jayjay Narag (Narag) in inflicting fatal injuries against Redoquerio.[10] The CA also noted that "the injuries sustained by Redoquerio would have caused his death, if not for the timely medical attention he received."[11] The CA added that CICL XXX's bare denial, when juxtaposed with the prosecution witnesses' positive declarations, was not worthy of any credence.[12] The CA thus affirmed CICL XXX's conviction for Frustrated Homicide.

CICL XXX then filed a motion for reconsideration which was later on denied by the CA in a Resolution[13] dated January 18, 2018.

Hence, the instant appeal.

Issue

For resolution of this Court are the following issues submitted by CICL XXX:

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[9] *Supra* note 1.

[10] *Rollo*, p. 47.

[11] *Id.*

[12] *Id.* at 49.

[13] *Id.* at 53-54. Penned by Associate Justice Magdangal M. De Leon with Associate Justices Franchito N. Diamante and Zenaida T. Galapate-Laguilles concurring.

(1) Whether the CA erred in convicting CICL XXX despite the prosecution's failure to show that he acted with discernment; and,

(2) Whether the CA erred in convicting CICL XXX for Frustrated Homicide without proof of the extent of the injuries sustained by Redoquerio.

The Court's Ruling

The appeal is meritorious. The Court acquits CICL XXX for the crime of Frustrated Homicide.

Whether the CA erred in convicting CICL XXX despite the prosecution's failure to show that he acted with discernment

In questioning his conviction, CICL XXX argues that because he was only seventeen (17) years old at the time he supposedly committed the crime, then he is presumed to have acted without discernment, and that it was the burden of the prosecution to prove otherwise. CICL XXX then argues that the prosecution was unable to discharge its burden.[14]

The argument is meritorious.

In the case of *Dorado v. People*,[15] the Court had the occasion to state that "when a minor above fifteen (15) but below eighteen (18) years old is charged with a crime, **it cannot be presumed that he or she acted with discernment**. During the trial, the prosecution must specifically prove as a separate circumstance that the CICL XXX committed the alleged crime with discernment."[16] The Court in the same case said:

"The discernment that constitutes an exception to the exemption from criminal liability of a minor x x x who commits an act prohibited by law, is his mental capacity to understand the difference between right and wrong, and such capacity may be known and should be

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

[15] 796 Phil. 233 (2016).

[16] *Id.* at 249.

determined by taking into consideration all the facts and circumstances accorded by the records in each case, the very appearance, the very attitude, the very comportment and behavior of said minor, not only before and during the commission of the act, but also after and even during the trial."

"The basic reason behind the exempting circumstance is complete absence of intelligence, freedom of action of the offender which is an essential element of a felony either by *dolus* or by *culpa*. Intelligence is the power necessary to determine the morality of human acts to distinguish a licit from an illicit act. On the other hand, discernment is the mental capacity to understand the difference between right and wrong." As earlier stated, the "prosecution is burdened to prove that the accused acted with discernment by evidence of physical appearance, attitude or deportment not only before and during the commission of the act, but also after and during the trial. The surrounding circumstances must demonstrate that the minor knew what he was doing and that it was wrong. Such circumstance includes the gruesome nature of the crime and the minor's cunning and shrewdness." In an earlier case, it was written:

> For a minor at such an age to be criminally liable, the prosecution is burdened to prove beyond reasonable doubt, by direct or circumstantial evidence, that he acted with discernment, meaning that he knew what he was doing and that it was wrong. Such circumstantial evidence may include the utterances of the minor; his overt acts before, during and after the commission of the crime relative thereto; the nature of the weapon used in the commission of the crime; his attempt to silence a witness; his disposal of evidence or his hiding the *corpus delicti*.
>
> x x x x x x x x x

Discernment cannot be presumed even if Dorado intended to do away with Ronald. Discernment is different from intent. The distinction was elaborated in *Guevarra v. Almodovar*. Thus:

> Going through the written arguments of the parties, the surfacing of a corollary controversy with respect to the first issue raised is evident, that is, whether the term "discernment," as used in Article 12(3) of the Revised Penal Code (RPC) is synonymous with "intent."It is the position of the petitioner

that "discernment" connotes "intent" (p. 96, *Rollo*), invoking the unreported case of *People vs. Nieto*, G.R. No. 11965, 30 April 1958. In that case We held that the allegation of "with intent to kill x x x" amply meets the requirement that discernment should be alleged when the accused is a minor between 9 and 15 years old. Petitioner completes his syllogism in saying that:

> "If discernment is the equivalent of 'with intent,' then the allegation in the information that the accused acted with discernment and willfully unlawfully, and feloniously, operate or cause to be fired in a reckless and imprudent manner an air rifle .22 [caliber] is an inherent contradiction tantamount to failure of the information to allege a cause of action or constitute a legal excuse or exception." (Memorandum for Petitioner, p. 97, *Rollo*)

If petitioner's argument is correct, then no minor between the ages of 9 and 15 may be convicted of a quasi-offense under Article 265 of the RPC.

On the contrary, the Solicitor General insists that discernment and intent are two different concepts. **We agree with the Solicitor General's view**; the two terms should not be confused.

The word "intent" has been defined as:

> "[a] design; a determination to do a certain [thing]; an aim; the purpose of the mind, including such! knowledge as is essential to such intent; x x x; the design resolve, or determination with which a person acts." [(46 CJS 1103.)]

It is this intent which comprises the third element of [*dolo*] as a means of committing a felony, freedom and intelligence being the other two; On the other hand, We have defined the term "discernment," as used in Article 12(3) of the RPC, in the old case of *People vs. Doquena*, 68 Phil. 580 (1939), in this wise:

> "The discernment that constitutes an exception to the exemption from criminal liability of a minor under fifteen years of age but over nine, who commits an act prohibited by law, is his mental capacity to understand the difference between right and wrong x x x" (italics Ours) p. 583

From the foregoing, it is clear that the terms "intent" and "discernment" convey two distinct thoughts. While both are

products of the mental processes within a person, the former refers to the desire of one's act while the latter relate to the moral significance that person ascribes to the said act. Hence, a person may not intend to shoot another but may be aware of the consequences of his negligent act which may cause injury to the same person in negligently handling an air rifle. It is not correct, therefore, to argue, as petitioner does, that since a minor above nine years of age but below fifteen acted with discernment, then he intended such act to be done. He may negligently shoot his friend, thus, did not intend to shoot him, and at the same time recognize the undesirable result of his negligence.

In further outlining the distinction between the words "intent" and "discernment," it is worthy to note the basic reason behind the enactment of the exempting circumstances embodied in Article 12 of the RPC; the complete absence of intelligence, freedom of action, or intent, or on the absence of negligence on the part of the accused. In expounding on intelligence as the second element of [*dolus*], Albert has stated:

> "The second element of *dolus* is intelligence; without this power, necessary to determine the morality of human acts to distinguish a licit from an illicit act, no crime can exist, and because x x x the infant (has) no intelligence, the law exempts (him) from criminal liability."[17] (Emphasis in the original)

The Court in *Dorado* acquitted the 16-year-old accused therein, because: (1) the prosecution did not make an effort to prove that the accused acted with discernment at the time of the commission of the crime, and (2) the decision of the RTC convicting the accused therein simply stated that a privileged mitigating circumstance of minority must be appreciated in favor of the accused. The Court therein noted that there was no discussion at all on whether the accused therein acted with discernment when he committed the crime imputed against him.[18]

The foregoing ruling is applicable to CICL XXX's case.

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[17] *Id.* at 250-253.

[18] *Id*. at 251.

In the present case, neither the RTC nor the CA discussed whether CICL XXX acted with discernment. The CA, for instance, only noted CICL XXX's age in its discussion of the penalty to be imposed on him. Thus:

> It was established that appellant was merely 17 years old at the time of the commission of the crime on January 1, 2010, having been born on August 15, 1992. He is therefore entitled to the privileged mitigating circumstance of minority embodied in Article 68 (2) of the Revised Penal Code. It provides that when the offender is a minor over 15 and under 18 years, the penalty next lower than that prescribed by law shall be imposed on the accused but always in the proper period.[19]

Both the RTC and the CA erred in convicting CICL XXX, as they both equated "intent to kill" — which was admittedly established through the evidence presented by the prosecution — with acting with discernment, which, on the contrary, was not proved,by the prosecution. The prosecution, in fact, never endeavored to prove that CICL XXX acted with discernment. This is highlighted by the prosecution's cross-examination of CICL XXX, which focused only on whether Redoquerio had the motive to falsely accuse CICL XXX of committing a crime, and whether CICL XXX's father owned a gun. Thus:

> CROSS-EXAMINATION BY ACP PAGAYATAN
>
> ACP PAGAYATAN (to the witness)
>
> Q: Mr. Witness, you were always present during the trial of this case specifically the taking of the testimony of the private complainant, am I correct?
> A: Yes, ma'am.
>
> Q: So, you also heard the testimony of the complainant on September16, 2013?
> A: Yes, ma'am.
>
> Q: Let me call your attention to the Question and Answer in page 8 of the TSN dated September 16, 2013, page 8 and I quote:

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

You heard the witness said or his answer to my question:

"Q: Mr. Witness, you said in your Sinumpaang Salaysay that Christopher Puyo and Jayjay Narag were holding you while Pepoy hit you or ginulpi ka?" What did Pepoy exactly do to you when you said "ginulpi"?

And the answer of the witness was:

"A: He punched me several times and he hit me with the gun that he was holding. He hit me here (Witness is pointing just atop his head)."

Do you recall having heard him say those testimony, Mr. Witness?

A: Yes, ma'am.

Q: When he said "Pepoy", Mr. Witness, you know that he was referring to you?
A: Yes, ma'am.

Q: Do you also know these Christopher Puyo and Jayjay Narag?
A: I know them, ma'am.

Q: You only know them on the date of the incident on January 1, 2010?
A: No, ma'am.

Q: You said that the private complainant is only a "dayo" or he came from another place and not in that place where the incident happened?
A: Yes, ma'am.

Q: So, you confirm and as a matter of fact you testified that he had no reason to falsely accused (*sic*) you of a crime you did not commit?
A: Yes, ma'm.

Q: He also mentioned that you had a gun and you hit him with it? Do you recall that?
A: Dito po sinasabi n'ya po yon sa testimonya n'ya po. Opo po dito po. (Yes, ma'am. Here, ma'am.)

Q: Does you or any member of your family issued or possessed any kind of gun?
A: My father, ma'am.

Q: What about your father, what is his profession?
A: He is a policeman, ma'am.

ACP PAGAYATAN: That will be all, your honor.[20]

The testimonies of the prosecution witnesses, on the other hand, established only CICL XXX's supposed participation in the mauling of Redoquerio. To reiterate, these pieces o evidence only establish CICL XXX's intent, instead of his having acted with discernment. Furthermore, even if he was a co-conspirator, he would still be exempt from criminal liability as the prosecution failed to rebut the presumption of non-discernment on his part by virtue of his age.[21]

It is well to emphasize that:

> [f]or a minor at such an age to be criminally liable, the **prosecution is burdened to prove beyond reasonable doubt, by direct or circumstantial evidence**, that he acted with discernment, meaning that he knew what he was doing and that it was wrong. Such circumstantial evidence may include the utterances of the minor; his overt acts before, during and after the commission of the crime relative thereto; the nature of the weapon used in the commission of the crime; his attempt to silence a witness; his disposal of evidence or his hiding the *corpus delicti*."[22] (Emphasis and underscoring supplied)

Again, there are no such pieces of evidence in the case at bar. As the presumption that CICL XXX acted without discernment was not successfully controverted, he must perforce be acquitted of the charge.

Whether the CA erred in convicting CICL XXX for Frustrated Homicide without proof of the extent of the injuries sustained by Redoquerio

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[20] TSN dated November 3, 2014, pp. 13-16, *rollo*, pp. 180-183.

[21] *People v. Estepano*, 367 Phil. 209, 220-221 (1999).

[22] *Jose v. People*, 489 Phil. 106, 113 (2005).

Even assuming that CICL XXX had acted with discernment, the RTC and the CA still erred in convicting him for Frustrated Homicide.

To successfully prosecute the crime of homicide, the following elements must be proved beyond reasonable doubt: (1) that a person was killed; (2) that the accused killed that person without any justifying circumstance; (3) that the accused had the intention to kill, which is presumed; and (4) that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide. Moreover, the offender is said to have performed all the acts of execution if the wound inflicted on the victim is mortal and could cause the death of the victim without medical intervention or attendance.[23]

On the other hand, the essential elements of a frustrated felony are as follows: (1) the offender performs all the acts of execution; (2) all the acts performed would produce the felony as a consequence; (3) but the felony is not produced; and (4) by reason of causes independent of the will of the perpetrator.[24]

In affirming the conviction of CICL XXX for Frustrated Homicide, the CA noted — without citing its basis - that "the injuries sustained by private complainant would have caused his death, if not for the timely medical attention he received."[25]

A perusal of the records, however, reveals that the extent of the injuries sustained by Redoquerio was not fully established. The medical records of Redoquerio were admitted into evidence only through the testimony of Luague, the Administrative Officer 1 of East Avenue Medical Center who had custody of the medical records. However, as he was not a medical doctor, both parties stipulated that Luague could not: (1) "testify as to the nature and gravity of the wound sustained by the private complainant;" and (2) "testify whether or not the alleged wound sustained by the private complainant is fatal in nature."[26]

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[23] *People v. Badriago*, 605 Phil. 894, 906-907 (2009).

[24] *Id*. at 907.

[25] *Rollo*, p. 47.

[26] *Id*. at 218.

Thus, while Redoquerio's medical records — the *Clinical Abstract*,[27] *Operating Room Record*,[28] and *Discharge Summary*[29] - are part of the evidence on record, there is no testimonial evidence on record explaining to the Court the medical findings which would have established the nature and extent of the injuries that Redoquerio sustained. To the mind of the Court, it was not absolutely necessary for Dr. Zorilla, Redoquerio's attending physician, to have testified. Any medical doctor, however, who was competent to interpret Dr. Zorilla's findings, as indicated in Redoquerio's medical records, could have testified in his stead to establish the nature and extent of the injuries.

As the nature and extent of the injuries were not sufficiently established, it was error for the lower courts to conclude that the injuries were fatal and that Redoquerio would have died if not for the timely medical assistance he received. In the final analysis, it was therefore error for the courts to conclude that the crime committed was Frustrated Homicide instead of Attempted Homicide.

Damages

While CICL XXX is not criminally liable for his acts because the presumption that he acted without discernment was not overcome, he is still civilly liable for the injuries sustained by Redoquerio. It is well-settled that "[e]very person criminally liable is also civilly liable x x x. However, it does not follow that a person who is not criminally liable is also free from civil liability. Exemption from criminal liability does not always include exemption from civilliability."[30]

The RTC, as affirmed by the CA, awarded to Redoquerio the following:

a. Actual damages (as proved by receipts): ₱18,922.90

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[27] *Id*. at 162.

[28] *Id*. at 163.

[29] *Id*. at 165.

[30] *People v. Castañeda, Jr.*, 207 Phil. 744, 746 (1983).

b. Civil indemnity: ₱30,000.00
c. Moral damages: ₱30,000.00

However, in light of the Court's ruling in *People v. Jugueta*,[31] the award of civil indemnity and moral damages should be reduced to ₱25,000.00 each, and an award of exemplary damages amounting to ₱25,000.00 should likewise be imposed.

The foregoing liability is imposed upon CICL XXX's parents because Article 101 of the Revised Penal Code provides that:

ARTICLE 101. *Rules Regarding Civil Liability in Certain Cases.* — The exemption from criminal liability established in subdivisions 1, 2, 3, 5, and 6 of article 12 and in subdivision 4 of article 11 of this Code does not include exemption from civil liability, which shall be enforced subject to the following rules:

First. In cases of subdivisions 1, 2, and 3 of article 12, **the civil liability for acts committed by** an imbecile or insane person, and by **a person** under nine years of age, or by one over nine but under fifteen years of age, **who has acted without discernment, shall devolve upon those having such person under their legal authority or control**, unless it appears that there was no fault or negligence on their part.

Should there be no person having such insane, imbecile or minor under his authority, legal guardianship, or control, or if such person be insolvent, said insane, imbecile, or minor shall respond with their own property, excepting property exempt from execution, in accordance with the civil law. (Emphasis and underscoring supplied)

In *Libi v. Intermediate Appellate Court*,[32] the Court *en banc* interpreted the above provision to mean that the civil liability of parents for criminal offenses committed by their minor children is **direct** and **primary**. The Court said:

Accordingly, just like the rule in Article 2180 of the Civil Code, under the foregoing provision **the civil liability of the parents for crimes committed by their minor children is likewise direct and**

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[31] 783 Phil. 806 (2016).

[32] 288 Phil. 780 (1992).

primary, and also subject to the defense of lack of fault or negligence on their part, that is, the exercise of the diligence of a good father of a family.

x x x x x x x x x

Under the foregoing considerations, therefore, we hereby rule that the parents are and should be held primarily liable for the civil liability arising from criminal offenses committed by their minor children under their legal authority or control, or who live in their company, unless it is proven that the former acted with the diligence of a good father of a family to prevent such damages. That primary liability is premised on the provisions of Article 101 of the Revised Penal Code with respect to damages *ex delicto* caused by their children 9 years of age or under, or over 9 but under 15 years of age who acted without discernment; and, with regard to their children over 9 but under 15 years of age who acted with discernment, or 15 years or over but under 21 years of age, such primary liability shall be imposed pursuant to Article 2180 of the Civil Code.[33] (Emphasis and underscoring supplied)

Article 101 of the RPC, however, provides that the foregoing liability of CICL XXX's parents is subject to the defense that they acted without fault or negligence. Thus, the civil aspect of this case is remanded to the trial court, and it is ordered to implead CICL XXX's parents for reception of evidence on their fault or negligence.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated September 5, 2017 and Resolution dated January 18, 2018 of the Court of Appeals in CA-G.R. CR No. 39177 are hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant CICL XXX is **ACQUITTED** of the crime charged.

The civil aspect of this case is hereby **REMANDED** to the trial court for reception of evidence on the issue of fault or negligence on the part of CICL XXX's parents.

SO ORDERED.

Reyes, J. Jr., *Lazaro-Javier*, and *Zalameda, JJ.*, concur.

Carpio (*Chairperson*), *J.*, on official leave.

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[33] *Id.* at 793-797.

FIRST DIVISION

[G.R. No. 238349. August 14, 2019]

VALMORE VALDEZ *y* MENOR, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE AND/OR ILLEGAL POSSESSION OF DANGEROUS DRUGS; CHAIN OF CUSTODY PROCEDURE; REQUIREMENT ON MARKING, PHYSICAL INVENTORY AND PHOTOGRAPHY OF THE SEIZED ITEMS.— In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, and hence, warrants an acquittal. To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or

his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media *AND* the Department of Justice, and any elected public official; or (*b*) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service *OR* the media. The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

2. ID.; ID.; ID.; ID.; AS A RULE, COMPLIANCE WITH THE CHAIN OF CUSTODY PROCEDURE IS STRICTLY ENJOINED; NON-COMPLIANCE THEREWITH UNDER JUSTIFIABLE GROUNDS, PROVEN AS FACTS, WILL NOT RENDER VOID AND INVALID THE SEIZURE AND CUSTODY OVER THE SEIZED ITEMS SO LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.— As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law." This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment." Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

3. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE WITNESS REQUIREMENT MAY BE PERMITTED IF THE PROSECUTION PROVES THAT THE APPREHENDING OFFICERS EXERTED GENUINE AND SUFFICIENT EFFORT TO SECURE THE REQUIRED WITNESSES, ALBEIT THEY EVENTUALLY FAILED TO APPEAR; CASE AT BAR.— Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest - to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule. x x x In this case, there is a deviation from the witness requirement without sufficient justification. An examination of the Physical Inventory of Evidence contains only the signatures of JO2 Lim, SPO3 Moran, petitioner, and another person whose identity was not established during the course of trial. Even assuming *arguendo* that said unidentified person was one of the witnesses required by law, his presence alone does not satisfy the witness requirement, since, as already adverted to, Section 21, Article II of RA 9165, as amended by RA 10640 requires the presence of: (*i*) an elected public official; *AND* (*ii*) a representative from either the National Prosecution Service or the media. Hence, it was incumbent upon the prosecution to account for the deviation from the aforesaid rule by presenting a justifiable reason therefor, or at the very least, by showing that the apprehending officers exerted genuine and sufficient efforts in securing their presence. However, no such justification was given, as in

fact, the prosecution did not even acknowledge that there was a deviation from the witness requirement in the first place. In view of the foregoing, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from petitioner were compromised, thereby necessitating his acquittal from the crime charged.

APPEARANCES OF COUNSEL

The Solicitor General for respondent.
Public Attorney's Office for petitioner.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated October 30, 2017 and the Resolution[3] dated March 16,2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39508, which affirmed the Decision[4] dated January 17, 2017 of the Regional Trial Court of Caloocan City, Branch 127 (RTC) in Crim. Case No. C-93234, finding Valmore Valdez *y* Menor (petitioner) guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

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[1] *Rollo*, pp. 11-30.

[2] *Id*. at 34-44. Penned by Associate Justice and Chairperson Romeo F. Barza with Associate Justices Myra V. Garcia-Fernandez and Ramon Paul L. Hernando (now a member of this Court), concurring.

[3] *Id*. at 59-61.

[4] *Id*. at 80-93. Penned by Presiding Judge Victoriano B. Cabanos.

[5] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

The Facts

This case stemmed from an Information[6] filed before the RTC accusing petitioner of the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165. The prosecution alleged that at around 7:20 in the morning of January 28, 2015, Jail Officer 2 Edgardo B. Lim (JO2 Lim) was conducting a head count of the inmates at the Caloocan City Jail when he noticed that petitioner, an inmate, was near the jail gate and acting suspiciously and exhibiting odd behavior while holding a plastic bucket. Petitioner was not in line with the other inmates, prompting JO2 Lim to approach petitioner. As petitioner looked anxious, JO2 Lim conducted a pat-down frisking on the former and discovered a plastic sachet containing white crystalline substance in the front portion of his brief. Upon further inspection, he also found ten (10) more plastic sachets of white crystalline substance in a black denim coin purse inside the plastic bucket which petitioner was holding.[7] JO2 Lim then brought petitioner to the jail investigator for preparation of documents and respective markings of the confiscated items. Thereafter, JO2 Lim brought petitioner and the marked items to the Station Anti-Illegal Drugs Special Operation Task Group (SAID-SOTG), Caloocan City, where they were turned over to Senior Police Officer 3 Fernando C. Moran (SPO3 Moran).[8] SPO3 Moran then prepared the physical inventory of evidence,[9] requested for laboratory examination,[10] and took photographs[11] of petitioner and the seized items. Subsequently, SPO3 Moran

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[6] See records, pp. 1-2.

[7] See *rollo*, pp. 35-36.

[8] See *id*. at 36.

[9] See Physical Inventory of Evidence dated January 28, 2015; records, p. 10.

[10] See Request for Laboratory Examination dated January 28, 2015; *id*. at 6.

[11] *Id.* at 14.

forwarded the seized items to the PNP Crime Laboratory in Northern Police District Crime Laboratory Office, Valenzuela City Satellite Office (crime laboratory) for laboratory examination. Upon qualitative examination,[12] the submitted specimens tested positive for *methamphetamine hydrochloride* or *shabu*, a dangerous drug.[13]

In his defense, petitioner denied the charges against him and claimed that after the jail count of the inmates, JO2 Lim approached another inmate, who was then holding a paint bucket, and instructed petitioner to open the bucket. He maintained that nothing was recovered from him except for money and was surprised that he was the one charged.[14]

In a Decision[15] dated January 17, 2017, the RTC found petitioner guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to seventeen (17) years and eight (8) months, as maximum, and to pay a fine in the amount of ₱300,000.00.[16] The RTC found that the prosecution was able to establish all the elements of the crime of Illegal Possession of Dangerous Drugs, as well as the *corpus delicti* of the crime through the positive testimony of JO2 Lim.[17]

Aggrieved, petitioner appealed[18] to the CA.

In a Decision[19] dated October 30, 2017, the CA affirmed petitioner's conviction.[20] It found that the integrity and

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[12] See Chemistry Report No. D-064-15 dated January 28, 2015; *id*. at 7.

[13] See *id*. See also *rollo*, p. 36.

[14] See *rollo*, p. 37.

[15] *Id.* at 80-93.

[16] *Id.* at 93.

[17] See *id*. at 90-93.

[18] See Notice of Appeal dated January 17, 2017; CA *rollo*, p. 10.

