
# PHILIPPINE REPORTS

# VOL. 861

## SEPTEMBER 2, 2019 TO SEPTEMBER 4, 2019

**VOLUME 861**

# REPORTS ON CASES

DECIDED BY THE

# SUPREME COURT

OF THE

# PHILIPPINES

FROM SEPTEMBER 2, 2019 TO SEPTEMBER 4, 2019

SUPREME COURT
MANILA
2021

*Prepared*
*by*

The Office of the Reporter
Supreme Court
Manila
2021


ANNALIZA S. TY-CAPACITE
DEPUTY CLERK OF COURT AND REPORTER

FLOYD JONATHAN LIGOT TELAN
SC ASSISTANT CHIEF OF OFFICE

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY VI & CHIEF, LAW REPORTS DIVISION

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY V & CHIEF, RECORDS DIVISION

LEUWELYN TECSON-LAT
COURT ATTORNEY V

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY V

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY IV

MA. CHRISTINA GUZMAN CASTILLO
COURT ATTORNEY IV & CHIEF, EDITORIAL DIVISION

LORELEI SANTOS BAUTISTA
COURT ATTORNEY IV

ROUSE STEPHEN G. CEBREROS
COURT ATTORNEY II

**SUPREME COURT OF THE PHILIPPINES**
(as of December 2021)

HON. ALEXANDER G. GESMUNDO, Chief Justice
HON. ESTELA M. PERLAS-BERNABE, Senior Associate Justice
HON. MARVIC M.V.F. LEONEN, Associate Justice
HON. ALFREDO BENJAMIN S. CAGUIOA, Associate Justice
HON. RAMON PAUL L. HERNANDO, Associate Justice
HON. ROSMARI D. CARANDANG Associate Justice
HON. AMY C. LAZARO-JAVIER, Associate Justice
HON. HENRI JEAN PAUL B. INTING, Associate Justice
HON. RODIL V. ZALAMEDA, Associate Justice
HON. MARIO V. LOPEZ, Associate Justice
HON. SAMUEL H. GAERLAN, Associate Justice
HON. RICARDO R. ROSARIO, Associate Justice
HON. JHOSEP Y. LOPEZ, Associate Justice
HON. JAPAR B. DIMAAMPAO, Associate Justice
HON. JOSE MIDAS P. MARQUEZ, Associate Justice

---

ATTY. MARIFE LOMIBAO-CUEVAS, Clerk of Court En Banc
ATTY. ANNA-LI R. PAPA-GOMBIO, Deputy Clerk of Court En Banc

**SUPREME COURT OF THE PHILIPPINES**

(as of September 2019)

HON. LUCAS P. BERSAMIN, Chief Justice
HON. ANTONIO T. CARPIO, Senior Associate Justice
HON. DIOSDADO M. PERALTA, Associate Justice
HON. ESTELA M. PERLAS-BERNABE, Associate Justice
HON. MARVIC MARIO VICTOR F. LEONEN, Associate Justice
HON. FRANCIS H. JARDELEZA, Associate Justice
HON. ALFREDO BENJAMIN S. CAGUIOA, Associate Justice
HON. ANDRES B. REYES, JR., Associate Justice
HON. ALEXANDER G. GESMUNDO, Associate Justice
HON. JOSE C. REYES, JR., Associate Justice
HON. RAMON PAUL L. HERNANDO, Associate Justice
HON. ROSMARI D. CARANDANG, Associate Justice
HON. AMY C. LAZARO-JAVIER, Associate Justice
HON. HENRI JEAN PAUL B. INTING, Associate Justice
HON. RODIL V. ZALAMEDA, Associate Justice

---

ATTY. EDGAR O. ARICHETA, Clerk of Court En Banc
ATTY. ANNA-LI R. PAPA-GOMBIO, Deputy Clerk of Court En Banc

**FIRST DIVISION**

*Chairperson*

Hon. Lucas R. Bersamin

*Members*

Hon. Estela M. Perlas-Bernabe
Hon. Francis H. Jardeleza
Hon. Alexander G. Gesmundo
Hon. Rosmari D. Carandang

*Division Clerk of Court*

Atty. Librada C. Buena

**SECOND DIVISION**

*Chairperson*

Hon. Antonio T. Carpio

*Members*

Hon. Alfredo Benjamin S. Caguioa
Hon. Jose C. Reyes, Jr.
Hon. Amy C. Lazaro-Javier
Hon. Rodil V. Zalameda

*Division Clerk of Court*

Atty. Ma. Lourdes C. Perfecto

**THIRD DIVISION**

*Chairperson*

Hon. Diosdado M. Peralta

*Members*

Hon. Marvic Mario Victor F. Leonen
Hon. Andres B. Reyes, Jr.
Hon. Ramon Paul L. Hernando
Hon. Henri Jean Paul B. Inting

*Division Clerk of Court*

Atty. Wilfredo Y. Lapitan

## PHILIPPINE REPORTS
### CONTENTS

# PHILIPPINE REPORTS

Page

Page

Page

# REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES


---

**SECOND DIVISION**


[A.C. No. 8249. September 2, 2019]
(Formerly CBD Case No. 05-1429)


**MARCIANO A. SAMBILE and LERMA M. SAMBILE,** *complainants, vs.* **ATTY. RENATO A. IGNACIO,** *respondent.*

**SYLLABUS**

**LEGAL ETHICS; NOTARIES PUBLIC; A NOTARY PUBLIC SHOULD NOT NOTARIZE A DOCUMENT UNLESS THE PERSONS WHO SIGNED THE SAME ARE THE VERY PERSONS WHO EXECUTED AND PERSONALLY APPEARED BEFORE HIM TO ATTEST TO THE CONTENTS AND TRUTH OF WHAT ARE STATED THEREIN; VIOLATION IN CASE AT BAR. —** The Court agrees with the undisputed finding of the IBP that respondent indeed notarized the Deed of Donation despite the fact that complainants did not appear before him. It must be emphasized that respondent was given ample chance to refute the allegations hurled against him, but he obstinately chose to ignore the notices and directive for him to appear before the Commission and file his position paper. The Certification issued by the Office of the Clerk of Court of the RTC of Cavite City which attested to the fact that no copy of such Deed of Donation is on file with the said court, coupled with the fact that the donor's spouse, who has been dead since 1987, signed the Deed of Donation in 2002 clearly show that the notarization of the same was dubious. In

*Legaspi v. Landrito*, the Court held: x x x Indeed, a notarial document is by law entitled to full faith and credit upon its face, and for this reason, notaries public must observe utmost care in complying with the elementary formalities in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined. Similarly, in *Bautista v. Bernabe*, the Court ruled: A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The presence of the parties to the deed will enable the notary public to verify the genuineness of the signature of the affiant. x x x As correctly found by the IBP, in acknowledging that the parties personally came and appeared before him when they, in fact, did not do so, respondent also violated Rule 10.01 of the CPR and [his] oath as a lawyer that [he] shall do no falsehood. In addition, his act of notarizing the Deed of Donation without the required presence of the complainants as required by Section 1(a) of Public Act No. 2103 likewise constitutes a violation of Canon 1 of the CPR which requires lawyers to obey the laws of the land.

**APPEARANCES OF COUNSEL**

*Millar Villasis Pangilinan Law Offices* for complainant.

## R E S O L U T I O N

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

### The Facts and the Case

On February 15, 2005, Marciano Sambile and Lerma Sambile (complainants) filed before the Integrated Bar of the Philippines (IBP) a verified complaint[1] against Atty. Renato A. Ignacio (respondent) for disciplinary action for notarizing a document without their personal appearance.

---

[1] *Rollo*, pp. 2-3.

On February 16, 2005, the IBP-Commission on Bar Discipline (IBP-CBD or Commission) issued an Order directing the respondent to submit his Answer to the complaint. A copy of the Order was sent to respondent's office address at EPZA, Rosario, Cavite.[2]

In an undated letter which was received by the IBP-CBD on April 25, 2005, the office manager of Supnet, Emelo and Torres Law Offices returned the Order (to Answer) and informed the Commission that the respondent is no longer connected with the law firm since he immigrated to the United States of America on December 26, 2004.[3]

On May 31, 2005, the IBP-CBD issued an Order directing the complainants to furnish the Commission with the correct and current address of the respondent, with a warning that non-compliance with the same will result in the dismissal of the complaint on the ground of lack of jurisdiction.[4]

In compliance with the May 31, 2005 Order, complainants informed the Commission of respondent's correct address as: Filomena Building, General Trias Drive, Rosario, Cavite.[5] Thus, on August 24, 2005, the IBP-CBD issued an Order to Answer reiterating its previous order for the respondent to file his Answer.[6]

On June 8, 2006, the IBP-CBD issued an Order noting that the address furnished anew by the complainants is the same address as that of Supnet, Emelo and Torres Law Offices which had already informed the Commission that the respondent was no longer connected therewith. Given that the Commission could not acquire jurisdiction over the respondent as he could not be properly served with its Orders, the Commission ordered the

---

[2] *Id*. at 6.

[3] *Id*. at 7.

[4] *Id*. at 14.

[5] *Id*. at 15.

[6] *Id*. at 17.

case archived, subject to its revival upon the determination of respondent's current address.[7]

On September 14, 2008, the Commission issued an Order submitting the case for decision.[8]

On September 22, 2008, the Commission issued a Report and Recommendation recommending that the complaint be dismissed without prejudice to its refiling should the whereabouts and address of the respondent be finally determined.[9]

On November 20, 2008, the IBP Board of Governors passed Resolution No. XVIII-2008-551 adopting and approving the Report and Recommendation of the IBP-CBD which dismissed the complaint against the respondent without prejudice to its refiling.[10]

On April 20, 2009, the IBP forwarded to this Court the Notice of Resolution of the Board of Governors and the records of the case, with information that none of the parties filed a motion for reconsideration in the case.[11]

On July 1, 2009, the Court's Second Division issued a Resolution noting the Notice of Resolution of the IBP, the records of the case, as well as the notation that no motion for reconsideration was filed by either party.[12]

In a Report for Agenda dated August 8, 2014, the Deputy Clerk of Court and Chief of the Office of the Bar Confidant recommended that the case be considered closed and terminated considering that no motion for reconsideration or petition for review had been filed by either party as of said date.[13]

---

[7] *Id*. at 18.

[8] *Id*.at 19.

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

[10] *Id*. at 22.

[11] *Id*. at 21.

[12] *Id*. at 26.

[13] *Id*. at 28.

On September 17, 2014, the Court's Second Division issued a Resolution noting the returned and unserved copy of the Court's July 1, 2009 Resolution that was sent to the respondent with the notation, "RTS-moved out"; and requiring the IBP and the Mandatory Continuing Legal Education Office (MCLEO) to inform the Court of respondent's current address within five days from notice.[14]

In compliance with the September 17, 2014 Resolution, the IBP informed the Court that based on their files, respondent's office address is at 3rd Floor, Filomena Building, General Trias Drive, Rosario, Cavite, while his home address is at 152 Callejon No. 2, Rosario, Cavite.[15] MCLEO, on the other hand, informed the Court that based on their records, respondent's address is at 3rd Floor, Filomena Building, General Trias Drive, Rosario, Cavite.[16]

In a Report for Agenda dated January 19, 2015, the Deputy Clerk of Court and Chief of the Office of the Bar Confidant reiterated its earlier recommendation to consider the case closed and terminated.[17]

On March 25, 2015, the Court's Second Division, issued a Resolution noting the compliance of both the IBP and the MCLEO to its September 17, 2014 Resolution.[18]

On April 17, 2017, the Court's Third Division, issued a Resolution referring the case to the IBP for investigation, report and recommendation or resolution given that the copy of the July 1, 2009 Resolution that the Court re-sent to respondent's home address had been duly received by his representative.[19]

---

[14] *Id*. at 29.

[15] *Id*. at 30.

[16] *Id*. at 32.

[17] *Id*. at 33.

[18] *Id*. at 34.

[19] *Id*. at 35 (dorsal side), 38.

On September 7, 2017, the IBP issued a *Notice of Mandatory Conference* to the parties directing them to appear before the Commission for a mandatory conference on October 13, 2017. They were likewise directed to submit their respective mandatory conference briefs, copy furnished the other party, at least three days before the scheduled conference.[20]

On the scheduled mandatory conference, Lerma appeared with her counsel. She manifested before the Commission that Marciano passed away on March 11, 2011. Respondent, on the other hand failed to appear. In view of the absence of the respondent, the mandatory conference was cancelled and reset to November 22, 2017. Lerma was also directed to submit to the Commission an authenticated copy of Marciano's death certificate on the next scheduled conference. A copy of the October 13, 2017 Order was sent to the respondent and the same was received by Emma Ignacio on October 30, 2017.[21]

During the mandatory conference scheduled on November 22, 2017, Lerma appeared together with her counsels. Since respondent again failed to appear, the mandatory conference was terminated and the parties were directed to submit their respective verified position papers within 30 days therefrom. A copy of the Order was received by the respondent on December 8, 2017.[22]

Complainants alleged that on February 15, 2002, Remedios Sambile (Remedios), adoptive mother of Marciano, came to their house and asked them to sign a document. Since they were busy at that time because they were hosting their daughter's birthday party, they just signed the document. After the document was signed, Remedios left their house. Shortly thereafter, she returned and furnished them with a copy of a document denominated as a Deed of Donation.[23] The Deed of Donation

---

[20] *Id*. at 41.

[21] *Id*. at 44, 45 including dorsal side.

[22] *Id*. at 46, 47 including dorsal side.

[23] *Id*. at 57.

was signed by Remedios as the donor, with the marital consent of her husband and the adoptive father of Marciano, Herminio Sambile (Herminio); Marciano as the donee, with the marital consent of his spouse, Lerma; and notarized before the respondent on even date.[24]

Complainants averred that they were surprised when subsequently thereafter, they received a notice that a complaint for annulment of deed of donation was filed against them by Remedios where it was alleged that the said Deed of Donation in favor of Marciano was falsified because Herminia could not have signed the same on February 15, 2002 since he already passed away on July 17, 1987. Complainants contended that they have nothing to do with the falsification of the same as they were only made to sign the document and accept the donation. They also never appeared before the respondent, the notary public before whom the said Deed of Donation was purportedly notarized. As proof that they never appeared before the respondent, complainants attached a Certification[25] executed by the Officer-in-Charge of the Office of the Clerk of Court of the Regional Trial Court (RTC) in Cavite City which stated that a copy of the subject Deed of Donation was not among the notarial documents submitted by the respondent before it for the year 2002. Thus, for notarizing the Deed of Donation without their personal appearance, complainants contended that respondent violated Rule 10.01 of the Code of Professional Responsibility (CPR) and the 2004 Rules on Notarial Practice.[26]

Respondent did not file his position paper.

In its April 19, 2018 Report and Recommendation, the IBP-CBD held that respondent's act of notarizing the Deed of Donation even if the complainants did not appear before him and his failure to submit a copy of the Deed of Donation together with his report to the Office of the Clerk of Court of the RTC

---

[24] *Id*. at 80-81.

[25] *Id*. at 82.

[26] *Id*. at 2, 57-58.

not only violated the 2004 Rules on Notarial Practice, but also amounted to an unlawful, dishonest, immoral or deceitful conduct which makes him liable under Rule 10.01 of the CPR. The IBP-CBD, thus, recommended that respondent be suspended from the practice of law for one year and that he be prohibited from being commissioned as a notary public for two years effective immediately, with a warning that a repetition of the same offense or similar acts shall be dealt with more severely.[27]

On June 28, 2018, the IBP Board of Governors issued a Resolution adopting the findings and recommendation of the IBP-CBD with modification, in that, aside from the penalties recommended by the IBP-CBD, it also imposed a ₱5,000.00 fine upon the respondent for his failure to comply with the directive of the Commission and ordered the immediate revocation of his notarial commission, if subsisting.[28]

The Resolution, together with the records of the case, were transmitted to this Court for final action, pursuant to Section 12(b), Rule 139-B of the Rules of Court.[29]

The Court agrees with the undisputed finding of the IBP that respondent indeed notarized the Deed of Donation despite the fact that complainants did not appear before him. It must be emphasized that respondent was given ample chance to refute the allegations hurled against him, but he obstinately chose to ignore the notices and directive for him to appear before the Commission and file his position paper. The Certification[30] issued by the Office of the Clerk of Court of the RTC of Cavite City which attested to the fact that no copy of such Deed of Donation is on file with the said court, coupled with the fact that the donor's spouse, who has been dead since 1987,[31] signed

---

[27] *Id*. at 99-101.

[28] *Id*. at 93-94.

[29] *Id*. at 92.

[30] *Supra* note 25.

[31] *Rollo*, p. 85.

the Deed of Donation in 2002[32] clearly show that the notarization of the same was dubious.[33]

In *Legaspi v. Landrito*,[34] the Court held:

> It cannot be overemphasized that notarization of documents is not an empty, meaningless or routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. It is through the act of notarization that a private document is converted into a public one, making it admissible in evidence without need of preliminary proof of authenticity and due execution. Indeed, a notarial document is by law entitled to full faith and credit upon its face, and for this reason, notaries public must observe utmost care in complying with the elementary formalities in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.

Similarly, in *Bautista v. Bernabe*,[35] the Court ruled:

> A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The presence of the parties to the deed will enable the notary public to verify the genuineness of the signature of the affiant.

Respondent, however, could not be adjudged to have violated the 2004 Rules on Notarial Practice for such failure for the reason that at the time the subject Deed of Donation was notarized in 2002, the 2004 Rules on Notarial Practice was not yet in force. Instead, respondent's failure to require the parties to the Deed of Donation notarized

---

[32] *Supra* note 24.

[33] See *Spouses Martires v. Chua*, 707 Phil. 34, 46 (2013).

[34] 590 Phil. 1, 6 (2008).

[35] 517 Phil. 236, 240 (2006).

by him to personally appear before him constitutes a violation of Section 1(a)[36] of Public Act No. 2103.[37]

As correctly found by the IBP, in acknowledging that the parties personally came and appeared before him when they, in fact, did not do so, respondent also violated Rule 10.01 of the CPR and [his] oath as a lawyer that [he] shall do no falsehood.[38] In addition, his act of notarizing the Deed of Donation without the required presence of the complainants as required by Section 1(a) of Public Act No. 2103 likewise constitutes a violation of Canon 1 of the CPR which requires lawyers to obey the laws of the land.

**WHEREFORE,** for violating Section 1(a) of Public Act No. 2103 and the Code of Professional Responsibility, the Court **SUSPENDS** respondent Atty. Renato A. Ignacio from the practice of law for one (1) year; **REVOKES** his notarial commission, if still extant; and **PROHIBITS** him from being commissioned as a notary public for two (2) years, effective immediately. Atty. Ignacio is **WARNED** that a repetition of the same or similar acts in the future shall be dealt with more severely.

---

[36] Sec. 1. An instrument or document acknowledged and authenticated in any State, Territory, the District of Columbia, or dependency of the United States, shall be considered authentic if the acknowledgment and authentication are made in accordance with the following requirements:

(a) The acknowledgment shall be made before a notary public or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed. The certificate shall be made under his official seal, if he is by law required to keep a seal, and if not, his certificate shall so state.

[37] *Social Security Commission v. Atty. Corral*, 483 Phil. 316, 320 (2004); *Heirs of Amado Celestial v. Heirs of Editha G. Celestial*, 455 Phil. 704, 716-717 (2003).

[38] *De Jesus v. Atty. Sanchez-Malit*, 738 Phil. 480, 493 (2014).

Let copies of this Resolution be entered into the personal records of respondent as a member of the bar and furnished to the Bar Confidant, the Integrated Bar of the Philippines, and the Court Administrator for circulation to all courts of the country for their information and guidance.

**SO ORDERED.**

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

---

**THIRD DIVISION**

[A.C. No. 9837. September 2, 2019]

**RANDY N. SEGURA,** *complainant, vs.* **PROSECUTOR MARILOU R. GARACHICO-FABILA,** *respondent.*

**SYLLABUS**

**POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; THE JURISDICTION OVER ADMINISTRATIVE CASES AGAINST GOVERNMENT LAWYERS RELATING TO ACTS COMMITTED IN THE PERFORMANCE OF THEIR OFFICIAL FUNCTIONS LIES WITH THE OMBUDSMAN WHICH EXERCISES ADMINISTRATIVE SUPERVISION OVER THEM; CASE AT BAR. —** In the case of *Alicias vs. Atty. Macatangay, et al.,* the Court pronounced that jurisdiction over administrative cases against government lawyers relating to acts committed in the performance of their official functions, lies with the Ombudsman which exercises administrative supervision over them; x x x In the several recent cases, the Court made a similar ruling, *i.e.,* dismissing the administrative case for lack of jurisdiction. x x x The case at bar is substantially on all fours with the said

cases. In his complaint, complainant imputes to respondent manifest bias and partiality in the conduct of the preliminary investigation and issuance of the Resolution which recommended the filing of a criminal case against him. The acts complained of arose from respondent's performance or discharge of official duties as a public prosecutor. Hence, the authority to investigate and discipline respondent exclusively pertains to her superior, the Secretary of Justice. The authority may also pertain to the Office of the Ombudsman which similarly exercises disciplinary jurisdiction over public prosecutors as public officials pursuant to Section 15, paragraph 1, of R.A. No. 6770. Indeed, respondent's accountability as an official performing or discharging her official duties is always to be differentiated from her accountability as a member of the Philippine Bar. For this reason, the IBP has no jurisdiction to investigate respondent as such government lawyer.

## D E C I S I O N

**INTING, *J.*:**

Before the Court is an administrative complaint[1] filed by complainant Randy N. Segura against respondent Associate Prosecution Attorney Marilou R. Garachico-Fabila, charging the latter with violation of the Lawyer's Oath and Canon 6.01 of the Code of Professional Responsibility.

The antecedents are as follows:

Complainant alleged that in March 2008, his wife, Maria Erna A. Segura (Erna), filed a complaint against him for violation of Section 5(e)(2) and (4) of Republic Act (R.A.) No. 9262,[2] otherwise known as the "Anti-violence Against Women and Their Children Act of 2004," before the Office of the City

---

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

[2] Section 5(e)(2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support; x x x (4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties. x x x

Prosecutor of Antipolo City. The complaint was dismissed in a Resolution[3] dated June 20, 2008. Dissatisfied, Erna once again filed a complaint against him for violation of Section 5 of R.A. No. 9262 with the Philippine National Police, San Jose, Antique. The complaint was then forwarded to the Office of the Provincial Prosecutor of Antique.

In a Resolution[4] dated April 13, 2010, respondent found probable cause and recommended the filing of an Information against complainant for violation of Sec. 5(e)(2) of R.A. No. 9262.

In his complaint, complainant ascribed bias to respondent, saying that as early as May 2, 2009, long before he received a subpoena from respondent in March 2010, the latter was already investigating the case by inquiring from his work agency the details of his contract. Complainant likewise imputed partiality on the part of respondent for holding that he did not submit evidence to show that he was providing financial support to his wife and children, when he so did. For complainant, the foregoing actuations constitute a violation of the following:

I) The Lawyer's Oath:

> x x x I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same; I will delay no man for money or malice x x x.

II) CANON 6 of the Code of Professional Responsibility:

> RULE 6.01 The primary duty of a lawyer engaged in public prosecution is not to convict but to see that justice is done. The suppression of facts or the concealment of witnesses capable of establishing the innocence of the accused is highly reprehensible and is cause for disciplinary action.

In her Comment,[5] respondent narrated that the case was initially raffled to Provincial Prosecutor Napoleon Abiera who

---

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

[4] *Id.* at 72-76.

[5] *Id.* at 83-95.

issued a subpoena addressed to complainant's residence. However, the return of the subpoena stated that complainant could not be found at the indicated address and his whereabouts could not be ascertained. Upon the retirement of Provincial Prosecutor Napoleon Abiera, the case was re-raffled to respondent. Before issuing another subpoena, respondent first ascertained complainant's true address and other circumstances such as his employment as a seafarer with crewing management Vega Manila. Upon inquiry therewith, however, the crewing management refused to divulge complainant's last known address. Respondent then addressed the second subpoena to complainant's parents' address.

Respondent denied being biased, saying that complainant was afforded due process. Respondent even tried to locate complainant's whereabouts so he could be served with the second subpoena. Moreover, the evidence submitted by complainant during the preliminary investigation was insufficient to show that he provided financial support to his family.

Upon submission of respondent's Comment, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[6]

In his Report and Recommendation[7] dated May 3, 2017, Investigating Commissioner Erwin L. Aguilera recommended the dismissal of the complaint against respondent. The Investigating Commissioner was convinced that the issuance of the second subpoena on complainant was to afford the latter an opportunity to air his side. The Investigating Commissioner held that the public prosecutor has broad discretion to determine whether probable cause exists, and whether the case should be filed in court. He further found that in issuing the April 13, 2010 Resolution,[8] respondent was merely performing her function as a public prosecutor.

---

[6] Resolution dated January 15, 2014, *id*. at 172.

[7] *Id*. at 391-398.

[8] *Supra* note 4.

Thus, the Investigating Commissioner recommended as follows:

> WHEREFORE, in view of the foregoing, it is hereby recommended that the complaint, against Pros. Marilou R. Garachico-Fabila be dismissed.
>
> RESPECTFULLY SUBMITTED.[9]

On June 29, 2018, the IBP Board of Governors issued a Resolution[10] adopting the findings of facts and recommendation of dismissal by the Investigating Commissioner, thus:

> RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner to DISMISS the complaint.

From this resolution, no motion for reconsideration or petition for review was filed by either party. Pursuant to Rule 139-B of the Rules of Court, the Notice of Resolution[11] dated June 29, 2018 and records of the case were transmitted to the Court.

*Ruling of the Court*

The Court dismisses the administrative complaint against respondent for lack of jurisdiction.