[19] *Rollo*, pp. 34-44.

[20] *Id.* at 43.

evidentiary value of the *corpus delicti* had been preserved and the post-seizure procedure under Section 21 of RA 9165 had been complied with, considering that the marking, inventory, and photography of the seized items were conducted in the presence of petitioner, the request for laboratory examination was prepared, and the seized items were personally brought by the investigator to the crime laboratory for qualitative examination.[21]

Undaunted, petitioner moved for reconsideration,[22] which was, however, denied in a Resolution[23] dated March 16, 2018; hence, the instant petition.

The Court's Ruling

The petition is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[24] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[25] Failing

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[21] See *id*. at 40-42.

[22] See Motion for Reconsideration dated December 12, 2017; *id*. at 45-55.

[23] *Id.* at 59-61.

[24] The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section II, Article II of RA 9165 are: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015]).

[25] See *People v. Crispo*, *id*.; *People v. Sanchez*, *id*.; *People v. Magsano*, *id*.; *People v. Manansala*, *id*.; *People v. Miranda*, *id*.; and *People v. Mamangon*, *id*. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, and hence, warrants an acquittal.[26]

To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[27] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."[28] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[29]

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely:

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[26] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

[27] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 24; *People v. Sanchez*, *supra* note 24; *People v. Magsano*, *supra* note 24; *People v. Manansala*, *supra* note 24; *People v. Miranda*, *supra* note 24; and *People v. Mamangon*, *supra* note 24. See also *People v. Viterbo*, *supra* note 25.

[28] *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

[29] See *People v. Tumulak*, 791 Phil. 148,160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

(*a*) if **prior** to the amendment of RA 9165 by RA 10640,[30] a representative from the media *AND* the Department of Justice, and any elected public official;[31] or (*b*) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service *OR* the media.[32] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[33]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "'not merely as a procedural technicality but as a matter of substantive law.' This is because '[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.'"[34]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[35] As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary

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[30] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2014.

[31] Section 21 (1) and (2), Article II of RA 9165 and its Implementing Rules and Regulations.

[32] Section 21, Article II of RA 9165, as amended by RA 10640.

[33] See *People v. Miranda*, *supra* note 24. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[34] See *People v. Bangalan*, G.R. No. 232249, September 3, 2018, citations omitted.

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

value of the seized items are properly preserved.[36] The foregoing is based on the saving clause found in Section 21 (a),[37] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[38] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[39] and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[40]

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.[41] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[42] These considerations arise

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[36] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[37] Section 21 (a), Article II of the IRR of RA 9165 pertinently states: "***Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures of and custody over said items**[.]" (Emphasis supplied)

[38] Section 1 of RA 10640 pertinently states: "***Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.**" (Emphasis supplied)

[39] *People v. Almorfe*, *supra* note 36.

[40] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[41] See *People v. Manansala*, *supra* note 24.

[42] See *People v. Gamboa*, *supra* note 26, citing *People v. Umipang*, *supra* note 26, at 1053.

from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.[43]

Notably, the Court, in *People v. Miranda*,[44] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[45]

In this case, there is a deviation from the witness requirement without sufficient justification. An examination of the Physical Inventory of Evidence[46] contains only the signatures of JO2 Lim, SPO3 Moran, petitioner, and another person whose identity was not established during the course of trial. Even assuming *arguendo* that said unidentified person was one of the witnesses required by law, his presence alone does not satisfy the witness requirement, since, as already adverted to, Section 21, Article II of RA 9165, as amended by RA 10640 requires the presence of: (*i*) an elected public official; ***AND*** (*ii*) a representative from either the National Prosecution Service or the media. Hence, it was incumbent

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[43] See *People v. Crispo*, *supra* note 24.

[44] *Supra* note 24.

[45] See *id*.

[46] Records, p. 10.

upon the prosecution to account for the deviation from the aforesaid rule by presenting a justifiable reason therefor, or at the very least, by showing that the apprehending officers exerted genuine and sufficient efforts in securing their presence. However, no such justification was given, as in fact, the prosecution did not even acknowledge that there was a deviation from the witness requirement in the first place. In view of the foregoing, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from petitioner were compromised, thereby necessitating his acquittal from the crime charged.

WHEREFORE, the appeal is **GRANTED**. The Decision dated October 30, 2017 and the Resolution dated March 16, 2018 of the Court of Appeals in CA-G.R. CR No. 39508 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Valmore Valdez *y* Menor is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 241164. August 14, 2019]

CRIZALINA B. TORRES, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; DIRECT EVIDENCE IS NOT A CONDITION *SINE QUA NON* TO PROVE GUILT OF AN ACCUSED BEYOND REASONABLE DOUBT; IN THE ABSENCE OF DIRECT EVIDENCE, CIRCUMSTANTIAL EVIDENCE MAY BE RESORTED TO IN ORDER TO ESTABLISH THE GUILT OF THE ACCUSED.—** Jurisprudence is replete with pronouncements that direct evidence is not a condition *sine qua non* to prove guilt of an accused beyond reasonable doubt. The rationale for this rule is further reiterated in *Dungo, et al. v. People of the Philippines*, thus: x x x Direct evidence is not a condition *sine qua non* to prove the guilt of an accused beyond reasonable doubt. For in the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden. **Crimes are usually committed in secret and under conditions where concealment is highly probable.** If direct evidence is insisted on under all circumstances, the prosecution of vicious felons who commit heinous crimes in secret or secluded places will be hard, if not impossible, to prove. x x x Certainly, in crimes involving the falsification of a public document, it is possible that secrecy and other surreptitious means may have been employed by the perpetrator precisely to conceal the true nature of a document he claims to be legitimate. In such a case, it is only logical and proper for the prosecution to resort to the presentation of circumstantial evidence in the absence of direct evidence to establish the guilt of the accused.

2. **CRIMINAL LAW; FALSIFICATION OF PUBLIC DOCUMENTS UNDER ARTICLE 171 THEREOF; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** [A]ll the elements of the crimes charged were sufficiently established by the prosecution. Petitioner was charged with six (6) counts of falsification of public documents punishable under Article 171 of the RPC, particularly paragraphs 1, 2, 4, and 5 thereof. x x x The elements of falsification under the aforesaid provision are as follows: (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 of the RPC. As to the first element, it is undisputed that at the

time of the commission of the crime, the petitioner was a public officer serving as Intelligence Agent I at the NBI-WEMRO. As to the second element, an offender is considered to have taken advantage of his official position when (1) he has the duty to make or prepare or otherwise to intervene in the preparation of a document; or (2) he has the official custody of the document which he falsifies. Here, the testimony of NBI-WEMRO Acting Administrative Officer George S. Perez established that petitioner, as an employee of the NBI-WEMRO, has the duty to make or prepare the subject DTRs. As to the third element, as correctly found by the CA, evidence presented by the prosecution established that petitioner's continuous absence since September 21, 2010 prompted an investigation against her which led to the discovery of the subject DTRs and Applications for Leave. The subject DTRs included the purported signatures of Embido and Minguez. However, both officers certified that the signatures appearing on the subject DTRs are not theirs. Furthermore, the Questioned Document Report No. 69-211, or the results of the handwriting examination conducted by the NBI Questioned Documents Division shows that the signatures on the subject DTRs and the sample signatures of Embido and Minguez were not written by the same person. Additionally, the testimony of Minguez established that he had not seen petitioner report for work for six (6) months. Anent the Applications for Leave, a Certification from Corazon A. Villas, Chief of the NBI – Personnel Division indicates that the said division has not received any application for any leave of absence from petitioner for the period of September 21, 2010 to December 8, 2010. The Application for Leave for the period of October 4 to 29, 2010 further indicates that the same was received by the Personnel Division on January 18, 2011, establishing that the same was not filed on September 17, 2010 as written thereon. Verily, the totality of evidence presented by the prosecution established that petitioner, a public officer, has taken advantage of her official position and falsified her DTRs and Applications for Leave by counterfeiting or imitating the signatures of Embido and Minguez, making it appear that the said officers verified her DTRs. Through the subject DTRs, petitioner likewise made untruthful statements in making it appear that she regularly reported for work in September, October, and November, when she actually stopped showing up for work after September 21, 2010. Petitioner likewise altered true dates

on her Applications for Leave, making it appear that she had filed the same on September 17, 2010 when they were actually filed on January 18, 2011.

3. ID.; ID.; PENALTY IN CASE AT BAR.— [T]he penalty for falsification of public documents is imprisonment of *prision mayor* and a fine not exceeding ₱5,000.00. In the absence of mitigating and aggravating circumstances, the penalty shall be imposed in its medium period, which is 8 years and 1 day to 10 years. Applying the Indeterminate Sentence Law, the petitioner is entitled to a minimum term which shall be taken within the range of the penalty next lower to what is prescribed by law which is *prision correccional*, the range of which is 6 months and 1 day to 6 years. Meanwhile, the maximum term of the penalty shall be that which is imposed by law considering any attending circumstances. In view of the penalties imposed by the RTC in the instant case, as affirmed by the CA, such penalties are likewise correct.

APPEARANCES OF COUNSEL

Augusto P. Jimenez, Jr. for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

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

This Petition for Review on *Certiorari*[1] filed by Crizalina B. Torres (petitioner) under Rule 45 of the Rules of Court seeks the reversal of the Decision[2] dated February 22, 2018 and Resolution[3] dated August 1, 2018, both issued by the Court of Appeals (CA) in CA-G.R. CR No. 39386.

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[1] *Rollo*, pp. 8-23.

[2] Penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Magdangal M. De Leon and Rodil V. Zalameda (now a Member of the Court); *id*. at 122-138.

[3] *Id.* at 155-156.

The Factual Antecedents

The case stemmed from six (6) criminal cases for Falsification of Documents punishable under paragraphs (1), (2), (4), and (5) of Article 171 of the Revised Penal Code (RPC) filed against the petitioner, an Intelligence Agent I of the National Bureau of Investigation-Western Mindanao Regional Office (NBI-WEMRO). The Informations, as quoted by the CA, read:

CRIMINAL CASE NO. 13-300681

That in or about the month of August 2010 or sometime prior or subsequent thereto in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, above-named accused, CRIZALINA B. TORRES, a low ranking public officer, being then an Intelligence Agent I of the National Bureau of Investigation-Western Mindanao Regional Office (NBI-WERMO) (sic) with Salary Grade 10, taking advantage of her position and committing the offense in relation to office, did then and there **willingly, unlawfully and feloniously falsified or caused to be falsified her Daily Time Record (DTR) for the month of August 2010, a public document, by counterfeiting or imitating NBI-WENRO (sic) Assistant Regional Director (ARD) Embido's signature thereby making it appear that ARD Embido verified her DTR as to the prescribed office hours, when in truth and in fact accused knew fully well that ARD Embido did not verify and sign her DTR, to the damage and prejudice of public interest**.

Contrary to law.[4] (Emphasis in the original)

CRIMINAL CASE NO. 13-300682

That in or about the month of September 2010 or sometime prior or subsequent thereto in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, above-named accused, CRIZALINA B. TORRES, a low ranking public officer, being then an Intelligence Agent I of the National Bureau of Investigation-Western Mindanao Regional Office (NBI-WERMO) (sic) with Salary Grade 10, taking advantage of her position and committing the offense in relation to office, did then and there **willingly, unlawfully and feloniously falsified or caused to be falsified her Daily Time Record (DTR) for the month of September 2010, a public document, by**

[4] *Id.* at 124.

making it appear that she. reported at the NBI-WENRO (sic) **for all working days of September, when in truth and in fact, accused knew fully well that on 21 September 2010 she left the office and never reported back to work and by falsifying the signature of NBI-WEMRO Assistant Regional Director (ARD) Oscar L. Embido, accused made it appear that ARD Embido verified her DTR as to the prescribed office hours when in truth and in fact he did not, to the damage and prejudice of public interest**.

Contrary to law.[5] (Emphasis in the original)

CRIMINAL CASE NO. 13-300683

That in or about the month of October 2010 or sometime prior or subsequent thereto in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, above-named accused, CRIZALINA B. TORRES, a low ranking public officer, being then an Intelligence Agent I of the National Bureau of Investigation-Western Mindanao Regional Office (NBI-WERMO) (sic) with Salary Grade 10, taking advantage of her position and committing the offense in relation to office, did then and there **willingly, unlawfully and feloniously falsified or caused to be falsified her Daily Time Record (DTR) for the month of October 2010, a public document, by making it appear that she reported at the NBI-WENRO** (sic) **for all working days of October, when in truth and in fact, accused knew fully well that on 21 September 2010 she left the office and never reported back to work and by counterfeiting or imitating the signature of NBI-WEMRO EX-O Vicente Essex E. Minguez, accused made it appear that EX-O Minguez verified her DTR as to the prescribed office hours for and in behalf of NBI-WEMRO Regional Director Manuel A. Almendares when in truth and in fact he did not, to the damage and prejudice of public interest**.

Contrary to law.[6] (Emphasis in the original)

CRIMINAL CASE NO. 13-300684

That in or about the month of January 2011 or sometime prior or subsequent thereto in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, above-named accused, CRIZALINA B. TORRES, a low ranking public officer, being then

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

[6] *Id*. at 125.

an Intelligence Agent I of the National Bureau of Investigation-Western Mindanao Regional Office (NBI-WERMO) (sic) with Salary Grade 10, taking advantage of her position and committing the offense in relation to office, did then and there **willingly, unlawfully and feloniously falsified or caused to be falsified her Application for Leave for 4 to 29 October 2010, a public document, by altering the true date of said application, thereby making it appear that she applied for a leave of absence on 17 September 2010, when in truth and in fact, accused knew fully well that she only applied and submitted her application for leave on 18 January 2011 or after she took her absences and by falsifying the signature of NBI-WEMRO Assistant Regional Director (ARD) Oscar L. Embido, accused made it appear that ARD Embido approved said application for leave when in truth and in fact he did not, to the damage and prejudice of public interest**.

Contrary to law.[7] (Emphasis in the original)

CRIMINAL CASE NO. 13-300685

That in or about the month of November 2010 or sometime prior or subsequent thereto in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, above-named accused, CRIZALINA B. TORRES, a low ranking public officer, being then an Intelligence Agent I of the National Bureau of Investigation-Western Mindanao Regional Office (NBI-WERMO) (sic) with Salary Grade 10, taking advantage of her position and committing the offense in relation to office, did then and there **willingly, unlawfully and feloniously falsified or caused to be falsified her Daily Time Record (DTR) for the month of November 2010, a public document, by making it appear that she reported at the NBI-WENRO** (sic) **for all working days of November, when in truth and in fact, accused knew fully well that on 21 September 2010 she left the office and never reported back to work and by counterfeiting or imitating the signature of NBI-WEMRO EX-O Vicente Essex E. Minguez, accused made it appear that EX-O Minguez verified her DTR as to the prescribed office hours for and in behalf of NBI-WEMRO Regional Director Manuel A. Almendares when in truth and in fact he did not, to the damage and prejudice of public interest**.

Contrary to law.[8] (Emphasis in the original)

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

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

CRIMINAL CASE NO. 13-300686

That in or about the month of January 2011 or sometime prior or subsequent thereto in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, above-named accused, CRIZALINA B. TORRES, a low ranking public officer, being then an Intelligence Agent I of the National Bureau of Investigation-Western Mindanao Regional Office (NBI-WERMO) (sic) with Salary Grade 10, taking advantage of her position and committing the offense in relation to office, did then and there **willingly, unlawfully and feloniously falsified or caused to be falsified her Application for Leave for 8 November to 10 December 2010, a public document, by altering the true date of said application, thereby making it appear that she applied for a leave of absence on 17 September 2010, when in truth and in fact, accused knew fully well that she only applied and submitted her application for leave on 18 January 2011 or after she took her absences and by falsifying the signature of NBI-WEMRO Assistant Regional Director (ARD) Oscar L. Embido, accused made it appear that ARD Embido approved said application for leave when in truth and in fact he did not, to the damage and prejudice of public interest**.

Contrary to law.[9] (Emphasis in the original)

The charges involved the petitioner's alleged falsification of the following: (1) August 2010 Daily Time Record (DTR); (2) September 2010 DTR; (3) October 2010 DTR; (4) November 2010 DTR; (5) Application for Leave for October 4 to 29, 2010; (6) and Application for Leave for November 8 to December 10, 2010. She allegedly falsified the respective signatures of officers on her DTRs, making it appear that they verified the same and that she reported for work despite not doing so. Also, she supposedly altered the date of filing of her Applications for Leave, making it appear that they were filed on September 17, 2010 instead of January 18, 2011.[10] The petitioner pleaded not guilty during her arraignment and after the termination of the pre-trial conference, trial on the merits ensued.[11]

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[9] *Id.* at 127.

[10] *Id.* at 124-127.

[11] *Id.* at 127.

Prompted by a request made by then NBI-WEMRO Regional Director Atty. Manuel A. Almendares (Almendares), the NBI-Internal Affairs Division (NBI-IAD) conducted an investigation on petitioner's continuous absence from work without leave in 2010. Allegedly, she last reported for work on September 21, 2010 where she left the office at 4:14 p.m. and had not reported back since. The NBI-IAD then procured copies of petitioner's records with the NBI-Personnel Division (Personnel) in Manila, among them included the abovementioned documents.[12]

Petitioner appeared to have two (2) DTRs on file with Personnel for the month of August 2010, which were received on November 3, 2010 and December 23, 2010, respectively. In both DTRs, NBI-WEMRO Assistant' Regional Director Atty. Oscar Embido (Embido) appeared to be the signatory as the authorized officer. Meanwhile, the DTRs for the months of October and November 2010 bore the purported signatures of Executive Officer Vicente Essex Minguez (Minguez) for and in behalf of Almendares.[13] Also, as certified by the Chief of the Personnel Division, petitioner had no application for leave of absence for the period of September 21, 2010 to December 2010. Petitioner's Applications for Leave were also received by Personnel on January 18, 2011 and not September 17, 2010.[14]

Upon verification, NBI-WEMRO Acting Administrative Officer George S. Perez (Perez) certified that petitioner's DTRs for October and November 2010 were not filed with his office, as they should have been, before they were forwarded to the head office.[15] As a matter of procedure, WEMRO employees prepare their respective DTRs within the first five (days) of each month and submitted to him for counter-checking. Thereafter, he signs his initials on the DTRs before they are

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[12] *Id.* at 128-129.

[13] *Id*. at 129.

[14] *Id*. at 132.

[15] *Id*. at 129.

signed by Almendares and forwarded to the head office in Manila. Almendares, Embido, and Minguez, whose names and/or signatures appeared on the subject DTRs, also denied having signed the same.[16]

A comparative examination was also conducted by the NBI-Questioned Document Division between Embido and Minquez's signatures on the subject DTRs and their twelve (12) sample signatures. It revealed that the signatures on the subject DTRs and the sample signatures of Embido and Minguez were not written by the same person.[17]

A notice to explain was sent to petitioner, but she did not respond. Upon the recommendation of the NBI-Legal and Evaluation Division, petitioner was officially dropped from the rolls effective November 2, 2010.[18]

As the lone witness for the defense, Minguez attested that he was directly in charge of supervision over petitioner and with respect to DTRs, he signs them in the absence of the regional director. However, Minguez admitted that he has not seen the subject DTRs or has signed any DTR of petitioner for October and November 2010. There is likewise no copy of the subject DTRs on file with their office where they are normally kept. He has not seen petitioner report to work for six (6) months. He also denied his signatures appearing on the DTRs.[19]

The RTC's Ruling

After the conduct of due proceedings, the REGIONAL TRIAL COURT (RTC) rendered its Decision[20] dated October 26, 2016, the dispositive portion of which states:

WHEREFORE, the court finds the accused, Crizalina B. Torres, **GUILTY** beyond reasonable doubt of six (6) counts of Falsification

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[16] *Id*.

[17] *Id*. at 130.

[18] *Id*. at 131.

[19] *Id*.

[20] *Id*. at 28-56.

of Public Document under Article 171 of the Revised Penal Code. Accordingly, there being neither aggravating nor mitigating circumstances attendant herein and applying the Indeterminate Sentence Law, she is hereby sentenced as follows:

1. In Criminal Case No. 13-300681 — TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY OF *prision correccional* as minimum to EIGHT (8) YEARS and ONE (1) DAY of *prision mayor* as maximum and to pay a fine of FIVE HUNDRED PESOS (₱500.00), without costs;

2. In Criminal Case No. 13-300682 — TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY OF *prision correccional* as minimum to EIGHT (8) YEARS and ONE (1) DAY of *prision mayor* as maximum and to pay a fine of FIVE HUNDRED PESOS (₱500.00), without costs;

3. In Criminal Case No. 13-300683 — TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY OF *prision correccional* as minimum to EIGHT (8) YEARS and ONE (1) DAY of *prision mayor* as maximum and to pay a fine of FIVE HUNDRED PESOS (₱500.00), without costs;

4. In Criminal Case No. 13-300684 — TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY OF *prision correccional* as minimum to EIGHT (8) YEARS and ONE (1) DAY of *prision mayor* as maximum and to pay a fine of FIVE HUNDRED PESOS (₱500.00), without costs;

5. In Criminal Case No. 13-300685 — TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY OF *prision correccional* as minimum to EIGHT (8) YEARS and ONE (1) DAY of *prision mayor* as maximum and to pay a tine of FIVE HUNDRED PESOS (₱500.00), without costs; and

6. In Criminal Case No. 13-300686 — TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY OF *prision correccional* as minimum to EIGHT (8) YEARS and ONE (1) DAY of *prision mayor* as maximum and to pay a fine of FIVE HUNDRED PESOS (P500.00), without costs.

SO ORDERED.[21]

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

The petitioner subsequently appealed the RTC 's Decision, arguing that there was no direct evidence presented by the prosecution that she authored and submitted the subject DTRs and applications for leave.

The CA's Ruling

In the assailed Decision dated February 22, 2018, the CA denied the petitioner's appeal, holding that direct evidence is not a condition *sine qua non* to prove the guilt of an accused beyond reasonable doubt and in the absence thereof, circumstantial evidence may be resorted to. The CA affirmed the RTC's findings that the totality of evidence presented by the prosecution established petitioner's guilt of the crimes charged beyond reasonable doubt. The dispositive portion of the assailed decision reads:

WHEREFORE, in light of the foregoing, the instant appeal is hereby **DENIED** and the assailed Decision dated 26 October 2016 is hereby **AFFIRMED** *in toto*.

SO ORDERED.[22] (Emphasis in the original)

Petitioner sought reconsideration of the assailed Decision, but the same was denied in assailed Resolution dated August 1, 2018.

Hence, the present petition where the petitioner raises the lone issue of:

WHETHER OR NOT THE RESPONDENT COURT OF APPEALS GRAVELY ERRED WHEN IT RENDERED THE ASSAILED DECISION AND RESOLUTION, THE SAME NOT BEING IN ACCORDANCE WITH THE LAW OR WITH APPLICABLE JURISPRUDENCE

Maintaining that the decision of the CA, along with the RTC, was made contrary to existing laws and jurisprudence, the petitioner argues that there is no direct evidence presented by the prosecution showing she caused the falsification and

[22] *Id*. at 137.

submission of the subject documents. She reiterates that none of the witnesses for the prosecution was able to categorically state that it was petitioner who submitted the subject DTRs and Applications for Leave with the NBI Personnel Division. The foregoing thus casts serious doubts as to the identity of the true perpetrator and her guilt for the crimes charged.

In their Comment,[23] the public respondent People of the Philippines, through the Office of the Solicitor General (OSG), submits that the petition should be dismissed as the petitioner failed to show any special or compelling reason that would necessitate the exercise of this Court's review and appellate jurisdiction, as the petitioner merely reiterated her contentions before the CA. The public respondent also points out that the instant petition merely raises questions of fact, which are not proper subjects for review in a Rule 45 petition. The public respondent also maintains that the RTC and the CA correctly ruled that the evidence presented by the prosecution sufficiently established the existence of all the elements of the crime charged and the guilt of the petitioner.

The Ruling of the Court

We deny the petition.

First, Jurisprudence is replete with pronouncements that direct evidence is not a condition *sine qua non* to prove guilt of an accused beyond reasonable doubt. The rationale for this rule is further reiterated in *Dungo, et al. v. People of the Philippines*,[24] thus:

> x x x Direct evidence is not a condition *sine qua non* to prove the guilt of an accused beyond reasonable doubt. For in the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden. **Crimes are usually committed in secret and under conditions where concealment is highly probable.** If direct evidence is insisted on under all circumstances, the prosecution of vicious felons who commit heinous crimes in secret or secluded places will be hard, if not impossible, to prove. x x x[25]

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[23] *Id.* at 332-355.