In the case of *Alicias vs. Atty. Macatangay, et al.,*[12] the Court pronounced that jurisdiction over administrative cases against government lawyers relating to acts committed in the performance of their official functions, lies with the Ombudsman which exercises administrative supervision over them; thus:

> Republic Act No. 6770 21 (R.A. No. 6770), otherwise known as "The Ombudsman Act of 1989," prescribes the jurisdiction of the Office of the Ombudsman. Section 15, paragraph 1 of R.A. No. 6770 provides:

---

[9] *Id*. at 398.

[10] *Id*. at 390.

[11] *Id*. at 390.

[12] 803 Phil. 85, 90-92 (2017).

> Section 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:
>
> (1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of his primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases.

The 1987 Constitution clothes the Office of the Ombudsman with the administrative disciplinary authority to investigate and prosecute any act or omission of any government official when such act or omission appears to be illegal, unjust, improper, or inefficient. The Office of the Ombudsman is the government agency responsible for enforcing administrative, civil, and criminal liability of government officials "in every case where the evidence warrants in order to promote efficient service by the Government to the people." In *Samson vs. Restrivera,* the Court ruled that the jurisdiction of the Ombudsman encompasses all kinds of malfeasance, misfeasance, and non-feasance committed by any public officer or employee during his or her tenure. Consequently, acts or omissions of public officials relating to the performance of their functions as government officials are within the administrative disciplinary jurisdiction of the Office of the Ombudsman.

In *Spouses Buffe vs. Secretary Gonzales,* the Court held that the IBP has no jurisdiction over government lawyers who are charged with administrative offenses involving their official duties. In the present case, the allegations in Alicias' complaint against Atty. Macatangay, Atty. Zerna, Atty. Ronquillo, and Atty. Buenaflor, which include their (1) failure to evaluate CSC records; (2) failure to evaluate documentary evidence presented to the CSC; and (3) non-service of CSC Orders and Resolutions, all relate to their misconduct in the discharge of their official duties as government lawyers working in the CSC. Hence, the IBP has no jurisdiction over Alicias' complaint. These are acts or omissions connected with their duties as government lawyers exercising official functions in the CSC and within the administrative disciplinary jurisdiction of their superior or the Office of the Ombudsman. [Emphasis omitted]

In the following recent cases, the Court made a similar ruling, *i.e.,* dismissing the administrative case for lack of jurisdiction. Thus–

In the Resolution dated February 21, 2018, A.C. No. 11920, *(Manuel B. Trovela vs. Maria Benet T. Santos-Madamba, Assistant City Prosecutor of Pasig City; Luther T. Ponpon, Reviewing Prosecutor of Pasig City; Jacinto G. Ang, City Prosecutor of Pasig City; Hon. Leila M. De Lima, Former Secretary, Department of Justice; and Hon. Vitaliano Aguirre II, Current Secretary, Department of Justice),*[13] the Court stated:

> We dismiss the administrative complaint against the respondents for lack of jurisdiction.
>
> x x x x x x x x x
>
> In his complaint-affidavit, the complainant insists that Assistant City Prosecutor Santos-Madamba, Reviewing Prosecutor Ponpon and City Prosecutor Ang be declared to have gravely abused their discretion in issuing the October 17, 2011 resolution; and that Secretary De Lima and Secretary Aguirre be pronounced guilty of gross neglect in not timely resolving his petition for review. x x x
>
> x x x x x x x x x
>
> Considering that the acts being complained against undoubtedly arose from the performance or discharge of official duties on the part of respondents Prosecutor Santos-Madamba, Prosecutor Ponpon and City Prosecutor Ang, we declare and hold that the authority to discipline said respondents exclusively pertained to former Secretary Aguirre, their superior; and in the case of Secretary De Lima and Secretary Aguirre, the authority to discipline belonged to the President. In either case, the authority could also pertain to the Office of the Ombudsman, which had disciplinary jurisdiction over them as public officials pursuant to Section 15, paragraph 1, of Republic Act No. 6770 (Ombudsman Act of 1989). The Court should not assert any authority over all the respondents because their accountability as officials performing or discharging their official duties is always to be differentiated from their accountability as members of the Philippine Bar.

---

[13] https://cdasiaonline.com/jurisprudences/66163?s_params=yp4e2K2q9q-EXhCSfakH.

In *Manuel B. Trovela vs. Michael B. Robles, Assistant City Prosecutor; Emmanuel L. Obungen, Prosecutor II; Jacinto G. Ang, City Prosecutor; Claro A. Arellano, Prosecutor General; and Leila M. De Lima, Former Secretary, Department of Justice,*[14] the Court stated:

We dismiss the administrative case against the respondents for lack of jurisdiction.

In his complaint-affidavit, the complainant has posited that Robles, Obungen and Ang committed grave errors of facts and law that require an inquiry into their mental and moral fitness as members of the Bar; and that Arellano and Secretary De Lima be declared guilty of dereliction of duty or gross inexcusable negligence for belatedly resolving his petition for review and motion for reconsideration. x x x

x x x x x x x x x

The acts complained of undoubtedly arose from the respondents' performance or discharge of official duties as prosecutors of the Department of Justice. Hence, the authority to discipline respondents Robles, Obungen, Ang and Arellano exclusively pertained to their superior, the Secretary of Justice. In the case of Secretary De Lima, the authority to discipline pertained to the President. In either case, the authority may also pertain to the Office of the Ombudsman, which similarly exercises disciplinary jurisdiction over them as public officials pursuant to Section 15, paragraph 1, of Republic Act No. 6770 (Ombudsman Act of 1989). Indeed, the accountability of respondents as officials performing or discharging their official duties as lawyers of the Government is always to be differentiated from their accountability as members of the Philippine Bar. The IBP has no jurisdiction to investigate them as such lawyers.

x x x x x x x x x

In the Resolution dated April 1, 2019, A.C. No. 10121 *(Nid Anima vs. Prosecutor Katheryn May Penaco-Rojas),*[15] the Court held:

---

[14] https://cdasiaonline.com/jurisprudences/64273?s_params=lawvwVGgRWnYJiuixzef.

[15] https://cdasiaonline.com/jurisprudences/67080?s_params=S-Tv1wEMsfwLsnL3LfqS.

After a careful review of the records of the case, We resolve to dismiss the instant administrative case against Prosecutor Katheryn May Penaco-Rojas for lack of jurisdiction.

In a number of cases, the Court has defined the line between the accountability of government lawyers as members of the bar and as public officials. In *Trovela vs. Robles,* the Court has held that the IBP has no jurisdiction to investigate government lawyers charged with administrative offense in the exercise of their official duties and functions. The Court further expounded that the authority to discipline government lawyers is with the Secretary of Justice as their superior.

Moreover, the Office of the Ombudsman is clothed with disciplinary jurisdiction over government lawyers as public officials, pursuant to Section 15, paragraph 1, of Republic Act No. 6770 (Ombudsman Act of 1989). Thus, the filing of the administrative complaint for disbarment should be filed with the Office of the Ombudsman.

As aptly found by the IBP Investigating Commissioner, the charges against the respondent involved her functions as a prosecutor. Considering that the alleged failure to furnish a copy of the resolution to complainant by respondent is an exercise of official function as contemplated under the law, it follows that the act complained of is within the disciplinary jurisdiction of the Office of the Ombudsman.

The case at bar is substantially on all fours with the above-stated cases.

In his complaint, complainant imputes to respondent manifest bias and partiality in the conduct of the preliminary investigation and issuance of the Resolution which recommended the filing of a criminal case against him. The acts complained of arose from respondent's performance or discharge of official duties as a public prosecutor. Hence, the authority to investigate and discipline respondent exclusively pertains to her superior, the Secretary of Justice.[16] The authority may also pertain to the

---

[16] See *Manuel B. Trovela vs. Michael B. Robles, Assistant City Prosecutor; Emmanuel L. Obungen, Prosecutor II; Jacinto G. Ang, City Prosecutor; Claro A. Arellano, Prosecutor General; and Leila M. De Lima, Former Secretary, Department of Justice, supra* note 14.

Office of the Ombudsman which similarly exercises disciplinary jurisdiction over public prosecutors as public officials pursuant to Section 15, paragraph 1, of R.A. No. 6770.[17] Indeed, respondent's accountability as an official performing or discharging her official duties is always to be differentiated from her accountability as a member of the Philippine Bar.[18] For this reason, the IBP has no jurisdiction to investigate respondent as such government lawyer.

**WHEREFORE,** the administrative complaint against respondent is **DISMISSED** for lack of jurisdiction.

Let a copy of this Decision be furnished the Secretary of Justice for whatever appropriate action the Secretary may wish to take with respect to the complaint against respondent Marilou R. Garachico-Fabila.

**SO ORDERED.**

*Peralta* (*Chairperson*), *Leonen,* and *Reyes, A. Jr., JJ.,* concur. *Hernando, J.,* on official leave.

---

[17] *Id*.

[18] See *Manuel B. Trovela vs. Maria Benet T. Santos-Madamba, Assistant City Prosecutor of Pasig City; Luther T. Ponpon, Reviewing Prosecutor of Pasig City; Jacinto G. Ang, City Prosecutor of Pasig City; Hon. Leila M. De Lima, Former Secretary, Department of Justice; and Hon. Vitaliano Aguirre II, Current Secretary, Department of Justice, Respondents, supra* note 13.

**SECOND DIVISION**

[G.R. No 210105. September 2, 2019]

**LAND BANK OF THE PHILIPPINES,** *petitioner, vs.* **MA. AURORA [RITA] DEL ROSARIO and IRENE DEL ROSARIO,** *respondents.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 6657 (COMPREHENSIVE AGRARIAN REFORM PROGRAM); JUST COMPENSATION; DEFINITION; IN COMPUTING THE JUST COMPENSATION, THE VALUE OF THE PROPERTY AT THE TIME OF THE TAKING OR WHEN THE LANDOWNER WAS DEPRIVED OF THE USE AND BENEFIT OF HIS OR HER PROPERTY SHOULD BE TAKEN INTO CONSIDERATION; CASE AT BAR. —** The taking of private lands under the agrarian reform program partakes of the nature of an expropriation proceeding, thus, subject to payment of just compensation. x x x Just compensation is the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample. In computing the just compensation, the trial courts take into consideration the value of the land "at the time of the taking" or when the landowner was deprived of the use and benefit of his or her property, such as when title is transferred to the Republic. Here, the Court of Appeals correctly reckoned the time of taking as of 2001. Indeed, records bear that: (i) the notice of coverage for the property was sent to respondents on February 20, 2001; (ii) petitioner received the Claim Folder from the DAR on October 5, 2001; and (iii) TCT No. T-126930 was issued under the name of the Republic on November 26, 2001. This Court considers the date of transfer of the property to the name of the Republic on November 26, 2001 as the time of taking. Consequently, RA 6657, prior to its amendment by RA 9700,

governs the present case. This finds support in Section 5, RA 9700 which amended Section 7, RA 6657, x x x The provision is clear: any new valuation method introduced by the DAR pursuant to RA 9700 cannot be given retroactive effect as to cover agricultural properties taken prior to the enactment of said law. Section 17 of RA 6657 enumerates the relevant factors in determining just compensation, x x x This provision had been translated into a basic formula under pertinent DAR administrative issuances. In determining just compensation, courts are duty bound to apply both the compensation valuation factors enumerated under Section 17 of RA 6657 and the applicable basic formula.

**2. ID.; ID.; THE RIGHT TO JUST COMPENSATION INCLUDES THE RIGHT TO BE PAID ON TIME; IMPOSITION OF INTEREST ON THE UNPAID AMOUNT OF JUST COMPENSATION IS WARRANTED; CASE AT BAR. —** The Land Bank had already paid respondents Php1,172,369.21 of the amount due, leaving a balance of Php 138,194.16. The interest on the balance of Php138,194.16 is warranted. For the right to just compensation includes the right to be paid on time. As explained in ***Apo Fruits Corporation, et al. v. Land Bank of the Philippines*** the rationale for imposing interest on just compensation is to compensate the property owners for the income that they would have made if they had been paid the full amount of just compensation at the time of taking when they were deprived of their property. Although the Land Bank has timely paid respondents based on the initial valuation of the property, it is, nevertheless, guilty of delay insofar as the balance is concerned. The balance of Php138,194.16, therefore, shall earn legal interest of twelve percent (12%) *per annum*, reckoned from the time of taking on November 26, 2001. Beginning July 1, 2013, until fully paid, the balance due shall earn interest at the new legal rate of six percent (6%) *per annum*.

**APPEARANCES OF COUNSEL**

*LBP Legal Services Group* for petitioner.
*Vicente P. Del Rosario* for respondents.

## D E C I S I O N

**LAZARO-JAVIER, *J.*:**

### The Case

This appeal assails the following dispositions of the Court of Appeals in CA-G.R. SP No. 127485:

1) Decision dated July 31, 2013[1] affirming respondents' entitlement to just compensation, but in the main decreasing it from Php3,829,514.29 to Php2,176,571.58; and

2) Resolution dated November 22, 2013[2] denying petitioner's motion for reconsideration.

### Antecedents

The facts are undisputed.

Respondents Ma. Aurora and Irene del Rosario were the owners of a 39.1248-hectare agricultural land in Barangay Oma-oma, Ligao City, Albay. Sometime in October 2000, a team composed of representatives from petitioner Land Bank of the Philippines (Land Bank), Department of Agrarian Reform (DAR), the Municipal Agrarian Reform Officer (MARO) of Ligao City, and the Barangay Agrarian Reform Council (BARC) conducted an ocular inspection of the property. In their Field Investigation Report, the team recommended that 36.3168 hectares of the property be placed under the Comprehensive Agrarian Reform Program (CARP)[3] pursuant to Republic Act (RA) 6657.[4]

---

[1] Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Francisco P. Acosta and Angelita A. Gacutan; *Rollo*, pp. 41-72.

[2] *Rollo*, p. 75.

[3] The remaining portion is exempt from the coverage of the program since its slope exceeded 18%; *Rollo*, p. 43.

[4] AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION,

On October 5, 2001, the Land Bank received the pertinent Claim Folder from DAR. The Land Bank then appraised the property at Php34,994.36 per hectare based on the prescribed formula under DAR Administrative Order (DAR AO) No. 5, s. of 1998. This valuation, however, was only applied to the 33.5017-hectare portion since the 2.8151-hectare area pertained to a non-compensable legal easement. The DAR offered Php1,172,369.21 as just compensation for the property but respondents rejected it.[5]

This prompted the Provincial Agrarian Reform Adjudicator (PARAD) – Albay to initiate summary administrative proceedings to determine the amount of just compensation for the property.[6] Meantime, respondents were paid the Php1,172,369.21 provisional valuation. On November 26, 2001, the Register of Deeds of Albay issued TCT No. T-126930 in the name of the Republic.[7]

Under Decision dated February 18, 2004,[8] the PARAD fixed just compensation at Php6,766,000.00 or about Php201,959.90 per hectare, excluding the legal easement. On April 1, 2004, it denied the Land Bank's motion for reconsideration.[9]

**The Trial Court Proceedings**

On April 20, 2004, the Land Bank filed before the Regional Trial Court (RTC)-Br. 3, Legazpi City, sitting as a Special Agrarian Court, a petition for determination of just compensation against respondents, the DAR Secretary, and the PARAD. The Land Bank maintained that it properly computed respondents' just compensation at Php1,172,369.21.

---

PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES.

[5] *Rollo*, p. 43.

[6] *Id*. at 44.

[7] *Id*.

[8] *Id*. at 288-291.

[9] *Id* at 45.

While the case was pending, the Congress, on July 1, 2009, enacted Republic Act 9700 (RA 9700),[10] otherwise known as the CARPER Law, amending RA 6657. Among the amendments were the inclusion of two (2) additional factors in determining just compensation: (i) the value of the standing crop and (ii) seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR).[11] To implement RA 9700, DAR promulgated DAR AO No. 2, s. 2009 and No. 1, s. of 2010.

**The Trial Court's Ruling**

By Decision dated August 17, 2012,[12] the trial court fixed the amount of just compensation at Php3,829,514.29 and imposed twelve percent (12%) interest *per annum* on the portion of the amount which respondents had not yet received, *viz.*:

**WHEREFORE**, the Court hereby renders judgment and declares, as follow, to wit:

a) The just compensation for Lot No. 4984-D with an area of 36.3168 hectares, owned by the private respondents, Ma. Aurora del Rosario and Irene del Rosario, is hereby fixed in the amount of PhP3,829,514.29.

b) The petitioner is hereby directed to compensate the private respondents in the afore-said sum minus the amount already received by the private respondents, if anything, within a period of thirty (30) days from notice of this decision free of any interest, and with interest at the rate of 12 percent *per annum* if not compensated within the 30-day period herein mandated, which payment of interest shall commence on the

---

[10] AN ACT STRENGTHENING THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP), EXTENDING THE ACQUISITION AND DISTRIBUTION OF ALL AGRICULTURAL LANDS, INSTITUTING NECESSARY REFORMS, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF REPUBLIC ACT NO. 6657, OTHERWISE KNOWN AS THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR.

[11] Section 7, RA 9700.

[12] Penned by Hon. Frank E. Lobrigo; *Rollo*, p. 126.

> 31st day from notice of the decision until the amounts of just compensation are fully satisfied or received by the private respondents.
>
> Issued this 17th day of August 2012 at Legazpi, City, Philippines.[13]

Notably, the trial court: ***first***, did not deduct the 2.8151 legal easement from subject property, rendering the entire 36.3168-hectare area compensable; ***second***, reckoned the time of taking as of June 30, 2009 when RA 9700 was enacted while petitioner reckoned the time of taking as of August 2001; and ***finally***, applied the prescribed formula under DAR AO No. 2, s. 2009 and No. 1, s. of 2010, and not the formula prescribed under DAR AO No. 5, s. of 1998.

On October 25, 2012, the trial court denied the Land Bank's motion for reconsideration.[14]

On appeal, the Land Bank faulted the trial court for allegedly ignoring the provisions of RA 6657 and the pertinent DAR issuances in fixing the just compensation for the property. It insisted on its own computation which purportedly adhered to legal standards.

**Court of Appeals' Ruling**

Through its assailed decision, the Court of Appeals affirmed with modification, *viz.*:

> **WHEREFORE**, the appeal is partly granted. The trial court's Decision dated August 17, 2012 and Order dated October 25, 2012 are **AFFIRMED**, subject to the modification that the just compensation for the subject property shall be in the amount of ₱2,176,571.58.
>
> Let a copy of this Decision be furnished the Honorable *ponente* in CA-G.R SP No. 119012, for his information and guidance.
>
> **SO ORDERED**.[15]

---

[13] *Rollo*, pp. 126-142.

[14] *Id*. at 155.

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

The Court of Appeals found that the trial court erred in adopting June 30, 2009 as the time of taking. As borne by records, it noted that the property was placed under the coverage of CARP in 2001. Thus, DAR AO No. 5, s. of 1998 should govern the computation of just compensation here.[16] More, the Land Bank properly deducted the legal easement before computing the value of the property.[17]

The Court of Appeals, nonetheless, noted that the Land Bank failed to include the amount of Php61,025.00 representing the value of standing trees on the property. Too, it modified the Land Bank's valuation of the average farm gate prices of copra per 100 kilos. Instead of using the average price from October 2000 to September 2001 at Php688.75, it used the average price from the six (6)-year period of 1998-2003, to wit:[18]

| Year | Average Selling Price |
|---|---|
| 1998 | Php1,453.58 |
| 1999 | 1,681.17 |
| 2000 | 914.70 |
| **2001** | **688.75** |
| 2002 | 1,114.75 |
| 2003 | 1,313.75 |
| **Total** | **Php7,166.70** |
| **Six-year Average** | **Php1,195.45** |

According to the Court of Appeals, this valuation was truly reflective of the income-producing capacity of subject property[19]; it considered statistical data showing that from 1998-2011, the price of copra was at its lowest in 2001.

---

[16] *Id* at 61-62.

[17] *Id* at 66-67.

[18] *Id* at 328.

[19] *Id*. at 67.

Ultimately, the Court of Appeals fixed just compensation at Php2,176,571.58[20] and retained the twelve percent (12%) interest *per annum* which the trial court imposed. It denied petitioner's motion for reconsideration on November 22, 2013.

**The Present Petition**

The Land Bank now invokes the Court's discretionary appellate jurisdiction to modify the amount of just compensation fixed by the Court of Appeals for respondents' copra produce from Php1,195.45 to Php688.75 per 100 kilos and to delete the award of twelve percent (12%) interest *per annum*. The Land Bank essentially argues:

1) In determining the amount of just compensation for respondents' copra produce, the Court of Appeals should have considered the prevailing market price at the time of taking in 2011, *i.e.* Php688.75; and not the average selling price from 1998-2003, *i.e*. Php1,195.45; and

2) It is not guilty of delay in the payment of the initial valuation at Php1,172,369.21. Hence, the imposition of twelve percent (12%) interest *per annum* should be deleted.

On the other hand, respondents riposte that the questions raised here are purely factual and beyond this Court's power of review.[21]

**Issue**

Did the Court of Appeals err when it computed the amount of just compensation for the property at Php2,176,571.58, plus twelve percent (12%) interest *per annum*?

**Ruling**

The petition is partly meritorious.

---

[20] *Id*. at 68-69.

[21] *Id*. at 345-351.

**The amount of just compensation is based on prevailing values at the time of taking; the valuation method prescribed under RA 6657 and DAR AO No. 5, s. of 1998 should therefore be applied**

The taking of private lands under the agrarian reform program partakes of the nature of an expropriation proceeding, thus, subject to payment of just compensation.[22] Section 4, Article XIII of the Constitution ordains:

> Sec. 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the, case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and **subject to the payment of just compensation.** In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing, (emphasis added)

Just compensation is the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample.[23] In computing the just compensation, the trial courts take into consideration the value of the land "at the time of the taking" or when the landowner was deprived of the use and benefit of his or her property, such as when title is transferred to the Republic.[24]

---

[22] *Land Bank of the Philippines v. Heirs of Sps. Encinas*, 686 Phil. 48, 55 (2012).

[23] *Rep. of the Phils, v. Cebuan, et al.,* 810 Phil. 767, 779 (2017).

[24] *Supra* note 22.

Here, the Court of Appeals correctly reckoned the time of taking as of 2001. Indeed, records bear that: (i) the notice of coverage for the property was sent to respondents on February 20, 2001; (ii) petitioner received the Claim Folder from the DAR on October 5, 2001; and (iii) TCT No. T-126930 was issued under the name of the Republic on November 26, 2001. This Court considers the date of transfer of the property to the name of the Republic on November 26, 2001 as the time of taking.

Consequently, RA 6657, prior to its amendment by RA 9700, governs the present case. This finds support in Section 5, RA 9700 which amended Section 7, RA 6657, in this wise:

SEC. 7. *Priorities*. – The DAR, in coordination with the Presidential Agrarian Reform Council (PARC) shall plan and program the final acquisition and distribution of all remaining unacquired and undistributed agricultural lands from the effectivity of this Act until June 30, 2014. Lands shall be acquired and distributed as follows:

"Phase One: During the five (5)-year extension period hereafter all remaining lands above fifty (50) hectares shall be covered for purposes of agrarian reform upon the effectivity of this Act. All private agricultural lands of landowners with aggregate landholdings in excess of fifty (50) hectares which have already been subjected to a notice of coverage issued on or before December 10, 2008; rice and corn lands under Presidential Decree No. 27; all idle or abandoned lands; all private lands voluntarily offered by the owners for agrarian reform: *Provided*, That with respect to voluntary land transfer, only those submitted by June 30, 2009 shall be allowed *Provided, further,* That after June 30, 2009, the modes of acquisition shall be limited to voluntary offer to sell and compulsory acquisition: *Provided*, furthermore, **That all previously acquired lands wherein valuation is subject to challenge by landowners shall be completed and finally resolved pursuant to Section 17 of Republic Act No. 6657, as amended:** xxx (emphasis added)

The provision is clear: any new valuation method introduced by the DAR pursuant to RA 9700 cannot be given retroactive effect as to cover agricultural properties taken prior to the enactment of said law.

Section 17 of RA 6657 enumerates the relevant factors in determining just compensation, *viz.*:

> **Section 17.** ***Determination of Just Compensation.*** — In determining just compensation, the cost of acquisition of the land, the current value of the like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

This provision had been translated into a basic formula under pertinent DAR administrative issuances. In determining just compensation, courts are duty bound to apply both the compensation valuation factors enumerated under Section 17 of RA 6657 and the applicable basic formula.[25]

DAR AO No. 5, s. of 1998 was still in force at the time of taking in this case. The formula embodied therein for fixing just compensation should, therefore, be applied.

**The Court of Appeals failed to apply DAR AO No. 5, s. of 1998**

DAR AO No. 5, s. of 1998 prescribes the following basic formula for fixing just compensation:

Land Value = (Capitalized Net Income x 0.9) + (Market Value x 0.1)[26]

The Land Bank does not question the applicability of this formula here, nor the Court of Appeals' computation of the market value of subject property. What it assails though is the Court of Appeals' use of the prevailing selling price of copra

---

[25] *Mateo, et al. v. Department of Agrarian Reform, et al.,* 805 Phil. 707, 728 (2017).

[26] When data on comparable sales are absent.

from 1998-2003 for the purpose of computing the Capitalized Net Income of the property.

We agree with the Land Bank.

Under DAR AO No. 5, s. of 1998, Capitalized Net Income is computed as follows:

| | | |
|---|---|---|
| Capitalized Net Income | = | Annual Gross Production (AGP)<br>x Selling Price (SP)<br>x Net Income Rate (NIR)<br>÷ Capitalization Rate[27]<br>Capitalized Net Income |

Where:

AGP = Annual Gross Production corresponding to the latest available 12-months' gross production immediately preceding the date of Field Investigation.

SP = **The average of the latest available 12-months' selling prices prior to the date of receipt of the Claim Folder** by LBP for processing, such prices to be secured from the Department of Agriculture and other appropriate regulatory bodies or, in their absence, from the Bureau of Agricultural Statistics. If possible, SP data shall be gathered for the barangay or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.