[24] 762 Phil. 630 (2015).

[25] *Id.* at 678-679.

Certainly, in crimes involving the falsification of a public document, it is possible that secrecy and other surreptitious means may have been employed by the perpetrator precisely to conceal the true nature of a document he claims to be legitimate. In such a case, it is only logical and proper for the prosecution to resort to the presentation of circumstantial evidence in the absence of direct evidence to establish the guilt of the accused.

Second, all the elements of the crimes charged were sufficiently established by the prosecution.

Petitioner was charged with six (6) counts of falsification of public documents punishable under Article 171 of the RPC, particularly paragraphs 1, 2, 4, and 5 thereof, to wit:

> Art. 171. Falsification by public officer, employee or notary or ecclesiastic minister. — The penalty of *prision mayor* and a fine not to exceed ₱5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:
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> 1. Counterfeiting or imitating any handwriting, signature or rubric;
> 2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
> x x x x x x x x x
> 4. Making untruthful statements in a narration of facts;
> 5. Altering true dates;
> x x x x x x x x x

The elements of falsification under the aforesaid provision are as follows: (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 of the RPC.[26]

As to the first element, it is undisputed that at the time of the commission of the crime, the petitioner was a public officer serving as Intelligence Agent I at the NBI-WEMRO.

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[26] *Malabanan v. Sandiganbayan*, G.R. No. 186329, August 2, 2017, 834 SCRA 21, 37-38.

As to the second element, an offender is considered to have taken advantage of his official position when (1) he has the duty to make or prepare or otherwise to intervene in the preparation of a document; or (2) he has the official custody of the document which he falsifies.[27] Here, the testimony of NBI-WEMRO Acting Administrative Officer George S. Perez established that petitioner, as an employee of the NBI-WEMRO, has the duty to make or prepare the subject DTRs.

As to the third element, as correctly found by the CA, evidence presented by the prosecution established that petitioner's continuous absence since September 21, 2010 prompted an investigation against her which led to the discovery of the subject DTRs and Applications for Leave. The subject DTRs included the purported signatures of Embido and Minguez. However, both officers certified that the signatures appearing on the subject DTRs are not theirs.[28] Furthermore, the Questioned Document Report No. 69-211,[29] or the results of the handwriting examination conducted by the NBI Questioned Documents Division, shows that the signatures on the subject DTRs and the sample signatures of Embido and Minguez were not written by the same person. Additionally, the testimony of Minguez established that he had not seen petitioner report for work for six (6) months.

Anent the Applications for Leave, a Certification from Corazon A. Villas, Chief of the NBI — Personnel Division indicates that the said division has not received any application for any leave of absence from petitioner for the period of September 21, 2010 to December 8, 2010.[30] The Application for Leave for the period of October 4 to 29, 2010[31] further indicates that the same was received by the Personnel Division

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[27] *Fullero v. People of the Philippines*, 559 Phil. 524, 539 (2007).

[28] *Rollo*, pp. 303-304.

[29] *Id.* at 250-254.

[30] *Id*. at 240.

[31] *Id*. at 209.

on January 18, 2011, establishing that the same was not filed on September 17, 2010 as written thereon.

Verily, the totality of evidence presented by the prosecution established that petitioner, a public officer, has taken advantage of her official position and falsified her DTRs and Applications for Leave by counterfeiting or imitating the signatures of Embido and Minguez, making it appear that the said officers verified her DTRs. Through the subject DTRs, petitioner likewise made untruthful statements in making it appear that she regularly reported for work in September, October, and November, when she actually stopped showing up for work after September 21, 2010. Petitioner likewise altered true dates on her Applications for Leave, making it appear that she had filed the same on September 17, 2010 when they were actually filed on January 18, 2011.

It is noteworthy to add that the foregoing findings of fact, as sustained by the CA, binds this Court. Barring the application of recognized exceptions, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not subject to review by the Supreme Court.[32]

Third and lastly, as previously mentioned, the penalty for falsification of public documents is imprisonment of *prision mayor* and a fine not exceeding ₱5,000.00. In the absence of mitigating and aggravating circumstances, the penalty shall be imposed in its medium period, which is 8 years and 1 day to 10 years. Applying the Indeterminate Sentence Law, the petitioner is entitled to a minimum term which shall be taken within the range of the penalty next lower to what is prescribed by law which is *prision correccional*, the range of which is 6 months and 1 day to 6 years. Meanwhile, the maximum term of the penalty shall be that which is imposed by law considering any attending circumstances.[33] In view of the penalties imposed

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[32] *Isabelita vda de Daya v. Heirs of Gavino Robles*, 612 Phil. 137, 144 (2009).

[33] Sec. 1, Republic Act No. 4103, An Act to Provide for an Indeterminate Sentence and Parole for All Persons Convicted of Certain Crimes by The Courts of the Philippine Islands; To Create a Board of Indeterminate Sentence and to Provide Funds Therefor and for other Purposes.

by the RTC in the instant case, as affirmed by the CA, such penalties are likewise correct.

All told, the Court finds no reversible error on the part of the CA in affirming the conviction of the petitioner for the crimes charged and rendering the assailed Decision and Resolution.

WHEREFORE, premises considered, the instant petition is hereby **DENIED**. The Decision dated February 22, 2018 and the Resolution dated August 1, 2018 rendered by the Court of Appeals in CA-G.R. CR No. 39386 are **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 241445. August 14, 2019]

REY BEN P. MADRIO, *petitioner, vs.* **ATLAS FERTILIZER CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; IN A RULE 45 REVIEW OF LABOR CASES, THE COURT HAS TO EXAMINE THE COURT OF APPEALS (CA) DECISION FROM THE PRISM OF WHETHER THE CA CORRECTLY DETERMINED THE PRESENCE OR ABSENCE OF GRAVE ABUSE OF DISCRETION IN THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) DECISION; TEST TO DETERMINE WHEN THE NLRC DECISION IS TAINTED WITH GRAVE ABUSE OF DISCRETION.—

At the outset, the Court stresses that in a Rule 45 review of labor cases, the Court only examines the correctness of the CA's decision in contrast with the review of jurisdictional errors under Rule 65. "In ruling for legal correctness, the Court views the CA decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC Decision." For decisions of the NLRC, there is grave abuse of discretion "when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and accordingly, dismiss the petition."

2. LABOR AND SOCIAL LEGISLATION; SEPARATION BENEFITS UNDER RETIREMENT PLAN; CIRCUMSTANCES IN CASE AT BAR SHOWED SOME PROOF OF AUTHENTICITY OR RELIABILITY THAT THE COPY OF THE RETIREMENT PLAN ATTACHED TO PETITIONER'S POSITION PAPER REFLECTS RESPONDENT'S RETIREMENT /SEPARATION POLICY.— Contrary to the CA's holding, the circumstances of this case show that there is actually *some proof of authenticity or reliability* that the copy of the Retirement Plan attached to petitioner's position paper reflects AFC's retirement/separation policy. This is because: (*a*) AFC never denied having an existing company policy wherein separation benefits are given to its qualified employees; (*b*) AFC, which is presumed to have custody of the relevant documents covering its company policies, never submitted the "true" copy of its Retirement Plan despite being given the opportunity to do so; and (*c*) as petitioner pointed out, the "eight (8)-page [copy of the Retirement Plan] is too technical, verbose and comprehensive to be simply attributed as a fake." Hence, these circumstances lend "some proof of authenticity or reliability" to the document presented by petitioner, and as such, the NLRC did not err in lending credence to the same.

3. ID.; ID.; ID.; THE SEPARATION BENEFITS UNDER THE RESPONDENT'S COMPANY POLICY IS NOT THE

SEPARATION PAY CONTEMPLATED UNDER THE LABOR CODE BUT A SPECIAL BENEFIT GIVEN TO UPSTANDING EMPLOYEES WHO HAVE SATISFIED CERTAIN CONDITIONS; SINCE SUCH BENEFITS ARE NOT INCURRED IN THE NORMAL COURSE OF RESPONDENT'S BUSINESS, THE BURDEN IS ON THE EMPLOYEE TO PROVE HIS ENTITLEMENT THERETO.— [T]he separation benefits under the AFC's company policy is not the separation pay contemplated under the labor code, but rather, a special benefit given by the company only to upstanding employees who have satisfied the following conditions: 1. The employee must voluntarily resign from the company; 2. **The employee must not have a derogatory record**; and 3. The employee must meet the minimum number of years in his credited service. In light of these special conditions, it is fairly apparent that the separation benefits under the Retirement Plan are not in the nature of benefits incurred in the normal course of AFC's business, such as salary differentials, service incentive leave pay, or holiday pay. As such, the burden is on the **employee** to prove his entitlement thereto; failing in which, the latter should not be paid the same.

4. ID.; ID.; ID.; ID.; PETITIONER FAILED TO PROVE THAT HE IS ENTITLED TO THE SEPARATION BENEFITS UNDER RESPONDENT'S COMPANY POLICY; MOREOVER, PETITIONER'S CLAIM FOR SUCH BENEFITS APPEARS TO BE PREMATURE.— [P]etitioner only submitted a copy of the Retirement Plan as proof of his entitlement to the separation benefits claimed. However, by and of itself, the said document only proves what the retirement/ separation policy of AFC is. It does not, in any way, demonstrate that the conditions for entitlement had already been met by the employee. Most glaring of all is the failure of petitioner to at least, *prima facie* show that he had no derogatory record before voluntarily resigning from the company. x x x Hence, unless proven otherwise, petitioner is not qualified to claim separation benefits from AFC. Moreover, petitioner's claim for separation benefits appears to be premature. It is undisputed that petitioner left the company while his separation benefits were still being processed and yet to be approved by the Retirement Committee pursuant to the "company's normal operating procedure."

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Gica Del Socorro Fernandez & Tan for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated June 20, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 08194-MIN which partially set aside the Decision[3] dated January 31, 2017 and the Resolution[4] dated April 28, 2017 of the National Labor Relations Commission (NLRC) in NLRC No. MAC-10-014668-2016 granting, among others, in favor of petitioner Rey Ben P. Madrio (petitioner) the amount of ₱84,150.00 representing separation benefits pursuant to respondent Atlas Fertilizer Corporation's (AFC) retirement/separation policy.

The Facts

Petitioner was formerly the Area Sales Manager of AFC from May 1, 2008 until he tendered his resignation in November 2015,[5] which, however, was not shown to have been approved by the company. At that time, he also requested for the payment of several monetary benefits,[6] but the same remained unheeded.

Feeling aggrieved, petitioner, on January 5, 2016, filed a complaint[7] against AFC for the payment of several monetary

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[1] *Rollo*, pp. 14-30.

[2] *Id*. at 36-42. Penned by Associate Justice Ruben Reynaldo G. Roxas with Associate Justices Edgardo T. Lloren and Walter S. Ong, concurring.

[3] *Id*. at 174-185. Signed by Presiding Commissioner Bario-Rod M. Talon with Commissioners Proculo T. Sarmen and Elbert C. Restauro, concurring.

[4] CA *rollo*, pp. 39-42.

[5] See *rollo*, pp. 37, 115, and 174-175.

[6] *Id*. at 74.

[7] *Id*. at 76.

benefits. Among others, petitioner claimed[8] that he was entitled to separation benefits in the amount of ₱158,400.00[9] pursuant to AFC's retirement/separation policy. As proof, petitioner attached an **unsigned and unauthenticated typewritten copy of the Retirement Plan**[10] and Policy on Separation from Employment[11] to his position paper, as well as copies of his pay slips[12] to show his monthly pay.[13]

For its part,[14] AFC categorically denied that the Retirement Plan is the retirement/separation policy it had for its employees.[15] In any event, it argued that it would be unreasonable for it to pay separation benefits to an employee who was solely responsible in causing the company a whopping financial loss of ₱43,023,550.21[16] attributed to his gross negligence in the handling of uncollected receivables from Richfield Agri-Supply (RAS). In this regard, AFC averred that the disciplinary proceeding for petitioner's gross negligence was only deferred out of humane considerations and in light of petitioner's years of service. It further stressed that petitioner was given the chance to redeem himself by assisting AFC to recover said amount from the defaulting customer, *i.e.*, RAS, but he just unceremoniously left the company without obtaining any clearance or permission from the management.[17]

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[8] See Position Paper dated June 14, 2016; *id.* at 48-56.

[9] Computed as 8 years of service multiplied by 50% of ₱39,600.00 (see *id.* at 52). However, it is incorrectly stated as "₱158,000.00" in some parts of the record.

[10] See AFC Fertilizer and Chemicals, Inc. Retirement Plan; *id.* at 60-67.

[11] *Id.* at 68.

[12] *Id.* at 78.

[13] See *id.* at 37-38 and 116-117.

[14] See Position Paper dated May 2016; *id.* at 79-89.

[15] See *id.* at 38 and 130.

[16] See *id.* at 80 and 98-104.

[17] See *id.* at 82-88.

The LA Ruling

In a Decision[18] dated August 26, 2016, the LA ruled in favor of petitioner, and accordingly, ordered AFC to pay him the total amount of ₱273,200.00 representing his monetary claims, inclusive of separation benefits in the amount of ₱158,400.00. AFC was likewise ordered to issue petitioner's Certificate of Employment.[19]

The LA held that petitioner's entitlement to separation benefits, among others, was already admitted by AFC itself as evinced by the tenor of its **March 20, 2016 reply-letter** received during conciliation proceedings. Considering that AFC introduced the reply-letter as its own evidence, and without qualification, it was estopped from assailing the contents thereof.[20] In this relation, the LA further pointed out that AFC, as the employer, had complete control over all the records of its employees. As such, it had the burden to prove payment or settlement when there was an allegation of non-payment of monetary claims. However, since AFC failed to do so, the claims are deemed admitted.[21]

Dissatisfied, AFC appealed[22] to the NLRC.

Among others, AFC argued that the LA's award of separation benefits was unwarranted as nothing in the March 20, 2016 reply-letter could be construed as automatically warranting petitioner's entitlement to the same. All it indicated was that petitioner's possible benefits were being processed. AFC also reiterated its objection to the admissibility of the unsigned and unauthenticated Retirement Plan submitted by petitioner. Moreover, even assuming the admissibility of the same, petitioner was still not entitled to separation pay since he did not meet

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[18] *Id*. at 115-122. Signed by Executive Labor Arbiter Rammex C. Tiglao.

[19] *Id*. at 122.

[20] See *id.* at 118-119.

[21] See *id*. at 121.

[22] See Memorandum on Appeal dated October 5, 2016; *id*. at 123-143.

the minimum age requirement and had a derogatory record, *i.e.*, the ₱43,023,550.21 loss that the company incurred for his gross negligence.[23]

The NLRC Ruling

In a Decision[24] dated January 31, 2017, the NLRC affirmed with modification the LA's ruling by reducing the amount of the separation benefits from ₱158,400.00 to ₱84,150.00, among others.[25]

The NLRC held that contrary to AFC's arguments, it already tacitly admitted petitioner's entitlement to separation benefits based on its March 20, 2016 reply-letter received during conciliation.[26] Furthermore, while petitioner was not eligible for normal or optional retirement benefits, he was entitled to separation benefits under Section 4, Article IV of the Retirement Plan which covers an employee who "voluntarily resigns from the Company without any derogatory record[.]"[27] However, the amount should be corrected to reflect the correct monthly salary exclusive of overtime pay, commissions, per diems, and other special remuneration, pursuant to the said Plan.[28]

Aggrieved, AFC sought partial reconsideration[29] which the NLRC denied in a Resolution[30] dated April 28, 2017. Thus, it filed a petition for *certiorari*[31] before the CA, raising only the twin issues of whether or not the NLRC committed grave abuse

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[23] See *id.* at 130-132.

[24] *Id.* at 174-185.

[25] *Id.* at 185.

[26] *Id.* at 109 and 181.

[27] *Id.* at 62 and 181.

[28] See *id.* at 182.

[29] See Motion for Partial Reconsideration dated March 1, 2017; *id.* at 186-192.

[30] CA *rollo*, pp. 39-42.

[31] Dated July 20, 2017. *Rollo*, pp. 193-214.

of discretion in admitting the unsigned and unauthenticated Retirement Plan, and declaring that petitioner was not disqualified from receiving his separation benefits.[32]

The CA Ruling

In a Decision[33] dated June 20, 2018, the CA partially set aside the NLRC ruling insofar as the award of separation benefits to petitioner was concerned.[34]

According to the CA, the NLRC erred in considering the Retirement Plan as evidence to support petitioner's claim for separation benefits. Being unsigned and unauthenticated, there was no way to verify the truth of its contents, and thus, it should have been rejected as evidence. In this regard, the CA held that while the NLRC is not bound by technical rules of procedure, the evidence presented must at least have a modicum of admissibility for it to have probative value, which was not the case here.[35] Consequently, it ruled that petitioner was not entitled to separation benefits under AFC's Retirement Plan given that there was no substantial evidence to prove the same.[36]

Hence, the instant petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the NLRC gravely abused its discretion when it admitted the Retirement Plan as evidence, and consequently, granted the award of separation benefits in favor of petitioner.

The Court's Ruling

At the outset, the Court stresses that in a Rule 45 review of labor cases, the Court only examines the correctness of the

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[32] *Id.* at 201.

[33] *Id.* at 36-42.

[34] *Id.* at 42.

[35] See *id.* at 40-41.

[36] See *id.* at 41.

CA's decision in contrast with the review of jurisdictional errors under Rule 65.[37] "In ruling for legal correctness, the Court views the CA decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC Decision."[38]

For decisions of the NLRC, there is grave abuse of discretion "when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and accordingly, dismiss the petition."[39]

In holding that the NLRC committed grave abuse of discretion, the CA found that it erroneously considered in evidence the unsigned and unauthenticated Retirement Plan for petitioner's claim of separation benefits. Considering that the said document should not have been admitted, the CA set aside the NLRC's award of separation benefits.[40]

The Court agrees with the result reached by the CA.

It is well-settled that administrative and quasi-judicial bodies, like the NLRC, are not bound by the technical rules of procedure in the adjudication of cases.[41] However, when it comes to admitting documents as evidence in labor cases, it is nonetheless

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[37] See *Aluag v. BIR Multi-Purpose Cooperative*, G.R. No. 228449, December 6, 2017, 848 SCRA 284, 296; *Sutherland Global Services (Philippines), Inc. v. Labrador*, 730 Phil. 295, 304 (2014); and *Montoya v. Transmed Manila Corporation*, 613 Phil. 696, 707 (2009).

[38] See *Telephilippines, Inc. v. Jacolbe*, G.R. No. 233999, February 18, 2019.

[39] *Id.*; underscoring supplied.

[40] See *rollo*, pp. 40-41.

[41] *Uichico v. NLRC*, G.R. No. 121434, June 2, 1997, 273 SCRA 35, 44.

required that there be some proof of authenticity or reliability as condition for the admission of documents.[42] In *IBM Philippines, Inc. v. NLRC*,[43] which was cited by the CA, the Court held that:

> The computer print-outs, which constitute the only evidence of petitioners, afford no assurance of their authenticity because they are unsigned. The decisions of this Court, while adhering to a liberal view in the conduct of proceedings before administrative agencies, have nonetheless **consistently required some proof of authenticity or reliability as condition for the admission of documents**.[44]

Contrary to the CA's holding, the circumstances of this case show that there is actually *some proof of authenticity or reliability* that the copy of the Retirement Plan attached to petitioner's position paper reflects AFC's retirement/separation policy. This is because: (*a*) AFC never denied having an existing company policy wherein separation benefits are given to its qualified employees; (*b*) AFC, which is presumed to have custody of the relevant documents covering its company policies, never submitted the "true" copy of its Retirement Plan despite being given the opportunity to do so; and (*c*) as petitioner pointed out, the "eight (8)-page [copy of the Retirement Plan] is too technical, verbose and comprehensive to be simply attributed as a fake."[45] Hence, these circumstances lend "some proof of authenticity or reliability" to the document presented by petitioner, and as such, the NLRC did not err in lending credence to the same.

Nevertheless, this does not mean that petitioner is automatically entitled to the claimed separation benefits. Proving the existence of AFC's retirement/separation policy, as well as its pertinent terms and conditions, is separate and distinct matter from proving the fact that these terms and conditions have been complied with.

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[42] *IBM Philippines, Inc. v. NLRC*, 365 Phil. 137, 148 (1999).

[43] *Id*.

[44] *Id*. at 148; emphasis and underscoring supplied.

[45] *Rollo*, p. 24.

To be sure, the separation benefits under the AFC's company policy is not the separation pay contemplated under the labor code,[46] but rather, a special benefit given by the company only to upstanding employees who have satisfied the following conditions:

1. The employee must voluntarily resign from the company;
2. **The employee must not have a derogatory record**; and
3. The employee must meet the minimum number of years in his credited service.[47]

In light of these special conditions, it is fairly apparent that the separation benefits under the Retirement Plan are not in the nature of benefits incurred in the normal course of AFC's business, such as salary differentials, service incentive leave pay, or holiday pay.[48] As such, the burden is on the **employee** to prove his entitlement thereto;[49] failing in which, the latter should not be paid the same.

In this case, petitioner only submitted a copy of the Retirement Plan as proof of his entitlement to the separation benefits claimed. However, by and of itself, the said document only proves what the retirement/separation policy of AFC is. It does not, in any

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[46] See *Security Bank Savings Corporation v. Singson*, 780 Phil. 860, 872-873 (2016).

[47] See Section 4, Article IV of AFC's Retirement Benefit Plan (*rollo*, p. 62) which provides:

Section 4 — Amount of Benefits

x x x x x x x x x

In the event that an employee voluntarily resigns from the Company without any derogatory record, he shall be accorded a separation pay in accordance with [his] Credited Service with the Company as follows:

Credited Service	Percentage of One Month Salary for every year of Credited Service
5-9 years	50.00%

[48] See *Loon v. Power Master, Inc.*, 723 Phil. 515, 532 (2013).

[49] See *Robina Farms Cebu v. Villa*, 784 Phil. 636, 651 (2016).

way, demonstrate that the conditions for entitlement had already been met by the employee.

Most glaring of all is the failure of petitioner to at least, *prima facie* show that he had no derogatory record before voluntarily resigning from the company. As indicated in AFC's March 20, 2016 reply-letter, AFC was still dealing with the ₱43,023,550.21 financial loss from the RAS account based on petitioner's alleged gross negligence at the time he abruptly "resigned" from the company.[50] While the records do not show that petitioner was disciplined for such infraction, AFC claims that "[d]ue to [petitioner's] unceremonious resignation, [it] was no longer able to conduct disciplinary proceedings and/or administrative hearings in relation to [petitioner's] non-feasance. It might even [be] safe to say that [petitioner] resigned just to pre-empt [AFC] from instituting disciplinary proceedings against him."[51] As such, it cannot be said that petitioner has no derogatory record with the company. Hence, unless proven otherwise, petitioner is not qualified to claim separation benefits from AFC.

Moreover, petitioner's claim for separation benefits appears to be premature. It is undisputed that petitioner left the company while his separation benefits were still being processed and yet to be approved by the Retirement Committee[52] pursuant to the "company's normal operating procedure."[53] This is clear from the March 20, 2016 reply-letter which — contrary to the findings of the labor tribunals — was not an admission of liability but, quite the contrary, an assertion that petitioner's claim for separation benefits was still subject to a contingency, *i.e.*, the approval by the Retirement Committee, *viz*.:

In any case, please be informed that based on records since your turn over or handover report were late (records were only turned over to

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[50] See *rollo*, pp. 107-108.

[51] *Id*. at 208.

[52] See Sections 1 and 2, Article XI of AFC's Retirement Benefit Plan; *id*. at 65-66.

[53] See *id*. at 109.

personnel department/PMIRD around last week of January 2016) the processing of your clearance and also your **separation benefit computation** in our accounting department **is still being processed**.

A documented and written handover report is a requirement in our company policy for clearance. You are aware of this policy. Your delayed submission of the said requirement have also contributed to the delay of your **separation pay**. This could have been avoided had you coordinated much earlier to your immediate superior regarding all your clearance requirements.

In any case, this is **now under process** and PMIRD is trying its best to fast track the routing of your **separation benefit sheet which needs to be approved by the retirement committee**. **This is part of the company's normal operating procedure.**"[54]

In fine, the Court is unconvinced that petitioner has proven his entitlement to the separation benefits under AFC's company policy. As such, the CA Decision is affirmed insofar as it set aside the NLRC's award of separation benefits in favor of petitioner not for the reasons given by the CA but based on the above discussion.

WHEREFORE, the petition is **DENIED**. The Decision dated June 20, 2018 of the Court of Appeals in CA-G.R. SP No. 08194-MIN is hereby **AFFIRMED** with **MODIFICATION**. The award of separation benefits amounting to ₱84,150.00 in the Decision dated January 31, 2017 and the Resolution dated April 28, 2017 of the National Labor Relations Commission in NLRC No. MAC-10-014668-2016 is hereby **DELETED**.

SO ORDERED.

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

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[54] *Id*. at 108-109; emphases and underscoring supplied.

SECOND DIVISION

[G.R. No. 242512. August 14, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARINO BAYA *y* YBIOSA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE, AS AMENDED; RAPE; WHEN TWO (2) PENAL LAWS MAY BOTH THEORETICALLY APPLY TO THE SAME CASE, THEN THE LAW WHICH IS MORE SPECIAL IN NATURE, REGARDLESS OF THE TIME OF THE ENACTMENT, SHOULD PREVAIL; CASE AT BAR.— The Court observed that the Information for Criminal Case No. 07-285 charged Baya of rape against BBB in relation to RA 7610. The Information did not include Article 266-A of the RPC, as amended by Republic Act 8353 (RA 8353) or the Anti-rape Law. Still, Section 5(b), Article III of RA 7610 states that if the victim is below 12 years old, the offender shall be prosecuted under the RPC. x x x The provision above referred to the old article on rape and acts of lasciviousness of the RPC, because RA 7610 was approved on June 17, 1992, prior to the enactment of RA 8353 on September 30, 1997. RA 8353 repealed Article 335 of the RPC, and formed new provisions as found in Articles 266-A to 266-D under Crimes against Persons. With this legal development, Section 5(b), Article III of RA 7610 should be amended to replace Article 335 with Article 266-A of the RPC. Thus, even if the Information did not include the relevant provision of the RPC, Baya was still prosecuted and convicted under the RPC because RA 7610 mandated it. Furthermore, in *People v. Ejercito*, the Court explained that RA 8353, amending the RPC, should be uniformly applied in rape cases against minors. Between Article 266-A of the RPC, as amended by RA 8353, x x x and Section 5 (b) of RA 7610, the Court deems it apt to clarify that Ejercito should be convicted under the former. Verily, penal laws are crafted by legislature to punish certain acts, and when two (2) penal laws may both theoretically apply to the same case, then the law which is more special in nature, regardless of the time of enactment, should prevail.

2. ID.; ID.; ID.; ELEMENTS; ESTABLISHED IN CASE AT BAR.— Article 266-A states that 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. The circumstance applicable in this case is Par. (d) considering that BBB was nine years old at the time of the incident as proven by her birth certificate. The fact of carnal knowledge was established through BBB and CCC's positive identification of Baya as their abuser. BBB testified he removed her shorts and panty, positioned himself on top of her, and inserted his penis into her vagina. BBB's Initial Medico-Legal Report showed "clear evidence of blunt force or penetrating trauma." With the prosecution sufficiently establishing all the elements of rape applicable in this case, Baya's guilt was proved beyond reasonable doubt. Therefore, the Court sustains the CA's conviction on rape.

3. ID.; ID.; ACTS OF LASCIVIOUSNESS; ELEMENTS.— Article 336 of the RPC states that acts of lasciviousness is committed by: 1. Anyone who commits any act of lasciviousness or lewdness; 2. The offended party is another person of either sex; 3. The act/s is done 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; 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.

4. ID.; REPUBLIC ACT NO. 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT); ACTS OF LASCIVIOUSNESS; ELEMENTS.— The elements of acts of lasciviousness under Section 5(b) of RA 7610 are: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) that the child, whether male or female, is below 18 years of age.

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

Statutory rape and statutory acts of lasciviousness are punishable under the Revised Penal Code and Republic Act 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

The Case

This is an ordinary appeal from the July 18, 2017 Court of Appeals (CA) Decision[1] in CA-G.R. CR-HC No. 08131, affirming with modification the January 13, 2016 Regional Trial Court (RTC) Joint Decision[2] in Criminal Case Nos. 06-884, 07-281 to 07-288, finding the accused guilty of two counts of acts of lasciviousness and two counts of rape.

The Facts

In nine separate Information, accused Marino Baya *y* Ybiosa (Baya), *alias* Rene, was charged with five counts of rape and four counts of acts of lasciviousness under Article 336 of the Revised Penal Code (RPC), in relation to Section 5(b), Article III, Republic Act 7610 (RA 7610) for sexually abusing three minors: 1) seven-year old AAA, 2) nine-year old BBB, and 3) nine-year old CCC.[3]

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[1] Penned by then Associate Justice Rosmari D. Carandang (now a Member of the Court), with Associate Justices Eduardo B. Peralta, Jr. and Zenaida T. Galapate-Laguilles, concurring; *rollo*, pp. 2-18.

[2] Penned by Judge Philip A. Aguinaldo; CA *rollo*, pp. 14-27.

[3] Pursuant to *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 533 Phil. 703-719, the Court shall withhold the real name of the victim-survivor and shall use fictitious initials instead to represent her. Likewise, the personal circumstances of the victims-survivors or any other

Criminal Case No. 06-884
[Acts of Lasciviousness against AAA]

On or about the 28th day of September 2006, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, intent to abuse, arouse and gratify his sexual desire, did then and there, wilfully, unlawfully and feloniously abuse sexually a child under twelve years of age that thereby debase, degrade and demean her intrinsic worth and dignity as a human being, as he did then and there place his hand in the short pants of AAA, a seven (7) year-old minor born on April 9, 1999, and thereafter [fondled] her vagina.[4]

Criminal Case No. 07-286
[Acts of Lasciviousness against AAA]

Sometime between 1st and 2nd day of September 2006, inclusive, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, intent to gratify his sexual desire and abuse a child, did then and there wilfully, unlawfully and feloniously abuse sexually a child under twelve years of age that thereby debase, degrade and demean her intrinsic worth and dignity as a child and human being, as he did then and there place his hand in the short pants of AAA, a seven (7) year-old girl born on 09 April 1999, and thereafter [fondled] her vagina.[5]

Criminal Case Nos. 07-281, 07-282, 07-283, 07-284
[Four counts of rape against BBB, similarly worded]

Sometime in September 2006, before the 26th day of September 2006, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to abuse a child and to gratify his sexual desire did then and there, wilfully, unlawfully and feloniously have carnal knowledge of a girl under 12 years of age, as he did then and there insert his penis into the vagina of BBB, a nine (9) [year-old] girl born on 01 November 1996 that thereby debase, degrade and

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information tending to establish or compromise their identities, as well those of their immediate family or household members, shall not be disclosed.

[4] Records, p. 1.

[5] *Id.* at 58.

demean the intrinsic worth and dignity of BBB as a child and human being.[6]

Criminal Case No. 07-285
[Rape against BBB]

On or about the 26th day of September 2006, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to abuse a child and to gratify his sexual desire did then and there, wilfully, unlawfully and feloniously have carnal knowledge of a girl under 12 years of age, as he did then and there insert his penis into the vagina of BBB, a nine (9) [year-old] girl born on 01 November 1996, that thereby debase, degrade and demean the intrinsic worth and dignity of BBB as a child and as a human being.[7]

Criminal Case No. 07-287
[Acts of Lasciviousness against CCC]

On or about the 26th day of September 2006, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, intent to gratify his sexual desire and abuse a child, did then and there, wilfully, unlawfully and feloniously abuse sexually a child under twelve years of age that thereby debase, degrade and demean her intrinsic worth and dignity as a child and human being, as he did then and there fold the short pants of CCC, an eight (8) year-old girl born on 16 May 1997, in such a manner that exposes her vagina; mount CCC; and then, move (rub) his penis [backward] and [forward] while pressed against the external part of the vagina of CCC.[8]

Criminal Case No. 07-288
[Acts of Lasciviousness against CCC]

Sometime in September 2006, but prior to the 26th day of September 2006, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, intent to gratify his sexual desire and abuse a child, did then and there, wilfully, unlawfully and feloniously abuse

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

[7] *Id.* at 56.

[8] *Id.* at 62.

sexually a child under twelve years of age that thereby debase, degrade and demean her intrinsic worth and dignity as a child and human being, as he did then and there [fondled] the vagina of CCC, an eight (8) year-old girl born on 16 May 1997.[9]

During arraignment, Baya pleaded not guilty in Criminal Case Nos. 06-884,[10] 07-285 to 07-287.[11] However, he was not arraigned in Criminal Case Nos. 07-281 to 07-284 and 07-288.[12]

During pre-trial, the parties stipulated on the jurisdiction of the court the identity of the accused, and the existence of the victims and arresting officers' sworn statements.[13] Thereafter, trial proceeded.

The prosecution presented BBB and CCC as witnesses. The Court dispensed with the presentation of PO1 Gil Inape,[14] one of the arresting officers who executed a sworn statement. The parties stipulated that he has no personal knowledge of the incident and he would be testifying only as to the contents of the sworn statement.[15]

The prosecution presented the following documents as evidence: 1) AAA's *Sinumpaang Salaysay*, 2) BBB's *Sinumpaang Salaysay*, 3) CCC's *Sinumpaang Salaysay*, 4) the arresting officers' *Pinagsamang Malayang Sinumpaang Salaysay*, 5) Initial Medico-Legal Report on AAA, 6) Initial Medico-Legal Report on BBB, 7) Initial Medico-Legal Report on CCC, 8) BBB's birth certificate, and 9) CCC's birth certificate.[16]

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[9] *Id*. at 66.

[10] *Id.* at 36-38.

[11] *Id.* at 84-86.

[12] *Rollo*, pp. 5-6.

[13] Records, pp. 126-128.

[14] Also referred to as "PO1 Gil Lanaque" in some parts of the *rollo*.

[15] Records, p. 176.

[16] *Id.* at 192-195.

BBB testified that in the afternoon of September 26, 2006, Baya's sister (Joy) asked her, AAA and CCC to fold her clothes in her house. The victims were watching the television while folding the clothes at the second floor. Baya was inside the room while the victims were doing their chores.[17]

When Joy went out of the house, Baya asked the victims to lie down together. He removed BBB's shorts and panty, positioned himself on top of her, and, inserted his penis into her vagina. She told him that she felt pain during the intercourse but he did nothing. After abusing her, AAA and CCC were next. BBB saw that Baya also violated AAA and CCC because they were all lying side by side. When Baya was done, he gave them money. She mentioned that there were five other similar incidents, but she could no longer remember the dates.[18]

CCC corroborated BBB's narration. She testified that on September 26, 2006, Joy asked BBB and CCC to fold her clothes. They were watching the television while folding the clothes. Baya was in the room. Once Joy left the house, Baya saw an opportunity to abuse the victims. He asked them to lie down next to each other. He first abused BBB, then CCC. He raised CCC's shorts and pressed his penis into her vagina. However, her shorts were tight, so his penis did not penetrate her vagina.[19]

CCC narrated that Baya abused her on different occasions by inserting his penis into her vagina, by sucking her breasts, or kissing her. However, she could no longer recall the dates.[20] She confirmed that she saw what Baya did to BBB. However, she testified that AAA was not in the house.[21]

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[17] TSN, April 15, 2009, pp. 4-8; TSN, May 6, 2009, pp. 2-13.

[18] *Id.*

[19] TSN, January 20, 2010, pp. 2-8; TSN, July 21, 2010, pp. 3-16.

[20] TSN, January 20, 2010, pp. 7-8.

[21] TSN, January 20, 2010, pp. 2-8; TSN, July 21, 2010, pp. 3-16.

For his defense, Baya testified that in the afternoon of September 26, 2006, he was in his sister's house fixing the flooring at the first floor. He denied committing the acts charged against him, because he was in the company of his nephews and nieces. Although he admitted knowing the victims because his sister would ask them to do chores for her, he was unaware of their whereabouts on that fateful day. He claimed that the victims' aunt and grandmother held a grudge against him for not fixing their house and store, and for failing to give medicine for urinary tract infection.[22]

The RTC Decision

On January 13, 2016, the RTC rendered a Joint Decision finding Baya guilty beyond reasonable doubt of one count of acts of lasciviousness against AAA in Criminal Case No. 06-884, two counts of rape against BBB in Criminal Case Nos. 07-281 and 07284, and one count of acts of lasciviousness against CCC.[23]

The RTC gave credence to the testimonies of BBB and CCC as to the incidents involving them and that of AAA. Their testimonies were straightforward, detailed, and credible. BBB and CCC both positively identified Baya as their abuser and that of AAA.[24]

BBB's Initial Medico-Legal Report showed clear evidence of blunt force or penetrating trauma. AAA and CCC's Initial Medico-Legal Reports indicated no evident injury at the time of the physical examination, but these do not exclude sexual abuse. The RTC held that these do not diminish the victims' credibility because laceration is not an element of acts of lasciviousness.[25]

BBB and CCC birth certificates confirmed that they were minors at the time of the incident. BBB was 10 years, 10

[22] TSN, February 22, 2012, pp. 3-14.

[23] CA *rollo*, pp. 26-27.

[24] *Id.* at 24.

[25] *Id.* at 25.

months and 27 days old, while CCC was 9 years, 4 months and 13 days old at the time of the incident. Although AAA has no birth certificate, the RTC presumed her to be between 12 to 18 years old.[26]

In Criminal Case No. 06-884, the RTC sentenced Baya to an indeterminate penalty of six months of *arresto mayor* in its maximum as the minimum period to four years and two months of *prision correccional* in its medium as the maximum period. He was ordered to pay AAA ₱5,000.00 as civil indemnity and ₱5,000.00 as exemplary damages.[27]

In Criminal Case Nos. 07-281 and 07-284, the RTC sentenced him to *reclusion perpetua* for each count of rape against BBB. He was ordered to pay BBB ₱75,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages for each count.[28]

As for the acts committed against CCC, the dispositive portion of the RTC decision did not indicate the criminal case number subject of the penalties. The RTC sentenced Baya to an indeterminate penalty of *reclusion temporal* in its minimum as the minimum period to *reclusion temporal* in its maximum as the maximum period. He was ordered to pay ₱50,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages.[29]

Baya appealed his conviction to the CA.

The CA Decision

On July 18, 2017, the CA rendered a Decision affirming with modification the RTC Joint Decision.[30]

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[26] *Id.*

[27] *Id.* at 26.

[28] *Id.* at 27.

[29] *Id.*

[30] *Rollo*, p. 17.

In Criminal Case No. 06-884 for acts of lasciviousness against AAA, the CA acquitted Baya because AAA did not testify to prove the commission of the crime. The RTC based its decision on BBB and CCC's testimonies that they saw Baya abusing AAA. However, upon clarificatory questions of the judge on BBB and CCC, they stated that there were only three persons in the room where the crime took place: BBB, CCC, and Baya. The CA ruled that guilt beyond reasonable doubt was not established. Thus, acquittal is in order.[31]

In Criminal Case Nos. 07-281 to 07-284 for rape against BBB, the CA remanded the case to the RTC for arraignment of the accused.[32]

In Criminal Case No. 07-285 for rape against BBB, the CA found Baya guilty under Art. 266 (A), Par. 1 (d) of the RPC. The CA explained a clerical error in the trial court's decision for indicating Criminal Case No. 07-284 instead of Criminal Case No. 07-285. The records show that Baya had not been arraigned in Criminal Case No. 07-284. As such, the trial court had not acquired jurisdiction over the accused, and the CA remanded the case for arraignment.[33]

Further, the body of the trial court's decision finding Baya guilty of rape pertains to the allegations covered by the Information of Criminal Case No. 07-285. The CA affirmed the conviction on the correct criminal case number. The CA imposed the penalty of *reclusion perpetua* and ordered Baya to pay the BBB the modified amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages, all subject to 6% interest from the finality of the decision until fully paid.[34]

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

[32] *Id.* at 13.

[33] *Id.* at 14.

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

In Criminal Case No. 07-287 for acts of lasciviousness against CCC, the CA affirmed the conviction.[35] The CA modified the penalty and imposed an indeterminate prison sentence of 13 years, 9 months and 10 days of *reclusion temporal* as minimum to 16 years, 5 months and 9 days of *reclusion temporal* as maximum. The CA ordered Baya to pay CCC ₱15,000.00 as fine, ₱20,000.00 as civil indemnity, and ₱15,000 as moral damages, all subject to 6% interest from the finality of the decision until fully paid.[36]

However, in Criminal Case No. 07-288 for acts of lasciviousness against CCC, the CA also remanded the case to the RTC for arraignment of the accused.[37]

Aggrieved, Baya appealed his conviction before the Court.

The Issue Presented

The sole issue presented before the Court is whether or not the CA erred in:

I. Acquitting Baya of acts of lasciviousness against AAA;
II. Convicting Baya of rape against BBB; and
III. Convicting Baya of acts of lasciviousness against CCC.

The Court's Ruling

The Court affirms with modification the CA's Decision.

I.

In Criminal Case No. 06-884 for acts of lasciviousness against AAA, the other victims, BBB and CCC, were inconsistent on whether AAA was present in the room at the time of the incident.

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[35] *Id.* at 14.

[36] *Id.* at 18.

[37] *Id.* at 13.

BBB's TSN dated April 15, 2009, pp. 4-5

Q4: Sino yung ginahasa niya?
A: Kami po.

Q5: Sinong kami?
A: Si BBB.

Q6: Sino si BBB, ikaw?
A: Opo.

Q7: Sino pa?
A: Si CCC tsaka si AAA.

BBB's TSN dated May 6, 2009, pp. 5-7

27Q: Habang natutupi kayo, sa'n dun yung ate Joy mo?
A: Wala po siya do'n.

28Q: Sino lang ang kasama mo dun?
A: Si CCC.

29Q: Sino pa?
A: AAA.

x x x x x x x x x

40Q: Sinong nanonood ng Wowowee nu'n?
A: Kami po.

41Q: Sino sino kayo?
A: CCC, ako po.

Questions from the court to BBB, TSN dated May 6, 2009, p. 10

Court: The Court would like to ask some clarificatory questions. BBB, nung kinantot ka ni kuya Rene, sinong kasama mo?
Witness: Si CCC po.

Court: Dalawa lang kayo sa kwarto pangatlo si kuya Rene?
Witness: Opo.

CCC's TSN dated July 21, 2010, p. 4

Q5: Konti lang. So, kung maaalala mo mabibilang mo ba sa daliri yung mga tao na nanduon nung mga panahon na yun? Lilinawin ko lang, ang tinatanong ko yung mismong tinitirhan ni Kuya Rene. Ilan tao kayo na nanduon nung mga panahon na yun nung kasama niyo kamo si Kuya Rene?

A: Tatlo lang po.

Q6: Sino-sino yung tatlong tao na yun?
A: Si Kuya Rene po tsaka ako, tsaka po si BBB.

Q7: Hindi niyo kasama si AAA?
A: Wala po siya nuon eh.

Q8: Ah wala siya nuon. Wala siya nun nuong time na yun?
A: Opo sa iba pong bahay yun.

Questions from the court to CCC, TSN dated July 21, 2010, pp. 11-14

The Court: So, may katanungan ang korte. Sino yun naunang na-rape?
Witness: Si BBB po.

The Court: Ah si BBB. Pagkatapos, nanduon ka sa kuwarto kung saan na-rape si BBB?
Witness: Opo.

The Court: Pagkatapos sinong sumunod?
Witness: Ako po.

The Court: Pagkatapos ka, sinong sumunod?
Witness: Si AAA po.

x x x x x x x x x

The Court: So, approximately, 5 x 5. Nung na-rape itong [si] BBB, ikaw na ngayon ang sumunod. Saan nagpunta si BBB pagkatapos niyang na-rape?
Witness: Nanunuod pa rin po ng tv pagkatapos.

The Court: So, pagkatapos mo, si AAA naman ang sumunod?
Witness: Kasi po wala po siya duon eh nandun po siya sa may kabilang bahay.

C. Interpreter: Sinong siya?
Witness: Si AAA po.

The Court: So, dalawa lang sila, CCC at saka itong si BBB.

With AAA's non-presentation in court and the uncertainty of BBB and CCC's testimonies on AAA's presence during the incident, Baya's guilt was not established beyond

reasonable doubt. The Court sustains the CA's ruling of acquittal on acts of lasciviousness against AAA.

II.

The Court observed that the Information for Criminal Case No. 07-285 charged Baya of rape against BBB in relation to RA 7610. The Information did not include Article 266-A of the RPC, as amended by Republic Act 8353 (RA 8353) or the Anti-rape Law.

Still, Section 5(b), Article III of RA 7610 states that if the victim is below 12 years old, the offender shall be prosecuted under the RPC.

> Section 5. Child Prostitution and Other Sexual Abuse. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> 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) 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; (Emphasis supplied)

The provision above referred to the old article on rape and acts of lasciviousness of the RPC, because RA 7610 was approved on June 17, 1992, prior to the enactment of RA 8353 on September 30, 1997. RA 8353 repealed Article 335 of the RPC, and formed new provisions as found in Articles 266-A to 266-D under Crimes against Persons. With this legal development, Section 5(b), Article III of RA 7610 should be amended to replace Article 335 with Article 266-A

of the RPC. Thus, even if the Information did not include the relevant provision of the RPC, Baya was still prosecuted and convicted under the RPC because RA 7610 mandated it.

Furthermore, in *People v. Ejercito*,[38] the Court explained that RA 8353, amending the RPC, should be uniformly applied in rape cases against minors.

> Between Article 266-A of the RPC, as amended by RA 8353, xxx and Section 5 (b) of RA 7610, the Court deems it apt to clarify that Ejercito should be convicted under the former. Verily, penal laws are crafted by legislature to punish certain acts, and when two (2) penal laws may both theoretically apply to the same case, then the law which is more special in nature, regardless of the time of enactment, should prevail. In *Teves v. Sandiganbayan*:
>
> > It is a rule of statutory construction that where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but **if there is any conflict, the latter shall prevail regardless of whether it was passed prior to the general statute**. Or where two statutes are of contrary tenor or of different dates but are of equal theoretical application to a particular case, **the one designed therefor specially should prevail over the other**. (Emphases in the original)
>
> After much deliberation, **the Court herein observes that RA 8353 amending the RPC should now be uniformly applied in cases involving sexual intercourse committed against minors, and not Section 5 (b) of RA 7610. Indeed, while RA 7610 has been considered as a special law that covers the sexual abuse of minors, RA 8353 has expanded the reach of our already existing rape laws. These existing rape laws should not only pertain to the old Article 335 of the RPC but also to the provision on sexual intercourse under Section 5 (b) of RA 7610 which, applying *Quimvel*'s characterization of a child "exploited in prostitution or subjected to other abuse," virtually punishes the rape of a minor.** (Emphasis supplied)

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[38] *People v. Ejercito*, G.R. No. 229861, July 2, 2018.

The pronouncement above was reiterated in the more recent case of *People v. Tulagan*.[39] After review of the records in Criminal Case No. 07-285 for rape against BBB, the prosecution's evidence established the elements under Article 266-A of the RPC, as amended by RA 8353.

Article 266-A states that 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. (Emphasis supplied.)

The circumstance applicable in this case is Par. (d) considering that BBB was nine years old at the time of the incident as proven by her birth certificate. The fact of carnal knowledge was established through BBB and CCC's positive identification of Baya as their abuser. BBB testified he removed her shorts and panty, positioned himself on top of her, and inserted his penis into her vagina. BBB's Initial Medico-Legal Report showed "clear evidence of blunt force or penetrating trauma." With the prosecution sufficiently establishing all the elements of rape applicable in this case, Baya's guilt was proved beyond reasonable doubt. Therefore, the Court sustains the CA's conviction on rape.

III.

In Criminal Case No. 07-287 for acts of lasciviousness against CCC, Baya was charged of violating Article 336 of the RPC, in relation to Section 5(b), Article III of the RA 7610.

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[39] *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

In *People v. Ladra*,[40] the Court held that "before an accused can be held criminally liable for lascivious conduct under Section 5(b) of RA 7610, the requisites of the crime of [a]cts of [l]asciviousness as penalized under Article 336 of the RPC x x x must be met."

Article 336 of the RPC states that acts of lasciviousness is committed by:[41]

1. Anyone who commits any act of lasciviousness or lewdness;
2. The offended party is another person of either sex;
3. The act/s is done 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;
   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; (Emphasis supplied)

On the other hand, Section 5(b), Article III of RA 7610 provides that:

Section 5. Child Prostitution and Other Sexual Abuse. — **Children, whether male or female, who** for money, profit, or any other consideration or **due to the coercion or influence of any adult,** syndicate or group, **indulge in** sexual intercourse or **lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.**

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x x x x x x

(b) **Those who commit** the act of sexual intercourse or **lascivious conduct with a child exploited in prostitution or subject to other sexual abuse**; *Provided*, That **when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under**

[40] *People v. Ladra*, G.R. No. 221443, July 17, 2017.