The Selling Price, one of the components of Capitalized Net Income, is based on the **12-month average** farm gate prices of crop grown in the covered property. Thus, as between the 2001 average of Php688.75 which petitioner used, on one hand, and the six (6)-year average of Php1,195.45 which the Court of Appeals utilized, on the other, the former has stronger legal mooring.

---

[27] Fixed at 12%.

In contrast, the Court of Appeals' use of 2002 and 2003 data finds no support in law. In fact, it contradicts the hornbook doctrine that just compensation be based on the value of the land "at the time of taking." In fine, private respondents cannot derive any benefit nor suffer prejudice from any change in the value of the property after the government had already taken it.

In light of the foregoing considerations, the amount of just compensation here should be fixed, as follows:

**A. Computing for the Average Selling Price:**

| | |
|---|---|
| 2001 Average Farm Gate Price of Copra per 100 kilos | Php688.75[28] |
| **Average Selling Price per kilo** | **6.89** |

**B. Computing for the Capitalized Net Income**

= (AGP x SP x NIR)/0.12
= (975 kilos/hectare[29] x Php6.89/kilo x 70%[30]) / 0.12
**= Php39,186.88/hectare**

**C. Computing for the Market Value per Tax Declaration:**[31]

= (SUMV land x LAF x RCPI) +
(trees/hectare x SUMV tree x LAF x RCPI)

= (Php13,720.00 x 81% x 1.098) +
(65 x Php140.00 x 81% x 1.098)

= Php12,202.29 + Php8,093.36

**= Php20,295.65/hectare**

---

[28] *Rollo*, p. 328.

[29] Annual Gross Production = (65 trees/hectare x 60 nuts/year) / 4 nuts/kilo = 975 kilos/hectare.

[30] Per DAR AO No. 5, s. of 1998, "Landholdings planted to coconut which are productive at the time of Field Investigation shall continue to use the assumed NIR of 70%".

[31] Per computation of the Court of Appeals; *Rollo*, p. 68.

**D. Computing for the Land Value per hectare:**

= (Capitalized Net Income x 90%) + (Market Value x 10%)

= (Php39,186.88/hectare x 90%) + (Php20,295.65/hectare x 10%)

= Php35,268.19/hectare + Php2,029.57/hectare

**= Php37,297.76/hectare**

**E. Computing for the Total Land Value:**

= Land value for 36.3168 hectares -
Land value for legal easement +
Land value for standing trees

= (36.3168 hectares x Php37,297.76/hectare) -
(2.8151 hectares x Php37,297.76/hectare) +
Php 61,025.00

= Php1,354,535.29 - Php104,996.92 + Php61,025.00

**= Php1,310,563.37**

The Land Bank had already paid respondents Php1,172,369.21 of the amount due, leaving a balance of Php138,194.16.

The interest on the balance of Php138,194.16 is warranted. For the right to just compensation includes the right to be paid on time. As explained in ***Apo Fruits Corporation, et al. v. Land Bank of the Philippines***,[32] the rationale for imposing interest on just compensation is to compensate the property owners for the income that they would have made if they had been paid the full amount of just compensation at the time of taking when they were deprived of their property.

Although the Land Bank has timely paid respondents based on the initial valuation of the property, it is, nevertheless, guilty of delay insofar as the balance is concerned. The balance of Php138,194.16, therefore, shall earn legal interest of twelve

---

[32] 647 Phil. 251, 283 (2010).

percent (12%) *per annum*, reckoned from the time of taking on November 26, 2001. Beginning July 1, 2013, until fully paid, the balance due shall earn interest at the new legal rate of six percent (6%) *per annum*.[33]

**ACCORDINGLY,** the petition is **PARTIALLY GRANTED**. The Court of Appeals Decision dated July 31, 2013 and Resolution dated November 22, 2013 are **AFFIRMED with MODIFICATION** as follows:

(i) Just compensation on the property is fixed at Php1,310,563.37;

(ii) The Land Bank is directed to pay respondents Php1,310,563.37 less Php 1,172,369.21 or a balance of Php138,194.16;

(iii) The Land Bank is directed to pay legal interest on the balance of Php138,194.16 at:

a. Twelve percent (12%) *per annum* from November 26, 2001 until June 30, 2013; and

b. Six percent (6%) *per annum* from July 1, 2013 until full payment.

**SO ORDERED.**

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

---

[33] See *Nacar v. Gallery Frames, et al.*, 716 Phil. 267, 280 (2013).

**SECOND DIVISION**

[G.R. No. 219673. September 2, 2019]

**SOLID HOMES, INC.,** *petitioner, vs.* **SPOUSES ARTEMIO JURADO and CONSUELO O. JURADO,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; REQUIREMENTS WHEN THE FINDINGS AND CONCLUSIONS OF AN ADMINISTRATIVE TRIBUNAL OR AN INFERIOR COURT MAY BE ALLOWED TO BE INCORPORATED BY REFERENCE IN DECISION, ENUMERATED; CASE AT BAR.—** The question as to whether the OP may adopt by reference the findings and conclusions of the HLURB was priorly raised and squarely resolved by the Court in *Solid Homes, Inc. v. Laserna* wherein we ruled: The constitutional mandate that, no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based, does not preclude the validity of memorandum decisions, which adopt by reference the findings of fact and conclusions of law contained in the decisions of inferior tribunals. x x x *Laserna*, citing *Francisco v. Permskul*, reiterated the conditions when incorporation by reference is allowed: (*a*) the memorandum decision must embody the findings of facts and conclusions of law of the lower court in an annex attached to and made an indispensable part of the decision; (*b*) the decision being adopted should, to begin with, comply with Article VIII, Section 14 of the Constitution; and (*c*) resort to memorandum decision may be had only in cases where the facts are in the main accepted by both parties and easily determinable by the judge and there are no doctrinal complications involved that will require an extended discussion of the laws involved. The OP's Decision satisfied these standards given that copies of the HLURB's Decision and Resolution were attached as annexes; the HLURB's Decision and Resolution itself complied with the requirements of the Constitution; the decision of the OP stated that it was convinced that the HLURB's Decision and Resolution were correct only after it evaluated and studied the case records; and that the case was an ordinary

complaint for specific performance where Solid Homes' appeal was found to be without merit.

**2. POLITICAL LAW; ADMINISTRATIVE LAW; THE ADMINISTRATIVE DECISION SATISFIES THE REQUIREMENT OF DUE PROCESS FOR AS LONG AS IT IS SUPPORTED BY EVIDENCE, AND EXPRESSED IN THE MANNER THAT SUFFICIENTLY INFORMS THE PARTIES OF THE FACTUAL AND LEGAL BASES OF THE DECISION.—** Further, in *Laserna*, we emphasized that the Constitutional requirement that no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based need not apply to decisions rendered in administrative proceedings. The administrative decision satisfies the requirement of due process for as long as it is supported by evidence, and expressed in a manner that sufficiently informs the parties of the factual and legal bases of the decision. At bar, the OP's Decision reviewed the evidence relied upon by the HLURB and even arrived at an independent conclusion that Solid Homes' defenses of lack of privity of contract, *res judicata* and laches are without merit.

**3. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE SUPREME COURT, UNDER ITS POWER OF REVIEW UNDER RULE 45, GENERALLY ADDRESSES ONLY QUESTION OF LAW AND THAT FACTUAL FINDINGS OF THE COURT OF APPEALS, ESPECIALLY WHEN SUCH ARE NOT CONTRADICTORY TO THAT OF THE LOWER COURTS, ARE BINDING; CASE AT BAR.—** Whether or not Solid Homes consented to the transfer and assignment of rights is a question of fact. To emphasize, the Court, under its power of review under Rule 45, generally addresses only questions of law and that factual findings of the CA, especially when such are not contradictory to that of the lower court's, are binding. While several exceptions to these rules have been jurisprudentially recognized, such exceptions must be alleged, substantiated, and proved. Even then, as the Court held in *Pascual v. Burgos,* the Court retains full discretion whether or not to review the CA's factual findings. We find none of the exceptions working to Solid Homes' benefit. On the contrary, we sustain the identical findings of the lower courts that Solid Homes' undisputed acts of preparing a standard form of the Deed of Assignment and

Transfer of Rights signed by one of its officers; charging a transfer fee; crediting payment in favor of spouses Jurado; and requiring and receiving from spouses Jurado the documents necessary to replace the subject property — all signify Solid Homes' consent to the transfer and assignment by spouses Calica of their rights under the Contract to Sell to spouses Jurado. As held by the CA, Solid Homes, by its acts and representations, is estopped from claiming otherwise. That Solid Homes gave its consent to spouses Calica's assignment and transfer of rights to spouses Jurado, is now an established fact that we find no reason to deviate from.

**4. CIVIL LAW; CONTRACTS; ASSIGNMENT OF CONTRACT; UPON AN ASSIGNMENT OF CONTRACT TO SELL; THE ASSIGNEE IS EFFECTIVELY SUBROGATED IN PLACE OF THE ASSIGNOR AND IN A POSITION TO ENFORCE THE CONTRACT TO SELL TO THE SAME EXTENT AS THE ASSIGNOR COULD; APPLICATION IN CASE AT BAR.—** [B]asic is the rule that the transfer of rights takes place upon the perfection of the contract, and the ownership of the right thereunder, including all appurtenant accessory rights, is acquired by the assignee, who steps into the shoes of the original creditor as subrogee, the moment the contract is perfected. The debtor need not be notified of the assignment but becomes bound thereby upon acquiring knowledge of the assignment. Upon an assignment of a contract to sell, the assignee is effectively subrogated in place of the assignor and in a position to enforce the contract to sell to the same extent as the assignor could. x x x [T]he non-assignment clause invoked by Solid Homes does not say that any assignment of rights under the Contract to Sell shall be null and void. The logical implication, if at all, which may be derived from the wording of the non-assignment clause is that the Contract to Sell is forfeited should there be an assignment, but even then, the right to forfeit is susceptible to waiver. Thus, when Solid Homes learned of the assignment, it could have treated the Contract to Sell with spouses Calica as having been breached, and yet, it opted not to do so and instead, by its own acts, recognized spouses Jurado as the buyers-assignees.

**5. ID.; PRESCRIPTION; WHILE THE PRESCRIPTIVE PERIOD FOR BRINGING AN ACTION FOR SPECIFIC PERFORMANCE PRESCRIBES IN TEN (10) YEARS, THE**

**PERIOD OF PRESCRIPTION IS RECKONED ONLY FROM THE DATE THE CAUSE OF ACTION ACCRUED; EXPLAINED.—** The Civil Code provides that an action based on a written contract, an obligation created by law, and a judgment must be brought within 10 years from the time the right of action accrues. While the prescriptive period for bringing an action for specific performance, as in this case, prescribes in 10 years, the period of prescription is reckoned only from the date the cause of action accrued. A cause of action arises when that which should have been done is not done, or that which should not have been done is done. A right of action does not necessarily accrue on the date of the execution of the contracts because it is the legal possibility of bringing the action that determines the reckoning point for the period of prescription. x x x Congruently, Article 1155 of the Civil Code explicitly provides that the prescriptive period is interrupted when an action has been filed in court; when there is a written extrajudicial demand made by the creditors; and when there is any written acknowledgment of the debt by the debtor. Interruption of the prescriptive period, as distinguished from mere suspension or tolling, by written extrajudicial demand means that the period would commence anew from the receipt of the demand. In other words, "[a] written extrajudicial demand wipes out the period that has already elapsed and starts anew the prescriptive period."

6. **ID.; LACHES; LACHES IS DEFINED AS THE FAILURE OR NEGLECT, FOR AN UNREASONABLE AND UNEXPLAINED LENGTH OF TIME, TO DO THAT WHICH BY THE EXERCISE OF DUE DILIGENCE COULD OR SHOULD HAVE BEEN DONE EARLIER; ELEMENTS.—** Laches is defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which by the exercise of due diligence could or should have been done earlier. Its elements are: (1) conduct on the part of the defendant, or of one under whom the defendant claims, giving rise to the situation which the complaint seeks a remedy; (2) delay in asserting the complainant[']s rights, the complainant having had knowledge or notice of the defendant[']s conduct as having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right in which the defendant bases the suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held barred.

**7. ID.; SALES; CONTRACT TO SELL; THE OBLIGATION OF THE PROSPECTIVE SELLER WHICH IS IN THE NATURE OF AN OBLIGATION TO DO, IS TO SELL THE PROPERTY TO THE PROSPECTIVE BUYER UPON THE HAPPENING OF THE POSITIVE SUSPENSIVE CONDITION, THAT IS, THE FULL PAYMENT OF THE PURCHASE PRICE; EFFECT OF NON-FULFILLMENT BY A PARTY, EXPLAINED.—** A contract to sell is textually 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." The obligation of the prospective seller, which is in the nature of an obligation to do, is to sell the property to the prospective buyer upon the happening of the positive suspensive condition, that is, the full payment of the purchase price. x x x The foregoing characters of a contract to sell are important in order to determine the laws and remedies applicable in case a party does not fulfill his or her obligations under the contract. In *Olivarez Realty Corporation v. Castillo* we held that the prospective buyer's failure to fully pay the purchase price in a contract to sell is not a breach of contract under Article 1191 on the right to rescind reciprocal obligations. Citing *Nabus, Olivarez* held that "[t]his is because there can be no rescission of an obligation that is still non-existent, the suspensive condition not having happened." Thus, in case the prospective buyer does not comply, the contract to sell is cancelled and the parties shall stand as if the obligation to sell never existed. When a contract to sell is cancelled, the installments paid for the property are generally ordered reimbursed, especially if possession over the property has not been delivered to the prospective buyer. The pronouncement in *Olivarez* should, however, be reconciled with our ruling in *Gotesco Properties, Inc. v. Spouses Fajardo*, wherein we upheld the buyer's right to rescind the contract to sell for failure of the seller to cause the transfer of the corresponding certificate of title upon full payment of the purchase price. Thus, a contract to sell is susceptible to rescission for substantial and fundamental breaches, as when the seller fails to comply with his obligation to sell the property despite the happening of the suspensive condition, because the power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply

with what is incumbent upon him. However, instead of rescission of the obligation, the injured party may choose that the contract be actually accomplished by the party bound to fulfill it. Specific performance refers to the remedy of requiring exact performance of a contract in the specific form in which it was made, or according to the precise terms agreed upon.

**APPEARANCES OF COUNSEL**

*Graciano J. Tobias* for petitioner.
*Manuel B.Imbong* for respondents.

## D E C I S I O N

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

This Petition for Review[1] under Rule 45 assails the Decision[2] dated March 13, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 130627. Also assailed is the CA Resolution[3] dated July 22, 2015, which denied petitioner Solid Homes, Inc.'s (Solid Homes) motion for partial reconsideration.[4]

The assailed CA Decision essentially affirmed the Decision[5] dated May 9, 2012 of the Office of the President (OP) which, in turn, affirmed the Decision[6] dated May 22, 2008 of the Board of Commissioners of the Housing and Land Use Regulatory Board (HLURB Board), finding Solid Homes liable to herein respondents spouses Artemio and Consuelo O. Jurado (spouses Jurado) under the terms of a contract to sell covering a residential lot.

---

[1] *Rollo*, pp. 10-36.

[2] Penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Magdangal M. De Leon and Jane Aurora C. Lantion; *id*. at 81-99.

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

[4] *Id*. at 100-104.

[5] *Id*. at 203-204.

[6] *Id*. at 195-198.

## The Facts

In 1977, Solid Homes entered into a Contract to Sell covering a 1,241 square meter residential lot located at Loyola Grand Villas Subdivision, Marikina, Rizal (subject property) with spouses Violeta and Jesus Calica (spouses Calica) for the consideration of ₱434,350.00.[7] Spouses Calica paid ₱86,870.00 as downpayment and the balance was made payable in equal monthly installments of ₱5,646.55 for a period of eight years.[8]

In 1983, by virtue of a Deed of Assignment and Transfer of Rights, spouses Calica assigned and transferred their rights as vendees in the Contract to Sell to spouses Jurado for the amount of ₱130,352.00. Solid Homes prepared the standard printed form of the Deed of Assignment and Transfer of Rights and its officer, Rita Castillo Dumatay (Dumatay), attested and affixed her signature thereon. Spouses Jurado paid the transfer fee for which Solid Homes issued a provisional receipt. Solid Homes also issued to spouses Jurado a credit memorandum indicating that the latter paid ₱108,001.00. As of February 22, 1983, spouses Calica and spouses Jurado made the total payment of ₱480,262.95.[9]

Thereafter, spouses Jurado inquired as to the transfer of ownership over the subject property and were informed by Dumatay that Solid Homes had mortgaged the property and that the mortgage had been foreclosed.[10] Solid Homes undertook to replace the subject property with another lot and for this purpose, spouses Jurado submitted the required documents. Through letters dated October 23, 1992 and August 7, 1996, spouses Jurado followed-up on the promised substitute property but to no avail.[11]

---

[7] *Id*. at 82.

[8] *Id*. at 12.

[9] *Id*. at 82.

[10] *Id*. at 164.

[11] *Id*.

In 2000, spouses Jurado filed a complaint for specific performance and damages before the HLURB. The HLURB dismissed the complaint without prejudice.[12] Said dismissal was affirmed by the HLURB Board on April 20, 2005.[13]

It appears that spouses Jurado no longer pursued any further appeal and instead in 2005, they refiled the complaint for specific performance and damages before the HLURB. They prayed that Solid Homes be ordered to replace the lot, or to convey and transfer to them a substitute lot, or in the alternative, to pay the current value of the lot, or to return the payments made with interests.[14] In answer, Solid Homes argued that the assignment and transfer was void as it was made without Solid Homes' prior written consent. Solid Homes further raised the defenses of prescription and laches, *res judicata*, forum shopping and estoppel.[15] Because the complaint was allegedly unfounded, Solid Homes prayed for the award of damages and attorney's fees.[16]

**The Ruling of the HLURB Arbiter**

On June 13, 2007, the HLURB Arbiter issued a Decision dismissing the complaint for lack of merit. The HLURB Arbiter held that there was no right created in favor of spouses Jurado for lack of proof that Solid Homes gave its prior written consent to the assignment and transfer of rights; and that, in any case, spouses Jurado's cause of action had prescribed.[17]

**The Ruling of the HLURB Board of Commissioners**

On appeal, the HLURB Board reversed the ruling of the HLURB Arbiter. It ruled that there was substantial evidence

---

[12] *Id*. at 39.

[13] *Id*. at 13.

[14] *Id*. at 211-212.

[15] *Id*. at 84.

[16] *Id*.

[17] *Id*.

showing that Solid Homes consented and even participated in the transfer of the property to spouses Jurado. It noted the following: (*1*) the standard form for the transfer and assignment of rights was prepared by Solid Homes; (*2*) Solid Homes required the payment of a transfer fee which was in fact paid by spouses Jurado in consideration for the transfer of the lot; (*3*) Solid Homes presented a subdivision plan to spouses Jurado showing a shaded area which was designated as a possible replacement lot. The subdivision plan presented in evidence by spouses Jurado was signed by a representative of Solid Homes; (*4*) Solid Homes wrote a letter to spouses Jurado requiring the latter to submit certain documents to facilitate the replacement; and (*5*) Solid Homes issued a credit memorandum in favor of spouses Jurado in the amount of ₱108,001.00 for the price of the subject property.[18]

The HLURB Board also brushed aside Solid Homes' argument of prescription and instead noted that extrajudicial demands were made by spouses Jurado. It likewise disregarded Solid Homes' defense of *res judicata* on the ground that the initial HLURB complaint was dismissed without prejudice.

Accordingly, the HLURB Board disposed as follows:

> **Wherefore**, premises considered, the appeal is GRANTED. The [HLURB Arbiter] decision of June 13, 2007 is REVERSED and SET ASIDE and a new judgment is hereby rendered ordering:
>
> 1. Respondent to replace the foreclosed lot and to convey to complainants in absolute ownership a parcel of land of the same area, quality and location as the lot covered by the contract to sell in the event that respondent is unable to do so, respondent Solid Homes is ordered to pay to respondent the current fair market value of the foreclosed lot.
>
> 2. Respondent to pay attorney's fees in the amount of Thirty Thousand Pesos ([₱]30,000.00) and moral damages in the amount of Thirty Thousand Pesos ([₱]30,000.00), and the cost of the suit.

---

[18] *Supra* note 6, at 196-197.

**So ordered**.[19]

Solid Homes moved for reconsideration, arguing that the HLURB Board erred in requiring that the subject lot be replaced, and in ordering that the same be conveyed to spouses Jurado without full payment of the purchase price. After examining the buyers' ledger which spouses Jurado themselves submitted in evidence, the HLURB Board confirmed that spouses Jurado still have a balance of ₱145,843.35, which they must pay to be entitled to the conveyance of the substitute property. The HLURB, thus, ordered spouses Jurado to pay the balance and imposed interest thereon to commence only from the time when Solid Homes shall make available to spouses Jurado a substitute lot.[20]

Thus, in a Resolution[21] dated October 2, 2009, the HLURB Board modified its earlier ruling and accordingly disposed:

> WHEREFORE, premises considered, our decision of May 22, 2008 is MODIFIED as follows:
>
> 1. Respondent is ordered to replace the foreclosed lot another of the same area, quality and location as the lot covered by the Contract to Sell. Thereupon, complainants are ordered to pay respondents the amount of [₱]145,843.35 with interest at the rate of 12% per annum in accordance with the contract reckoned from the time the lot is made available to them; upon such full payment, respondent is ordered to execute a deed of sale and deliver the title of the substitute lot in complainants' favor.
>
> 2. At complainant's option, or if the above is no longer possible, respondent is hereby ordered to pay the complainants the fair market value of the lot they lost with interest at the rate of 12% per annum reckoned from the filing of the complaint until fully paid.
>
> 3. Respondent is ordered to pay complainants moral damages of [₱]30,000.00, attorney's fees of [₱]30,000.00 and the cost of the suit.

---

[19] *Id*. at 198.

[20] *Id*. at 201.

[21] *Id*. at 199-202.

SO ORDERED.[22]

Consequently, Solid Homes lodged an appeal to the OP.

**The Ruling of the Office of the President**

The OP adopted by reference the findings of facts and conclusions of law as contained in the HLURB Board's Decision and Resolution and held that the same were supported by the evidence on record. The OP also agreed with the HLURB Board that there was substantial evidence showing that Solid Homes consented to the transfer and assignment of the property and even recognized spouses Jurado as the buyers-assignees thereof. It similarly disregarded Solid Homes' argument that the complaint was barred by *res judicata*. Finally, the OP held that spouses Jurado are not guilty of laches for lack of proof that they abandoned their case,[23] disposing, thus:

**WHEREFORE**, premises considered, the appeal of [Solid Homes] is hereby DISMISSED.

**SO ORDERED**.[24]

Solid Homes' subsequent motion for reconsideration met similar denial from the OP.

Through a petition for review, Solid Homes elevated the case to the CA, arguing that the OP erred in adopting by reference the HLURB's findings of facts and conclusions of law; that the complaint was barred by *res judicata* and prescription; that there was no privity of contract between Solid Homes and spouses Jurado considering that the Deed of Assignment and Transfer of Rights between spouses Calica and spouses Jurado was void; and that the award of damages and attorney's fees was without basis.

---

[22] *Id*. at 202.

[23] *Supra* note 5.

[24] *Id*. at 204.

**The Court of Appeals' Ruling**

Except as to the award of damages and attorney's fees, the CA affirmed the ruling of the OP.

The CA held that the OP's adoption by reference of the HLURB's findings of facts and conclusions of law was allowed considering that the administrative decision was based on evidence and expressed in a manner that sufficiently informed the parties of the bases of the decision.[25] The CA also dismissed Solid Homes' contention that the complaint was barred by *res judicata*, noting that the earlier complaint was dismissed by the HLURB without prejudice and as such, was not a final judgment on the merits. Considering that the complaint was not barred by *res judicata*, the imputation of forum shopping is consequently without basis.[26]

With regard to Solid Homes' contention that the complaint was barred by prescription and laches, the CA held that spouses Jurado's cause of action arose after February 22, 1983, when Solid Homes informed the spouses Jurado that the subject property had been mortgaged and foreclosed. The CA observed that the written extrajudicial demands made by spouses Jurado in the meantime interrupted the running of the prescriptive period.[27]

As to whether Solid Homes consented to the assignment and transfer of rights to the Contract to Sell, the CA found that Solid Homes' consent was evident from the facts that: Solid Homes itself prepared the standard form of the Deed of Assignment and Transfer of Rights which was attested and signed by Dumatay; Solid Homes charged a transfer fee; Solid Homes issued a credit memorandum to spouses Jurado indicating that the amount of ₱108,001.00 was credited in favor of the latter as payment for the subject property; and Solid Homes, through

---

[25] *Supra* note 2, at 90.

[26] *Id*. at 93.

[27] *Id*. at 94.

Dumatay, received the documents from spouses Jurado which the former required to facilitate the replacement of the subject property.[28] The CA, thus, held that by Solid Homes' acts and representations, it led spouses Jurado to believe that Solid Homes consented to the Deed of Assignment and Transfer of Rights.[29]

Addressing finally the issue on the award of damages, the CA ruled that moral damages are recoverable only when proven and that the award of attorney's fees must have factual and legal bases which must be stated in the body of the decision. Noting that these requirements were not satisfied, the CA disallowed the award of moral damages and attorney's fees but sustained the imposition of the costs of suit against Solid Homes.

The *fallo* of the CA Decision reads:

> We **MODIFY** the Decision dated 09 May 2012 of Office of the President in O.P. Case No. 09-K-581 (which affirmed the Resolution dated 02 October 2008 of the Housing and Land Use Regulatory Board in HLURB Case No. REM-A-070914-0423), as follows: we **DELETE** the award for moral damages in the amount of Php30,000.00 and the attorney's fees in the amount of Php30,000.00.
>
> **IT IS SO ORDERED**.[30]

Solid Homes' motion for partial reconsideration met similar denial from the CA in its Resolution[31] dated July 22, 2015.