[41] *Id.*

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; (Emphasis supplied)

The elements of acts of lasciviousness under Section 5(b) of RA 7610 are:[42]

(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) that the child, whether male or female, is below 18 years of age.

Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases or the IRR of RA 7610 defines lascivious conduct as:

h) "Lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person

Here, CCC testified that Baya raised her shorts and pressed his penis into her vagina. However, since the shorts were tight, his penis did not penetrate her. BBB corroborated CCC's testimonies. Clearly, the act complained of constitutes as lascivious conduct under the IRR of RA 7610.

The element of minority is proved by CCC's birth certificate, which showed that she was nine years old on September 26, 2006, having been born on May 16, 1997.

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[42] *People v. Ladra*, G.R. No. 221443, July 17, 2017.

The prosecution sufficiently established all the elements of acts of lasciviousness under the RPC and RA 7610, which proved Baya's guilt beyond reasonable doubt. Therefore, the Court sustains the CA's conviction on acts of lasciviousness.

IV. Penalties

As to the penalties in Criminal Case No. 07-285 for rape against BBB, the Court affirms with modification the CA's decision. In accordance with the Court's ruling in *People v. Jugueta*,[43] the exemplary damages is increased to ₱75,000.00.

In Criminal Case No. 07-287 for acts of lasciviousness against CCC, the Court modifies the penalty to *reclusion temporal* in its medium period as stated in Section 5(b) of Article III of RA 7610 and as discussed in *People v. Tulagan*.[44]

We also modify the award of damages as follows: ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages in accordance with *Tulagan* case.

WHEREFORE, premises considered, the July 18, 2017 Court of Appeals Decision in CA-G.R. CR-HC No. 08131 is **AFFIRMED WITH MODIFICATION:**

1. In Criminal Case No. 06-884 for acts of lasciviousness against AAA, the accused Marino Baya *y* Ybiosa is **ACQUITTED** for failure to prove his guilt beyond reasonable doubt.

2. In Criminal Case Nos. 07-281, 07-282, 07-283, 07-284, and 07-288 are **REMANDED** to the court of origin for arraignment of the accused.

3. In Criminal Case No. 07-285 for rape against BBB, the Court finds Baya **GUILTY** beyond reasonable doubt and **IMPOSES** the penalty of *reclusion perpetua*

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[43] *People v. Jugueta*, 783 Phil. 806 (2016).

[44] *People v. Tulagan* G.R. No. 227363, March 12, 2019.

and **ORDERS** him to pay BBB the ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, all subject to 6% interest from the finality of this Decision until fully paid.

4. In Criminal Case No. 07-287 for acts of lasciviousness against CCC, the Court finds Baya **GUILTY** beyond reasonable doubt and **IMPOSES** the penalty of *reclusion temporal* in its medium period and **ORDERS** him to pay CCC ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, all subject to 6% interest from the finality of this Decision until fully paid.

SO ORDERED.

Caguioa (*Acting Chairperson*),[*] *Lazaro-Javier,* and *Zalameda, JJ.,* concur.

Carpio, S.A.J. (Chairperson), on official leave.

SECOND DIVISION

[G.R. No. 242656. August 14, 2019]

ROWENA SANTOS *y* COMPRADO and RYAN SANTOS *y* COMPRADO, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165, AS AMENDED (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY RULE; THE FOUR (4) LINKS

[*] Per Special Order No. 2688 dated July 30, 2019.

THAT SHOULD BE ESTABLISHED IN THE CHAIN OF CUSTODY OF THE CONFISCATED/SEIZED ITEMS, ENUMERATED; PRESENT IN CASE AT BAR.— In this case, the prosecution was able to establish the integrity of the *corpus delicti* and an unbroken chain of custody. The Court has explained in a catena of cases the four (4) links that 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. In this case, the prosecution was able to prove all the links that should be established in the chain of custody. Moreover, the police officers were also able to strictly comply with the requirements laid down in Section 21. They conducted the physical inventory and photography of the seized items in the presence of petitioners, a representative from the media, a representative of the DOJ and a barangay official at the place where the search was conducted.

2. ID.; ID.; ILLEGAL POSSESSION OF ILLEGAL DRUGS; CONCEPT OF CONSTRUCTIVE POSSESSION; CONSTRUCTIVE POSSESSION EXISTS WHEN THE DRUG IS UNDER THE DOMINION AND CONTROL OF THE ACCUSED OR WHEN HE HAS THE RIGHT TO EXERCISE DOMINION AND CONTROL OVER THE PLACE WHERE IT IS FOUND; APPLICATION IN CASE AT BAR.— In *People v. Tira*, the Court explained the concept of possession of illegal drugs, x x x Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. **The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another**. Thus, conviction need not be predicated upon exclusive possession, and a showing of non-exclusive possession would not exonerate the accused. Such fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom. However, the prosecution must prove that the accused

had knowledge of the existence and presence of the drug in the place under his control and dominion and the character of the drug. **Since knowledge by the accused of the existence and character of the drugs in the place where he exercises dominion and control is an internal act, the same may be presumed from the fact that the dangerous drugs [are] in the house or place over which the accused has control or dominion, or within such premises in the absence of any satisfactory explanation**. In the instant case, as correctly pointed out by the CA, there is no question that the dangerous drugs were found in a coin purse on top of the refrigerator in the first-floor living room of Rowena and in a plastic container box inside a cabinet in the bedroom of Ryan. These findings were witnessed by a media representative, a DOJ representative and a barangay official who were present during the seizure and confiscation of the dangerous drugs until the conduct of the inventory and taking of photographs. They also did not offer any satisfactory explanation to overcome the presumption that the seized items belong to them. Hence, the CA was correct in ruling that petitioners had constructive possession of the illegal drugs since they were shown to enjoy dominion and control over the premises they occupied. The fact that there were other people living in their house is of no consequence.

APPEARANCES OF COUNSEL

Edwin A. Hidalgo for petitioners.
Office of the Solicitor General for respondent.

D E C I S I O N

CAGUIOA,[*] *J.*:

Before this Court is an appeal by *certiorari*[1] under Rule 45 of the Rules of Court (Petition) questioning the Decision[2] dated September 19, 2018 of the Court of Appeals (CA) in CA-G.R.

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[*] Designated Acting Chairperson per Special Order No. 2688 dated July 30, 2019.

[1] *Rollo*, pp. 9-18.

[2] *Id.* at 19-37. Penned by Associate Justice Marlene B. Gonzales-Sison

CR No. 40167, which affirmed the Joint Judgment[3] dated April 20, 2017 rendered by the Regional Trial Court, Branch 61, Naga City (RTC) in Criminal Case No. 2010-0410 and Criminal Case No. 2010-0411, which found herein petitioners Rowena Santos *y* Comprado (Rowena) and Ryan Santos y Comprado (Ryan) guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended (RA 9165).

The Facts

On September 22, 2010, two (2) separate criminal Informations[4] were filed against Rowena and Ryan for violation of Section 11, Article II of RA 9165. The accusatory portions of the two (2) Informations are reproduced below, to wit:

[**Criminal Case No. 2010-0410**

People v. Rowena Santos]

That on or about **September 20, 2010**, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and without prescription or corresponding license, did then and there, willfully, unlawfully and criminally have in his (*sic*) possession, custody and control one (1) piece plastic sachets (*sic*) containing methamphetamine hydrochloride or shabu weighing 0.1 gram, which is a dangerous drug, in violation of the above-cited law.[5]

[**Criminal Case No. 2010-0411**

People v. Ryan Santos]

That on or about **September 20, 2010**, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, the

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with Associate Justices Nina G. Antonio-Valenzuela and Geraldine C. Fiel-Macaraig, concurring.

[3] *Id*. at 41-69. Penned by Judge Soliman M. Santos, Jr.

[4] *Id*. at 39-40.

[5] *Id*. at 39.

above-named accused, without authority of law and without prescription or corresponding license, did then and there, willfully, unlawfully and criminally have in his possession, custody and control six (6) pieces plastic sachets containing methamphetamine hydrochloride or shabu all weighing more or less 2.8 grams, which is a dangerous drug, in violation of the above-cited law.[6]

Both accused pleaded not guilty to the offense charged.[7]

Version of the Prosecution

The version of the prosecution, as summarized by the RTC, is as follows:

On September 20, 2010, at about 10:00 o'clock in the morning, PO1 Joker Algura Albao (PO1 Albao), PO3 Louie Ordoñez (PO3 Ordoñez), SPO2 Feliciano Aguilar (SPO2 Aguilar) and PO3 August Florece (PO3 Florece) attended an operational briefing at the Intelligence Section of Naga City Police in connection with the implementation of three search warrants issued against Gomer Aquiban (Gomer), Rowena, Ryan, Ronnie Santos and Romeo Santos (Romeo). Search Warrant[8] P-03-2010 was issued against Ryan and Rowena of Sagrada Familia, Peñafrancia, Naga City. The Santoses are neighbors while Gomer's residence is about 150 meters away.[9]

Earlier, the Intelligence Section sent a pre-coordination report and a pre-operation report to PDEA that led to the subsequent issuance of a Certification of Coordination, which signified as the approval of the PDEA Regional Office for the Naga City Police officers to conduct the operation.[10]

The team, composed of around ten members proceeded to Sagrada Familia, Barangay Peñafrancia, Naga City at about

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[6] *Id*. at 40.

[7] *Id*. at 42.

[8] *Id*. at 38. Issued by Executive Judge Jose C. Sarcilla.

[9] *Id*. at 44.

[10] *Id*.

11:55 in the morning. Upon arrival, SPO2 Aguilar was the first one to go inside the house of Rowena.[11]

On the other hand, PO1 Albao went to the house of Ryan, accompanied by PO2 Altes. He promptly informed Ryan of the search warrant. Ryan was handcuffed and was transferred to the room of Rowena where both accused were informed of the contents of the warrant. The live-in partner of Ryan was outside the house, so there was no one else left in Ryan's room when he was transferred aside from an officer who guarded the door.[12]

While converged at Rowena's house, they waited around five minutes for the arrival of the mandatory witnesses: Department of Justice (DOJ) representative Perry Boy Solano (Perry), media representative Adiel Auxillo, and Barangay Kagawad Ma. Celina Breñis[13] (Celina).[14]

In the presence of PO3 Ordoñez, Rowena and the mandatory witnesses, PO1 Albao and SPO2 Aguilar began searching the receiving room of Rowena. PO1 Albao found fourteen (14) assorted cellphones, some cash in various denominations amounting to ₱8,275.00, and five pieces of empty plastic sachets. PO1 Albao turned over the seized items to PO3 Ordoñez.[15]

Then they proceeded to the kitchen where, still in the presence of mandatory witnesses, Rowena, PO3 Ordoñez and SPO2 Aguilar, PO1 Albao found a plastic sachet with *shabu* contained in the black coin purse on top of the refrigerator. The coin purse was hidden beneath the refrigerator cover. PO1 Albao was able to identify the sachet of *shabu* in open court through the marking "JAA-024-A" that he placed. PO1 Albao turned them over again to PO3 Ordoñez.[16]

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[11] *Id.* at 45.

[12] *Id.*

[13] Spelled as "Selena Briñes" in *rollo*, p. 51.

[14] *Rollo*, p. 45.

[15] *Id.* at 46.

[16] *Id.*

Next, they searched the comfort room. PO1 Albao found in a basin some cash in various denominations amounting to ₱6,100.00. PO1 Albao marked the found money bills in the presence of Rowena, the mandatory witnesses, SPO2 Aguilar and PO3 Ordoñez. At Rowena's bedroom on the second floor, PO1 Albao found seven cellphones that he also marked in the presence of the mandatory witnesses and Rowena.[17]

After searching Rowena's house, they commenced searching Ryan's house that is just adjacent to Rowena's house. They started the search in his bedroom. On the second level of the cabinet, PO1 Albao found a small blue box containing six sachets of *shabu*. PO1 Albao marked the sachets in the presence of Ryan, the mandatory witnesses, SPO2 Aguilar and PO3 Ordoñez. PO1 Albao also found empty sachets separate from the six sachets containing *shabu*.[18]

From the bedroom, the search continued to the kitchen where PO1 Albao found, in the presence of Ryan, the mandatory witnesses, SPO2 Aguilar and PO3 Ordoñez, a laundry basket containing a black clutch bag containing money in the amount of ₱110,300.00. Thereafter, they searched the receiving room, but they did not find anything.[19]

Back in Rowena's living room, PO3 Ordoñez, assigned as a recorder, prepared the Receipt of Property Seized. Photographs were also taken during the marking and inventory proceedings.[20]

From Rowena's house, they went back to Ryan's house and did the same inventory procedure. PO3 Ordoñez prepared the Receipt of Property Seized and Certification. The mandatory witnesses also affixed their respective signatures on both documents. The entire inventory proceeding was also photographed.[21]

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[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.* at 47.

[21] *Id.*

After the inventory, SPO2 Aguilar arrested and apprised the petitioners of their constitutional rights. The implementation of the search warrant concluded some minutes after 5:00 p.m. They proceeded to the Naga Police Station at Barlin Street for booking and recording, where PO3 Ordoñez caused the incident to be entered into the police blotter. PO3 Ordoñez was in possession and custody of all the seized items from the residences of the petitioners until they reached the police station where he turned them over to PO3 Florece, since he was the applicant for the issuance of the warrants and who had the duty to return them to the court. PO3 Florece issued a turnover receipt and PO3 Ordoñez promptly acknowledged.[22]

Thereafter, PO3 Florece kept the seized items in his locker that he alone had the key to. Immediately, PO3 Florece prepared a Return Examination and a Request for Laboratory Examination. The following morning, they made a return of the warrant to the Regional Trial Court, Branch 31, Pili, Camarines Sur. The motion was granted through an Order where PO3 Florece acknowledged and released the items. Thereafter, PO3 Florece brought the specimens to the provincial crime laboratory for examination.[23] The laboratory examination of the seven items yielded a positive result for the presence of dangerous drugs.[24]

Version of the Defense

The version of the defense, as summarized by the RTC, is as follows:

From 2008 to 2011, Rowena and her family stayed at Sagrada Familia, Peñafrancia, Naga City together with her siblings, JR and co-accused Ryan. Ryan has his own dwelling right beside theirs. Their occupied spaces were divided by a wall.[25]

On September 20, 2010, at about 8:00 o'clock in the morning while Rowena and her husband, Jesus Barra (Jesus) and their

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[22] *Id.*

[23] *Id.*

[24] *Id.* at 48.

[25] *Id.* at 50.

two children, Karl Joshua and John Fredo, were having breakfast, some ten policemen entered the living room unannounced. A police officer instructed them to gather at the sala because they have to recover things from their house and that they were waiting for some people to arrive. They obediently sat on the couch. Later, Ryan came escorted by another policeman. Rowena's brother JR and her cousin were also gathered by the officer at the sala. Two officers stood guard over the main door.[26]

Earlier that day, Ryan was awakened by loud knocks on his door. When he opened his door, he saw three police officers who announced that they were going to search his residence. One of them escorted him to Rowena's residence and he was ordered to sit with Rowena, Jesus, Romeo, and their cousin. Ryan recalled that he left his door room open with two police officers in his house. He did not know any of the policemen or any of the five to six policemen who were at Rowena's house.[27]

Initially, the officers did not show them any papers to explain their presence. It was only at 11:30 a.m. when the search warrant was read to them and the search began at the arrival of the awaited persons. During the intervening period however, two policemen were at the kitchen, which was about three meters away from where they were seated. They heard some noises coming from the room where the police were searching and from Ryan's house.[28]

PO1 Albao searched Rowena's house twice. The first round of search was at the sala, kitchen, and the upper level, but they did not find anything. However, when they searched the kitchen again, they found a black coin purse on top of the refrigerator, hidden under the refrigerator cover. They never exhibited the contents of the purse to her, although PO1 Albao informed Rowena of his findings. Rowena never witnessed the finding or opening of the purse to reveal the contents because her line

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[26] *Id.*

[27] *Id.*

[28] *Id.*

of vision was blocked by the door, and all throughout the search, Rowena and her companions remained seated at the sala. Although the refrigerator belonged to spouses Barra, everyone in the household, including Rowena's parents and siblings, had access to it. It was the first time Rowena saw the coin purse when PO1 Albao showed it to them.[29]

Ryan also remained seated at Rowena's sala all throughout the search and even during the search of his house. His place was searched by PO1 Albao, SPO2 Aguilar, accompanied by the DOJ representative and barangay official. After the search in Ryan's house, the officers announced that they found a sachet of *shabu* in his room. Ryan claimed that he stood only from Rowena's couch when was called for picture taking. He was only captured in the photographs because a policeman asked him to pose for the pictures after the search. He did not know who owned the blue plastic container.[30]

After the search, they gathered all the items in the sala. Rowena and Ryan refused to sign the list because if they did, they would admit ownership of the drugs. Rowena denied ownership of numerous cellphones seized from the bedroom, the Pawnshop Ticket in the name of Pedro de Luna and the two bundles of money amounting to ₱8,275.00 found in the comfort room. She could not remember why her lawyer, Atty. Amador Simando, asked for the release of these items from the court's custody. They might have been found in her house, but they did not belong to her.[31]

Although she was captured in the photo in the comfort room with her brother JR and PO1 Albao, Rowena insisted that she was only called in by PO1 Albao at that time to show her the money. Also present during the search were witnesses DOJ Representative Perry and Brgy. Kagawad Celina. Another photo showed SPO2 Aguilar bodily searching her brother, JR.[32]

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[29] *Id.*

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

[31] *Id.* at 51.

[32] *Id.*

The sala cum kitchen is a place common to Rowena and Ryan although Ryan has his own house. The entrance door leading to Ryan's place is aligned with her entrance, and their dwellings are separated by a wall partition. She has no access to the occupied dwelling of Ryan.[33]

Rowena's family also occupies the second level. The spiral staircase located at the center of the ground floor leads to the upper level. Another way to the upper level is through the terrace. Only Rowena's house has an upper level, which is practically her bedroom. The ground floor has a sala, kitchen, and comfort room. Ryan has his own sala and kitchen, but he would allow himself in the common sala in view of the proximity of their entrance doors. Sometimes, Rowena would cook more than enough for her family and share some with Ryan. That is why Ryan is comfortably at ease in Rowena's kitchen although he has his own. Everyone has access to the refrigerator — the Barra family and Rowena's siblings.[34]

In the last few months before the search, Ryan rarely used his place because he stayed with his live-in partner at Calauag. Most of the time he was not around and usually his relatives and friends hang out in his house. They came and went for their gimmicks, usually playing video games and drinking, but not for pot or drugs sessions. He is not sure if the drugs belonged to his friend or relatives. On the other hand, a substantial amount of the money found belonged to his aunt, Meryl Comprado Francisco, a sister of his mother. He did not see the police officers planting any drugs in the premises, and he did not insist on his innocence during the search. He also did not press charges against the officers. At the time of the implementation of the warrant, he was helping his father in a construction site as a laborer.[35]

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[33] *Id.*

[34] *Id.*

[35] *Id.*

Ruling of the RTC

In a Joint Judgment dated April 20, 2017, the RTC found Rowena and Ryan guilty beyond reasonable doubt for the crime charged. The dispositive portion of the Decisions reads:

> WHEREFORE, premises considered, judgment is rendered, finding both ACCUSED ROWENA SANTOS (-BARRA) y Comprado in Crim. Case No. 2010-0410 and ACCUSED RYAN SANTOS y Comprado in Crim. Case. No. 2010-0411 to be GUILTY beyond reasonable doubt each of violation of Section 11 of R.A. No. 9165 (the Comprehensive Dangerous Drugs Act of [2012]). Consequently, ACCUSED ROWENA SANTOS is SENTENCED to an indeterminate period of IMPRISONMENT from a minimum of twelve (12) years and one (1) day to a maximum of thirteen (13) years AND a FINE of Three Hundred Thousand Pesos (₱300,000.00), while ACCUSED RYAN SANTOS is SENTENCED to an indeterminate period of IMPRISONMENT from a minimum of fifteen (15) years to a maximum of seventeen (17) years AND a FINE of Four Hundred Thousand Pesos (₱400,000.00)
>
> [SO ORDERED].[36]

The RTC convicted Rowena and Ryan for violation of Section 11, Article II of RA 9165. It ruled that the prosecution was able to establish the elements of the crime of Illegal Possession of Dangerous Drugs.[37] The prosecution was able to prove that both Rowena and Ryan exercised control and dominion over their respective dwellings.[38] It further ruled that the prosecution was able to establish the *corpus delicti* and compliance with the chain of custody rule.[39] Lastly, it held that the search warrant was valid and the search conducted by the police officers was legal.[40]

Aggrieved, Rowena and Ryan appealed his conviction to the CA.

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[36] *Id.* at 68.

[37] *Id.* at 52-55.

[38] *Id.* at 53.

[39] *Id.* at 55-57.

[40] *Id.* at 57-64.

Ruling of the CA

In a Decision dated September 19, 2018, the CA affirmed Rowena's and Ryan's conviction. The dispositive portion of the Decision reads:

WHEREFORE, the present appeal is hereby **DISMISSED**. Consequently, the assailed Joint Judgment of the Regional Trial Court, Branch 61, Naga City, in Criminal Case Nos. 2010-0410 and 2010-0411 is **AFFIRMED** *in toto*.

SO ORDERED.[41]

Hence, the instant Petition.

Issue

The instant Petition raises two issues for the consideration of the Court: whether (1) the CA erred in convicting the petitioners for violation of Section 11, Article II of RA 9165; and (2) the CA erred in finding that the petitioners had been in constructive possession of the illegal drugs found in their premises.

The Court's Ruling

The Petition lacks merit.

At the outset, the Court notes that the issues raised in the Petition are factual and evidentiary in nature, which are outside the Court's scope of review in Rule 45 petitions. In this regard, it is settled that the assessment of the credibility of witnesses is a task most properly within the domain of trial courts due to the unique opportunity afforded them to observe the witnesses when placed on the stand.[42] While questions of fact have been entertained by the Court in justifiable circumstances, Rowena and Ryan herein failed to establish that the instant case falls within the allowable exceptions. Hence, not being a trier of facts but of law, the Court must necessarily defer to the concurrent findings of fact of the CA and the RTC.[43]

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[41] *Id.* at 36.

[42] See *People v. Gahi*, 727 Phil. 642, 658 (2014).

[43] *Miro v. Vda. de Erederos*, 721 Phil. 772, 785-786 (2013).

Be that as it may, the Court finds no reversible error committed by the CA in affirming petitioners' guilt for violation of Section 11, Article II of RA 9165.

First, the petitioners argue that the *corpus delicti* had not been fully established and that the chain of custody rule was not followed, thus the integrity of the dangerous drugs was not ensured and their identity was not established with moral certainty.[44]

Relevant to this case is the procedure to be followed in the custody and handling of seized dangerous drugs as outlined in Section 21, paragraph 1, Article II of RA 9165, which reads:

> (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[.]

In this case, the prosecution was able to establish the integrity of the *corpus delicti* and an unbroken chain of custody. The Court has explained in a catena of cases the four (4) links that 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.[45] In this case, the prosecution was able to prove all the links that should be established in the chain of custody.

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[44] *Rollo*, p. 29.

[45] *People v. Holgado*, 741 Phil. 78, 94-95 (2014), citing *People v. Nandi*, 639 Phil. 134, 144-145 (2010).

Moreover, the police officers were also able to strictly comply with the requirements laid down in Section 21. They conducted the physical inventory and photography of the seized items in the presence of petitioners, a representative from the media, a representative of the DOJ and a barangay official at the place where the search was conducted.

Second, petitioners contend that the CA erred in ruling that petitioners were in constructive possession of the seized drugs since that the place where the seized drugs were found were under the control and dominion of petitioners. They mainly argue that since there are other family members who live in their houses, it is possible that the seized drugs are not owned by them. This argument has no merit.