## The Issues

Hence, Solid Homes resorts to the present petition raising the following issues:

1. Whether or not the Honorable Office of the President as affirmed by the Honorable Court of Appeals seriously and

---

[28] *Id*. at 95.

[29] *Id*.

[30] *Supra* note 2, at 98.

[31] *Supra* note 3.

gravely erred in adopting by reference the findings of fact and conclusion of law contained in the assailed Decision and Resolution of the HLURB Board of Commissioners;

2. Whether or not the Honorable Office of the President as affirmed by the Honorable Court of Appeals seriously and gravely erred in not holding that *res judicata* has already set-in in the instant case;

3. Whether or not the Honorable Office of the President as affirmed by the Honorable Court of Appeals seriously and gravely erred in not holding that prescription and laches have likewise set-in;

4. Whether or not the Honorable Office of the President as affirmed by the Honorable Court of Appeals seriously and gravely erred in not holding that respondents are guilty of forum-shopping;

5. Whether or not the Honorable Office of the President as affirmed by the Honorable Court of Appeals seriously and gravely erred in not holding that there was no privity of contract between respondents and petitioner;

6. Whether or not the Honorable Office of the President as affirmed by the Honorable Court of Appeals seriously and gravely erred in not holding respondents were in estoppel;

7. Whether or not the Honorable Office of the President as affirmed by the Honorable Court of Appeals seriously and gravely erred in ordering to replace the 'alleged' foreclosed lot covered by the Contract to Sell. Thereupon, respondents are ordered to pay petitioner the amount of [₱]145,843.35 with interest at the rate of 12% per annum in accordance with the contract reckoned from the time the lot is made available to them; and upon such full payment, petitioner is ordered to execute a deed of sale and deliver title of the substitute lot in respondents['] favor;

8. Whether or not the Honorable Office of the President as affirmed by the Honorable Court of Appeals seriously and gravely erred in ordering that at respondents['] option, or if the above is no longer possible, petitioner is hereby ordered to pay the respondents the fair market value of the lot they lost with interest at the rate of 12% per annum reckoned from the filing of the complaint until fully paid; and

9. Whether or not the Honorable Office of the President as affirmed by the Honorable Court of Appeals seriously and gravely erred in not awarding petitioner to [sic] its counterclaim.[32]

Save for the issue on the propriety of the award for damages, the issues raised in the instant petition were a virtual copy of the issues raised by Solid Homes before the CA.

In essence, Solid Homes is asking the Court to review the correctness of the CA's ruling on the issues of whether: (a) the OP may adopt by reference the HLURB's findings of facts and conclusions of law; (b) the complaint should have been dismissed on the grounds of *res judicata*, prescription, laches, forum shopping and estoppel; (c) there was privity of contract between Solid Homes and spouses Jurado; and (d) Solid Homes' counterclaims should have been granted. Additionally, Solid Homes impugns the correctness of the imposition of a 12% interest rate on the fair market value of the property instead of 6% pursuant to *Nacar v. Gallery Frames*.[33]

## The Court's Ruling

The petition is partly meritorious.

### I

### Compliance with Constitutional mandate of a memorandum decision

The question as to whether the OP may adopt by reference the findings and conclusions of the HLURB was priorly raised and squarely resolved by the Court in *Solid Homes, Inc. v. Laserna*[34] wherein we ruled:

The constitutional mandate that, no decision shall be rendered by any court without expressing therein clearly and distinctly the facts

---

[32] *Supra* note 1, at 17-19.

[33] 716 Phil. 267, 281-283 (2013).

[34] 574 Phil. 69, 79-80 (2008).

and the law on which it is based, does not preclude the validity of memorandum decisions, which adopt by reference the findings of fact and conclusions of law contained in the decisions of inferior tribunals. In fact, in *Yao v. Court of Appeals*, this Court has sanctioned the use of memorandum decisions, a specie of succinctly written decisions by appellate courts in accordance with the provisions of Section 40, B.P. Blg. 129, as amended, on the grounds of expediency, practicality, convenience and docket status of our courts. This Court likewise declared that memorandum decisions comply with the constitutional mandate.[35] (Emphasis and citations omitted)

*Laserna*, citing *Francisco v. Permskul*,[36] reiterated the conditions when incorporation by reference is allowed: (*a*) the memorandum decision must embody the findings of facts and conclusions of law of the lower court in an annex attached to and made an indispensable part of the decision; (*b*) the decision being adopted should, to begin with, comply with Article VIII, Section 14 of the Constitution;[37] and (*c*) resort to memorandum decision may be had only in cases where the facts are in the main accepted by both parties and easily determinable by the judge and there are no doctrinal complications involved that will require an extended discussion of the laws involved.

The OP's Decision satisfied these standards given that copies of the HLURB's Decision and Resolution were attached as annexes; the HLURB's Decision and Resolution itself complied with the requirements of the Constitution; the decision of the OP stated that it was convinced that the HLURB's Decision and Resolution were correct only after it evaluated and studied the case records; and that the case was an ordinary complaint for specific performance where Solid Homes' appeal was found to be without merit.

Further, in *Laserna*, we emphasized that the Constitutional requirement that no decision shall be rendered by any court

---

[35] *Id*.

[36] 255 Phil. 311, 324-326 (1989).

[37] No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and law on which it is based.

without expressing therein clearly and distinctly the facts and the law on which it is based need not apply to decisions rendered in administrative proceedings. The administrative decision satisfies the requirement of due process for as long as it is supported by evidence, and expressed in a manner that sufficiently informs the parties of the factual and legal bases of the decision. At bar, the OP's Decision reviewed the evidence relied upon by the HLURB and even arrived at an independent conclusion that Solid Homes' defenses of lack of privity of contract, *res judicata* and laches are without merit.

**II**

**Effect of non-assignment clause**

In arguing that spouses Jurado's complaint should have been dismissed, Solid Homes insists that it did not give the prior written consent requisite to the assignment and transfer of rights under the Contract to Sell and as such, the assignment was void. Solid Homes invites attention to the non-assignment clause found in the Contract to Sell:

> SECTION 10. THE VENDEE AGREES NOT TO SELL, CEDE, ENCUMBER, TRANSFER OR IN [ANY] MANNER DO ANY ACT WHICH WILL AFFECT HIS/HER RIGHT UNDER THIS CONTRACT WITHOUT THE PRIOR WRITTEN APPROVAL OF THE ENDOR AND UNTIL ALL STIPULATIONS OF THIS CONTRACT SHALL HAVE BEEN FULFILLED.[38] x x x (Underscoring in the original)

Disregarding this contention, the HLURB, the OP, as well as the CA, similarly held that the factual circumstances negate Solid Homes' disavowal of consent.

Whether or not Solid Homes consented to the transfer and assignment of rights is a question of fact.[39] To emphasize, the

---

[38] *Supra* note 1, at 12.

[39] *Republic v. Sandiganbayan*, 425 Phil. 752, 765-766 (2002), distinguishes a question of law from a question of fact in this wise:

Court, under its power of review under Rule 45, generally addresses only questions of law and that factual findings of the CA, especially when such are not contradictory to that of the lower court's, are binding. While several exceptions[40] to these rules have been jurisprudentially recognized, such exceptions must be alleged, substantiated, and proved. Even then, as the Court held in *Pascual v. Burgos,*[41] the Court retains full discretion whether or not to review the CA's factual findings.

We find none of the exceptions working to Solid Homes' benefit. On the contrary, we sustain the identical findings of the lower courts that Solid Homes' undisputed acts of preparing a standard form of the Deed of Assignment and Transfer of

---

A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.

[40] *Pascual v. Burgos*, 776 Phil. 167 (2016), citing *Medina v. Mayor Asistio, Jr.,* 269 Phil. 225, 182-183 (1990), enumerates the following exceptions:

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

[41] *Id*. at 181.

Rights signed by one of its officers; charging a transfer fee; crediting payment in favor of spouses Jurado; and requiring and receiving from spouses Jurado the documents necessary to replace the subject property — all signify Solid Homes' consent to the transfer and assignment by spouses Calica of their rights under the Contract to Sell to spouses Jurado. As held by the CA, Solid Homes, by its acts and representations, is estopped from claiming otherwise. That Solid Homes gave its consent to spouses Calica's assignment and transfer of rights to spouses Jurado, is now an established fact that we find no reason to deviate from.

At any rate, the non-assignment clause could not be interpreted as affecting the validity of the transfer and assignment between spouses Calica and spouses Jurado.

*Firstly*, basic is the rule that the transfer of rights takes place upon the perfection of the contract, and the ownership of the right thereunder, including all appurtenant accessory rights, is acquired by the assignee,[42] who steps into the shoes of the original creditor as subrogee,[43] the moment the contract is perfected. The debtor need not be notified of the assignment but becomes bound thereby upon acquiring knowledge of the assignment. Upon an assignment of a contract to sell, the assignee is effectively subrogated in place of the assignor and in a position to enforce the contract to sell to the same extent as the assignor could.[44]

*Secondly*, there is no express stipulation in the Contract to Sell that an assignment made by the vendee will give no right whatsoever to the assignee. Otherwise stated, the non-assignment clause invoked by Solid Homes does not say that any assignment of rights under the Contract to Sell shall be null and void. The logical implication, if at all, which may be derived from the

---

[42] *Project Builders, Inc. v. Court of Appeals*, 411 Phil. 264, 274 (2001).

[43] *South City Homes, Inc. v. BA Finance Corporation*, 423 Phil. 84, 95 (2001).

[44] *Project Builders*, *supra*, at 274.

wording of the non-assignment clause is that the Contract to Sell is forfeited should there be an assignment, but even then, the right to forfeit is susceptible to waiver.[45] Thus, when Solid Homes learned of the assignment, it could have treated the Contract to Sell with spouses Calica as having been breached, and yet, it opted not to do so and instead, by its own acts, recognized spouses Jurado as the buyers-assignees.

## III

## Defenses of *res judicata*, forum shopping, estoppel, prescription and laches

Solid Homes also repeatedly invokes the grounds of *res judicata*, forum shopping, estoppel, prescription and laches to defeat the claim of spouses Jurado. These arguments are, however, patently without merit.

The 1996 HLURB Rules of Procedure, as amended by Resolution No. R-660, series of 1999, the rules in force at the time the first complaint was filed, require that documentary evidence supporting the cause of action must be attached to the complaint and in the absence of which, the complaint shall be dismissed without prejudice. Dismissal with prejudice disallows and bars the refiling of the complaint; whereas, the same cannot be said of a dismissal without prejudice.[46]

---

[45] *See* ALLCOCK, B. (1983). RESTRICTIONS ON THE ASSIGNMENT OF CONTRACTUAL RIGHTS. THE CAMBRIDGE LAW JOURNAL, 42(2), 328-346. Allcock observes that the non-assignment clause had been given restrictive interpretation and admits of at least four possible constructions: (a) as a promise not to assign, in which case the assignment would make the assignor liable in damages but would not prevent the assignee from acquiring rights against the obligor; (b) as preventing an assignee from acquiring rights against the obligor; (c) as purporting to prevent the assignee from acquiring rights against the assignor; and (d) as giving the obligor the right to forfeit the contract. <http://www.jstor.org/stable/450656 > (Visited September 2, 2019)

[46] *Strongworld Construction Corporation v. Hon. Perello*, 528 Phil. 1080, 1093 (2006).

Here, the HLURB Arbiter dismissed the first complaint for lack of documentary evidence and the dismissal was expressly made to be without prejudice to the refiling thereof. Since spouses Jurado did not appear to have further appealed from said dismissal as affirmed by the HLURB Board, their remedy was to refile the complaint, together with their documentary evidence supporting their cause of action, as they in fact did in 2005. Thus, Solid Homes' contentions that the second complaint was barred by *res judicata*,[47] that spouses Jurado committed forum shopping,[48] and that they were estopped from adducing additional documentary evidence, are erroneous.

There is likewise no reason to hold that the complaint was barred by prescription or by laches. Solid Homes postulates that the 10-year prescriptive period should be reckoned from

---

[47] *Social Security Commission v. Rizal Poultry and Livestock Association, Inc.,* 665 Phil. 198, 206 (2011) enumerates the elements of *res judicata* as follows:

> (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action. Should identity of parties, subject matter, and causes of action be shown in the two cases, then *res judicata* in its aspect as a "bar by prior judgment" would apply. If as between the two cases, only identity of parties can be shown, but not identical causes of action, then *res judicata* as "conclusiveness of judgment" applies.

[48] In *Dy v. Mandy Commodities Co., Inc.*, 611 Phil. 74, 85-86 (2009), the Court reiterated the following test for determining whether there is forum shopping:

> The test for determining the existence of forum shopping is whether a final judgment in one case amounts to *res judicata* in another or whether the following elements of *litis pendentia* are present: (a) identity of parties, or at least such parties as representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. Said requisites are also constitutive of the requisites for *auter action pendant* or *lis pendens*.

September 17, 1977 when it executed the Contract to Sell with spouses Calica, or at the latest, from January, 1983, when the Deed of Assignment and Transfer of Rights was executed.

The Civil Code provides that an action based on a written contract, an obligation created by law, and a judgment must be brought within 10 years from the time the right of action accrues.[49] While the prescriptive period for bringing an action for specific performance, as in this case, prescribes in 10 years, the period of prescription is reckoned only from the date the cause of action accrued.[50]

A cause of action arises when that which should have been done is not done, or that which should not have been done is done.[51] A right of action does not necessarily accrue on the date of the execution of the contracts because it is the legal possibility of bringing the action that determines the reckoning point for the period of prescription.[52] Thus, it was only when Solid Homes mortgaged the subject property in February 1983 that spouses Jurado's cause of action accrued because it was only then that Solid Homes' obligation to replace the mortgaged property arose.

Congruently, Article 1155 of the Civil Code explicitly provides that the prescriptive period is interrupted when an action has been filed in court; when there is a written extrajudicial demand made by the creditors; and when there is any written acknowledgment of the debt by the debtor. Interruption of the prescriptive period, as distinguished from mere suspension or

---

[49] 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

[50] See *Solid Homes, Inc. v. Tan*, 503 Phil. 121, 128 (2005).

[51] *Id*.

[52] *Id*., citing *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, 388 Phils. 27, 39-40 (2000).

tolling, by written extrajudicial demand means that the period would commence anew from the receipt of the demand.[53] In other words, "[a] written extrajudicial demand wipes out the period that has already elapsed and starts anew the prescriptive period."[54]

In this case, the uncontroverted fact is that spouses Jurado made extrajudicial demands upon Solid Homes to replace the property through letters dated October 23, 1992 and August 7, 1996, and then filed the complaint in 2000. Resultantly, when Spouses Jurado re-filed their complaint in 2005, their cause of action had not yet prescribed.

Neither do we find spouses Jurado guilty of laches as to deprive them of the remedy provided under the law.

Laches is defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which by the exercise of due diligence could or should have been done earlier. Its elements are:

> (1) conduct on the part of the defendant, or of one under whom the defendant claims, giving rise to the situation which the complaint seeks a remedy; (2) delay in asserting the complainant[']s rights, the complainant having had knowledge or notice of the defendant[']s conduct as having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right in which the defendant bases the suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held barred.[55]

In 1983, when spouses Jurado were made aware that Solid Homes mortgaged the subject property, which mortgage was eventually foreclosed, the latter made representation that it will

---

[53] See *The Overseas Bank of Manila v. Hon. Geraldez*, 183 Phil. 493,495 (1979).

[54] *Id*. at 496.

[55] *Estate of the Late Encanacion Vda. de Panlilio v. Dizon*, 562 Phil. 518, 544 (2007).

replace the lot. The factual findings of the HLURB, OP, and CA indicate that indeed such was the case. Relying on this representation, spouses Jurado submitted the required documents to facilitate the replacement and when no such replacement was forthcoming, they made repeated extrajudicial demands on Solid Homes until, eventually, they filed a complaint in the HLURB. By their actions, spouses Jurado could not be charged of having stalled in asserting their rights under the Contract to Sell.

It is further noted that since Solid Homes was factually determined to be the subdivision developer,[56] the provisions of Presidential Decree No. 957 (P.D. 957), or the Subdivision and Condominium Buyer's Protective Decree, as amended, should apply. With respect to mortgages over existing subdivision projects, Section 18 of P.D. 957 provides:

> SEC. 18. Mortgages. – **No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority**. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto;

In *Philippine Bank of Communications v. Pridisons Realty Corporation*,[57] the Court held that the failure to secure the HLURB's approval results in the nullity of the mortgage but that, nevertheless, a contract of indebtedness still exists between the subdivision developer as mortgagor and the mortgagee. In this case, however, considering the dearth of factual finding

---

[56] *Supra* note 2, at 82.

[57] 701 Phil. 178, 191 (2013).

as to whether or not Solid Homes secured the clearance to mortgage before mortgaging the subject property, that neither of the parties raised this issue in the instant case, and that the parties were factually found to have instead, agreed on the replacement of the property, compel the Court to refrain from delving upon the applicability of Section 18 to the instant case. At any rate, the remedies provided under P.D. 957 are expressly made to be in addition to any and all other rights and remedies that may be available under existing laws.

**IV**

**Obligations under a contract to sell**

Based on the same argument that it did not give its consent to the transfer and assignment of rights under the Contract to Sell, Solid Homes contends that the CA erred in affirming the OP's and the HLURB's similar orders to replace the foreclosed lot and to convey title over the property, or in the alternative, to pay the current value of the property.

As above-discussed, the Deed of Assignment and Transfer of Rights between spouses Calica and spouses Jurado effectively subrogated the latter in place of the former; consequently, spouses Jurado had the right to enforce the Contract to Sell as spouses Calica could.

A contract to sell is textually 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."[58] The obligation of the prospective seller, which is in the nature of an obligation to do, is to sell the property to the prospective buyer upon the happening of the positive suspensive condition, that is, the full payment of the purchase price.[59]

---

[58] *Coronel v. Court of Appeals*, 331 Phil. 294, 310 (1996).

[59] Article 1479 of the New Civil Code provides:

*Nabus v. Pacson*[60] exhaustively explains the concept of a contract to sell:

> In a contract to sell, the prospective seller explicitly reserves the transfer of title to the prospective buyer, meaning, the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the happening of an event, which for present purposes we shall take as the full payment of the purchase price. What the seller agrees or obliges himself to do is to fulfill his promise to sell the subject property when the entire amount of the purchase price is delivered to him. In other words, the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell from arising and, thus, ownership is retained by the prospective seller without further remedies by the prospective buyer.
>
> x x x x x x x x x
>
> Stated positively, upon the fulfillment of the suspensive condition which is the full payment of the purchase price, the prospective seller's obligation to sell the subject property by entering into a contract of sale with the prospective buyer becomes demandable x x x.
>
> x x x x x x x x x
>
> In a contract to sell, upon the fulfillment of the suspensive condition which is the full payment of the purchase price, ownership will not automatically transfer to the buyer although the property may have been previously delivered to him. The prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale.

The foregoing characters of a contract to sell are important in order to determine the laws and remedies applicable in case a party does not fulfill his or her obligations under the contract.[61]

---

A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price.

[60] 620 Phil. 344, 361-362 (2009), citing *Coronel v. Court of Appeals*, *supra*.

[61] 738 Phil. 737, 764 (2014).

In *Olivarez Realty Corporation v. Castillo*[62] we held that the prospective buyer's failure to fully pay the purchase price in a contract to sell is not a breach of contract under Article 1191 on the right to rescind reciprocal obligations. Citing *Nabus, Olivarez* held that "[t]his is because there can be no rescission of an obligation that is still non-existent, the suspensive condition not having happened."[63] Thus, in case the prospective buyer does not comply, the contract to sell is cancelled and the parties shall stand as if the obligation to sell never existed.[64] When a contract to sell is cancelled, the installments paid for the property are generally ordered reimbursed, especially if possession over the property has not been delivered to the prospective buyer.[65]

The pronouncement in *Olivarez* should, however, be reconciled with our ruling in *Gotesco Properties, Inc. v. Spouses Fajardo*,[66] wherein we upheld the buyer's right to rescind the contract to sell for failure of the seller to cause the transfer of the corresponding certificate of title upon full payment of the purchase price. Thus, a contract to sell is susceptible to rescission for substantial and fundamental breaches,[67] as when the seller fails to comply with his obligation to sell the property despite the happening of the suspensive condition, because the power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him. However, instead of rescission of the obligation, the injured party may choose that the contract be actually

---

[62] *Id*. at 765.

[63] *Id*.

[64] *Id*.

[65] *Id*. at 766.

[66] 705 Phil. 294, 300-304 (2013).

[67] As a general rule, "rescission will not be permitted for a slight or casual breach of the contract, but only for such breaches as are substantial and fundamental as to defeat the object of the parties in making the agreement." *Song Fo and Company v. Hawaiian-Philippine Co.*, 47 Phil. 821, 827 (1925).

accomplished by the party bound to fulfill it.[68] Specific performance refers to the remedy of requiring exact performance of a contract in the specific form in which it was made, or according to the precise terms agreed upon.

In their complaint, spouses Jurado prayed that Solid Homes be ordered "to replace the foreclosed lot or to convey and transfer to complainants in absolute ownership, a parcel of land of the same area, volume, quality and location as the lot covered by the Contract to Sell and that in the event [Solid Homes] is unable to do so, that [Solid Homes] be ordered to pay [spouses Jurado] its current market value in the amount of ₱10 million; and that moreover, if found unwarranted that [Solid Homes] be ordered to return the amount [of] ₱480,262.95 to [spouses Jurado] and that [Solid Homes] be ordered to pay moral damages of ₱500,000.00 and attorney's fee of ₱200,000.00, all with legal interest until fully paid."[69]

Spouses Jurado opted to avail of the remedy of specific performance, *i.e.*, to replace the property, when Solid Homes mortgaged the subject property without the former's knowledge, much less, consent. Notably, the facts that the subject property had been mortgaged and that said mortgage was eventually foreclosed, were never disputed by Solid Homes. Consequently, rights to the lot should be restored to spouses Jurado or the same should be replaced by another acceptable lot.[70] The HLURB Board, as affirmed by the OP and the CA, therefore correctly ordered Solid Homes to replace the mortgaged and foreclosed

---

[68] Article 1191 of the New Civil Code provides:

The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission even after he has chosen fulfillment, if the latter should become impossible, x x x x

[69] *Rollo*, pp. 211-212.

[70] See *Palay, Inc. v. Clave*, 124 SCRA 638, 647-648 (1983).

property with another of the same area, quality, and location as the lot covered by the Contract to Sell. In case Solid Homes fails to comply, spouses Jurado can treat the contract to sell as cancelled and be entitled to a reimbursement of the installments paid. Spouses Jurado could not have rescinded the contract to sell as they have yet to pay the purchase price in full.

Considering that spouses Jurado have not yet paid the full purchase price, the HLURB's order, affirmed by the OP and the CA, for Solid Homes to convey title in favor of spouses Jurado or to pay the fair market value of the property is premature and consequently, erroneous.

We underscore that title and ownership over the replacement property remains with Solid Homes until spouses Jurado fully pay the balance of the purchase price which was factually determined to be in the amount of ₱145,843.35. It is only then that Solid Homes can be made to execute the corresponding deed of absolute sale and deliver the title in favor of spouses Jurado. As emphasized in *Gotesco*,[71] the seller's obligation to deliver the corresponding certificates of title is simultaneous and reciprocal to the buyer's full payment of the purchase price. Pointedly, Section 25 of P.D. No. 957 states:

> **SEC. 25. Issuance of Title. The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit**. No fee, except those required for the registration of the deed of sale in the Registry of Deeds, shall be collected for the issuance of such title. In the event a mortgage over the lot or unit is outstanding at the time of the issuance of the title to the buyer, the owner or developer shall redeem the mortgage or the corresponding portion thereof within six months from such issuance in order that the title over any fully paid lot or unit may be secured and delivered to the buyer in accordance herewith. (Emphasis supplied)

It must be emphasized that the obligation to pay the fair market value of the property, as the alternative to the transfer of ownership and delivery of title over the subject lot, becomes

---

[71] *Supra* note 66, at 300.

demandable only upon the full payment of the purchase price. Since spouses Jurado have yet to pay the purchase price in full, Solid Homes cannot be ordered to convey title over the replacement lot or to pay the value of the lot foreclosed at this point. Otherwise stated, without spouses Jurado's full payment, there can be no breach of the obligation to sell because Solid Homes has no obligation yet to turn over the title, or in the alternative, to pay its value.

Only in the event that Solid Homes fails to sell an acceptable replacement lot despite full payment of the purchase price that such may be considered a contractual breach which, under Article 1191 of the New Civil Code, gives rise to the remedy of rescission. Relatedly, rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interests.[72] While we are aware of our ruling in *Solid Homes, Inc. v. Spouses Tan*,[73] as reiterated in *Gotesco*, that for reasons of equity and justice and to prevent unjust enrichment, the injured party should be paid the market value of the lot,[74] such presupposes that the buyer already paid the purchase price in full. As held in *Gotesco*:

On this score, it is apt to mention that it is the intent of PD 957 to protect the buyer against unscrupulous developers, operators and/or sellers who reneged on their obligations. Thus, in order to achieve this purpose, equity and justice dictate that the injured party should

---

[72] Article 1385 of the New Civil Code provides:

Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interests; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore.

[73] 503 Phil. 1121, 133 (2005).

[74] In *Solid Homes, Inc., v. Spouses Tan*, the Court said:

Were we to follow the letter of Article 1385, we will in effect be paving the way to an absurd situation whereby subdivision developers who have reneged on their contractual and legal obligation to provide utility systems and facilities for the use of subdivision lot owners may themselves profit from their very own wrongs and shortcomings; *Id*.

be afforded full recompense and as such, be allowed to recover the prevailing market value of the undelivered lot **which had been fully paid for**. (Emphasis ours)[75]

But since in this case, spouses Jurado have yet to fully pay the purchase price, they should be entitled, not to the entire current market value of the property, but to a refund of the installments they paid with interest, in the event Solid Homes fails to replace the subject property with an acceptable lot.

With regard to the imposition of interest, *Nacar* held that in the absence of stipulation, whether or not the obligation constitutes a loan or forbearance of money, the rate of interest shall be 6% *per annum* which shall be reckoned from the time of judicial or extrajudicial demand.

Thus, in line with *Nacar* and in consonance with the circular of the Monetary Board of the Bangko Sentral ng Pilipinas No. 799, Series of 2013, effective July 1, 2013,[76] the prevailing rate of interest is 6% *per annum*, in the absence of an express contract as to such rate of interest. Accordingly, the interest rate of 12%[77] *per annum* should be imposed on the total payments made from the date of the demand to replace the property, or

---

[75] *Supra* note 66, at 305.

[76] The pertinent portion of which reads:

> The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:
>
> Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.
>
> Section 2. In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly. This Circular shall take effect on 01 July 2013.

[77] CB Circular No. 905 which took effect on December 22, 1982, particularly Section 2 thereof states:

on February 22, 1983, until June 30, 2013 and the interest rate of 6% *per annum* is imposed from July 1, 2013 until fully paid.

**WHEREFORE,** the instant Petition is **PARTLY GRANTED**. Petitioner Solid Homes, Inc. is ordered to **REPLACE** the foreclosed lot with another of the same area, quality, and location as the lot covered by the Contract to Sell. Upon replacement of the property, spouses Artemio and Consuelo O. Jurado shall pay the remaining balance of ₱145,843.35 with interest at the rate of 6% *per annum* reckoned from the time the replacement lot is made available to them. In case of failure to replace the foreclosed lot with an acceptable lot, Solid Homes is ordered to **REIMBURSE** to spouses Jurado the amount of ₱480,262.95 with interest at the rate of 12% *per annum* reckoned from February 22, 1983 until June 30, 2013, and interest at the rate of 6% *per annum* from July 1, 2013 until fully paid.

No pronouncement as to costs.

**SO ORDERED.**

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

---

Sec. 2. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, shall continue to be twelve percent (12%) per annum.

**SECOND DIVISION**

[G.R. Nos. 229164 & 229186. September 2, 2019]

**MERCEDES TOLENTINO SOLIMAN, HEIRS OF ANGELES TOLENTINO-ANGELES, namely: GRACIA S. PANES, EDGAR T. SALVOSA, BENJAMIN T. SALVOSA AND SONIA I. MENDOZA, HEIRS OF RAFAEL TOLENTINO, namely: LEAH T. BAENA, RENE ANGEL TOLENTINO and ROBERT TOLENTINO,** *petitioners, vs.* **HEIRS OF RAMON TOLENTINO, namely: MARILOU T. LOIUE, ANTONIO I. TOLENTINO, ELSA T. CALAUSTRO, DOLORES T. TOLENTINO, JOCELYN T. DURAN, TERESITA T. THOMAS, SUSAN T. CLASIO and REMIGIO MANCHUS,** *respondents.*

**SYLLABUS**

**POLITICAL LAW; JUDICIARY; DOCTRINE OF JUDICIAL STABILITY OR NON-INTERFERENCE; THE JUDGMENT OF A COURT OF COMPETENT JURISDICTION COULD NOT BE INTERFERED WITH BY ANY COURT OF CONCURRENT JURISDICTION; APPLICATION IN CASE AT BAR.—** To ensure the orderly administration of justice, the quintessential doctrine of judicial stability or non-interference between concurrent and coordinate courts is being enforced in our jurisdiction. It provides that the judgment of a court of competent jurisdiction could not be interfered with by any court of concurrent jurisdiction. Acting as an "insurmountable barrier," it strongly proscribes the exercise of jurisdiction of a court of competent jurisdiction as regards cases relative to that already decided by another co-equal court. Rooted on the concept of jurisdiction, a court that acquires jurisdiction over the case and renders judgment therein has jurisdiction over its judgment, to the exclusion of all other coordinate courts, for its execution and over all its incidents, and to control, in furtherance of justice, the conduct of ministerial officers acting in connection with this judgment. Alternatively

put, the orders and decisions of a competent court cannot be altered, modified or amended by another court of concurrent jurisdiction. Fortifying these tenets, Section 9 (2) of Batasang Pambansa (B.P.) Blg. 129 was promulgated, x x x Significantly, B.P. Blg. 129 does not specifically provide for any power of the RTC to annul judgments of quasi-judicial bodies. x x x Petitioners' reckless attempt to persuade this Court to rule in their favor is unavailing. The records of the case reveal that what was being assailed in the complaint for annulment of title was the issuance of TCT No. 3153 in the name of Ramon, which stemmed from the CFI Order. Citing its February 22, 2013 Order, the RTC found that the CFI Order is "null and void" for lack of jurisdiction insofar as it ordered the issuance of a new certificate of title. The basis for said ruling was the fact that the CFI exceeded its authority when it issued a new certificate of title in the name of Ramon when the prayer was for mere reconstitution of title, which should be in the name of the original owners. Verily, this pronouncement of the RTC interfered with the judgment of the then CFI. By declaring "null and void" the judgment of the CFI insofar as the issuance of title is concerned, the RTC amended the earlier decision of the CFI, which is a clear violation of the doctrine of non-interference. x x x As the RTC Order was issued in violation of this aforementioned doctrine, it bears no legal effect as it is considered as a void judgment, which cannot be a source of any right or the creator of any obligation.

**APPEARANCES OF COUNSEL**

*Grace C. Dela Torre* for petitioners.
*Expedito B. Mapa* for respondents heirs of Ramon Tolentino.
*Cruz Enverga & Lucero* for respondent Remigio I. Manchus.

## D E C I S I O N

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

The application of the doctrine of judicial stability is put forth as an issue in this Petition for Review on *Certiorari*[1] anent

[1] *Rollo*, pp. 22-39.

the Decision[2] dated April 29, 2016 and Resolution[3] dated November 23, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 102933.

**The Relevant Antecedents**

Stripped off the non-essential, the facts of the case are as follows:

Spouses Doroteo Tolentino and Engracia Dela Cruz (spouses Tolentino) were the registered owners of a parcel of land with an area of 200,944 square meters situated in San Vicente, Pili, Camarines Sur, covered by Original Certificate of Title (OCT) No. RO 529 (263). Their children are Ramon Tolentino (Ramon), Angeles Tolentino (Angeles), Rafael Tolentino (Rafael), Carmen T. Imperial (Carmen) and Mercedes T. Soliman (Mercedes).[4]

On the ground of OCT No. RO 529 (263)'s loss and destruction, Ramon filed a petition for its reconstitution before the Court of First Instance of Pili, Camarines Sur, Branch VI (CFI) on August 25, 1977. Among others, Ramon prayed that the reconstituted title be issued in his name.[5]

In an Order[6] dated January 20, 1978 (CFI Order), the CFI granted the petition and correspondingly ordered the issuance of a new title in the name of Ramon, to wit:

> AS PRAYED FOR, the petition is granted. The original and owner's duplicate copy of Original Certificate of Title No. 263 in the name of the late spouses Doroteo Tolentino and Engracia de la Cruz are hereby declared lost and of no further legal force and effect; the Register of Deeds is hereby ordered to reconstitute said title based on the decree of registration (Decree No. 128031) in Land Registration Case

---

[2] Penned by Associate Justice Ramon F. Barza, with Associate Justices Danton Q. Bueser and Agnes Reyes-Carpio, concurring; *id.* at 43-57.

[3] *Id.* at 58-61.

[4] *Id.* at 45.

[5] *Id.*

[6] Penned by Judge Esteban Lising; *id.* at 111-113.

No. 124 (G.L.R.O Record No. 21387) (Exh. "E") and thereafter, cancel the same and issue, in lieu thereof, a new title in the name of the herein petitioner, Dr. Ramon Tolentino, of legal age, Filipino, married to Dolores Imperial and residing at Pili, Camarines Sur, subject to such incumbrance as may be found subsisting.

SO ORDERED.[7]

On April 4, 1978, Transfer Certificate of Title (TCT) No. 3153 was issued in the name of Ramon.[8]

Thirty four years after or on August 29, 2012, Mercedes, the heirs of Angeles, and the heirs of Rafael (collectively referred to as petitioners) questioned the issuance of TCT No. 3153 and accordingly filed a petition for its annulment, enforcement of agreement of partition, reconveyance with damages, with prayer for the issuance of a temporary restraining order and preliminary mandatory injunction against the heirs of Ramon.[9]

Petitioners contended that the land covered by TCT No. 3153 is co-owned by them as heirs of spouses Tolentino and that said co-ownership was terminated by the execution of an Agreement of Partition. The latter sprung from a confrontation which happened among the siblings when TCT No. 3153 was issued in the name of Ramon alone. As Ramon assured them that their shares in the property shall be fully protected despite the issuance of the title in his name, said Agreement, which gave each sibling a particular portion of the property, was executed.[10]

However, as the land was solely in the name of Ramon, the Department of Agrarian Reform (DAR) placed a portion of the same under the Operation Land Transfer pursuant to Presidential Decree No. 27 and distributed the same to farmer-beneficiaries. Only Ramon received just compensation

---

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

[8] *Id*. at 46.

[9] *Id*.

[10] *Id*. at 47.

corresponding to the value of the expropriated land. Even then, petitioners' possession of their respective portions was never disturbed.[11]

Not soon thereafter, one of Ramon's heir, began claiming the land as exclusively belonging to his father and refused to acknowledge the Agreement among the siblings.[12]

Only Remigio Manchus (Remigio) and Antonio Tolentino (Antonio) filed their Answer.[13]

In their Answer with Special and Affirmative Defenses, Remigio and Antonio, as heirs of Ramon, insisted in their right as Ramon's lawful heirs. They asserted that Ramon has the exclusive ownership and possession of the property upon the demise of the spouses Tolentino because his other siblings were given their respective properties elsewhere.[14]

In an Order[15] dated February 22, 2013, the Regional Trial Court of Pili, Camarines Sur, Branch 33 (RTC) resolved the defenses laid down by the heirs of Ramon. It explicitly ruled on the invalidity of the CFI Order insofar as the issuance of a title in favor of Ramon is concerned for want of jurisdiction.

The Motion for Reconsideration filed by Remigio and Antonio was denied in an Order[16] dated April 15, 2013.

These Orders of the RTC were assailed in a Petition for *Certiorari*, docketed as CA-G.R. SP No. 130055, before the CA.[17]

---

[11] *Id*.

[12] *Id*.

[13] *Id*. at 46.

[14] *Id*. at 48.

[15] Penned by Judge Marvel C. Clavecilla; *id*. at 64.

[16] *Id*. at 65.

[17] *Id*. at 52.

On June 10, 2013, petitioners filed a Motion for Summary Judgment, praying that a judgment be rendered on the validity of the Order dated January 20, 1978, relative to the reconstitution and cancellation of OCT No. RO 259 (263) and the issuance of TCT No. 3153.[18]

In an Order[19] dated May 9, 2014 (RTC Order), the RTC declared the January 20, 1978 Order as valid only insofar as the reconstitution of the title is concerned. Accordingly, the issuance of TCT No. 3154 was declared void, thus:

> **WHEREFORE**, foregoing premises considered, judgment is hereby rendered declaring that (a) the Order of January 20, 1978 relative to the reconstitution and cancellation of OCT No. RO-529(263) in the name of Sps. Doroteo Tolentino and Engracia [Dela] Cruz is VALID and (b) the issuance of a Transfer Certificate of Title No. 3153 in the name of Ramon Tolentino, in lieu of OCT No. RO-259(263) is VOID, for having been issued for want of jurisdiction.
>
> SO ORDERED.[20]

Antonio and Remigio filed an appeal, docketed as CA-G.R. CV No. 102933, assailing the authority of the RTC to annul, amend or modify the Order dated January 20, 1978 issued by the CFI.[21]

The CA consolidated the appeal and the Petition for *Certiorari* filed by Antonio and Remigio and rendered a Decision[22] dated April 29, 2016. Applying the doctrine of non-interference, the CA held that the RTC erred in declaring void the CFI Order, issued by a co-equal court. The *fallo* thereof reads:

> **WHEREFORE**, the Orders dated February 22, 2013 and April 15, 2013, subject of **CA-G.R. SP No. 130055**, are **ANNULLED** and **SET ASIDE**. The Order dated May 29, 2014, subject of **CA-G.R.**

---

[18] *Id*.

[19] Penned by Judge Marvel C. Clavecilla; *id*. at 62-63.

[20] *Id*. at 63.

[21] *Id*. at 53.

[22] *Supra* note 2.

**CV No. 102933**, is **REVERSED** and **SET ASIDE**. The complaint for annulment of Certificate of Title No. 3153 is **DISMISSED**.

**SO ORDERED**.[23]

Aggrieved, petitioners filed a Motion for Reconsideration, which was, however, denied in a Resolution[24] dated November 23, 2016.

Hence, this petition.

**The Issue**

Petitioners raised the lone issue of whether or not the CA erred in dismissing petitioners' complaint for annulment of title by applying the doctrine of non-interference.[25]

**The Court's Ruling**

To ensure the orderly administration of justice, the quintessential doctrine of judicial stability or non-interference between concurrent and coordinate courts is being enforced in our jurisdiction. It provides that the judgment of a court of competent jurisdiction could not be interfered with by any court of concurrent jurisdiction.[26] Acting as an "insurmountable barrier,"[27] it strongly proscribes the exercise of jurisdiction of a court of competent jurisdiction as regards cases relative to that already decided by another co-equal court.

Rooted on the concept of jurisdiction, a court that acquires jurisdiction over the case and renders judgment therein has jurisdiction over its judgment, to the exclusion of all other coordinate courts, for its execution and over all its incidents,

---

[23] *Id*. at 56-57.

[24] *Supra* note 3.

[25] *Id*. at 30.

[26] *Pinausukan Seafood House Roxas Blvd., Inc. v. Far East Bank & Trust Company*, 725 Phil. 19, 29 (2014).

[27] *Panlilio v. Judge Salonga*, 303 Phil. 494, 499 (1994).

and to control, in furtherance of justice, the conduct of ministerial officers acting in connection with this judgment.[28]

Alternatively put, the orders and decisions of a competent court cannot be altered, modified or amended by another court of concurrent jurisdiction.[29]

Fortifying these tenets, Section 9 (2) of Batasang Pambansa (B.P.) Blg. 129 was promulgated, to wit:

> Section 9. *Jurisdiction*. – The Court of Appeals shall exercise:
>
> x x x x x x x x x
>
> 2. Exclusive original jurisdiction over actions for annulment of judgments of Regional Trial Courts; x x x

Significantly, B.P. Blg. 129 does not specifically provide for any power of the RTC to annul judgments of quasi-judicial bodies.[30]

Petitioners insist that what was annulled in the RTC Order was mere TCT No. 3153, and not the CFI Order itself. Hence, there was no interference made by the RTC against the then CFI.

This Court does not agree.

Petitioners' reckless attempt to persuade this Court to rule in their favor is unavailing. The records of the case reveal that what was being assailed in the complaint for annulment of title was the issuance of TCT No. 3153 in the name of Ramon, which stemmed from the CFI Order. Citing its February 22, 2013 Order, the RTC found that the CFI Order is "null and void" for lack of jurisdiction insofar as it ordered the issuance of a new certificate of title. The basis for said ruling was the fact that the CFI exceeded its authority when it issued a new certificate of title in the name of Ramon when the prayer was for mere reconstitution of title, which should be in the name of the original owners.

---

[28] *Adlawan v. Joaquino*, 787 Phil. 599, 607 (2016).

[29] *Id*.

[30] *Springfield Development Corporation, Inc. v. Hon. Presiding Judge of RTC, Misamis Oriental, Br. 40, Cagayan De Oro City*, 543 Phil. 298, 309 (2007).

Verily, this pronouncement of the RTC interfered with the judgment of the then CFI. By declaring "null and void" the judgment of the CFI insofar as the issuance of title is concerned, the RTC amended the earlier decision of the CFI, which is a clear violation of the doctrine of non-interference.

In the case of *Adlawan v. Joaquino*,[31] this Court already clarified that a petition for annulment of title which was filed and granted subsequent to an earlier decision of the RTC which granted the petition for reconstitution of title constitutes a violation of the doctrine of judicial stability, *viz.*:

> Since the assailed reconstituted title in this case, from which the petitioner's title originated was ordered issued by the RTC Branch 14, Cebu City, the respondents' complaint to annul said title — by reason of the doctrine of non-interference — should have been filed with the CA and not with another RTC branch. Evidently, the RTC Branch 17, Cebu City, as a co-equal court, has no jurisdiction to annul the reconstitution of title previously ordered by the RTC, Branch 14, Cebu City. In fact, the CA was of the same view that the RTC, Branch 17, Cebu City, exceeded its jurisdiction when it declared the order of reconstitution issued by the RTC, Branch 14, Cebu City, as null and void.[32]

As the RTC Order was issued in violation of this aforementioned doctrine, it bears no legal effect as it is considered as a void judgment, which cannot be a source of any right or the creator of any obligation.

**WHEREFORE,** premises considered, the petition is **DENIED**. Accordingly, the Decision dated April 29, 2016 and the Resolution dated November 23, 2016 of the Court of Appeals in CA-G.R. CV No. 102933 are **AFFIRMED *in toto***.

**SO ORDERED.**

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

---

[31] *Supra* note 28, 608.

[32] *Id*.

**SECOND DIVISION**

[G.R. No. 243151. September 2, 2019]

**XXX,**[1] *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

**SYLLABUS**

**1. CRIMINAL LAW; ACTS OF LASCIVIOUSNESS; ELEMENTS.—** To convict XXX of the crime of Acts of Lasciviousness under the RPC, the prosecution, in turn, had to prove the following elements, to wit: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done (a) by using force and intimidation or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex. The third element is immediately satisfied for the offended party is, naturally, a person of either sex.

**2. ID.; ID.; ALTHOUGH THE PROSECUTION FAILED TO PROVE THE AGE OF THE VICTIM AT THE TIME OF THE INCIDENT, THE ACTS COMMITTED AGAINST THE CHILD VICTIM ARE STILL CONSIDERED DONE WITH FORCE OR INTIMIDATION BY VIRTUE OF THE ACCUSED'S RELATIONSHIP WITH THE VICTIM, HENCE, ALL THE ELEMENTS OF THE CRIME OF ACTS OF LASCIVIOUSNESS ARE ESTABLISHED; CASE AT BAR.—** In the present case, the prosecution did not present AAA's birth certificate. Instead, they presented a photocopy of AAA's Baptismal Certificate, and both AAA and BBB testified as regards AAA's age. As pointed out by XXX, however, these

---

[1] 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 Amended Administrative Circular No. 83-2015 dated September 5, 2017.

pieces of evidence were not compliant with the *Pruna* guidelines and thus do not suffice to establish AAA's age. x x x In this case, not only are the records devoid of evidence that the primary evidence was lost, destroyed, or otherwise unavailable, a perusal of the records even reveals that AAA's birth certificate could, in fact, be located and furnished the court if only someone exerted sufficient effort to secure the same. x x x Considering the foregoing, it could thus be concluded that AAA's age was not properly proved by the prosecution. In *People v. Belen*, the Court convicted the accused therein only of Simple Rape instead of Statutory Rape because the age of the victim was not sufficiently established. Applying the same principle in this case, the Court thus convicts XXX only of Acts of Lasciviousness, punished under Article 336 of the RPC, and **not in relation to Section 5(b), R.A. 7610** as required by recent jurisprudence on the matter. Verily, without proof of AAA's age, R.A. 7610 cannot be made to apply as the said law applies only when the victim is below 18 years old. It must be clarified, however, that the Court still convicts XXX for Acts of Lasciviousness despite the failure of the prosecution to prove the victim's age, because all the elements of the crime are still present. To reiterate, the first element — that the offender commits any act of lasciviousness or lewdness — was sufficiently proved by the testimony of AAA as regards the incident complained of. The third element was, in turn, immediately satisfied as the offended party was a person of either sex. The second element was likewise present because, although the prosecution failed to prove that AAA was only eight years old at the time of the incident, the acts committed by XXX are still considered done with force or intimidation by virtue of XXX's relationship with AAA. As the Court held in *People v. Corpuz*, "in rape [or acts of lasciviousness] committed by a close kin, such as the victim's father, stepfather, uncle, or the **common-law spouse of her mother,** it is not necessary that actual force or intimidation be employed; **moral influence or ascendancy takes the place of violence or intimidation**."

## APPEARANCES OF COUNSEL

*Public Attorney's Office* for petitioner.
*The Solicitor General* for respondent.

## D E C I S I O N

**CAGUIOA, *J.*:**

Before the Court is a Petition for Review on *Certiorari*[2] filed by the petitioner XXX assailing the Decision[3] dated July 26, 2018 and Resolution[4] dated November 6, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 40229, which affirmed the Decision[5] dated July 12, 2016 of Branch 36, Regional Trial Court of Calamba City, Laguna (RTC) in Criminal Case Nos. 17538-2010, finding XXX guilty beyond reasonable doubt of violating Section 5(b) of Republic Act No. 7610 (R.A. 7610).

### The Facts

An Information was filed against XXX for doing lascivious acts against AAA,[6] which reads:

> That sometime in the year 2005 at [YYY],[7] City of [ZZZ],[8] Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, through force, intimidation, and coercion, did then and there willfully, unlawfully and criminally, with lewd design, committed lascivious acts against [AAA], eight years old, a child subjected to other sexual abuse, by touching her breasts, and vagina and other parts of her body, against complainant's will and consent, to her damage and prejudice.

---

[2] *Rollo*, pp. 12-38.

[3] *Id.* at 42-58. Penned by Associate Justice Ramon R. Garcia with Associate Justices Myra V. Garcia-Fernandez and Germano Francisco D. Legaspi concurring.

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

[5] *Id.* at 86-94. Penned by Presiding Judge Glenda R. Mendoza-Ramos.

[6] *See* note 1.

[7] *See* note 1.

[8] *See* note 1.

CONTRARY TO LAW.[9]

During the arraignment, XXX pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued.

The prosecution presented AAA, her older sister BBB,[10] and social welfare officer Nancy de Castro. The version of the prosecution, as summarized by the CA, is as follows:

> Appellant is the common-law husband of private complainant's mother CCC. Private complainant, along with her mother CCC, her sisters DDD and EEE including her younger brother FFF, was living with appellant at [YYY], [ZZZ], Laguna.
>
> Private complainant testified that sometime in 2005, when she was eight (8) years old, she was at home sleeping when she suddenly felt appellant touch her breasts and vagina. She was so afraid that all she could do was tremble. Worse, the incident was witnessed by her mother, who instead of coming to her aid, said "*kayo na lang ang magsama*". This statement proved hurtful to private complainant.
>
> After the unfateful (*sic*) incident, private complainant tried to distance herself from appellant. However, she was repeatedly molested by appellant almost everyday. There were times when the lascivious conduct would occur during daytime while she was cooking rice and at nighttime while she was asleep. On one occasion, while she and younger brother FFF were in their room, appellant sexually abused her by touching her breasts and vagina. She tried to resist by screaming and attempting to jump out the window of their house but she was overpowered by appellant's strength. Upon witnessing the incident, her younger brother FFF ran and called their mother.
>
> In order to avoid being sexually molested, private complainant left their house sometime in 2010. She then went to live with her older sister BBB at the Mornese Retreat House in Quezon City, where the latter works. Thereafter, private complainant recounted to her sister BBB the ordeals she suffered from appellant. This prompted BBB to file the instant case against appellant.

---

[9] Records, p. 1.

[10] *See* note 1.

Private complainant's sister BBB testified that private complainant was born on September 1, 1997. They have the same biological parents but their father [had] already died. At the time of the incident, she was not living with her family because she was already working at the Mornese Retreat House in Quezon City. She further testified that private complainant presently lives with her at the Mornese Retreat House in Quezon City. Private complainant ran away from their house sometime in August 2010 because she was being sexually abused by appellant by touching her breasts and vagina.

The prosecution likewise presented private complainant AAA's Certificate of Baptism to establish that she was born on September 1, 1997 and Social Case Study Report dated December 1, 2011 concluding that private complainant was a victim of sexual abuse and recommending her for proper intervention.[11]

On the other hand, the version of the defense, as likewise summarized by the CA, is as follows:

Appellant was presented as the sole witness for the defense.

Appellant interposed the twin defenses of denial and alibi. He denied that he was living with private complainant's mother in the year 2005. He claims that he was then a construction worker assigned at the Tejeros Cavite Economic Zone. His working hours was from 8:00 a.m. to 4:00 p.m. After the end of his duty, he proceeds to the employee's barracks located at their job site. Moreover, while he admitted that he was romantically involved with private complainant's mother, he insisted that he never stepped into their house at [YYY], [ZZZ], Laguna. As a matter of fact, it was private complainant's mother who visited him in his rented house located at [WWW],[12] [ZZZ], Laguna. The distance between these two houses is about 2 kilometers or twenty (20) minutes away by means of a tricycle. Appellant also denied ever having personally met private complainant and claims that he only saw her through the pictures shown to him by her mother. Appellant further pointed out that private complainant holds a grudge against him because he was romantically involved with her mother.[13]

---

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

[12] *See* note 1.

[13] *Rollo*, p. 45.

**Ruling of the RTC**

After trial on the merits, in its Decision[14] dated July 12, 2016, the RTC convicted XXX of the crime charged. The dispositive portion of the said Decision reads:

> **WHEREFORE**, in view of the foregoing, the Court finds accused [XXX] **GUILTY** beyond reasonable doubt for violation of Section 5(b) of Republic Act 7610. He is hereby sentence (*sic*) to suffer the indeterminate penalty of EIGHT (8) years and ONE (1) day of *prision mayor* as minimum to SEVENTEEN (17) years, FOUR (4) months and ONE (1) day of *reclusion temporal*, as maximum, and to pay the amount of FIFTEEN THOUSAND PESOS (₱15,000.00) as fine. Likewise, he is ordered to pay AAA the amount of TWENTY THOUSAND Pesos (₱20,000.00) as civil indemnity FIFTEEN THOUSAND PESOS (₱15,000.00) as moral damages; and FIFTEEN THOUSAND PESOS (₱15,000.00) as exemplary damages, with subsidiary imprisonment in case of insolvency.
>
> SO ORDERED.[15]

The RTC found AAA's testimony to be candid and straightforward, with "no tinge of revenge or rancor"[16] and thus deserving of full faith and credit. The RTC found the five-year delay in reporting the incident to be insignificant, as the victim was only able to run away from her home five years after the incident complained of. The RTC added:

> It is herein stressed that the accused failed to show an acceptable motive and the records show none for the private complainant to concoct a story and to testify falsely against him. His claim that private complainant did not want to have a relationship with her mother cannot overcome AAA's positive and forthright testimony which appears to be consistent even under cross-examination. It has

---

[14] *Supra* note 5.