In *People v. Tira*,[46] the Court explained the concept of possession of illegal drugs, to wit:

> x x x This crime is *mala prohibita*, and, as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (*animus posidendi*) the drugs. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. **The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another**.
>
> Thus, conviction need not be predicated upon exclusive possession, and a showing of non-exclusive possession would not exonerate the accused. Such fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom. However, the prosecution must prove that the accused had knowledge of the existence and presence of the drug in the place under his control and dominion and the character of the drug. **Since knowledge by the accused of the existence and character of the drugs in the place where he exercises dominion and control is an internal act,**

[46] 474 Phil. 152 (2004).

the same may be presumed from the fact that the dangerous drugs [are] in the house or place over which the accused has control or dominion, or within such premises in the absence of any satisfactory explanation.[47] (Emphasis and underscoring supplied)

In the instant case, as correctly pointed out by the CA, there is no question that the dangerous drugs were found in a coin purse on top of the refrigerator in the first-floor living room of Rowena and in a plastic container box inside a cabinet in the bedroom of Ryan.[48] These findings were witnessed by a media representative, a DOJ representative and a barangay official who were present during the seizure and confiscation of the dangerous drugs until the conduct of the inventory and taking of photographs.[49] They also did not offer any satisfactory explanation to overcome the presumption that the seized items belong to them. Hence, the CA was correct in ruling that petitioners had constructive possession of the illegal drugs since they were shown to enjoy dominion and control over the premises they occupied. The fact that there were other people living in their house is of no consequence.

All told, the Court is convinced that petitioners are indeed guilty of violating Section 11, Article II of RA 9165.

Proceeding from the foregoing, the instant petition is denied.

On a final note, the Court is not unaware that there have been numerous cases[50] wherein due to the police officers'

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

[48] *Rollo*, p. 34.

[49] *Id.*

[50] *Ramos v. People*, G.R. No. 233572, July 30, 2018, accessed at <http://library.judiciary.gov.ph/thebookshelf/showdocs/1/64716>; *People v. Balubal*, G.R. No. 234033, July 30, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64491>; *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>.

inexcusable failure to comply with the mandatory requirements of Section 21, the Court has been compelled to acquit an accused.

However, it is obvious in this case that the mandatory requirements of Section 21 are not unreasonable and are in fact, not difficult to follow. As adequately shown above, the police officers were able to meticulously follow the procedure laid out in Section 21 — from the arrest of the accused and the seizure, marking, photography and inventory of the illegal drugs in the presence of the three (3) mandatory witnesses, to the turnover of the illegal drugs seized to the investigator and then to the forensic chemist, until its final turnover to the Court.

This case therefore belies any claim that the requirements of RA 9165 are difficult to comply with and defeats the usual flimsy excuses of police officers for non-compliance. It is an exemplar of how the law can be easily followed and more importantly, it shows that if police officers diligently perform their duties and obligations, justice would be rightfully served. The Court thus commends the police officers involved in this case for upholding the law and enforcing it as it is.

WHEREFORE, in view of the foregoing, the Petition is hereby **DENIED**. The Court **ADOPTS** the findings of fact and conclusions of law in the Decision dated September 19, 2018 of the Court of Appeals in CA-G.R. CR No. 40167 and **AFFIRMS** the said Decision finding petitioners Rowena Santos *y* Comprado and Ryan Santos y Comprado **GUILTY** beyond reasonable doubt for violation of Section 11, Article II of RA 9165.

SO ORDERED.

Reyes, J. Jr., *Lazaro-Javier*, and *Zalameda, JJ.*, concur.

Carpio (Chairperson), J., on official leave.

INDEX

INDEX

right; and 3) Act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief; if the allegations of the complaint do not state the concurrence of the above elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action which is the proper remedy under Section 1(g) of Rule 16 of the Revised Rules of Civil Procedure. (Heirs of Satramdas V. Sadhwani *vs*. Sadhwani, G.R. No. 217365, Aug. 14, 2019) p. 385

Dismissal of — Dismissals that are based on the following grounds, to wit: (1) that the cause of action is barred by a prior judgment or by the statute of limitations; (2) that the claim or demand set forth in the plaintiffs pleading has been paid, waived, abandoned or otherwise extinguished; and (3) that the claim on which the action is founded is unenforceable under the provisions of the statute of frauds, bar the refiling of the same action or claim; logically, the nature of the dismissal founded on any of the preceding grounds is "with prejudice" because the dismissal prevents the refiling of the same action or claim; ergo, dismissals based on the rest of the grounds enumerated are without prejudice because they do not preclude the refiling of the same action; the RTC's dismissal was premised on the finding that petitioners were suing as heirs of the Sps. Sadhwani who, being Indian nationals, were prohibited from owning the subject properties and therefore could not transmit rights over the same through succession; the dismissal was based on Rule 16, Sec. 1(g), *i.e*., that the Complaint states no cause of action; as the dismissal was without prejudice (not having been premised on Secs. 1(f), (h) or (i) of Rule 16), the remedy of appeal was not available; instead, petitioners should have simply refiled the complaint. (Heirs of Satramdas V. Sadhwani *vs*. Sadhwani, G.R. No. 217365, Aug. 14, 2019) p. 385

— In *Westmont Bank v. Funai Phils., Corp.*, the Court distinguished failure to state a cause of action and lack of cause of action in this wise: "Failure to state a cause of action and lack of cause of action are distinct grounds to dismiss a particular action; the former refers to the insufficiency of the allegations in the pleading, while the latter to the insufficiency of the factual basis for the action; dismissal for failure to state a cause of action may be raised at the earliest stages of the proceedings through a motion to dismiss under Rule 16 of the Rules of Court, while dismissal for lack of cause of action may be raised any time after the questions of fact have been resolved on the basis of stipulations, admissions or evidence presented by the plaintiff"; as applied to the instant case, lack of cause of action could not have been the basis for the dismissal of the instant action considering that no stipulations, admissions or evidence have yet been presented; the RTC's inaccurate pronouncement, however, should have been challenged through a Rule 65 petition for *certiorari* and not through an appeal, as expressly provided in Rule 41, Sec. 1; moreover, the challenge should have been brought to the Court of Appeals instead of filing the same directly with the Court, in accordance with the rule on hierarchy of courts; the instant Petition must be dismissed. (*Id*.)

— The case of *Hongkong and Shanghai Banking Corporation Limited v. Catalan* laid down the test to determine the sufficiency of the facts alleged in the complaint, to wit: The elementary test for failure to state a cause of action is whether the complaint alleges facts which if true would justify the relief demanded; the inquiry is into the sufficiency, not the veracity of the material allegations; if the allegations in the complaint furnish sufficient basis on which it can be maintained, it should not be dismissed regardless of the defense that may be presented by the defendants; by filing a Motion to Dismiss, a defendant hypothetically admits the truth of the material allegations of the ultimate facts contained in the plaintiffs complaint; when a motion to dismiss is grounded on the failure to

state a cause of action, a ruling thereon should, as a rule, be based only on the facts alleged in the complaint; petitioners failed to state a cause of action because they premised their claim of ownership over the subject properties as *heirs* of the Sps. Sadhwani who were unquestionably Indian nationals. (*Id*.)

ACTS OF LASCIVIOUSNESS

Elements — Art. 336 of the RPC states that acts of lasciviousness is committed by:1. Anyone who commits any act of lasciviousness or lewdness; 2. The offended party is another person of either sex; 3. The act/s is done 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; 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. (People *vs*. Baya *y* Ybiosa, G.R. No. 242512, Aug. 14, 2019) p. 973

— The elements of acts of lasciviousness under Art. 336 of the RPC are: (a) the offender commits any act of lasciviousness or lewdness upon another person of either sex; and (b) the act of lasciviousness or lewdness is committed either (i) by using force or intimidation; or (ii) when the offended party is deprived of reason or is otherwise unconscious; or (iii) when the offended party is under twelve (12) years of age; lewd is defined as obscene, lustful, indecent, lecherous; it signifies that form of immorality that has relation to moral impurity. (People *vs*. Pagkatipunan *y* Cleope, G.R. No. 232393, Aug. 14, 2019) p. 806

— The imposable penalty for Acts of Lasciviousness under Art. 336 of the RPC in relation to Sec. 5 of R.A. No. 7610, if the victim is below twelve (12) years old when the offense was committed, is *reclusion temporal* in its medium period; considering the presence of the aggravating circumstance of dwelling, the penalty shall

supported by substantial evidence; factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court; an exception would be when the findings of the Court of Appeals are contrary to those of the trial court, as in this case; the Court will have to make its own factual determination for the purpose of resolving the present case. (Magalang *vs*. Heretape, G.R. No. 199558, Aug. 14, 2019) p. 233

Factual findings of the trial court —The factual findings of the Regional Trial Court, as affirmed by the Court of Appeals, are likewise affirmed by this Court; the Regional Trial Court had the opportunity to personally observe the witnesses during their testimonies; thus, its assignment of probative value to testimonial evidence will not be disturbed except when significant matters were overlooked; a reversal of its findings becomes even less likely when affirmed by the Court of Appeals. (People *vs*. Lita, G.R. No. 227755, Aug. 14, 2019) p. 726

— The trial court's factual findings on the credibility of witnesses are accorded high respect, if not conclusive effect; this is because the trial court has the unique opportunity to observe the witnesses' demeanor, and is in the best position to discern whether they are telling the truth or not; this rule becomes more compelling when such factual findings carry the full concurrence of the Court of Appeals, as in this case. (People *vs*. Pagkatipunan *y* Cleope, G.R. No. 232393, Aug. 14, 2019) p. 806

Petition for review on certiorari to the Supreme Court under Rule 45 — The Court's power of review in a Rule 45 petition is limited to resolving matters pertaining to perceived legal errors that the CA may have committed in issuing the assailed decision; hence, We generally do not review factual issues; nevertheless, the Court will proceed to probe and resolve factual issues when exceptional circumstances are present; the conflicting rulings of the LA and NLRC on one hand, and of the CA on the other, in this case is one such exception to the

of the legal profession rightly enjoin lawyers to act with the highest standards of truthfulness and nobility in the course of their practice of law; if the lawyer falls short of this standard, the Court will not hesitate to discipline the lawyer by imposing an appropriate penalty based on the exercise of sound judicial discretion. (Phil. Investment One (SPV-AMC), Inc. *vs*. Atty. Lomeda, A.C. No. 11351, Aug. 14, 2019) p. 41

— "Disbarment should never be decreed where any lesser penalty could accomplish the end desired; a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment; these penalties are imposed with great caution, because they are the most severe forms of disciplinary action and their consequences are beyond repair"; this is the second time in a very short span of time that Respondent must answer to a situation of conflict of interest involving substantial amounts of money; respondent guilty of gross misconduct in violation of the Code of Professional Responsibility; he is disbarred from the practice of law. (Palalan Carp Farmers Multi-Purpose Coop *vs*. Atty. Dela Rosa, A.C. No. 12008, Aug. 14, 2019) p. 52

— Respondent committed a serious breach of Rule 1.01 of Canon 1; *Billanes v. Atty. Latido*, cited; likewise, this Court finds respondent guilty of violating Canon 10, Rule 10.01 of the CPR which provides: Records show that respondent indulged in deliberate falsehood when he caused the falsification of the bail bond and release order; he even presented these court documents in court all for the purpose of securing his son's temporary release from detention; *Sps. Umaguing v. Atty. De Vera*, cited; fundamental is the rule that in his dealings with his client and with the courts, every lawyer is expected to be honest, imbued with integrity, and trustworthy; these expectations, though high and demanding, are the professional and ethical burdens of every member of the Philippine Bar; the Court has invariably emphasized that membership in the bar is only bestowed upon

we are expected to maintain a high standard of honesty, integrity, and fair dealing; before being admitted to the practice of law, we took an oath "to obey the laws as well as the legal orders of the duly constituted authorities" and to "do no falsehood"; any resort to falsehood or deception evinces an unworthiness to continue enjoying the privilege to practice law and highlights the unfitness to remain a member of the law profession; ultimate administrative penalty of disbarment, imposed. (Phil. Investment One (SPV-AMC), Inc. *vs*. Atty. Lomeda, A.C. No. 11351, Aug. 14, 2019) p. 41

—— The Court has consistently held that disbarment and suspension of an attorney are the most severe forms of disciplinary action, which should be imposed with great caution; they should be meted out only for duly proven serious administrative charges; while Atty. Puti is guilty of using inappropriate language against the opposing counsels and the judge, such transgression is not of a grievous character as to merit his suspension since his misconduct is considered as simple rather than grave; the Court takes into consideration that this is the first administrative case against him in his more than three decades in the legal profession; finding him guilty of violating Canons 8 and 11 and Rules 8.01, 11.03, and 11.04 of the Code of Professional Responsibility, the Court reprimands him with stern warning that a repetition of the same or similar act in the future will be dealt with more severely. (Canete *vs.* Atty. Puti, A.C. No. 10949 [Formerly CBD Case No. 13-3915], Aug. 14, 2019) p. 29

Discipline of —— A lawyer's holding of public office does not deprive this Court of jurisdiction to discipline and impose penalties upon him or her for unethical conduct; on the contrary, holding public office amplifies a lawyer's disciplinary liability; *Fuji v. Atty. Dela Cruz,* cited; in *Collantes v. Atty. Renomeron*, confronted with the issue of "whether the respondent register of deeds, as a lawyer, may also be disciplined by this Court for his malfeasances as a public official,"this Court ruled, "yes, for his misconduct as a public official also constituted a violation

of court; originally, the reception of evidence was set to take place on December 9, 2012; however, since that date fell on a Sunday, the presiding judge, through the last challenged trial court order, rescheduled the same to Friday, December 14, 2012; such scheduling and rescheduling of the *ex parte* hearing were the result of Judge Villordon's hasty and preemptive action on HGC's complaint, which was tantamount to further grave abuse of discretion. (Carniyan *vs*. Home Guaranty Corp., G.R. No. 228516, Aug. 14, 2019) p. 744

— In ruling on the issue of the validity of OCT No. 0-CALT-37, the Court will necessarily rule on the validity of CALT No. CAR-BAG-0309-000207, and the reconstructed and unapproved survey plan together with the technical description of Lot 1, SWO-14110215703-D-A-NCIP, both of which were issued and approved in Resolution 060-2009-AL; this, however, does not remove the Complaint from the RTC's jurisdiction, and as described above, even confirms it; the cause of action of the Republic is for the reversion to the public domain of the lot and the cancellation of the title; in ruling on this issue, the RTC may dwell on the validity of the proceedings of the NCIP, which gave rise to the issuance of the Torrens title; the RTC committed grave abuse of discretion when it dismissed the Republic's Complaint for lack of jurisdiction; as the Court ruled in *Heirs of Spouses Reterta v. Spouses Mores and Lopez*: "The term *grave abuse of discretion* connotes whimsical and capricious exercise of judgment as is equivalent to excess, or lack of jurisdiction; the abuse must be so patent and gross as to amount to an evasion of a positive duty or to 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 or hostility." (Rep. of the Phils. *vs*. Heirs of Ikang Paus, G.R. No. 201273, Aug. 14, 2019) p. 254

Motion for reconsideration — Petitioner failed to file a motion for reconsideration before resorting to the instant petition for *certiorari;* the settled rule is that a motion for

provides exceptions to the rule that an order denying a motion to dismiss is not the proper subject of a petition for *certiorari;* when such orders are issued without or in excess of jurisdiction, or when their issuance is tainted with grave abuse of discretion, *certiorari* lies as a remedy; none of the exceptions apply in this case. (Carniyan *vs.* Home Guaranty Corp., G.R. No. 228516, Aug. 14, 2019) p. 744

CODE OF PROFESSIONAL RESPONSIBILITY (CPR)

Canon 8 — The term "bakla" (gay) itself is not derogatory; it is used to describe a male person who is attracted to the same sex; the term in itself is not a source of offense as it is merely descriptive; however, when "bakla" is used in a pejorative and deprecating manner, then it becomes derogatory; *Sy v. Fineza*, cited; Atty. Puti's remark was clearly unprofessional, especially since he used to be a public prosecutor; by nonchalantly accusing the prosecutors of having been bribed or otherwise acting for a valuable consideration, he overstepped the bounds of courtesy, fairness, and candor which he owes to the opposing counsels; violation of the following provisions under the Code of Professional Responsibility: CANON 8 – A lawyer shall conduct himself with courtesy, fairness, and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel; Rule 8.01 – A lawyer shall not, in his professional dealings, use language which is abusive, offensive, or otherwise improper. (Canete *vs.* Atty. Puti, A.C. No. 10949 [Formerly CBD Case No. 13-3915], Aug. 14, 2019) p. 29

Canon 11 — While a lawyer, as an officer of the court, has the right to criticize the acts of courts and judges, the same must be made respectfully and through legitimate channels; Atty. Puti violated the following provisions in the Code of Professional Responsibility: CANON 11 – A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others; Rule 11.03 – A lawyer shall abstain from scandalous, offensive or menacing language

Coop *vs*. Atty. Dela Rosa, A.C. No. 12008, Aug. 14, 2019) p. 52

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule–– Another gap in the chain of custody happened when the seized drug was delivered to the crime laboratory; there was nothing on record here showing how the seized drug was handled before, during, and after it came to the custody of the forensic chemist's possession; as to how he took precautionary steps in preserving the integrity and evidentiary value of the seized drug while it remained in her possession and prior to its presentation in court, no evidence was ever presented; *People v. Hementiza*, cited. (People *vs*. Nabua *y* Campos, G.R. No. 235785, Aug. 14, 2019) p. 895

–– As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law"; this is because "the law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment"; nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible; as such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved; the foregoing is based on the saving clause found in Sec. 21 (a),Art. II of the Implementing Rules and Regulations of R.A. No. 9165, which was later adopted into the text of R.A. No. 10640; conditions for the saving clause to apply. (Valdez *y* Menor *vs*. People, G.R. No. 238349, Aug. 14, 2019) p. 933

peddlers and distributors, the law nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded; in all drugs cases, compliance with the chain of custody rule is crucial in any prosecution that follows such operation; the rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt; Sec. 21, Art. II of R.A. No. 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; (2) that the physical inventory and photographing must be done in the presence of: (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice, all of whom shall be required to sign the copies of the inventory and be given a copy thereof; here, it cannot be denied that the authorities seriously and, in a wholesale manner, swept aside the compulsory procedures mandated under Sec. 21 of R.A. No. 9165. (People *vs*. Baer @ "Tikyo," G.R. No. 228958, Aug. 14, 2019) p. 763

— From the language of Sec. 21, the mandate to conduct inventory and take photographs "immediately after seizure and confiscation"necessarily means that these shall be accomplished *at the place of arrest;* when this is impracticable, the Implementing Rules and Regulations (IRR) of R.A. No. 9165 allows for two (2) other options: 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; to sanction noncompliance, the prosecution must prove that the

rule here cast serious uncertainty on the identity and integrity of the *corpus delicti*; the metaphorical chain did not link at all, albeit, it unjustly restrained appellant's right to liberty; therefore, a verdict of acquittal is in order. (People *vs*. Lacdan *y* Parto, G.R. No. 232161, Aug. 14, 2019) p. 792

— Sec. 21 of R.A. No. 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases; here, the inventory and photograph of seized items were only made in the presence of appellant and three barangay officials; this fact was confirmed by the police officers in their testimony before the trial court; no media representative and DOJ representative were present during the inventory and photograph of the seized items; the arresting officers failed to give any justifiable explanation for the absence of these witnesses; the insulating presence of such witnesses would have preserved an unbroken chain of custody; more, they failed to performed their positive duty to secure through earnest efforts the presence of these representatives; this is certainly a serious lapse of procedure; *People v. Abelarde*, cited. (People *vs*. Nabua *y* Campos, G.R. No. 235785, Aug. 14, 2019) p. 895

— The absence of the elected public official and representative of the DOJ or the media specifically required to witness the physical inventory and photographing of the evidence seized, and that no photograph was taken to document the seizure of drugs were also undeniable; the obligation imposed by Sec. 21 of R.A. No. 9165 to tender the credible explanation for any non-compliance with the affirmative safeguards firmly rested on the State and its agents, and on no other; the Court has stressed the importance of the Prosecution's obligation to justify their non-compliance with the safeguards in *People v. Lim*; under the circumstances, the arresting officers must prove that they had exerted efforts to comply with the mandated procedure, and that their actions were reasonable under the obtaining circumstances; if the State and its agents did not discharge such obligation, then the evidence of guilt necessarily becomes suspect; among the

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, the prosecution was able to prove all the links that should be established in the chain of custody; moreover, the police officers were also able to strictly comply with the requirements laid down in Sec. 21. (Santos *y* Comprado *vs*. People, G.R. No. 242656, Aug. 14, 2019) p. 992

— To establish the *corpus delicti*, the proper handling of the confiscated drug is paramount in order to ensure the unbroken chain of custody, a process essential to preserving the integrity of the evidence of the *corpus delicti*; forthis purpose, the State needs only to show a rational basis from which to conclude that the evidence being presented to establish criminal guilt is what the State claims it to be, that is, the drug that was confiscated at the time of the buy-bust or other operation to arrest the violator; the courts require a more stringent foundation for the chain of custody of the item with sufficient completeness to render it improbable that the original item has either been changed with another or tampered with; the apprehending officers did not follow the procedural safeguards of the law; for one, they did not do the marking and the inventory of the evidence seized immediately at the place of arrest despite the law itself directing such acts to be done then and there; to excuse their lapse, PO2 Reas openly declared that "… the area is critical and we have to leave the place immediately and we do not have time to make the inventory there"; such declaration was hardly plausible, however, because outside of the officer's self-serving claim, the Prosecution adduced no evidence that would have substantiated the "critical" conditions then obtaining that had prevented compliance with the statutory safeguards. (People *vs*. Placiente *y* Tejero, G.R. No. 213389, Aug. 14, 2019) p. 349

— To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment

of the accused or when he has the right to exercise dominion and control over the place where it is found; exclusive possession or control is not necessary; the accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another; thus, conviction need not be predicated upon exclusive possession, and a showing of non-exclusive possession would not exonerate the accused; such fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom; however, the prosecution must prove that the accused had knowledge of the existence and presence of the drug in the place under his control and dominion and the character of the drug; in the instant case, the CA was correct in ruling that petitioners had constructive possession of the illegal drugs. (Santos *y* Comprado *vs*. People, G.R. No. 242656, Aug. 14, 2019) p. 992

—— Jurisprudence holds that possession, under the law, includes not only actual possession, but also constructive possession; actual possession exists when the drug is in the immediate physical possession or control of the accused; on the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found; in the assailed Decision, the CA cites the cases of *People of the Philippines v. Torres*, *People of the Philippines v. Tira*, and *Abuan v. People of the Philippines*, holding that "in all those cases, the accused were held to be in constructive possession of illegal drugs since they were shown to enjoy dominion and control over the premises where these drugs were found"; but what the CA failed to see was that in these cases, the drug specimens retrieved were readily accessible in the places under the control of the accused persons; the same cannot be said in instant case; the Court finds that accused-appellant did not constructively possess the supposed drug specimens retrieved by the authorities; on this point alone, the

substance of the crime and refers, in its primary sense, to the fact that a crime was actually committed; in criminal prosecution of alleged violations of R.A. No. 9165, like the offense charged herein, the *corpus delicti* is no other than the dangerous drug itself; hence, the State must be able to present the seized drug, along with proof that there were no substantial gaps in the chain of custody thereof from the time of its confiscation until its presentation during the trial as to raise any doubts about its authenticity as evidence of guilt when presented in court. (People *vs*. Placiente *y* Tejero, G.R. No. 213389, Aug. 14, 2019) p. 349

Illegal sale of dangerous drugs — To sustain an accused's conviction for the illegal sale of dangerous drugs, the following elements must 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*. Banding *y* Ulama, G.R. No. 233470, Aug. 14, 2019) p. 837

Requirement of witnesses — Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear; while the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances; mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance; in this case, there is a deviation from the witness requirement without sufficient justification; Sec. 21, Art. II of RA 9165, as amended by R.A. No. 10640 requires the presence of: (*i*) an elected public official; *AND* (*ii*) a representative from either the National Prosecution Service or the media; it was incumbent upon the prosecution to account for the deviation from the aforesaid rule by presenting a justifiable reason therefor, or at the very least, by showing that 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. (People *vs*. Banding *y* Ulama, G.R. No. 233470, Aug. 14, 2019) p. 837

CONSPIRACY

Existence of — Conspiracy exists when two (2) or more persons come to an agreement concerning the commission of a felony, and decide to commit it; proof of express agreement, however, is not always required to be shown; in *People of the Philippines v. Jimmy Evasco, et al.*, the Court emphasized the two (2) forms of conspiracy; the first refers to express conspiracy; it requires proof of an actual agreement among the co-conspirators to commit the crime; the second pertains to implied conspiracy;it exists when two (2) or more persons are shown by their acts to have aimed toward the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, are in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiments; how proven. (People *vs*. Angeles *y* Guarin, G.R. No. 224289, Aug. 14, 2019) p. 652

CONSTITUTIONAL RIGHTS

Freedom of expression — Freedom of expression has gained recognition as a fundamental principle of every democratic government, and given a preferred right that stands on a higher level than substantive economic freedom or other liberties; a fundamental part of this cherished freedom is the right to participate in electoral processes, which includes not only the right to vote, but also the right to express one's preference for a candidate or the right to influence others to vote or otherwise not vote

CRIMINAL PROCEDURE

Filing of criminal complaint or information — Sec. 5(a) of Rule 112 of the Revised Rules on Criminal Procedure grants the trial court three (3) options upon the filing of the criminal complaint or Information; it may: a) dismiss the case if the evidence on record clearly failed to establish probable cause; b) issue a warrant of arrest if it finds probable cause; or c) order the prosecutor to present additional evidence within five days from notice in case of doubt on the existence of probable cause. (Silver *vs.* Judge Daray, G.R. No. 219157, Aug. 14, 2019) p. 408

Issuance of warrant of arrest — If the trial court decides to issue a warrant of arrest, such warrant must have been issued after compliance with the requirement that probable cause be personally determined by the judge; at this stage, the judge is tasked to merely determine the probability, not the certainty, of guilt of the accused; in doing so, the judge need not conduct a *de novo* hearing; in sum, the judge must (1) personally evaluate the report and supporting documents submitted by the prosecutor regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause; note that supporting documents include but are not limited to affidavits, the transcripts of stenographic notes (if any), and all other supporting documents behind the prosecutor's certification which are material in assisting the judge to make his determination of probable cause; both Judges personally examined the eight (8) Informations filed by the prosecution, the relevant DOJ resolutions on the existence of probable cause against petitioners *et al.*, the previous order of RTC-Branch 14, Davao City issuing warrants of arrest on petitioners *et al*., the prosecution's ex-parte manifestation for issuance of warrants of arrest and petitioners *et al.*'s opposition thereto, petitioners' motion for reconsideration of Order dated April 28, 2011, the

DEFAULT, ORDER OF

Requisites — The second challenged trial court order contained a directive to the petitioners to file an answer to HGC's complaint within a non-extendible period of 10 days from notice; however, the records reveal that the petitioners never complied with the same; consequently, HGC filed a motion to declare them in default, which Judge Villordon granted through the third challenged trial court order; the petitioners assailed the Order via *certiorari* before the CA; in arguing that the same was tainted with grave abuse of discretion, they maintained that the order was prematurely issued by Judge Villordon; *certiorari* was the improper remedy; a cursory reading of Sec. 3(b) of Rule 9 of the Rules of Court will reveal that one of the defending party's remedies against an order of default is to file a motion under oath to set it aside on the ground of fraud, accident, mistake, or excusable negligence; additionally, the defending party must append to the said motion an affidavit showing that he or she has a meritorious defense; verily, so that an order of default may be lifted, the following requisites must be met: (a) that a motion be filed under oath by one who has knowledge of the facts; (b) that the defending party's failure to file answer was due to fraud, accident, mistake, or excusable negligence; and (c) that the defending party shows the existence of a meritorious defense through an affidavit of merit; as discussed above, resort may be had to a petition for *certiorari* only in the absence of an appeal or any other plain, speedy, and adequate remedy in the ordinary course of law; considering that no judgment had yet been rendered *a quo*, the petitioners, pursuant to Sec. 3(b) of Rule 9 of the Rules of Court, should have filed a motion to lift the order declaring them in default; failing to do so, their recourse to the CA via a petition for *certiorari* was improper. (Carniyan *vs*. Home Guaranty Corp., G.R. No. 228516, Aug. 14, 2019) p. 744

"delegate authority for the performance of any administrative or substantive function to subordinate officials of the DENR"; one such policy is DENR A.O. 2012-9. (*Id*.)