[15] *Rollo*, p. 94.

[16] *Id*. at 90.

been held that the best test of credibility is its compatibility with the common experience of man. A testimony deserves deserves credence if it does not run counter to human knowledge, observation and experience.[17]

XXX thus appealed to the CA.

**Ruling of the CA**

In the questioned Decision[18] dated July 26, 2018, the CA affirmed the RTC's conviction of XXX.

The CA held that AAA's testimony sufficiently established all the elements of the crime. It ruled that the RTC correctly accorded credence to the testimony of AAA after finding her answers to the questions on direct and cross-examination to be intelligible, candid, and unwavering.[19] The CA also noted that, contrary to XXX's claim, the prosecution was able to establish AAA's age at the time of the commission of the offense using AAA's baptismal certificate. Finally, the CA ruled against XXX's defenses of alibi and denial, for they were inherently weak as they could be easily contrived. Thus, the CA convicted XXX of the crime of "acts of lasciviousness under Article 336 of the Revised Penal Code [(RPC)] in relation to Section 5(b) of [R.A.] 7610."[20]

XXX filed a motion for reconsideration of the Decision, however, the same was denied by the CA in a Resolution dated November 6, 2018.

Hence, the instant appeal.

---

[17] *Id*. at 91.

[18] *Supra* note 3.

[19] *Rollo*, p. 52.

[20] *Id*. at 56.

**Issue**

Proceeding from the foregoing, for resolution of the Court is the issue of whether the RTC and the CA erred in convicting XXX.

**The Court's Ruling**

The appeal is partially granted. The Court modifies XXX's conviction from "acts of lasciviousness under Article 336 of the [RPC] in relation to Section 5(b) of [R.A.] 7610" to "Acts of Lasciviousness under Article 336 of the [RPC]."

The CA convicted XXX of "acts of lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of [R.A.] 7610" because of its conclusion that the victim was only eight years old at the time of the commission of the act complained of. The CA was only following the prevailing jurisprudence on the matter, which states that "when the [victim] of lascivious conduct is under 12 years of age, the perpetrator shall be (1) prosecuted under Article 336 of the RPC, and (2) the penalty shall be *reclusion temporal* in its medium period."[21]

Thus, while XXX was charged and convicted for the crime "in relation to [R.A.] 7610," the elements of Acts of Lasciviousness under the RPC was what the prosecution essentially needed to prove — which it did so successfully. The only effect of relating the crime to R.A. 7610 was the imposition of *reclusion temporal* in its medium period as the penalty.

To convict XXX of the crime of Acts of Lasciviousness under the RPC, the prosecution, in turn, had to prove the following elements, to wit: (1) that the offender commits any act of

---

[21] Separate Concurring Opinion of Associate Justice Diosdado M. Peralta in *Quimvel v. People*, 808 Phil. 889, 943 (2017). This is still the prevailing rule as it was upheld in the recent case of *People v. Tulagan*, G.R. No. 227363, March 12, 2019, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020>.

lasciviousness or lewdness; (2) that it is done (a) by using force and intimidation or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex.[22] The third element is immediately satisfied for the offended party is, naturally, a person of either sex.

The first element — that the offender commits any act of lasciviousness or lewdness — on the other hand, was satisfied through the testimony of AAA, the offended party. AAA testified:

Q You said that you were abused by [XXX] who is the accused, when did it happen?
A Year 2005, I was in Grade 1, sir.

Q And where did it happen?
A At home while I was sleeping, sir.

Q So, if you were at home and the accused was also at your house, why is he at your house?
A He is the husband of my mother, he is my step father, sir.

Q So, the accused is your step father?
A Yes, sir.

Q Now according to you [AAA], you were abused by the accused in the Year 2005 at your house in [ZZZ], now my question is how did the accused abuse you?
A He was touching my breast and other private parts of my body, sir.

Q Can you be more specific with respect to your private parts?
A He was touching my vagina, sir.

Q Now while he was doing it to you, what was your reaction?
A I was afraid sir, I was trembling.

Q And while he was also doing it to you, what was his reaction?
A Nothing, sir.

---

[22] *Perez v. Court of Appeals*, 431 Phil. 786, 796 (2002).

Q How long did the accused touch your private parts, for how long?
A He touched my body for a short time and after that he left, sir.

Q Was this incident repeated?
A Yes, sir.

Q How many times did this incident repeated (*sic*)?
A Almost everyday, sir.

Q Did you reveal this incident to a person?
A None, sir.

Q So when did this incident stopped (*sic*)?
A When I ran away, sir.[23]

Upon cross-examination, AAA was only asked regarding (1) the lighting conditions in the room where the act complained of was done; (2) when AAA was able to run away from home and thus relay the incident to her sister, BBB; and (3) if AAA told her mom about the incident, in which she testified:

Q After the incident, you did not bother to inform your mom about the incident.
A No ma'am, she just saw the incident.

Q But is it true that you said a while ago that your mother slept at the other room, is that correct?
A Yes, ma'am. My mom is at the other room but she is seeing whenever he moves.

Q You said that your mother saw the incident yet you did not bother to confront her and even tell her what happened to you?
A My mother was able to see the incident and the following morning, she's the one telling me about that incident and she even joked "kami na lang daw po and (*sic*) magsama" and it hurts me.[24]

---

[23] TSN dated May 25, 2011, pp. 5-6.

[24] TSN dated May 25, 2011, p. 10.

The RTC, as affirmed by the CA, noted that the foregoing testimony "deserves total credibility. It was candid, straightforward, with no tinge of revenge or rancor."[25] In turn, it is well-settled that in the absence of facts or circumstances of weight and substance that would affect the result of the case, appellate courts will not overturn the factual findings of the trial court.[26] In addition, when the case pivots on the issue of the credibility of the victim, the findings of the trial courts necessarily carry great weight and respect as they are afforded the unique opportunity to ascertain the demeanor and sincerity of witnesses during trial.[27] From the foregoing, it may thus be concluded that the first element of the crime charged has been proven by the prosecution beyond reasonable doubt.

For the second element, the RTC and the CA concluded that it was present because AAA was only eight years old at the time of the incident complained of. Coincidentally, because of this finding, the lower courts deemed R.A. 7610 to be applicable in light of recent jurisprudence.

XXX, however, argues in this appeal that AAA's age was not properly established as the Court's guidelines in *People v. Pruna*[28] (*Pruna*) were not followed. The *Pruna* guidelines are as follows:

> In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.
>
> 1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
>
> 2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

---

[25] *Rollo*, p. 90.

[26] *People v. Gerola*, 813 Phil. 1055, 1063-1064 (2017).

[27] *People v. Aguilar*, 565 Phil. 233, 247 (2007).

[28] 439 Phil. 440 (2002).

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. The trial court should always make a categorical finding as to the age of the victim.[29]

The Court agrees with XXX's contention.

In the present case, the prosecution did not present AAA's birth certificate. Instead, they presented a photocopy of AAA's Baptismal Certificate, and both AAA and BBB testified as regards AAA's age. As pointed out by XXX, however, these pieces of evidence were not compliant with the *Pruna* guidelines and thus do not suffice to establish AAA's age.

The prosecution was unable to comply with the first guideline because, as mentioned, they did not present AAA's birth certificate which could have been the best evidence that she was only eight years old at the time of the incident complained

---

[29] *Id*. at 470-471.

of. The second guideline was likewise not complied with, as the Baptismal Certificate[30] submitted in evidence was a mere photocopy and no one was presented to authenticate the same.

The third guideline was likewise not sufficiently complied with. While BBB, AAA's older sister, testified as to AAA's age, the resort to such testimony was not proper because the guideline provides that such testimony may be admitted only after the "certificate of live birth or authentic document is shown to have been **lost** or **destroyed** or **otherwise unavailable.**"[31] In *People v. Hilarion*[32] the Court did not appreciate the mother's testimony as to her daughter's age because her testimony failed to show how the birth certificate or other authentic documents were lost, destroyed, or were otherwise unavailable. The Court in the said case ruled:

> In the present case, the records are completely devoid of evidence that the certificates recognized by law have been lost or destroyed or were otherwise unavailable. The mother simply testified without prior proof of the unavailability of the recognized primary evidence. Thus, proof of the victim's age cannot be recognized, following the rule that all doubts should be interpreted in favor of the accused.[33]

In this case, not only are the records devoid of evidence that the primary evidence was lost, destroyed, or otherwise unavailable, a perusal of the records even reveals that AAA's birth certificate could, in fact, be located and furnished the court if only someone exerted sufficient effort to secure the same. According to BBB's testimony, AAA's birth certificate was just in Cubao:

Q [BBB], your sister, is she older or younger to you?
A Much younger[,] Your Honor.

Q Do you know when she was born?
A September 1, 1997 Your Honor.

---

[30] Records, p. 87.

[31] *People v. Pruna*, *supra* note 28.

[32] 722 Phil. 52 (2013).

[33] *Id*. at 58.

**Q** **Would you know whether she has Birth Certificate?**
**A** **Her Birth Certificate is in Cubao Your Honor**.[34] (Emphasis supplied)

Thus, resort to BBB's testimony to prove AAA's age was improper.

Lastly, the fourth guideline was similarly not complied with because although AAA testified as to her age, the said fact was not expressly and clearly admitted by XXX in accordance with the fourth guideline in *Pruna*.

Considering the foregoing, it could thus be concluded that AAA's age was not properly proved by the prosecution. In *People v. Belen*,[35] the Court convicted the accused therein only of Simple Rape instead of Statutory Rape because the age of the victim was not sufficiently established. Applying the same principle in this case, the Court thus convicts XXX only of Acts of Lasciviousness, punished under Article 336 of the RPC, and **not in relation to Section 5(b), R.A. 7610** as required by recent jurisprudence on the matter. Verily, without proof of AAA's age, R.A. 7610 cannot be made to apply as the said law applies only when the victim is below 18 years old.

It must be clarified, however, that the Court still convicts XXX for Acts of Lasciviousness despite the failure of the prosecution to prove the victim's age, because all the elements of the crime are still present. To reiterate, the first element — that the offender commits any act of lasciviousness or lewdness — was sufficiently proved by the testimony of AAA as regards the incident complained of. The third element was, in turn, immediately satisfied as the offended party was a person of either sex.

The second element was likewise present because, although the prosecution failed to prove that AAA was only eight years old at the time of the incident, the acts committed by XXX are

---

[34] TSN dated June 2, 2011, p. 6.

[35] 803 Phil. 751 (2017).

still considered done with force or intimidation by virtue of XXX's relationship with AAA. As the Court held in *People v. Corpuz*,[36] "in rape [or acts of lasciviousness] committed by a close kin, such as the victim's father, stepfather, uncle, or the **common-law spouse of her mother**, it is not necessary that actual force or intimidation be employed; **moral influence or ascendancy takes the place of violence or intimidation**."[37]

All the elements of the crime of Acts of Lasciviousness are thus present.

With regard to the amount of damages, the Court deems it proper to adjust the award of damages in consonance with *People v. Tulagan*.[38] Thus, XXX is hereby ordered to pay AAA, the amount of Twenty Thousand Pesos (₱20,000.00) as civil indemnity, Twenty Thousand Pesos (₱20,000.00) as moral damages, and Twenty Thousand Pesos (₱20,000.00) as exemplary damages. Interest at the rate of 6% *per annum* on the monetary awards reckoned from the finality of this Decision is likewise imposed to complete the quest for justice and vindication on the part of AAA.[39]

**WHEREFORE,** in view of the foregoing, the Decision dated July 26, 2018 and Resolution dated November 6, 2018 of the Court of Appeals in CA-G.R. CR No. 40229 is hereby **AFFIRMED WITH MODIFICATION**. The accused-appellant XXX is found **GUILTY** beyond reasonable doubt of the crime of Acts of Lasciviousness, defined and punished under Article 336 of the Revised Penal Code. He is sentenced to suffer the indeterminate penalty of imprisonment of four (4) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. He is

---

[36] 597 Phil. 459 (2009).

[37] *Id*. at 467.

[38] G.R. No. 227363, March 12, 2019, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020>.

[39] *People v. Arcillas*, 692 Phil. 40, 54 (2012).

likewise ordered to pay AAA the amounts of TWENTY THOUSAND PESOS (₱20,000.00) as civil indemnity, TWENTY THOUSAND PESOS (₱20,000.00) as moral damages, and TWENTY THOUSAND PESOS (₱20,000.00) as exemplary damages. Interest at the rate of 6% *per annum* on the monetary awards reckoned from the finality of this Decision is likewise imposed.

**SO ORDERED.**

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

---

**SECOND DIVISION**

[G.R. No. 243386. September 2, 2019]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **HILARIO DE CASTRO *y* SANTOS *alias* "DACOY,"** *accused-appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY RULE; REQUIREMENTS UNDER SECTION 21, ARTICLE II OF RA 9165, ENUMERATED; THE THREE REQUIRED WITNESSES SHOULD ALREADY BE PHYSICALLY PRESENT DURING THE CONDUCT OF INVENTORY OF THE SEIZED ITEMS, WHICH MUST BE IMMEDIATELY DONE AT THE PLACE OF SEIZURE AND CONFISCATION OF THE ILLEGAL DRUGS.—** In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of

conviction. It is essential, therefore, that the identity and integrity of the seized drugs must be established with moral certainty. Thus, in order to obviate any unnecessary doubt on their identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. In this connection, the Court has repeatedly held that Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, **strictly requires** that (1) the seized items be inventoried and photographed **immediately after seizure or confiscation:** and (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ). Verily, the three required witnesses **should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**.

2. **ID.; ID.; ID.; ID.; IN CASE THE APPREHENDING TEAM FAILED TO STRICTLY COMPLY WITH THE REQUIREMENTS OF THE LAW, THE PROSECUTION STILL NEEDS TO SATISFACTORILY PROVE THAT: (A) THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE; AND (B) THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; NOT ESTABLISHED IN CASE AT BAR.—** While the Court has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible; and the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void, this has ***always*** been with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. However, in this case, it is evident that the police officers blatantly disregarded the

requirements laid down under Section 21 and they had no valid excuse for their deviation from the rules. x x x The Court points out that, as testified by PO3 Amodia, **none** of the three required witnesses was present at the time of arrest of the accused and the seizure of the drugs. Neither were they present during the inventory of the seized drugs at the police office: x x x In addition, they offered nothing but a flimsy excuse for their deviation from the requirements laid down under Section 21. They merely alleged that they transferred to the police station because people started to come out and there might be a ***possible*** commotion. They even admitted that they did not bring the necessary documents at the place of arrest when in fact, this should already be standard practice for police officers in conducting buy-bust operations. x x x The integrity and evidentiary value of the *corpus delicti* have thus been compromised, thus necessitating the acquittal of De Castro.

**3. ID.; ID.; ID.; ID.; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY CANNOT OVERCOME THE STRONGER PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED.—** The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right. In this connection, the presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused. Especially as applied in this case where there are several procedural lapses by the buy-bust operation team which cast doubt as to the regularity in the performance of official duties by the police officers. The Court has repeatedly held that the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual. In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165.

**4. ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** [T]he elements of illegal sale of dangerous drugs: *(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.

**5. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** The successful prosecution of illegal possession of drugs necessitates the following facts to be proved, namely: (a) the accused was in possession of the dangerous drugs, (b) such possession was not authorized by law, and (c) the accused was freely and consciously aware of being in possession of the dangerous drugs.

**APPEARANCES OF COUNSEL**

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

**D E C I S I O N**

**CAGUIOA, *J.*:**

This is an Appeal[1] under Section 13(c), Rule 124 of the Rules of Court from the Decision[2] dated February 6, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC. No. 07962, which affirmed the Decision[3] dated November 16, 2015 rendered by the Regional Trial Court, Branch 203, Muntinlupa City (RTC) in Criminal Case No. 10-501 and Criminal Case No. 10-502, finding accused-appellant Hilario De Castro *y* Santos *alias* "Dacoy" (De Castro) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended.

---

[1] See Notice of Appeal dated February 19, 2018, *rollo*, pp. 21-23.

[2] *Rollo*, pp. 2-20. Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Priscilla J. Baltazar-Padilla and Germano Francisco D. Legaspi, concurring.

[3] CA *rollo*, pp. 44-59. Penned by Presiding Judge Myra B. Quiambao.

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

## The Facts

The two separate Informations[5] filed against De Castro for violation of Sections 5 and 11, Article II of RA 9165 pertinently read:

**[Criminal Case No. 10-501 (Illegal Possession of Dangerous Drugs)]**

On or about the *4th day of August 2010*, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who is not authorized by law, to possess any dangerous drug, did then and there willfully and unlawfully and feloniously have in his possession, custody and control Methylamphetamine Hydrochloride, a dangerous drug weighing 0.12 gram contained in two (2) small heat-sealed transparent plastic sachets placed inside a yellow plastic container, in violation of the above-cited law.

Contrary to law.[6]

**[Criminal Case No. 10-502 (Illegal Sale of Dangerous Drugs)]**

That on or about the 4th *day of August 2010*, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, feloniously and unlawfully sell, trade, deliver and give away to another, Methylamphetamine Hydrochloride, a dangerous drug weighing 0.02 gram contained in one (1) small heat-sealed transparent plastic sachet, in violation of the above-cited law.

Contrary to law.[7]

Upon arraignment, De Castro pleaded not guilty to both charges.[8]

---

[5] Records, pp. 1-4.

[6] *Id*. at 1.

[7] *Id*. at 3.

[8] *Rollo*, p. 4.

*Version of the Prosecution*

The version of the prosecution, as summarized by the CA, is as follows:

The prosecution presented the following persons as witnesses: PCI Richard Allan Mangalip ("PCI Mangalip;" Forensic Chemist); PO3 Aires Abian ("PO3 Abian;" Evidence Custodian); NUP Bernardo Bucayan ("NUP Bucayan;" Receiving Officer); PO3 Manuel Amodia Jr. ("PO3 Amodia[;"], Apprehending Officer").

The Prosecution and the Defense entered into stipulations, and dispensed with the testimonies of PCI Mangalip, PO3 Abian, and NUP Bucayan.

The evidence of the Prosecution is summarized thus: on 4 August 2010, at around 2:00 a.m., PINSP Domingo J. Diaz ("PINSP Diaz") instructed the police to conduct the buy-bust operation after receiving a tip from the Informant that the appellant De Castro was selling *shabu* for ₱300.00; PINSP. Diaz formed the buy-bust team (*i.e.*: PO3 Amodia, poseur-buyer; and PO2 Rondivar Hernaez ["PO2 Hernaez"], back-up/arresting officer); the police prepared the Pre-Operational Report, and Coordination Form and PINSP Diaz signed these two documents; the police brought the Pre-Operational Report, the Coordination Form, and the Certificate of Coordination, to the Philippine Drug Enforcement Agency ("PDEA") as evidenced by Control Number PDEA-MMRO 0810-00029, to comply with the requirement of a legitimate buy-bust operation; the police prepared the buy-bust money consisting of three pieces genuine ₱100.00 bills, and recorded the operation in the logbook; after the police accomplished the documents, the police and the Informant went to Purok 2, Montillano Street, Alabang Muntinlupa City ("target site").

PO3 Amodia and the Informant arrived at the target site at 3:00 a.m.; PO3 Amodia and the Informant saw a shirtless man standing on the stairs outside a house; the shirtless man (who later turned out to be appellant De Castro), approached PO3 Amodia and the Informant; the Informant told the appellant De Castro that they (the Informant and PO3 Amodia) wanted to buy ₱300.00 worth of *shabu*; the Informant introduced PO3 Amodia to the appellant De Castro as the Informant's cousin; PO3 Amodia handed the appellant [D]e Castro the buy-bust money; after receiving the buy-bust money, the appellant De Castro folded the bills, and inserted the bills in the right waist of the appellant

De Castro's shorts; the appellant [D]e Castro then drew from his (the appellant De Castro's) left waist the small, yellow, plastic container, opened the container, took out one small transparent plastic sachet containing a white crystalline substance suspected to be *shabu*, and handed the plastic sachet to PO3 Amodia; PO3 Amodia accepted the plastic sachet and executed the pre-arranged signal that the transaction had been consummated; PO3 Amodia introduced himself to the appellant De Castro as a policeman, and grabbed the appellant De Castro's right hand which was then holding the plastic container; PO2 Hernaez frisked the appellant De Castro and recovered the buy-bust money; PO3 Amodia retrieved from the appellant De Castro's plastic container, two more plastic sachets; PO3 Amodia arrested the appellant De Castro, and informed the appellant De Castro of his constitutional rights, and the reason for the appellant De Castro's arrest; at the place of arrest and seizure PO3 Amodia marked the plastic container with "HDC," and the transparent plastic sachets with "HDC-2" and "HDC-3;" the police brought the appellant De Castro to the Crime Investigation Division Office ("CID Office") for proper inventory and documentation, to avoid commotion; PO3 Amodia was in custody of the seized contraband from the place of arrest, to the CID Office.

At the CID Office, the police prepared the Certificate of Inventory; several attempts to summon representatives from the media, the Department of Justice ("DOJ"), and an elected public official were futile, thus, the police were forced to proceed with the inventory even without the representatives from the media, the Department of Justice ("DOJ"), and an elected public official; PO2 Forastero prepared the Booking and Information Sheet, and the Spot Report, and the PDEA received two documents; the police prepared the Request for Laboratory Examination on Seized Evidence, and PINSP Diaz signed it; PO3 Amodia and PO2 Hernaez brought the Request for Laboratory Examination on Seized Evidence, and the seized contraband, to the Southern Police District ("SPD") Crime Laboratory; PO3 Amodia was in possession of the seized contraband from the CID Office, to the SPD Crime Laboratory; PO2 Hernaez delivered and submitted to Receiving Officer Bucayan the Request for Laboratory Examination, and the seized contraband; although PO2 Hernaez was the one who signed the "delivered by" portion of the Request for Laboratory Examination (because it was PO2 Hernaez who had an ID at the time), it was actually Apprehending Office PO3 Amodia who handed the seized contraband to the SPD Crime Laboratory; the seized contraband

delivered to the SPD Crime Laboratory was never altered; Forensic Chemist PCI Mangalip conducted the laboratory examination, and found that the seized contraband tested positive for methamphetamine hydrochloride, as evidenced by the Physical Science Report No. D-268-10S; Evidence Custodian PO3 Abian received from Forensic Chemist PCI Mangalip the seized contraband bearing the security seals and markings.[9]

*Version of the Defense*

On the other hand, the defense presented De Castro as the sole witness and the defense's version, as summarized by the CA, is as follows:

The evidence of the Defense is summarized thus: on 3 August 2010, at around 7:00 p.m. the appellant De Castro, who was then an Ice Delivery Truck Driver, parked the ice delivery truck at Cas[t]ro, Alabang, Muntinlupa, when a white vehicle arrived and parked in front of appellant De Castro's truck; three men (who later turned out to be policemen) alighted from the white vehicle, and suddenly grabbed and searched the appellant De Castro; appellant De Castro asked the three men what was going on, but the three men just told the appellant De Castro to go with them (the three men); when the police were not able to find anything on the appellant De Castro, the police told the appellant [D]e Castro to board the vehicle; inside the vehicle, the appellant De Castro saw five men in handcuffs; the appellant De Castro again asked for the reason for his arrest, but nobody answered the appellant De Castro; upon arrival at the CID Office, the police took the names of the arrested men, including appellant De Castro; at around 10:00 p.m., the police transferred the men to Block 2, Alabang Precinct, where the police detained the men; at midnight, the police released the other five men, leaving the appellant De Castro under detention.

On 5 August 2010, at around 3:00 p.m., PO2 Hernaez, one of the police who apprehended the appellant De Castro, brought the appellant De Castro to the Office of the Prosecutor for inquest proceeding; the police returned the appellant [D]e Castro to Block 2, Alabang Precinct, and then transferred the appellant De Castro to the Muntinlupa City Jail; the appellant De Castro later learned that the police had charged him with violation of Section[s] 11 and Section 5, R.A. 9165; the

---

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

appellant De Castro denied that he sold illegal drugs, and claimed that the police arrested him on 3 August 2010, and not on August 2010 (as claimed by the police).[10]

**Ruling of the RTC**

In the consolidated Decision dated November 16, 2015, the RTC ruled that the prosecution successfully proved the existence of all the elements of illegal sale and illegal possession of dangerous drugs.[11] It further ruled that the buy-bust operation was well-documented, from the Pre-Operational Report, Coordination with the Philippine Drug Enforcement Agency (PDEA), photocopying of the buy-bust money, the briefing, and the actual operation.[12] Therefore, the police officers' conduct was within the acceptable standard of fair and honorable administration of justice.[13] It held that the accused's defense of denial cannot prevail over the affirmative and credible testimony of PO3 Amodia pointing to the accused as the seller of the prohibited drugs.[14] Lastly, it ruled that there was substantial compliance with the legal requirements on the handling of the seized items.[15] Their integrity and evidentiary value were not diminished.[16] The chain of custody of the drugs subject matter of these cases had not been shown to have been broken.[17]

The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the Court finds accused Hilario De Castro *y* Santos @ Dacoy GUILTY beyond reasonable doubt in Criminal Case No. 10-501 for violation of Section 11, Article II of

---

[10] *Id*. at 7.

[11] CA *rollo*, p. 50.

[12] *Id*. at 51.

[13] *Id*.

[14] *Id*. at 55.

[15] *Id*. at 57a.

[16] *Id*.

[17] *Id*.

R.A. No. 9165 and sentences him to imprisonment of Twelve (12) years and one (1) day as *minimum* to fourteen (14) years and eight (8) months as *maximum* and a fine of ₱300,000.00; and in Criminal Case No. 10-502 for violation of Section 5, Article II of R.A. No. 9165 and sentences him to *life imprisonment* and a fine of ₱500,000.00.

The preventive imprisonment undergone by the accused shall be credited in his favor.

x x x x x x x x x

SO ORDERED.[18]

Aggrieved, De Castro appealed to the CA.

**Ruling of the CA**

In the assailed Decision dated February 6, 2018, the CA affirmed De Castro's conviction. The dispositive portion of the Decision reads:

We **DISMISS** the appeal, and **AFFIRM** the assailed Decision dated 16 November 2015 of the Regional Trial Court, Branch 203, Muntinlupa City in Criminal Case No. 10-501, and Criminal Case No. 10-502.

**IT IS SO ORDERED**.[19]

The CA ruled that all the elements of the crime of illegal possession of dangerous drugs and illegal sale of dangerous drugs were proven.[20] It further ruled that non-compliance with the requirements under Section 21 does not invalidate the seizure and custody of the contraband.[21] What is important is that the integrity and evidentiary value of the seized items were preserved.[22] Lastly, it ruled that De Castro failed to show that the police officers deviated from the regular performance of

---

[18] *Id*. at 58-59.

[19] *Rollo*, p. 19.

[20] *Id*. at 11 and 13.

[21] *Id*. at 16.

[22] *Id*.

their duties, hence the presumption of regularity in performance by police officers was sustained.[23]

Hence, the instant appeal.

**Issue**

Whether De Castro's guilt for violation of Sections 5 and 11 of RA 9165 was proven beyond reasonable doubt.

**The Court's Ruling**

The appeal is granted. De Castro is accordingly acquitted.

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense[24] and the fact of its existence is vital to sustain a judgment of conviction.[25] It is essential, therefore, that the identity and integrity of the seized drugs must be established with moral certainty.[26] Thus, in order to obviate any unnecessary doubt on their identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[27]

In this connection, the Court has repeatedly held that Section 21,[28] Article II of RA 9165, the applicable law at the

---

[23] *Id*. at 18.

[24] *People v. Sagana*, 815 Phil. 356, 367 (2017).

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

[26] *People v. Alvaro*, G.R. No. 225596, January 10, 2018, 850 SCRA 464, 479.

[27] *People v. Manansala*, G.R. No. 229092, February 21, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63936>.

[28] 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

time of the commission of the alleged crime, **strictly requires** that (1) the seized items be inventoried and photographed **immediately after seizure or confiscation:** and (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ).[29]

Verily, the three required witnesses **should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**.[30]

While the Court has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible;[31] and the failure of the

---

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[.]

[29] See RA 9165, Art. II, Sec. 21 (1) and (2); *Ramos v. People*, G.R. No. 233572, July 30, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64716>; *People v. Ilagan*, G.R. No. 227021, December 5, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/648 00>; *People v. Mendoza*, G.R. No. 225061, October 10, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64646>.

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

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

apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void, this has ***always*** been with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[32]

However, in this case, it is evident that the police officers blatantly disregarded the requirements laid down under Section 21 and they had no valid excuse for their deviation from the rules.

It is true that the police officers marked the seized drugs at the place of arrest.[33] Thereafter, to avoid any possible commotion since they noticed that people were starting to come out, they decided to bring the accused and the seized evidence to their office for proper inventory.[34] They also said that they did not have the necessary documents to conduct the inventory at the place of arrest that is why they decided to move to the police office.[35]

The Court points out that, as testified by PO3 Amodia, **none** of the three required witnesses was present at the time of arrest of the accused and the seizure of the drugs. Neither were they present during the inventory of the seized drugs at the police office:

> Q And how come you prepared the inventory in your office instead [of] that place where you arrested Hilario De Castro?
> A First, we don't have the necessary document, we don't have the inventory sheet, sir. Secondly, after we arrested Dacoy, people were coming out and we decided that to avoid any commotion, we decided to prepare the inventory in our office, sir. (*sic*)

---

[32] *People v. Ceralde*, 815 Phil. 711, 721 (2017).

[33] CA *rollo*, p. 47.

[34] *Id*.

[35] *Id*.

x x x x x x x x x

Q Are you familiar with the rule that when you prepared (*sic*) an inventory, there must be someone from the Department of Justice, a representative from the media, an elected local government official from the media and so on, who must be present?

A Yes, sir.

Q **How come there is no signature from those people?**

A **We try to call several persons, sir and nobody arrived and since it's already early [in the] morning sir, and we were afraid that we might encounter technicality problem in the documentation sir, so, we decided to get this NUP personnel**.[36] (Emphasis supplied)

Based on the testimony of PO3 Amodia, it is obvious that the police officers merely tried to "call-in" the three witnesses after the conduct of the buy-bust operation already. Indubitably, this is the very practice that the law seeks to prevent. 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.[37] Also, that the police officers tried to call several persons and nobody arrived without sufficient explanation of the attending circumstances is not indicative that they exerted earnest efforts to comply with the requisite regarding the presence of the mandatory witnesses.

In addition, they offered nothing but a flimsy excuse for their deviation from the requirements laid down under Section 21. They merely alleged that they transferred to the police station because people started to come out and there

---

[36] TSN, November 16, 2012, pp. 23-24.

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

might be a ***possible*** commotion.[38] They even admitted that they did not bring the necessary documents at the place of arrest when in fact, this should already be standard practice for police officers in conducting buy-bust operations.[39]

It bears stressing that the prosecution has the burden of (1) proving the police officers' compliance with Section 21, RA 9165 and (2) providing a sufficient explanation in case of non-compliance. As the Court *en banc* unanimously held in the recent case of *People v. Lim*,[40]

> It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:
>
> (1) **their attendance was impossible because the place of arrest was a remote area**; (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official themselves were involved in the punishable acts sought to be apprehended;** (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention;** or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape**.[41] (Emphasis in the original and underscoring supplied)

Verily, none of the abovementioned circumstances was attendant in the case. Their excuse for non-compliance is hardly

---

[38] CA *rollo*, p. 47.

[39] *Id*.

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

[41] *Id*., citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64255>.

acceptable. Moreover, the buy-bust team could have strictly complied with the requirements of Section 21 had they been more prudent in doing what is required in their job.

The integrity and evidentiary value of the *corpus delicti* have thus been compromised, thus necessitating the acquittal of De Castro.

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

The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.[42] In this connection, the presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[43] Especially as applied in this case where there are several procedural lapses by the buy-bust operation team which cast doubt as to the regularity in the performance of official duties by the police officers.

The Court has repeatedly held that the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual.[44]

In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165.

All told, due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and

---

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

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

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

handling of the seized drug, the prosecution failed to prove the elements of illegal sale of dangerous drugs: *(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.[45] 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.[46]

Also, the elements of illegal possession of drugs were not satisfactorily proven by the prosecution. The successful prosecution of illegal possession of drugs necessitates the following facts to be proved, namely: (a) the accused was in possession of the dangerous drugs, (b) such possession was not authorized by law, and (c) the accused was freely and consciously aware of being in possession of the dangerous drugs.[47]

For both offenses, it is crucial that the prosecution establishes the identity of the seized dangerous drugs in a way that the integrity thereof has been well-preserved from the time of seizure or confiscation from the accused until the time of presentation as evidence in court.[48] In this case, the prosecution utterly failed to prove that the integrity and evidentiary value of the seized drugs were preserved. The same breaches of procedure in the handling of the illegal drug subject of the illegal sale charge equally apply to the illegal drug subject of the illegal possession charge. Corollary, the prosecution was not able to overcome the presumption of innocence of De Castro.

De Castro must perforce also be acquitted of the charge of violating Section 11, RA 9165.

As a reminder, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions

---

[45] *People v. Cuevas*, G.R. No. 238906, November 5, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64904>.

[46] *Id*.

[47] *Reyes v. Court of Appeals*, 686 Phil. 137, 148 (2012).

[48] *Id*.

of Section 21 of RA 9165, as amended, and its Implementing Rules and Regulations, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with**. In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.[49]

**WHEREFORE,** in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated February 6, 2018 of the Court of Appeals in CA-G.R. CR-HC. No. 07962, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **HILARIO DE CASTRO *y* SANTOS *alias* "DACOY"** is **ACQUITTED** of the crimes charged on the ground of reasonable doubt and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

**SO ORDERED.**

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

---

[49] See *People v. Jugo*, G.R. No. 231792, January 29, 2018, 853 SCRA 321, 337-338.

**EN BANC**

[A.C. No. 10439. September 3, 2019]

**ANNALIZA C. CHAN,** *complainant, vs.* **ATTY. REBENE C. CARRERA,** *respondent.*

**SYLLABUS**

**1. LEGAL ETHICS; DISCIPLINE OF ATTORNEYS; AN ADMINISTRATIVE PROCEEDING CONTINUES DESPITE THE DESISTANCE OF A COMPLAINANT, OR FAILURE OF THE COMPLAINANT TO PROSECUTE THE SAME; CASE AT BAR.—** Section 5, Rule 139-B of the Rules of Court provides that "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." This rule finds application in *Ferancullo v. Atty. Ferancullo* where We held that x x x In view of its nature, administrative proceedings against lawyers are not strictly governed by the Rules of Court. x x x Hence, an administrative proceeding continues despite the desistance of a complainant, or failure of the complainant to prosecute the same. From the foregoing precepts, the Court holds that the Investigating Commissioner correctly denied Chan's request for the withdrawal of her complaint, proceeding with the investigation of the allegations against Carrera. It is a fundamental principle that members of the legal profession must conform to the highest standards of morality and that the Court is duty-bound to ensure compliance therewith. As such, any deviation initially raised as the private concern of a complainant becomes a matter of judicial interest. Indeed, Chan may very well be disinterested in pursuing the instant complaint, but this shall not necessarily set Carrera free from any liability he may have already incurred.

**2. ID.; ID.; IMMORALITY AS BASIS OF DISCIPLINARY ACTION MUST BE CORRUPT AS TO VIRTUALLY CONSTITUTE A CRIMINAL ACT OR SO UNPRINCIPLED AS TO BE REPREHENSIBLE TO A HIGH DEGREE OR COMMITTED UNDER SUCH SCANDALOUS OR REVOLTING CIRCUMSTANCES AS TO SHOCK THE COMMON SENSE OF DECENCY;**

**PRESENT IN CASE AT BAR.—** Time and again, the Court has ruled that a married person's abandonment of his or her spouse in order to live and cohabit with another constitutes immorality. The offense may even be criminal — either as concubinage or as adultery. Immoral conduct, or immorality, is that which is so wilful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community. As a basis of disciplinary action, such immoral conduct, or immorality must be so corrupt as to virtually constitute a criminal act or so unprincipled as to be reprehensible to a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency. That the illicit partner is himself or herself married compounds the immorality. The facts of the present case are beyond dispute. Both Chan and Carrera acknowledged their undeniable love affair, with the latter designating the same as a "chemistry of two consensual adults." At the same time, both of them did not deny the reality that they were still legally married to another. In a heartbeat, they left their respective homes and moved into a house that Carrera had bought and where they wilfully resided for a good three (3) years. It is in said house that they played husband and wife to each other and father and mother to their child. All of these facts, both parties do not contest. At most, their disagreement lies merely in the alleged time when each found out about the fact that the other was still legally married to his or her spouse. But the precise date and time one discovered the other party's existing marriage cannot affect the outcome of the case for both parties nonetheless openly and deliberately cohabited despite knowledge of their status, separating only when their relationship had turned sour.

3. **ID.; ID.; ANY LAWYER GUILTY OF GROSS MISCONDUCT SHOULD BE SUSPENDED OR DISBARRED EVEN IF THE MISCONDUCT RELATES TO HIS OR HER PERSONAL LIFE FOR AS LONG AS THE MISCONDUCT EVINCES HIS OR HER LACK OF MORAL CHARACTER, HONESTY, PROBITY OR GOOD DEMEANOR; IMPOSABLE PENALTY IN CASE AT BAR.—** It is this clear and outright admission that is the basis for Carrera's disbarment. His endless accomplishments listed in his *curriculum vitae* cannot render him innocent of the charges against him. On the contrary, the Court wonders how despite all these achievements in his

professional career, Carrera allowed himself to falter in such a highly scandalous manner. His level of knowledge and experience should have alerted him of his duty to keep with the standards of morality imposed on every lawyer. To recall, he even proposed to Chan his services in annulling her marriage. Hence, all of this could have been avoided had he made an effort to make things right. In *Amalia R. Ceniza v. Atty. Ceniza, Jr.*, the Court enunciated that any lawyer guilty of gross misconduct should be suspended or disbarred even if the misconduct relates to his or her personal life for as long as the misconduct evinces his or her lack of moral character, honesty, probity or good demeanor. Every lawyer is expected to be honorable and reliable at all times, for a person who cannot abide by the laws in his private life cannot be expected to do so in his professional dealings. As regards the penalty to be imposed, the Court has been consistent. In *Ceniza*, as well as in *Narag v. Atty. Narag*, *Dantes v. Atty. Dantes*, *Bustamante-Alejandro v. Atty. Alejandro*, and *Guevarra v. Atty. Eala*, We resolved to disbar the respondents therein for abandoning their legitimate spouses and maintaining illicit affairs with another. By necessary implication, as a consequence of Carrera's scandalous and highly immoral conduct, the Court similarly finds him to be deserving of the extreme penalty of disbarment, although three (3) of its members considered the penalty too harsh.

## APPEARANCES OF COUNSEL

*Conrado P. Parras* for complainant.

## D E C I S I O N

***PER CURIAM*:**

Before the Court is a Complaint-Affidavit[1] filed by complainant, Annaliza C. Chan, on September 11, 2009 charging respondent, Atty. Rebene C. Carrera, with Gross Misconduct.

The antecedent facts are as follows:

---

[1] *Rollo*, pp. 2-4.

In her complaint, Chan alleged that she met Carrera sometime in July 2006 while she was a trainee at Max's Restaurant. At that time, he was dining with a woman companion she thought was Carrera's wife. She was surprised when Carrera later introduced himself as a widower. After two (2) weeks, Carrera returned and requested for Chan to be his server. While waiting for his food, he told her that he just settled a case and earned ₱4 million. He then proceeded to ask her several questions such as whether she was interested in studying nursing or caregiving in a school that he owned in Dagupan City. After his meal, he left his calling card with her, but she threw the same away. From that time onwards, Carrera frequented the restaurant and requested for Chan to assist him. They had conversations where Carrera promised Chan a lot of things. He showed interest in pursuing her and even visited her house to meet her parents. At one point, however, Chan told Carrera that it was best he pursued somebody else as she was still married albeit separated. She told him that her husband left her for another woman and that she was raising their daughter alone. Carrera, however, did not seem to mind. He even represented that he can annul her marriage for her and support her daughter. Eventually, Chan grew fond of Carrera. He was able to convince her to join him on a trip to Hong Kong. Upon their return, he bought a house for them in Quezon City as well as a car for her with a special plate number "ANA" inspired by her name. They then went to his school in Dagupan City where he called for a board meeting during which he introduced her as his fiancé and a new member of the board of trustees.[2]

In September 2008, however, around the time when Chan and Carrera moved to another house at Project 8, Quezon City, Chan discovered that Carrera was not in fact a widower and that his wife was still alive. Even though his wife was confined in an institution, he was still validly married to her. Chan further discovered that Carrera also had a child with another woman. Because of this, Chan wanted to leave Carrera. Unfortunately,

---

[2] *Id.* at 172.

she found out that she was pregnant with his child. Nevertheless, while Chan decided to stay with Carrera, their relationship was no longer harmonious. Throughout her pregnancy, Carrera often scolded her and treated her badly. He accused her of stealing his credit card and withdrawing from his account. In one instance, Carrera even denied being the father of the child she was carrying. Aside from this, Chan often caught Carrera having illicit relationships with other women. When confronted, he would usually make empty promises to change his ways. Chan thought about the welfare of their child and felt that she had no choice but to remain with Carrera.[3]

Despite his infractions, Chan nonetheless helped Carrera during his time of need. When his business suffered from irreversible losses, she worked hard as his paralegal and referred him clients. Because of her help, he was able to recover his losses, save his school from closing, and was even able to purchase more properties. Still, Carrera refused to give up his womanizing. This time, when Chan confronted Carrera about it, he got furious, asked her to leave their home, to return the car he gave her, and forbade her from working as his paralegal. He also consistently humiliated her such that when she would visit his office to ask for financial support for their son, he would utter invective words first before giving her money.[4]

For his part, Carrera denied the accusations against him. He alleged that the instant complaint was merely part of Chan's elaborate plan of extorting money from him. On Chan's narration of facts, Carrera admitted that he met her at Max's Restaurant when he was having lunch with a lady executive at St. Luke's Medical Center. He admitted that her smile and stare were so sweet and attractive that he gave her his calling card and that he dined at the restaurant almost every week. When she found out that he was going to Hong Kong, he granted her request and brought her along as she shared that she wanted to experience her first plane ride. There, their relationship intensified. Upon

---

[3] *Id.* at 172-173.

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

their return, Carrera initially brought Chan home to the house of her bachelor uncle's house where she lived. However, he was pressured into looking for a house for her in Novaliches, Quezon City when she told him that she was at risk of being harassed by her uncle who was physically attracted to her. Instantly, he bought a house for her and her daughter. But Chan did not stop there. She asked Carrera to leave his legitimate family and stay with her at the newly-purchased house. Since he was already emotionally attached, he acceded. He told his daughter of his decision to leave his original home in Commonwealth Avenue, Quezon City, and lived with Chan in said house from September 2006 to September 2008, the time when they transferred to another house at Project 8, Quezon City.[5]

On December 4, 2007, Chan and Carrera's son, Rebene C. Carrera, Jr., was born. According to Carrera, from the time that he and Chan began living together up until the present, he was never remiss in providing for her, her daughter, and their son. He bought them houses, cars, toys, clothes, and enrolled their son at an educational center even when he was only 1-and-½ years old. In fact, he even paid for her education at St. Joseph's College where she took her Master of Arts in Special Education. This notwithstanding, Chan became very unreasonable. She prevented Carrera from seeing his own children of his previous relationship. She also became very jealous of all his lady friends and would often create a scene at his office when these ladies were merely his friends and business associates. Unsatisfied, Chan even clamored for the transfer of the Project 8 house and car in her name. But Carrera refused to give in to Chan's unreasonable demands any longer. On August 29, 2009, he decided to move out of their house and back to his legitimate family's abode.[6]

---

[5] *Id.* at 174-176.

[6] *Id.* at 176-178.

Contrary to the claims of Chan, moreover, Carrera maintains that there is no truth to the assertion that he told her that he was a widower. She knew from the very beginning that he was married and that his wife was incapacitated and confined at Estrella's Half-way House due to her "schizophrenia." She also knew that he was living in his house with the children he had with said wife. Carrera further claims that he informed Chan that the lady he was eating with during their first encounter at Max's Restaurant was not his wife but his classmate from high school who was an executive at St. Luke's Medical Center and who accompanied him at his check-up at said hospital. In fact, it was Chan who initially told him that she was single and that she told him of the fact that she was married only when they were in Hong Kong.[7]

In the end, Carrera insisted that his only "sin" was that he was so sympathetic and charitable to Chan who was never satisfied with his generosity and with whom he fell deeply in love with. But this had nothing to do with his qualifications as a provider of the family and as lawyer. On the contrary, he was nothing but respectable having been a member of the Academe for more than 20 years, a Director and Treasurer of the Integrated Bar of the Philippines, Pangasinan Chapter, and a member of the bar in good standing since his admission in 1980. As such, he asked for compassion given that his infraction did not amount to the kind of "grossly immoral conduct" he was accused of engaging in.

In a Report and Recommendation[8] dated August 9, 2010, the Investigating Commissioner of the Commission on Bar Discipline (*CBD*) of the Integrated Bar of the Philippines (*IBP*) recommended that Carrera be admonished and warned. In a Resolution[9] dated December 14, 2012, however, the Board of Governors (*BOG*) of the IBP approved, with modification, the

---

[7] *Id.* at 177.

[8] *Id.* at 171-186.

[9] *Id.* at 170.

Report and Recommendation of the Investigating Commissioner and suspended Carrera from the practice of law for three (3) years. Subsequently, the BOG issued another Resolution[10] on February 11, 2014 affirming its previous resolution, but with the modification that Carrera is suspended from the practice of law for one (1) year instead of three (3) years.

***The Court's Ruling***

In view of the circumstances of the instant case, the Court finds that the actuations of Carrera warrant the penalty of disbarment from the practice of law and not merely suspension therefrom as found by the BOG.

Prefatorily, the Court notes Chan's disinterest in pursuing her complaint against Carrera as she initially manifested in her Verified Position Paper[11] dated June 6, 2010 and, in several pleadings, thereafter. She insists that she was merely induced into filing the same by some individuals who had a personal grudge against Carrera. At the time of her filing, she was angry and furious at Carrera who was leaving her for his wife who was seriously ill. She realized soon after, however, that she was only being irrational. In fact, Chan recounts that she originally wrote her complaint in Tagalog but was translated in English by a lady staff in the IBP. While the translation was blessed with Chan's consent, she revealed that she no longer read the same. It turned out that the translation was an exaggeration of the original complaint written in Tagalog. Accordingly, she seeks the withdrawal of her complaint.[12]

We resolve to deny Chan's request.

In the first place, the Court is aware of the Investigating Commissioner's observation that Chan was not represented by counsel when she sought the withdrawal of her complaint. In

---

[10] *Id.* at 202.

[11] *Id.* at 144-166.

[12] *Id.* at 197-199.

the second place, We sustain the Investigating Commissioner's finding that Chan's motion to withdraw does not serve as a bar for the investigation of the administrative case against Carrera. Section 5, Rule 139-B of the Rules of Court provides that "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." This rule finds application in *Ferancullo v. Atty. Ferancullo*[13] where We held that:

> x x x In view of its nature, administrative proceedings against lawyers are not strictly governed by the Rules of Court. As we held in *In re Almacen*, a disbarment case is *sui generis* for it is neither purely civil nor purely criminal but is rather an investigation by the court into the conduct of its officers. Hence, an administrative proceeding continues despite the desistance of a complainant, or failure of the complainant to prosecute the same.[14]

From the foregoing precepts, the Court holds that the Investigating Commissioner correctly denied Chan's request for the withdrawal of her complaint, proceeding with the investigation of the allegations against Carrera. It is a fundamental principle that members of the legal profession must conform to the highest standards of morality and that the Court is duty-bound to ensure compliance therewith. As such, any deviation initially raised as the private concern of a complainant becomes a matter of judicial interest. Indeed, Chan may very well be disinterested in pursuing the instant complaint, but this shall not necessarily set Carrera free from any liability he may have already incurred.

But at any rate, even if We sustain Chan's contention that the English translation exaggerated the allegations she raised in her Tagalog complaint, both parties never denied, and even expressly admitted, that they freely engaged in an extra-marital affair. They cohabited under one roof from September 2006 to

---

[13] 538 Phil. 501, 517 (2006).

[14] *Id.* at 512-513. (Citations omitted)

August 2009, or practically for a period of three (3) years, despite the fact that they were still legally married to their respective spouses. They also produced a child who they named after Carrera. This fact, standing alone, suffices to hold Carrera administratively liable for grossly immoral conduct. No amount of exaggeration can change the attending circumstances of the instant case.

At this juncture, We reproduce the provisions of Rules 1.01 and 7.03 of the Code of Professional Responsibility below:

> Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
>
> Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

Time and again, the Court has ruled that a married person's abandonment of his or her spouse in order to live and cohabit with another constitutes immorality. The offense may even be criminal — either as concubinage or as adultery. Immoral conduct, or immorality, is that which is so wilful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community. As a basis of disciplinary action, such immoral conduct, or immorality must be so corrupt as to virtually constitute a criminal act or so unprincipled as to be reprehensible to a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency. That the illicit partner is himself or herself married compounds the immorality.[15]

The facts of the present case are beyond dispute. Both Chan and Carrera acknowledged their undeniable love affair, with the latter designating the same as a "chemistry of two consensual adults." At the same time, both of them did not deny the reality that they were still legally married to another. In a heartbeat,

---

[15] *Amalia R. Ceniza v. Atty. Ceniza, Jr.,* A.C. No. 8335, April 10, 2019.

they left their respective homes and moved into a house that Carrera had bought and where they wilfully resided for a good three (3) years. It is in said house that they played husband and wife to each other and father and mother to their child. All of these facts, both parties do not contest. At most, their disagreement lies merely in the alleged time when each found out about the fact that the other was still legally married to his or her spouse. But the precise date and time one discovered the other party's existing marriage cannot affect the outcome of the case for both parties nonetheless openly and deliberately cohabited despite knowledge of their status, separating only when their relationship had turned sour.

It is this clear and outright admission that is the basis for Carrera's disbarment. His endless accomplishments listed in his *curriculum vitae* cannot render him innocent of the charges against him. On the contrary, the Court wonders how despite all these achievements in his professional career, Carrera allowed himself to falter in such a highly scandalous manner. His level of knowledge and experience should have alerted him of his duty to keep with the standards of morality imposed on every lawyer. To recall, he even proposed to Chan his services in annulling her marriage. Hence, all of this could have been avoided had he made an effort to make things right. In *Amalia R. Ceniza v. Atty. Ceniza, Jr.*,[16] the Court enunciated that any lawyer guilty of gross misconduct should be suspended or disbarred even if the misconduct relates to his or her personal life for as long as the misconduct evinces his or her lack of moral character, honesty, probity or good demeanor. Every lawyer is expected to be honorable and reliable at all times, for a person who cannot abide by the laws in his private life cannot be expected to do so in his professional dealings.