EMPLOYMENT, TERMINATION OF

Management prerogative — While it is the prerogative of the management to transfer an employee from one office to another within the business establishment based on its assessment and perception of the employee's qualifications, aptitudes and competence, and in order to ascertain where he can function with maximum benefit to the company, this prerogative is not without limit; as explained by the Court: The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play; having the right should not be confused with the manner in which that right is exercised; thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker; the CA has strong basis for its conclusion that the transfer was not prompted by legitimate business purpose, but merely a retaliatory move against the respondents; respondents had a valid reason to refuse the Manila transfer. (Univ. of Manila *vs*. Pinera, G.R. No. 227550, Aug. 14, 2019) p. 710

Procedural due process — There is procedural due process in termination of employment for just cause if the employer gives the employee two written notices and a hearing or opportunity to be heard if requested by the employee before terminating the employment; specifically, there should be a notice specifying the grounds for which dismissal is sought, a hearing or an opportunity to be heard, and after hearing or opportunity to be heard, a notice of the decision to dismiss. (Univ. of Manila *vs*. Pinera, G.R. No. 227550, Aug. 14, 2019) p. 710

Separation benefits under retirement plan — Contrary to the CA's holding, the circumstances of this case show that there is actually *some proof of authenticity or reliability* that the copy of the Retirement Plan attached to petitioner's

in light of these special conditions, it is fairly apparent that the separation benefits under the Retirement Plan are not in the nature of benefits incurred in the normal course of AFC's business, such as salary differentials, service incentive leave pay, or holiday pay; as such, the burden is on the employee to prove his entitlement thereto; failing in which, the latter should not be paid the same. (*Id*.)

Twin requirements for valid dismissal — Under the Labor Code, there are twin requirements to justify a valid dismissal from employment: (a) the dismissal must be for any of the causes provided in Art. 282 of the Labor Code (substantive aspect); and (b) the employee must be given an opportunity to be heard and to defend himself (procedural aspect); the *onus* of proving the validity of dismissal lies with the employer. (Univ. of Manila *vs*. Pinera, G.R. No. 227550, Aug. 14, 2019) p. 710

Willful breach of trust or loss of trust and confidence — A dismissal based on willful breach of trust or loss of trust and confidence entails the presence of two conditions; first, breach of trust and confidence must be premised on the fact that the employee concerned holds a position of trust and confidence, where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected; the essence of the offense for which an employee is penalized is the betrayal of such trust; in the case of *Wesleyan University Phils. v. Reyes*, employees vested with trust and confidence were divided into two classes: (a) the managerial employees; and (b) the fiduciary rank-and-file employees; second, there must be some basis for the loss of trust and confidence; the employer must present clear and convincing proof of an actual breach of duty committed by the employee by establishing the facts and incidents upon which the loss of confidence in the employee may fairly be made to rest. (Univ. of Manila *vs*. Pinera, G.R. No. 227550, Aug. 14, 2019) p. 710

at the time the check was issued; (2) lack of sufficient funds to cover the check; (3) knowledge on the part of the offender of such circumstances; and (4) damage to the complainant; what sets apart the crime of estafa from the other offense of this nature *(i.e.*, B.P. Blg. 22) is the element of deceit; deceit has been defined as "the false representation of a matter of fact, whether by words or conduct by false or misleading allegations or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury"; *Juaquico v. People*, cited; to constitute estafa, deceit must be the efficient cause of the defraudation, such that the issuance of the check should be the means to obtain money or property from the payer resulting to the latter's damage; petitioner's act of issuing a worthless check belonging to another who appears to have sufficient means is the efficient cause of the deceit and defraudation; at any rate a *prima facie* presumption of deceit arises when the drawer of the dishonored check is unable to pay the amount of the check within three days from receipt of the notice of dishonor; while it is true that no criminal liability under the RPC arises from the mere issuance of postdated checks as a guarantee of repayment, this is not true in the instant case where the element of deceit is attendant in the issuance of the said checks; the liability therefore is not merely civil, but criminal. (Abalos *y* Puroc *vs.* People, G.R. No. 221836, Aug. 14, 2019) p. 450

Penalty — The Court takes into consideration the amendment embodied in R.A. No. 10951 which modifies the penalty in swindling and estafa cases; Sec. 100 of the said law provides that it shall have retroactive effect only insofar as it is favorable to the accused; this necessitates a comparison of the corresponding penalties imposable under the RPC and R.A. No. 10951; penalty imposed by the RPC in estafa committed under Sec. 315, par. 2(d); Indeterminate Sentence Law and R.A. No. 10951, applied; if R.A. No. 10951 would be given retroactive effect, the same will prejudice petitioner; the penalty under the

of vicious felons who commit heinous crimes in secret or secluded places will be hard, if not impossible, to prove; in crimes involving the falsification of a public document, it is possible that secrecy and other surreptitious means may have been employed by the perpetrator precisely to conceal the true nature of a document he claims to be legitimate; in such a case, it is only logical and proper for the prosecution to resort to the presentation of circumstantial evidence in the absence of direct evidence to establish the guilt of the accused. (Torres *vs.* Court of Appeals, G.R. No. 241164, Aug. 14, 2019) p. 944

Doctrine of independently relevant statements — The Court stated in *Gubaton v. Amador* that "under the doctrine of independently relevant statements, only the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial; the doctrine on independently relevant statements holds that conversations communicated to a witness by a third person may be admitted as proof that, regardless of their truth or falsity, they were actually made; evidence as to the making of such statements is not secondary but primary, for in itself it: (a) constitutes a fact in issue; or (b) is circumstantially relevant to the existence of such fact; accordingly, the hearsay rule does not apply and, hence, the statements are admissible as evidence." (Judge Maddela III *vs*. Judge Pamintuan, A.M. No.RTJ-19-2559 [Formerly OCA I.P.I. No. 11-3810-RTJ], Aug. 14, 2019) pp. 148-149

Proof beyond reasonable doubt — Proof beyond reasonable doubt is required to support a conviction in criminal cases; the prosecution bears the burden of proving beyond reasonable doubt that an accused is guilty of the offense charged; should it fail, the presumption of innocence prevails and, ultimately, the accused shall be acquitted; requiring proof beyond reasonable doubt is consistent with our constitutionally guaranteed rights: This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused; requiring proof beyond reasonable doubt

the indubitable conclusion that it was respondent, no other, who conceptualized, planned, and implemented the falsified bail bond and release order for his son's temporary release; under the principle of presumption of authorship, the possessor and user of a falsified document is the author of the falsification and whoever stands to benefit from the falsification is the author thereof; it was respondent himself who held the falsified court documents; he, too, utilized the same to secure his son's temporary liberty; all considerations points to him as the primary author of the falsified court documents; *Spouses Villamar v. People of the Philippines*, cited. (Judge Sitaca *vs.* Atty. Palomares, Jr., A.C. No. 5285, Aug. 14, 2019) p. 1

FALSIFICATION OF PUBLIC DOCUMENTS UNDER ARTICLE 171

Elements — All the elements of the crimes charged were sufficiently established by the prosecution; petitioner was charged with six (6) counts of falsification of public documents punishable under Art. 171 of the RPC, particularly paragraphs 1, 2, 4, and 5 thereof; the elements of falsification under the aforesaid provision are as follows: (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 Art. 171 of the RPC; the totality of evidence presented by the prosecution established that petitioner, a public officer, has taken advantage of her official position and falsified her DTRs and Applications for Leave by counterfeiting or imitating the signatures of Embido and Minguez, making it appear that the said officers verified her DTRs. (Torres *vs.* Court of Appeals, G.R. No. 241164, Aug. 14, 2019) p. 944

Penalty — The penalty for falsification of public documents is imprisonment of *prision mayor* and a fine not exceeding ₱5,000.00; In the absence of mitigating and aggravating circumstances, the penalty shall be imposed in its medium

benefit of the real owner of the property; if fraud was indeed committed, it gives a complainant the right to seek reconveyance of the property from the registered owner or subsequent buyers; a complaint for reconveyance is an action which admits the registration of title of another party but claims that such registration was erroneous or wrongful; it seeks the transfer of the title to the rightful and legal owner, or to the party who has a superior right over it, without prejudice to innocent purchasers in good faith; the party seeking to recover the property must prove, by clear and convincing evidence, that he or she is entitled to the property, and that the adverse party has committed fraud in obtaining his or her title; as to what is clear and convincing evidence; "intentional acts to deceive and deprive another of his right, or in some manner injure him, must be specifically alleged and proved"; in the absence of such required proof, the complaint for reconveyance will not prosper. (Magalang *vs*. Heretape, G.R. No. 199558, Aug. 14, 2019) p. 233

INDIRECT BRIBERY

Elements — Art. 211 of the Revised Penal Code penalizes the crime of indirect bribery, which has the following elements: (1) the offender is a public officer; (2) the offender accepts gifts; and (3) the said gifts are offered to the offender by reason of his or her office; in the present case, Abadies is a public officer, being a court employee, specifically working in the JRO, and accepted gifts, in the form of money, from Mr. Tambio, by reason of her office; it does not matter that Abadies returned the money that she had accepted, because the crime of indirect bribery was already consummated upon the concurrence of the aforementioned three elements under Art. 211 of the Revised Penal Code. (Re: Investigation Relative to the Fake Decision in G.R. No. 211483 (Manuel Tambio *v.* Alberto Lumbayan, *et al.*), A.M. No. 19-03-16-SC, Aug. 14, 2019) p. 102

retirement, the alternative penalty of fine equivalent to his six (6) months salary shall be imposed instead. (Office of the Court Administrator *vs*. Hon. Galvez, A.M. No.RTJ-19-2567 [Formerly A.M. No. 01-12-641-RTC], Aug. 14, 2019) p. 188

— The Court agrees with the findings of the OCA that Judge Galvez is guilty of gross misconduct for his deliberate and repeated failure to comply with the Court's lawful orders and directives; he owes candor to the Court when rendering an explanation, in the same way that he expected it from lawyers who appeared before his court; a resolution of the Supreme Court should not be construed as a mere request and should be complied with promptly and completely; all directives coming from the Court Administrator and his deputies are issued in the exercise of this Court's administrative supervision of trial courts and their personnel, hence, should be respected; gross misconduct is a serious offense under Sec. 8(3), Rule 140 of the Rules of Court. (*Id*.)

— The judge is the visible representation of the law and, more importantly, of justice; thus, a judge must be the first to abide by the law and weave an example for the others to follow; he/she should be studiously careful to avoid committing even the slightest infraction of the Rules; compliance with the directives issued by the Court is one of the foremost duties that a judge accepts upon assumption to office as laid out in Canon 1 of the New Code of Judicial Conduct. (*Id*.)

Gross ignorance of the law — Considering the gravity of respondent-judge's infraction, coupled with the fact that he is found guilty of the same or similar offense for the third time now, dismissal from service with forfeiture of benefits and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations would have been the appropriate penalty had he not availed of his optional retirement; however, as the OCA noted in its recommendation, the Court has in several occasions

Pamintuan, A.M. No. RTJ-19-2559 [Formerly OCA I.P.I. No. 11-3810-RTJ], Aug. 14, 2019) pp. 148-149

— The Court recognizes that "an accusation of bribery is easy to concoct and difficult to disprove"; this is owing to the fact that in cases of this nature, no witness can be called to testify on the attempt at bribery; no third party is ordinarily involved to witness the incident; the only ones present in such a case is the one offering the bribe and the one to whom the bribe is offered; this is the reality of a charge of gross misconduct on the basis of bribery; based on the foregoing, only two persons have personal knowledge of the actual bribery attempt: Exec. Judge Paradeza and respondent; however, the incidents immediately prior to and after the bribery attempt could be corroborated by Mr. Dalit and Atty. Aquino, which they did in their respective affidavits; in the face of Exec. Judge Paradeza's straightforward account of the incident, corroborated circumstantially by Mr. Dalit and Atty. Aquino, respondent's bare denial deserves scant consideration; "suffice it to say that 'denial is an intrinsically weak defense; if unsubstantiated by clear and convincing evidence as in this case, it is negative and self-serving, deserving no greater value than the testimony of credible witnesses who testify on affirmative matters'"; respondent's attempt to bribe Exec. Judge Paradeza constitutes gross misconduct; violative of the New Code of Judicial Conduct for the Philippine Judiciary, specifically, Canons 1, 2, and 4. (*Id*.)

Gross misconduct and simple misconduct — "Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer; to warrant dismissal from service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling; the misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to

A.M. No. RTJ-19-2559 [Formerly OCA I.P.I. No. 11-3810-RTJ], Aug. 14, 2019) pp. 148-149

Ignorance of the law — A judge's failure to interpret the law or to properly appreciate the evidence presented does not necessarily render him administratively liable; only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice will be administratively sanctioned; however, it is also settled that when a law or rule is basic, judges owe it to their office to simply apply the law; anything less is ignorance of the law, warranting administrative sanction; in several cases, this Court had the occasion to explain: A judge is expected to keep abreast of the developments and amendments thereto, as well as of prevailing jurisprudence; ignorance of the law by a judge can easily be the mainspring of injustice; in the absence of fraud, dishonesty, or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action; however, the assailed judicial acts must not be in gross violation of clearly established law or procedure, which every judge must be familiar with; respondent-judge's actions are more than mere errors of judgment that can be excused and left to the judicial remedy of review by the appellate court for correction; amounts to gross ignorance of the law and inexcusable abuse of authority. (Bogabong *vs.* Judge Balindong, A.M. No. RTJ-18-2537 [Formerly OCA I.P.I. No. 13-4027-RTJ], Aug. 14, 2019) p. 133

Undue delay in rendering decisions and violation of Supreme Court rules, directives, and circulars — Sec. 9, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, the offenses "undue delay in rendering decisions" and "violation of Supreme Court rules, directives, and circulars" are classified as less serious charges; thus, respondent may be imposed with any of the following sanctions for each of the said less serious charges: 1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or 2. A fine of more than 10,000.00 but not exceeding

main case on appeal; "except in cases where the appeal is patently or unquestionably intended to delay, it must not be made the basis of execution pending appeal if only to protect and preserve a duly exercised right to appeal." (Bogabong *vs*. Judge Balindong, A.M. No. RTJ-18-2537 [Formerly OCA I.P.I. No. 13-4027-RTJ], Aug. 14, 2019) p. 133

JUDICIAL REVIEW

Actual justiciable controversy –– There exists an actual justiciable controversy in this case given the "evident clash of the parties' legal claims" as to whether the questioned provision infringe upon the constitutionally-guaranteed freedom of expression of the petitioner, as well as all the Filipinos overseas; petitioner's allegations and arguments presented a *prima facie* case of grave abuse of discretion which necessarily obliges the Court to take cognizance of the case and resolve the paramount constitutional issue raised; the case is likewise ripe for adjudication considering that the questioned provision continues to be in effect until the Court issued the TRO above-cited, enjoining its implementation; the petition has clearly and sufficiently alleged the existence of an immediate or threatened injury sustained and being sustained by her, as well as all the overseas Filipinos, on their exercise of free speech by the continuing implementation of the challenged provision; a judicial review of the case presented is, thus, undeniably warranted. (Nicolas-Lewis *vs*. COMELEC, G.R. No. 223705, Aug. 14, 2019) p. 560

JUDICIARY

Longevity pay—In the resolution promulgated on June 16, 2015 in A.M. Nos. 12-8-07-CA, 12-9-5-SC and 13-02-07-SC, the Court favorably ruled on Justice Salazar-Fernando's request to include her judicial service prior to her appointment to the CA in the computation of her current longevity pay despite the gap in the two periods of her judicial service; the Court later clarified through

CENRO or PENRO certification — For clarification, however, I submit, as I did in my Concurring and Dissenting Opinion in *Dumo v. Republic of the Philippines*, that the second requirement established in T.A.N. has been rendered superfluous and unnecessary after the issuance of DENR Administrative Order No. (AO) 2012-9 on November 14, 2012, which delegated unto the CENRO, PENRO and the National Capital Region (NCR) Regional Executive Director (RED-NCR) the authority to issue not only certifications on land classification status, but also certified true copies of approved land classification (LC) maps with respect to lands falling within their respective jurisdictions; since the certification in question in *T.A.N.* was issued prior to DENR AO 2012-9, *i.e.*, in 1997, the Court's decision therein was correctly premised upon the lack of authority on the part of CENRO to issue certified true copies of approved LC maps or to serve as repository for said copies; the same may be said of the CENRO certifications presented in *Republic v. Lualhati* and *Republic v. Nicolas*, which correctly applied *T.A.N.*;however, this lack of authority no longer holds true under the regime of DENR AO 2012-9; it is my view that pursuant to DENR AO 2012-9, certifications of land classification status issued by the CENRO, PENRO and the RED-NCR should be deemed sufficient for purposes of proving the alienable and disposable character of property subject of land registration proceedings, *provided only* that these certifications expressly bear references to: (i) the LC map; and (ii) the document through which the original classification had been effected, such as a Bureau of Forest Development Administrative Order (BFDAO) issued and signed by the DENR Secretary. (Rep. of the Phils. *vs*. Sps. Alonso, G.R. No. 210738, Aug. 14, 2019) p. 315

— On the basis of *Republic v. T.A.N. Properties* (*T.A.N.*), which requires the presentation of: (i) a certificate of land classification status issued by the Community Environment and Natural Resources Office (CENRO) or Provincial Environment and Natural Resources Office

Torrens title — The Torrens title is conclusive evidence with respect to the ownership of the land described therein, and other matters which can be litigated and decided in land registration proceedings; as such, the titleholder is entitled to all the attributes of ownership of the property, including possession; here, OCT (P-45002) Pls-9154, OCT (P-45003) P-9155, and OCT (P-42941) P-3449 are conclusive evidence that Lucibar Heretape, Nestor Heretape, and Roberto Landero, in whose names the lots are registered, are indeed the real owners thereof; in contrast, petitioners' single tax declarations and old tax receipts dated 1963-1967 are not considered evidence of ownership, hence, the same cannot defeat respondents' certificates of title to the lots in question; more so because the certificates of title issued came at a much later date than the tax declaration and tax receipts; *Cureg v. IAC* states: "We hold that said tax declaration, being of an earlier date cannot defeat an original certificate of title which is of a later date." (Magalang *vs*. Heretape, G.R. No. 199558, Aug. 14, 2019) p. 233

LEGAL REDEMPTION

Written notice of the foreclosure sale—Petitioners' right of redemption accrued the moment they have written notice of the foreclosure sale; in legal pre-emption or redemption under the Civil Code of the Philippines, written notice of the sale to all possible redemptioners is indispensable; in the old case of *Butte vs. Manuel Uy and Sons, Inc.*, the Court ruled that Art. 1623 of the Civil Code clearly and expressly prescribes that the 30 days for making the pre-emption or redemption are to be counted from notice in writing by the vendor; the Court in the case of *Etcuban v. Court of Appeals* has clarified that even if it was not sent by the vendor as long as the redemptioners were notified in writing, the same is sufficient for their right to redeem to accrue; in the case of *Francisco v. Boiser*, the Court has adopted the rule that any written notice is sufficient such that it ruled that the receipt by petitioner of summons in a civil case amounted to actual knowledge

Property relations —– Properties accumulated by a married couple may either be real or personal; while the RTC awarded herein all personal properties in favor of Angelita pursuant to the "Matrimonial Property Agreement" executed in Germany, it ignored that such agreement was governed by the national law of the contracting parties; and that the forms and solemnities of contracts, wills, and other public instruments should be governed by the laws of the country in which they are executed; Angelita did not allege and prove the German law that allowed her to enter into and adopt the regime of complete separation of property through the "Matrimonial Property Agreement"; in the absence of such allegation and proof, the German law was presumed to be the same as that of the Philippines; Art. 77 of the *Family Code*, cited; assuming that the relevant German law was similar to the Philippine law, the "Matrimonial Property Agreement," being entered into by the parties in 1991, or a few years *after* the celebration of their marriage on August 30, 1988, could not be enforced for being in contravention of a mandatory law; also, with the parties being married on August 30, 1988, the provisions of the *Family Code* should govern; pursuant to Art. 75 of the *Family Code*, the property relations between the spouses were governed by the absolute community of property. (Simundac-Keppel *vs*. Keppel, G.R. No. 202039, Aug. 14, 2019) p. 277

Psychological incapacity —– Jurisprudentially speaking, psychological incapacity under Art. 36 of the *Family Code* contemplates an incapacity or inability to take cognizance of and to assume basic marital obligations, and is not merely the difficulty, refusal, or neglect in the performance of marital obligations or ill will; the disorder consists of: *(a)* a true inability to commit oneself to the essentials of marriage; *(b)* the inability must refer to the essential obligations of marriage, that is, the conjugal act, the community of life and love, the rendering of mutual help, and the procreation and education of offspring; and *(c)* the inability must be tantamount to a

absolutely prohibited from acquiring public or private lands in the Philippines, save only in constitutionally recognized exceptions; in *Ang v. So*, the Court further stated that "the prohibition against aliens owning lands in the Philippines is subject only to limited constitutional exceptions, and not even an implied trust can be permitted on equity considerations"; after a judicious examination of the allegations in the complaint, the Court finds that petitioners failed to sufficiently allege the basis for their purported right over the subject properties; since the Sps. Sadhwani were prohibited from owning land in the instant case, they were likewise prohibited from transmitting any right over the same through succession; the Court holds that petitioner cannot sidestep their burden of sufficiently pleading and eventually proving a cause of action under foreign law even when claiming under Philippine law may be more favorable or expedient; as they failed to sufficiently allege the basis for their right under the national law of their parents, petitioners failed to state a cause of action over the condominium unit; the allegations of the complaint failed to sufficiently state the concurrence of the three elements for a cause of action, particularly, the legal right to the relief demanded; in any event, the dismissal of the complaint for failure to state a cause of action under Rule 16, Sec. 1(g) is a dismissal without prejudice. (Heirs of Satramdas V. Sadhwani *vs*. Sadhwani, G.R. No. 217365, Aug. 14, 2019) p. 385

NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY

Canon 4 — The New Code of Judicial Conduct for the Philippine Judiciary mandates that "propriety and the appearance of propriety are essential to the performance of all the activities of a judge"; Sec. 1 of Canon 4 and Sec. 4 of Canon 1, cited; respondent admitted that he engaged in the following activities: (1) the organization of the Freddie Aguilar concert and solicitation of donations therefor; (2) the celebration of the 60th birthday of his wife in a venue owned by a person who apparently has a pending

NOVATION

Concept — Noted civilist Justice Eduardo P. Caguioa elucidated on the concept of modificatory novation as follows: Novation has been defined as the substitution or alteration of an obligation by a subsequent one that cancels or modifies the preceding one; unlike other modes of extinction of obligations, novation is a juridical act of dual function, in that at the time it extinguishes an obligation, it creates a new one in lieu of the old; Our Civil Code now admits of the so-called imperfect or modificatory novation where the original obligation is not extinguished but modified or changed in some of the principal conditions of the obligation; thus, Art. 1291 provides that obligations may be modified; while the Civil Code permits the subsequent modification of existing obligations, these obligations cannot be deemed modified in the absence of clear evidence to this effect; novation is never presumed, and the *animus novandi*, whether total or partial, must appear by express agreement of the parties, or by their acts that are too clear and unequivocal to be mistaken; the burden to show the existence of novation lies on the party alleging the same. (Sps. Modomo *vs*. Sps. Layug, Jr., G.R. No. 197722, Aug. 14, 2019) p. 214

OVERSEAS ABSENTEE VOTING ACT OF 2003 (R.A. NO. 9189), AS AMENDED BY THE ABSENTEE VOTING ACT OF 2013 (R.A. NO. 10590)

Freedom of speech — Being a content-neutral regulation, we measure the same against the intermediate test, *viz*.: (1) the regulation is within the constitutional power of the government; (2) it furthers an important or substantial governmental interest; (3) such governmental interest is unrelated to the suppression of the free expression; and (4) the incidental restriction on the alleged freedom of expression is no greater than what is essential to the furtherance of the governmental interest; Our point of inquiry focuses on the fourth criterion in the said test, *i.e.*, that the regulation should be no greater than what

is more than what is essential to the furtherance of the contemplated governmental interest; on its face, the challenged law provides for an absolute and substantial suppression of speech as it leaves no ample alternative means for one to freely exercise his or her fundamental right to participate in partisan political activities; consider: The use of the unqualified term "abroad" would bring any intelligible reader to the conclusion that the prohibition was intended to also be extraterritorial in application; *Generaliaverbasuntgeneraliterinteligencia*; general words are understood in a general sense; the basic canon of statutory interpretation is that the word used in the law must be given its ordinary meaning, unless a contrary intent is manifest from the law itself; thus, since the Congress did not qualify the word "abroad" to any particular location, it should then be understood to include any and all locations abroad. (*Id.*)

Section 36.8 — Sec. 36.8 of R.A. No. 9189, as amended by R.A. No. 10590, is an impermissible content-neutral regulation for being overbroad, violating, thus, the free speech clause under Sec. 4, Art. III of the 1987 Constitution; the questioned provision is clearly a restraint on one's exercise of right to campaign or disseminate campaign-related information; prior restraint refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination; the prohibition under the questioned legislative act restrains speech or expression, in the form of engagement in partisan political activities, before they are spoken or made; the restraint, however, partakes of a content-neutral regulation as it merely involves a regulation of the incidents of the expression, specifically the time and place to exercise the same; it does not, in any manner, affect or target the actual content of the message; it is not concerned with the words used, the perspective expressed, the message relayed, or the speaker's views; it is easily understandable that the restriction was not adopted because of the government's disagreement with the message the subject speech or

only a reasonable proof of work connection, not direct causal relation is required; in this case, respondent relied on the certifications issued by a medical specialist and the company-designated physician; the company-designated physician categorically stated that respondent's condition is not work-related; the findings of company-designated physicians are accorded great weight and credence. (Phil. Transmarine Carriers, Inc. *vs*. Bernardo, G.R. No. 220635, Aug. 14, 2019) p. 431

Compensable occupational disease — Sec. 32(A)(20) of the 2000 POEA-SEC provides for certain requirements before hypertension may be considered a compensable occupational disease; thus: 20. Essential Hypertension; hypertension classified as primary or essential is considered compensable if it causes impairment of function of body organs like kidneys, heart, eyes and brain, resulting in permanent disability; *Provided*, that the following documents substantiate it: (a) chest x-ray report, (b) ECG report, (c) blood chemistry report, (d) funduscopy (*sic*) report, and (f) (*sic*) C-T scan; there is no showing that petitioner's hypertension impaired the functioning of any of his vital organs, resulting in permanent disability; moreover, petitioner did not submit any of the enumerated medical test results; having failed to satisfy the requisites under Sec. 32(A)(20) of the 2000 POEA-SEC, petitioner's hypertension is not compensable. (Lerona *vs.* Sea Power Shipping Enterprises, Inc., G.R. No. 210955, Aug. 14, 2019) p. 332

Permanent total disability — Petitioner cannot claim disability benefits because he committed medical abandonment; *C.F. Sharp Crew Management, Inc. v. Orbeta*,cited; Sec. 20(D) of the 2000 POEA-SEC provides that "no compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties. "; a seafarer is duty-bound to complete his medical treatment until declared fit to work or assessed with a permanent disability rating by the company-designated physician; while indeed a seafarer has the

(Lerona *vs.* Sea Power Shipping Enterprises, Inc., G.R. No. 210955, Aug. 14, 2019) p. 332

— *Status Maritime Corporation v. Spouses Delalamon*, cited; the fact that Margarito passed his PEME cannot excuse his willful concealment nor can it preclude the petitioners from rejecting his disability claims; PEME is not exploratory and does not allow the employer to discover any and all pre-existing medical condition with which the seafarer is suffering and for which he may be presently taking medication; it is nothing more than a summary examination of the seafarer's physiological condition; it merely determines whether one is "fit to work" at sea or "fit for sea service" and it does not state the real state of health of an applicant; the "fit to work" declaration in the PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment. (*Id*.)

Section 20(A) — Entitlement to disability benefits by seamen on overseas work is a matter governed not only by medical findings but also by Philippine law and by the contract between the parties; Sec. 20(A) of the 2010 POEA-SEC, which is deemed incorporated in every seafarer's contract of employment, provides for the procedure as to how the seafarer can legally demand and claim disability benefits from the employer/manning agency for an injury or illness suffered; the person who claims entitlement to the benefits provided by law must establish his or her right thereto by substantial evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; in this case, the PVA, as well as the CA, were consistent in holding that Quijano was able to substantially prove his entitlement to total and permanent disability benefits. (Marlow Navigation Phils., Inc. *vs.* Quijano, G.R. No. 234346, Aug. 14, 2019) p. 858

Work-related illnesses — Sec. 20(A)(4) of the POEA-SEC provides that even those illnesses not listed in Sec. 32 are still disputably presumed as work-related; not having been listed in Sec. 32, post infectious arthritis: gouty

PLEADINGS AND PRACTICE

Final and interlocutory order — In *Denso (Phils.), Inc. v. Intermediate Appellate Court*, the difference between a final and an interlocutory order was stated in the following manner: A "final" judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, *e.g.*, an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res judicata* or prescription; nothing more remains to be done by the Court except to await the parties' next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes "final" or, to use the established and more distinctive term, "final and executory"; conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory," *e.g.*, an order denying a motion to dismiss under Rule 16 of the Rules, or granting a motion for extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for postponement, or production or inspection of documents or things, *etc*. (Carniyan *vs*. Home Guaranty Corp., G.R. No. 228516, Aug. 14, 2019) p. 744

Interlocutory order — An order denying a motion to dismiss is classified as an interlocutory, as opposed to a final, order; this classification is vital because it is determinative of the remedy available to the aggrieved party. (Carniyan *vs*. Home Guaranty Corp., G.R. No. 228516, Aug. 14, 2019) p. 744

damage, the presiding judge must require the applicant to post a bond, otherwise the courts could become instruments of oppression and harassment. (Bogabong *vs*. Judge Balindong, A.M. No. RTJ-18-2537 [Formerly OCA I.P.I. No. 13-4027-RTJ], Aug. 14, 2019) p. 133

PRESUMPTIONS

Presumption of constitutionality — Nothing is more settled than that any law or regulation must not run counter to the Constitution as it is the basic law to which all laws must conform; while admittedly, these rights, no matter how sacrosanct, are not absolute and may be regulated like any other right, in every case where a limitation is placed on their exercise, the judiciary is called to examine the effects of the challenged governmental action considering that our Constitution emphatically mandates that no law shall be passed abridging free speech and expression; a law or statute regulating or restricting free speech and expression is an outright departure from the express mandate of the Constitution against the enactment of laws abridging free speech and expression, warranting, thus, the presumption against its validity. (Nicolas-Lewis *vs*. COMELEC, G.R. No. 223705, Aug. 14, 2019) p. 560

Presumption of innocence of crime — Both the RTC and CA seriously overlooked the long-standing legal tenet that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent; this presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases and has proven the guilt of the accused beyond reasonable doubt, 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; 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; the accused need not present a single

of title is assailed as void; there is no obstacle to the determination of the validity of petitioner's TCT in the instant case; while the indefeasibility of a Torrens title may not be collaterally attacked, the underlying complaint originated from the MTC as an action for reconveyance filed by petitioner against herein respondents, and not an original action filed by the latter to question the validity of the TCT on which petitioner anchors her claim; although a ruling on the validity of the title may constitute a collateral attack, respondents, in their answer to the complaint, have put forth a counterclaim of ownership over the subject property along with a claim for damages; the Court of Appeals, therefore, may competently rule – as in fact it did – on the validity of petitioner's title for the counterclaim to be considered a direct attack on the same. (Unciano *vs.* Gorospe, G.R. No. 221869, Aug. 14, 2019) p. 466

— Under Sec. 32 of P.D. No. 1529, title to the property covered by a Torrens certificate becomes indefeasible after the expiration of one year from the entry of the decree of registration; such decree of registration is incontrovertible and becomes binding on all persons whether or not they were notified of, or participated in, the *in rem* registration process; ABRC's certificate of title was issued on June 17, 1971, while the cross-claim was filed by the heirs of Sumagang only in 1998, which is clearly beyond the one-year prescriptive period. (Heirs of Benigno Sumagang *vs.* Aznar Enterprises, Inc., G.R. No. 214315, Aug. 14, 2019) p. 365

PROSECUTION SERVICE ACT OF 2010 (R.A. NO. 10071)

Retroactivity clause — R.A. No. 9417, amending P.D. No. 1347, elevated the ranks, prerogatives, salaries, allowances, benefits and privileges of Assistant Solicitors General to make them equivalent to those of the Associate Justices of the CA, while the positions of Senior State Solicitor, State Solicitor II, and State Solicitor I were given the same ranks, prerogatives, salaries, and privileges as the Judges of the Regional Trial Courts, Metropolitan

death in accordance with Art. 266-B, in relation to R.A. No. 9346. (People *vs*. XXX, G.R. No. 225793, Aug. 14, 2019) p. 696

Elements — The RTC, as affirmed by the CA, correctly ruled that the elements of qualified rape through force, threat and intimidation were clearly established in this case, to wit: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under 18 years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim. (People *vs*. XXX, G.R. No. 225793, Aug. 14, 2019) p. 696

QUIETING OF TITLE

Requisites — In an action for quieting of title, the complainant is seeking for an adjudication that a claim of title or interest in property adverse to the claimant is invalid, to free him from the danger of hostile claim, and to remove a cloud upon or quiet title to land where stale or unenforceable claims or demands exist; for this action to prosper, two indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy. (Sps. Chua *vs*. Sps. Lo, G.R. No. 196743, Aug. 14, 2019) p. 199

RAPE

Application of two penal laws — The Information charged Baya of rape against BBB in relation to R.A. No. 7610; the Information did not include Art. 266-A of the RPC, as amended by R.A. No. 8353 or the Anti-rape Law; still, Sec. 5(b), Art. III of R.A. No. 7610 states that if the victim is below 12 years old, the offender shall be prosecuted under the RPC; the provision above referred to the old article on rape and acts of lasciviousness of

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; the circumstance applicable in this case is Par. (d) considering that BBB was nine years old at the time of the incident as proven by her birth certificate; the fact of carnal knowledge was established through BBB and CCC's positive identification of Baya as their abuser; with the prosecution sufficiently establishing all the elements of rape applicable in this case, Baya's guilt was proved beyond reasonable doubt; therefore, the Court sustains the CA's conviction on rape. (People *vs*. Baya *y* Ybiosa, G.R. No. 242512, Aug. 14, 2019) p. 973

—— Par. 1, Art. 266-A of the RPC provides for the modes when rape is committed: (a) through force, threat or intimidation; (b) when the offended party is deprived of reason or is otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; or (d) when the offended party is under twelve (12) years of age or is demented; where the victim is below twelve (12) years old, a case of statutory rape, the only subject of inquiry is whether carnal knowledge took place; proof of force, threat, or intimidation is unnecessary. (People *vs*. Pagkatipunan *y* Cleope, G.R. No. 232393, Aug. 14, 2019) p. 806

REGIONAL TRIAL COURT

Jurisdiction — In *Republic v. Roman Catholic Archbishop of Manila*,the Court held that "actions for cancellation of title and reversion belong to the class of cases that 'involve the title to, or possession of, real property, or any interest therein' and where the assessed value of the property exceeds ₱20,000.00, fall under the jurisdiction of the RTC"; as the Court held in *Malabanan v. Republic* "in a reversion suit, we should emphasize, the attack is directed

to prove beyond reasonable doubt, by direct or circumstantial evidence, that he acted with discernment, meaning that he knew what he was doing and that it was wrong; such circumstantial evidence may include the utterances of the minor; his overt acts before during and after the commission of the crime relative thereto; the nature of the weapon used in the commission of the crime; his attempt to silence a witness; his disposal of evidence or his hiding the *corpus delicti*"; there are no such pieces of evidence in the case at bar; as the presumption that CICL XXX acted without discernment was not successfully controverted, he must perforce be acquitted of the charge. (CICL XXX *vs.* People, G.R. No. 237334, Aug. 14, 2019) p. 912

— In the case of *Dorado v. People*, the Court had the occasion to state that "when a minor above fifteen (15) but below eighteen (18) years old is charged with a crime, it cannot be presumed that he or she acted with discernment; during the trial, the prosecution must specifically prove as a separate circumstance that the CICL XXX committed the alleged crime with discernment"; the Court in *Dorado* acquired the 16-year-old accused therein because: (1) the prosecution did not make an effort to prove that the accused acted with discernment at the time of the commission of the crime, and (2) the decision of the RTC convicting the accused therein simply stated that a privileged mitigating circumstance of minority must be appreciated in favor of the accused; the Court therein noted that there was no discussion at all on whether the accused therein acted with discernment when he committed the crime imputed against him; the foregoing ruling is applicable to CICL XXX's case; here, neither the RTC nor the CA discussed whether CICL XXX acted with discernment. (*Id.*)

— The liability is imposed upon CICL XXX's parents because Article 101 of the Revised Penal Code provides that: ARTICLE 101. *Rules Regarding Civil Liability in Certain Cases*. – The exemption from criminal liability established in subdivision 1,2,3,5, and 6 of Art. 12 and in subdivision

4 of Art. 11 of this Code does not include exemption from civil liability, which shall be enforced subject to the following rules: *First*. In cases of subdivisions 1, 2, and 3 of article 12, the civil liability for acts committed by an imbecile or insane person, and by a person under nine years of age, or by one over nine but under fifteen years of age, who has acted without discernment, shall devolve upon those having such person under their legal authority or control, unless it appears that there was no fault or negligence on their part; in *Libi v. Intermediate Appellate Court*, the Court *en banc* interpreted the above provision to mean that the civil liability of parents for criminal offenses committed by their minor children is direct and primary; the Court said: Accordingly, just like the rule in Art. 2180 of the Civil Code, under the foregoing provision the civil liability of the parents for crimes committed by their minor children is likewise direct and primary, and also subject to the defense of lack of fault or negligence on their part, that is, the exercise of the diligence of a good father of a family; under the foregoing considerations, the parents are and should be held primarily liable for the civil liability arising from criminal offenses committed by their minor children under their legal authority or control, or who live in their company, unless it is proven that the former acted with the diligence of a good father of a family to prevent such damages; Art. 101 of the RPC, however, provides that the foregoing liability of CICL XXX's parents is subject to the defense that they acted without fault or negligence; thus, the civil aspect of this case is remanded to the trial court, and it is ordered to implead CICL XXX's parents for reception of evidence on their fault or negligence. (*Id*.)

— While CICL XXX is not criminally liable for his acts because the presumption that he acted without discernment was not overcome, he is still civilly liable for the injuries sustained by Redoquerio; it is well-settled that "every person criminally liable is also civilly liable; however, it does not follow that a person who is not criminally

liable is also free from civil liability; exemption from criminal liability does not always include exemption from civil liability"; in light of the ruling in *People v. Jugueta*, the award of civil indemnity and moral damages should be reduced to ₱25,000.00 each, and an award of exemplary damages amounting to ₱25,000.00 should likewise be imposed. (*Id.*)

SALES

Contract of — In property law, fundamental is the principle that no one can give what he does not have; a seller may sell only what he or she owns, or that which he does not own but has authority to transfer, and a buyer can acquire only what the seller can legally transfer; the Civil Code states that in a contract of sale, the seller binds himself to transfer the ownership of the thing sold,and to do so, he must have the right to convey ownership of the thing at the time it is delivered; the thing must be licit. (Unciano *vs.* Gorospe, G.R. No. 221869, Aug. 14, 2019) p. 466

— The sale of Victor in favor of Agustin Lo Realty Corporation is in excess of the area of 600 sq. m.; the heirs of Delia could only dispose of Delia's rightful share, which as per their agreement, is up to 1,478 sq. m. area only; this is consistent with the rule that one cannot sell what he does not own and this rule has much force when the subject of the sale is a titled land that belongs to another person; thus, the Deed of Sale executed by Victor in favor of Agustin Lo Realty Corporation (which conveyed upon the latter 2,078 sq. m. of the lot) should be nullified as it includes the 600 sq. m. portion of a land not owned by the seller. (Sps. Chua *vs*. Sps. Lo, G.R. No. 196743, Aug. 14, 2019) p. 199

Contract to sell — The spouses Chua contend that said sale transactions were essentially contracts to sell such that a contract of sale (transferring the ownership) will be executed upon full payment by the vendees of the purchase price; if indeed ownership over the lot is reserved in favor of the vendor and transfer thereof would only be effected upon full payment of the price, then no doubt,

of, among others, Vice Mayors, are within the exclusive original jurisdiction of the Sandiganbayan if these public officials commit crimes involving: (a) violations of R.A. No. 3019, as amended, R.A. No. 1379, and Chap. II, Sec. 2, Title VII of the RPC; and (b) other offenses or felonies committed in relation to their office. (*Id*.)

Jurisdiction — Generally, the jurisdiction of a court to try a criminal case is to be determined at the time of the institution of the action, not at the time of the commission of the offense; in this case, the Informations were filed on July 14, 2017, for petitioner's violations of Sec. 3(e) of R.A. No. 3019 and Art. 171(2) of the Revised Penal Code, allegedly committed on November 3, 2014 or sometime prior or subsequent thereto; while R.A. No. 10660 which took effect on May 5, 2015 is the law in force at the time of the institution of the action, such law is not applicable to petitioner's cases; R.A. No. 10660 provides that the reckoning period to determine the jurisdiction of the Sandiganbayan in cases involving violations of R.A. No. 3019 is the time of the commission of the offense; it is clear from the transitory provision of R.A. No. 10660 that the amendment introduced regarding the jurisdiction of the Sandiganbayan shall apply to cases arising from offenses committed after the effectivity of the law; consequently, the new paragraph added by R.A. No. 10660 to Sec. 4 of P.D. No. 1606, as amended, transferring the exclusive original jurisdiction to the RTC of cases where the information: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos, applies to cases which arose from offenses committed after the effectivity of R.A. No. 10660; while the Informations were filed on July 14, 2017, the alleged offenses were committed by petitioner on November 3, 2014, which was six months before the effectivity of R.A. No. 10660 on May 5, 2015; hence, the Sandiganbayan did not abuse its discretion when it denied the motion to quash the

Simple neglect of duty — For Aguilar's lapses in the procedures in the implementation of the writ of execution, as well as his delay in complying with the directives of the OCA to submit his comment, we find him guilty of simple neglect of duty; Simple neglect of duty is defined as the failure of an employee to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference; it is a less grave offense punishable by suspension from office for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense under Sec. 46(D) of the Revised Rules on Administrative Cases in the Civil Service; however, the Court, in several cases, imposed the penalty of fine in *lieu* of suspension as an alternative penalty in order to prevent any undue adverse effect on public service which would ensue if work were otherwise left unattended by reason of respondent's suspension. (Meim *Vda. de*Atienza *vs.* Aguilar, A.M. No.P-19-3988 [Formerly OCA I.P.I. No. 17-4692-P], Aug. 14, 2019) p. 121

SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. NO. 7610)

Acts of lasciviousness — The elements of acts of lasciviousness under Sec. 5(b) of R.A. No. 7610 are:(1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) that the child, whether male or female, is below 18 years of age. (People *vs.* Baya *y* Ybiosa, G.R. No. 242512, Aug. 14, 2019) p. 973

Section 5(b) — To sustain a verdict of conviction under Sec. 5(b) of R.A. No. 7610, the following elements must be proved: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age. (People *vs.* Pagkatipunan *y* Cleope, G.R. No. 232393, Aug. 14, 2019) p. 806

— Relationship *per se* does not equate to bias or ulterior motive nor automatically tarnish the testimony of a witness; on the contrary, a witness who is related to the victim is naturally interested in securing the conviction of the guilty and definitely not the innocent or just any or some "fall guy"; otherwise, the real culprits would gain immunity. (People *vs*. Angeles *y* Guarin, G.R. No. 224289, Aug. 14, 2019) p. 652

Discrepancy in the affidavit of the witness and in the testimony in open court — Petitioner pointed out the inconsistency in the evidence of the prosecution specifically with the testimonies of Sembrano herself; for a discrepancy to serve as basis for acquittal, it must refer to significant facts vital to the guilt or innocence of the accused; an inconsistency, which has nothing to do with the elements of the crime, cannot be a ground to reverse a conviction; the inconsistency referred to in this case does not attach upon the very element of the crime of estafa; while it was indeed admitted by Sembrano that the checks were collaterals, this only lends credence to the fact that the said checks were the reason why Sembrano parted with her money; petitioner committed deceit when she failed to make known to Sembrano that the checks she issued were not hers and they were not sufficiently funded. (Abalos *y* Puroc *vs.* People, G.R. No. 221836, Aug. 14, 2019) p. 450

Testimony of — In a long line of cases, the Court has recognized that different persons react differently to the same situations for there is no hard and fast standard by which to measure a person's behavior or reaction when confronted with a startling or horrifying occurrence, as in this case; some may shout for help, some may be hysterical, some fight back, and others may simply freeze and take the blows mutely. (People *vs*. Angeles *y* Guarin, G.R. No. 224289, Aug. 14, 2019) p. 652

— Minor inconsistencies in witnesses' testimonies may indicate a lack of coaching and, thus, spontaneity and truthfulness; in *People v. Nelmida*: It is axiomatic that

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

Page

Page

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

Page

B. STATUTES

Page

Page

Page

Page

Page

C. OTHERS

Page

D. BOOKS
(Local)

II. FOREIGN AUTHORITIES

A. STATUTES

B. BOOKS

Page