As regards the penalty to be imposed, the Court has been consistent. In *Ceniza*,[17] as well as in *Narag v. Atty. Narag*,[18]

---

[16] *Supra.*

[17] *Id.*

[18] 353 Phil. 643 (1998).

*Dantes v. Atty. Dantes*,[19] *Bustamante-Alejandro v. Atty. Alejandro*,[20] and *Guevarra v. Atty. Eala*,[21] We resolved to disbar the respondents therein for abandoning their legitimate spouses and maintaining illicit affairs with another. By necessary implication, as a consequence of Carrera's scandalous and highly immoral conduct, the Court similarly finds him to be deserving of the extreme penalty of disbarment, although three (3) of its members considered the penalty too harsh.

**WHEREFORE,** the Court hereby **DECLARES** respondent Atty. Rebene C. Carrera guilty of Gross Immorality in violation of Rule 1.01 and Rule 7.03 of the Code of Professional Responsibility, **DISBARS** him from the practice of law effective upon receipt of this Decision, and **ORDERS** his name stricken off the Roll of Attorneys.

Let a copy of this Decision be attached to the respondent's personal record in the Office of the Bar Confidant.

Furnish a copy of this Decision to the Integrated Bar of the Philippines for its information and guidance; and the Office of the Court Administrator for dissemination to all courts of the Philippines.

**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.

---

[19] 482 Phil. 64 (2004).

[20] 467 Phil. 139 (2004).

[21] 555 Phil. 713 (2007).

**EN BANC**

[A.C. No. 12019. September 3, 2019]

**JOSE ANTONIO G. GABUCAN,** *complainant, vs.* **ATTY. FLORENCIO A. NARIDO, JR.,** *respondent.*

**SYLLABUS**

**1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); THE LAWYER AND THE CLIENT; A LAWYER NEEDS TO INFORM HIS CLIENT, TIMELY AND ADEQUATELY, IMPORTANT UPDATES AND STATUS AFFECTING THE CLIENT'S CASE; NOT ESTABLISHED IN CASE AT BAR.—** Rule 18.04 of the CPR states that "[a] lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information." A lawyer's duty to keep his client constantly updated on the developments of his case is crucial in maintaining the client's confidence. The lawyer needs to inform his client, timely and adequately, important updates and status affecting the client's case. He should not leave his client in the dark as how to he is defending the client's interest. In this case, Atty. Narido, Jr. claims that he has constantly updated complainant through his representative Almonia. However, Atty. Narido, Jr. did not present any document establishing such fact. It is logical that Atty. Narido, Jr. should have at least a document formally informing the complainant of the status of the case. He stated that he knew that the complainant was hardly in the Philippines, then it would have been more prudent, in keeping with his duty to inform his client of the status of the case, to formally inform the complainant in writing and not merely verbally through Almonia, which Atty. Narido, Jr. has not proven.

**2. ID.; CANONS OF PROFESSIONAL ETHICS; CONTINGENCY FEES; THE TERMS OF THE CONTINGENCY FEE CONTRACT LARGELY DEPENDS UPON THE REASONABLENESS OF THER AMOUNT FIXED AS CONTINGENT FEE UNDER THE CIRCUMSTANCES OF THE CASE.—** A contingency fee agreement has been generally rendered as valid and binding in this jurisdiction. It is a contract in writing in which the fee, generally a fixed percentage of what

may be recovered in an action, is made to depend upon the success of the case. The terms of the contingency fee contract largely depends upon the reasonableness of the amount fixed as contingent fee under the circumstances of the case. Canon 13 of the Canons of Professional Ethics states that a contract for a contingent fee, when sanctioned by law, should be reasonable under all the circumstances of the case including the risk and uncertainty of the compensation, but should always be subject to the supervision of the court as to its reasonableness.

**3. ID.; COMPENSATION OF ATTORNEYS; IT IS A FUNDAMENTAL RULE IN ETHICS THAT AN ATTORNEY WHO UNDERTAKES AN ACTION IMPLIEDLY STIPULATES TO CARRY IT TO ITS TERMINATION, THAT IS, UNTIL THE CASE BECOMES FINAL AND EXECUTORY; CASE AT BAR.—** A separate contingency fee for the appeal before the RTC and another separate contingency fee for the appeal before the CA is clearly unreasonable, unjustified and unconscionable. It should be stated that this is a mere ejectment case and requiring a 35% contingency fee of the property or its value and limiting the same only in the MCTC case is clearly violative of Section 24, Rule 138 of the Rules of Court. x x x The practice of law is not a business. Public service, not profit, should be the primary consideration. Lawyering is not primarily meant to be a money-making venture, and law advocacy is not a capital that necessarily yields profits. To serve and administer Justice must be the primary purpose of lawyers and their personal interest should be subordinate. Atty. Narido, Jr. makes it appear that complainant owes him for representing the latter in the appeal before the RTC and the CA, despite the absence of a separate retainer agreement from complainant. Atty. Narido, Jr. should be reminded that this is exactly his duty to his client and not a circumstance that would be interpreted as a noble act or that would mitigate his unethical conduct. Once he accepted or agreed to take up the cause of the complainant, Atty. Narido, Jr. owes fidelity to such case. It is a fundamental rule in ethics that an attorney who undertakes an action impliedly stipulates to carry it to its termination, that is, until the case becomes final and executory. He cannot simply abandon his client and withdraw his service without reasonable cause and only upon proper notice with the court.

**4. CIVIL LAW; SALES; LAWYERS ARE PROHIBITED FROM LEASING, EITHER IN PERSON OR THROUGH AN AGENT, PROPERTY AND RIGHTS WHICH MAY BE THE OBJECT OF ANY LITIGATION TO WHICH THEY MAY TAKE PART BY VIRTUE OF THEIR PROFESSION; VIOLATION IN CASE AT BAR.—** A lawyer's relationship to his client demands a highly fiduciary relationship. It requires a high standard of conduct and demands utmost fidelity, candor, fairness and good faith. In this case, Atty. Narido, Jr. acquired for himself, interest over complainant's property, which is the subject of litigation. In fact, even before the filing of the complaint for unlawful detainer, Atty. Narido, Jr., already had the complainant sign over to him, in the guise of a lease contract, the complainant's property. Article 1646, in relation to Article 1491 of the Civil Code, explicitly provides that lawyers are prohibited from leasing, either in person or through an agent, property and rights which may be the object of any litigation to which they may take part by virtue of their profession. The prohibition, which rests on considerations of public policy and interests is intended to curtail any undue influence of the lawyer upon his client on account of his fiduciary and confidential relationship with him.

**5. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); VIOLATION OF THE CPR AND THE LAWYER'S OATH IN CASE AT BAR, IMPOSABLE PENALTY.—** The fact that Atty. Narido, Jr. will go through such lengths to fabricate facts show his unethical conduct and unfitness to be a member of the Bar. Atty. Narido, Jr. took an oath that he will obey the laws, do no falsehood and conduct himself as a lawyer according to the best of his knowledge and discretion. Further, Rule 10.01 of the CPR 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". Clearly, Atty. Narido, Jr. committed unethical conduct directly in contravention with his Lawyer's Oath and the CPR to which he must be sanctioned. x x x In the present case, although what was involved was merely a lease of the subject property, considering that the same is also prohibited under Article 1646 of the Civil Code, a suspension of six (6) months from the practice of law is deemed proper.

**APPEARANCES OF COUNSEL**

*Rogen T. Dal* for complainant.

**R E S O L U T I O N**

**CARANDANG, *J.*:**

In a Complaint[1] filed by Jose Antonio G. Gabucan (complainant) against Atty. Florencio A. Narido, Jr. (Atty. Narido, Jr.), complainant charges Atty. Narido, Jr. for violation of Rule 1.01,[2] Canon 1, Rule 18.04,[3] Canon 18 and Rule 20.04,[4] Canon 20 of the Code of Professional Responsibility (CPR).

**Fact of the Case**

Complainant alleged that he is the owner of a parcel of land covered by Transfer Certificate of Title (TCT) No. 3934 located at Catarman, Camiguin. He hired the services of Atty. Narido, Jr. to initiate an ejectment case before the 2nd Municipal Circuit Trial Court of Catarman, Sagay (MCTC) against Rogelio Ebalang (Ebalang).[5]

On December 7, 2004, the parties concluded an Agreement[6] as to the engagement of Atty. Narido, Jr., as the lawyer of Gabucan, to wit:

---

[1] *Rollo*, pp. 2-8.

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

[3] Rule 18.04 – A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

[4] Rule 20.04 – A lawyer shall avoid controversies with clients concerning his compensation and shall resort to judicial action only to prevent imposition, injustice or fraud.

[5] *Rollo*, p. 2.

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

07 December 2004

MR. JOSE ANTONIO G. GABUCAN
Liloan, Catarman, Camiguin Province

RE: HANDLING THE COMPLAINT FOR UNLAWFUL DETAINER AGAINST ROGELIO EBALANG AT THE MUNICIPAL CIRCUIT TRIAL COURT OF CATARMAN

Dear Mr. Gabucan,

In line with our practice to appraise our client in advance regarding our fees in handling a particular case, we are pleased to submit the foregoing proposal for your consideration. Please be advised that our fees is based on a semi-contingent basis as follows:

a. Acceptance fee is waived
b. Professional fee is 35% of the property or its value and the amount of damages that may be awarded in favor of client
c. Appearance fee is ₱2,500.00 per hearing subject to changes should circumstances warrant upon prior notice and consent of the client.

Appearance fee shall become due each and every time the Law Firm through any of its partners or associates makes representation on your behalf before the court or any government agencies or for a (sic) in relation to the above case.

Expenses or fees incidental to the processing of papers or documentation, photocopying, mailing, transportation, meals, lodging and similar expenses shall be for the client's account and for this purpose the client shall deposit with the Law Firm the amount of ₱1,000.00.

Docketing, filing and other miscellaneous fees as may be determined by the court shall be paid for by the client. The client shall be notified properly for the payment of the obligation.

The Law Firm shall inform the client for the need to replenish the deposit should the same be consumed for the purpose intended.

In the event the controversy is settled in favor of the client at any stage of the proceedings, the foregoing contractual obligation of the client shall become immediately due.

If you agree to the foregoing terms and conditions, please affix your signature to show your conformity and this instrument shall then become our handling agreement in this case.

Very truly yours,

[(Sgd)] ATTY. FLORENCIO A. NARIDO, JR.
For the Firm

With My Conformity

[(Sgd)] JOSE ANTONIO G. GABUCAN
Client

On December 10, 2004, Atty. Narido, Jr. entered into a Contract of Lease[7] with the complainant over a property covered by Original Certificate of Title (OCT) No. 386, the property that would be the subject of the unlawful detainer case. Thereafter, Atty. Narido, Jr. took possession of the litigated property and introduced improvements by building a shanty made up of mixed materials.[8]

On March 18, 2008, complainant, through Atty. Narido, Jr. filed a case for unlawful detainer against Ebalang over the subject property covered by OCT No. 386.[9]

On April 5, 2005, the MCTC rendered a Decision[10] in favor of the complainant and ordered the ejectment of Ebalang.

On appeal, the Regional Trial Court of Mambajao, Camiguin, Branch 28 (RTC), in its Decision[11] dated February 15, 2006, dismissed the appeal and remanded the case to the MCTC for execution.

Ebalang, however, filed a Petition for Review[12] before the Court of Appeals (CA).[13] Pending review by the CA, Atty.

---

[7] *Id*. at 12.

[8] *Id*. at 3.

[9] *Id*.

[10] Penned by Presiding Judge Nannette Michote E. Lao; *id*. at 13-16.

[11] Penned by Judge Rustico D. Paderanga; *id*. at 17-24.

[12] Not attached to the *rollo*.

[13] *Rollo*, p. 3.

Narido, Jr. failed to communicate to complainant, to at least apprise or report the status of the case. Atty. Narido, Jr., likewise, failed to file a comment or memorandum as required by the CA.[14]

In a Decision[15] dated February 28, 2008, the CA granted the petition and remanded the case to the MCTC for further proceedings.

Because of the inaction of Atty. Narido, Jr., complainant felt aggrieved such that he was forced to hire the services of another lawyer to continue prosecuting the remanded case before the MCTC. Atty. Narido, Jr. did not object to the termination of his services.[16]

On April 2, 2011, complainant amicably settled the attorney's fees of Atty. Narido, Jr., fixing the 35% contingent fee of the latter at ₱70,000.00. The partial payment of ₱35,000.00 to be paid on that day, while the other ₱35,000.00 to be paid 15 days after the initial payment but not later than the end of June 2011. Atty. Narido, Jr. further agreed to voluntarily relinquish, abandon, or waive all and whatever interest he had over Lot 3934, together with all improvements he introduced therein, and further agreed that the costs of the demolition shall be on his account. To evidence the same, Atty. Narido, Jr. prepared an Acknowledgment with Quitclaim.[17]

Eventually, the MCTC rendered a decision in favor of complainant. Thus, the latter immediately executed the judgment and took possession of the property by leasing the same to a certain Bernard Guani (Guani). Thus, Guani began introducing improvements in the leased property.[18]

---

[14] *Id.* at 4.

[15] Not attached to the *rollo*.

[16] *Rollo*, p. 4.

[17] *Id.* at 25.

[18] *Id.* at 5.

On November 4, 2011, the complainant, through his representative Evangelista Z. Almonia (Almonia), sought to pay the remaining ₱35,000.00 to Atty. Narido, Jr. However, the latter refused to accept the same, unless an additional amount of ₱10,000.00 would be paid, as payment for the materials of his improvements that were demolished.[19]

Then, on November 6, 2011, Atty. Narido, Jr., by coercion and intimidation, re-entered the property and had his men build a structure thereon purposely to obstruct and to prevent the passage of the dump trucks of Guani. Thus, a certain Minerva Adaza Cunayan, an employee of Guani, reported the same to the police station.[20]

On November 8, 2011, complainant filed a complaint with the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline (IBP-CBD).

In his Answer,[21] Atty. Narido, Jr. admitted that he was engaged by the complainant in a semi-contingency basis to file a case for unlawful detainer against Ebalang.[22]

Atty. Narido, Jr. claimed that of all the hearings he attended for the complainant's case, complainant only paid his appearance fee once. Even with the disregard of complainant's obligation, he did not abandon the case until a favorable decision was issued by the MCTC. When Ebalang appealed the decision of the MCTC, Atty. Narido, Jr. informed Almonia to advise the complainant that a separate professional fee for the appeal has to be agreed upon. Atty. Narido, Jr., however, claimed that he never heard from the complainant or Almonia despite repeated reminders. Despite the absence of a separate agreement, Atty. Narido, Jr. still represented the complainant in the RTC, until again, a favorable decision was rendered by the court. Even

---

[19] *Id*. at 26.

[20] *Id*. at 27.

[21] *Id*. at 48-54.

[22] *Id*. at 49.

with this development, Atty. Narido, Jr. alleged that neither the complainant nor Almonia communicated with him nor answered his request for a separate professional fee.[23]

When Ebalang appealed the case to the CA, Atty. Narido, Jr. still represented the complainant despite the absence of a separate professional fee agreement. Atty. Narido, Jr. stated that he was already confident that the CA will uphold the rulings of the MCTC and the RTC, which is why he did not see the need to file a comment or a memorandum.[24]

When the CA decision remanded the case to the MCTC, it was only at this point that the complainant communicated with him and informed him that he will engage the services of a new lawyer to handle the remanded case. Atty. Narido, Jr. reminded the complainant that he still has unpaid obligations to the former, including his contingency fee. Since the complainant was a political ally, Atty. Narido, Jr. accommodated his plea of consideration. When the MCTC rendered a decision in the remanded case in favor of the complainant, the latter immediately had it executed.[25]

Without his knowledge, Atty. Narido, Jr. learned that the complainant conveyed the subject property to Guani for an undisclosed sum of money without informing him that his share, totalling to about 76 square meters of the property, was included in the disposition. Despite this, Atty. Narido, Jr. did not confront the complainant because he still has his house built on the property. Thus, complainant had no choice but to negotiate with Atty. Narido Jr. if he was willing to sell his portion of the lot, since Guani demanded that the property be delivered to him free from any claims from other persons.[26]

---

[23] *Id*.

[24] *Id*. at 50.

[25] *Id*.

[26] *Id*.

Thereafter, they agreed that complainant was to pay Atty. Narido, Jr. ₱35,000.00 initially. As evidence of their agreement, Atty. Narido, Jr. executed an Acknowledgment with Quitclaim.[27] Atty. Narido, Jr. claimed that he agreed to undertake the demolition of the house in order to allow him to salvage materials therefrom. However, even if the complainant had not paid in full and without prior notice to Atty. Narido, Jr., the latter asserted that the complainant caused the demolition of the house scattering all the materials. Because of the dump trucks of Guani that entered the property, Atty. Narido, Jr. claimed that his materials were buried and he cannot retrieve and use them for his purpose. Consequently, Atty. Narido, Jr. demanded that complainant pay the amount of ₱10,000.00 to compensate him for the valuable materials, which were buried. Atty. Narido Jr. claimed that the ₱10,000.00 was a meager amount considering that the construction of his house amounted to ₱260,000.00.[28]

Atty. Narido, Jr. claimed that the lease of the property between him and complainant was merely a strategy to prevent Guani to take possession of the property. Atty. Narido, Jr. claimed that even before the filing of the unlawful detainer case, it appeared that a certain Mrs. Banaag sold the subject property to Guani. The strategy proved to be successful because Guani was not able to enter the property.[29]

Atty. Narido, Jr. asserted that he was not remiss in his obligation to keep his client informed of the status of his case. He gave constant updates to Almonia due to complainant's constant absence from the country. It was complainant who reneged on his obligations. He also did not engage in any unlawful, dishonest, immoral or deceitful conduct because he fully served complainant even beyond the term of his engagement.[30]

---

[27] *Id*. at 25.

[28] *Id*. at 51.

[29] *Id*. at 51-52.

[30] *Id*. at 53.

### IBP Commission on Bar Discipline

On July 29, 2015, the Investigating Commissioner found that Atty. Nando, Jr. violated Rule 18.04 of the CPR and his Lawyer's Oath, thus:

> IN VIEW OF THE FOREGOING, it is respectfully submitted that a clear case for disciplinary sanction has been duly established against respondent and it is recommended that respondent be SUSPENDED from the practice of law for a period of TWO (2) YEARS.
>
> RESPECTFULLY SUBMITTED.[31]

### IBP Board of Governors

On August 27, 2016, the IBP Board of Governors issued a Resolution[32] adopting the findings of the Investigating Commissioner, thus:

> RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner imposing the penalty of SUSPENSION from the practice of law for a period of two (2) years.

### Issue

Whether Atty. Narido, Jr., is guilty of violating the CPR and his Lawyer's Oath, necessitating his suspension from the practice of law for two (2) years.

### The Ruling of the Court

In disciplinary proceedings against lawyers, public interest is the primary objective. The Court is called upon to determine whether a lawyer is still fit to be allowed the privileges of the practice of law. Thus, the Court calls upon the lawyer 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

---

[31] *Id*. at 86.

[32] *Id*. at 64.

profession of members, who by their misconduct is not worthy to be entrusted with the duties and responsibilities that pertain to a lawyer.[33]

***Atty. Narido Jr. violated Rule 18.04 of the CPR by failing to inform the complainant of the status of the case.***

Rule 18.04 of the CPR states that "[a] lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information."

A lawyer's duty to keep his client constantly updated on the developments of his case is crucial in maintaining the client's confidence. The lawyer needs to inform his client, timely and adequately, important updates and status affecting the client's case. He should not leave his client in the dark as how to he is defending the client's interest.[34]

In this case, Atty. Narido, Jr. claims that he has constantly updated complainant through his representative Almonia. However, Atty. Narido, Jr. did not present any document establishing such fact. It is logical that Atty. Narido, Jr. should have at least a document formally informing the complainant of the status of the case. He stated that he knew that the complainant was hardly in the Philippines, then it would have been more prudent, in keeping with his duty to inform his client of the status of the case, to formally inform the complainant in writing and not merely verbally through Almonia, which Atty. Narido, Jr. has not proven.

As held in the case of *Mendoza vda. de Robosa v. Atty. Juan B. Mendoza*,[35]

Canon 18 of the CPR mandates that a lawyer shall serve his client with competence and diligence. Rule 18.03 further provides that a

---

[33] *Ylaya v. Gacott*, 702 Phil. 390, 407 (2013).

[34] *Mendoza vda. de Robosa v. Atty. Mendoza*, 769 Phil. 359, 377 (2015).

[35] *Id*.

lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.

Thus:

> Once he agrees to take up the cause of a client, a lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence and champion the latter's cause with wholehearted fidelity, care and devotion. Elsewise stated, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied. This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense. If much is demanded from an attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar and helps maintain the respect of the community to the legal profession.

Here, Atty. Narido, Jr. admitted that he did not file any comment or memorandum before the CA, since he was already confident that it was no longer necessary because the CA will affirm the findings of the MCTC and the RTC. This is arrogance on the part of Atty. Narido, Jr. He has no way of knowing that the CA will indeed rule in favor of his client. In fact, the CA reversed the rulings of the MCTC and the RTC. The least that Atty. Narido, Jr. could have done was to file a manifestation stating that his client, complainant, is waving his right to file a comment or memorandum, since the pleadings he filed before the lower courts sufficiently established the cause of complainant. Atty. Narido, Jr. should not have simply disregarded the filing of the comment or memorandum. He owes it to his client to exert his best and diligent efforts to protect the client's interest. His failure to file the comment or memorandum required by the CA, especially in an arrogant and presumptuous way, and his failure to inform the complainant of the status of the case

constitutes inexcusable negligence which entails disciplinary sanction.

In the case of *Mendoza vda. de Robosa v. Atty. Mendoza*,[36] where the respondent lawyers similarly violated Rule 18.03 and Rule 18.04 of the CPR, the respondent lawyers were suspended for a period of six (6) months. Further, *The Heirs of Tiburcio F. Ballesteros, Sr. v. Atty. Apiag*[37] also involved a lawyer's violation of Rule 18.03 and Rule 18.04 of the CPR, and this Court also suspended the respondent lawyer for a period of six (6) months.

In the present case, for Atty. Narido, Jr.'s violation of Rule 18.03 and Rule 18.04 of the CPR, We find a suspension from the practice of law for a period of six months justified.

***A contingent fee contract is valid and binding but the same must be reasonable and just under the circumstances.***

A contingency fee agreement has been generally rendered as valid and binding in this jurisdiction. It is a contract in writing in which the fee, generally a fixed percentage of what may be recovered in an action, is made to depend upon the success of the case.[38] The terms of the contingency fee contract largely depends upon the reasonableness of the amount fixed as contingent fee under the circumstances of the case.[39] Canon 13 of the Canons of Professional Ethics states that a contract for a contingent fee, when sanctioned by law, should be reasonable under all the circumstances of the case including the risk and uncertainty of the compensation, but should always be subject to the supervision of the court as to its reasonableness.[40]

---

[36] *Id*.

[37] 508 Phil. 113 (2005).

[38] *Sps. Jacinto v. Atty. Bangot Jr.*, 706 Phil. 302, 315 (2016).

[39] *Mendoza vda. de Robosa v. Atty. Mendoza*, *supra* note 34.

[40] *Id*.

In this case, Atty. Narido, Jr. claims that the contingency fee agreement between him and the complainant is only limited at the MCTC level and a separate contingency fee is required in the appeal before the RTC and another separate contingency fee is required in the appeal before the CA. Be it noted that the amount of contingency fee in the instant case is 35% of the property or its value. A separate contingency fee for the appeal before the RTC and another separate contingency fee for the appeal before the CA is clearly unreasonable, unjustified and unconscionable. It should be stated that this is a mere ejectment case and requiring a 35% contingency fee of the property or its value and limiting the same only in the MCTC case is clearly violative of Section 24, Rule 138 of the Rules of Court, which explicitly provides:

> Sec. 24. *Compensation of attorneys; agreement as to fees*. – An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney. No court shall be bound by the opinion of attorneys as expert witnesses as to the proper compensation, but may disregard such testimony and base its conclusion on its own professional knowledge. A written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable.

The practice of law is not a business. Public service, not profit, should be the primary consideration. Lawyering is not primarily meant to be a money-making venture, and law advocacy is not a capital that necessarily yields profits. To serve and administer Justice must be the primary purpose of lawyers and their personal interest should be subordinate.[41]

Atty. Narido, Jr. makes it appear that complainant owes him for representing the latter in the appeal before the RTC and the CA, despite the absence of a separate retainer agreement from complainant. Atty. Narido, Jr. should be reminded that this is exactly his duty to his client and not a circumstance that

---

[41] *Bengco v. Atty. Bernardo*, 687 Phil. 7, 16-17 (2012).

would be interpreted as a noble act or that would mitigate his unethical conduct. Once he accepted or agreed to take up the cause of the complainant, Atty. Narido, Jr. owes fidelity to such case. It is a fundamental rule in ethics that an attorney who undertakes an action impliedly stipulates to carry it to its termination, that is, until the case becomes final and executory. He cannot simply abandon his client and withdraw his service without reasonable cause and only upon proper notice with the court.[42]

***Atty. Narido, Jr. violated the prohibition provided under Article 1646 of the Civil Code.***

A lawyer's relationship to his client demands a highly fiduciary relationship. It requires a high standard of conduct and demands utmost fidelity, candor, fairness and good faith.[43]

In this case, Atty. Narido, Jr. acquired for himself, interest over complainant's property, which is the subject of litigation. In fact, even before the filing of the complaint for unlawful detainer, Atty. Narido, Jr., already had the complainant sign over to him, in the guise of a lease contract, the complainant's property. Article 1646,[44] in relation to Article 1491[45] of the

---

[42] *De Juan v. Atty Baria III*, 473 Phil. 161, 167 (2004).

[43] *Macarilay v. Seriño*, 497 Phil. 349, 356 (2005).

[44] CIVIL CODE, Art. 1646. The persons disqualified to buy referred to in Articles 1490 and 1491, are also disqualified to become lessees of the things mentioned therein.

[45] CIVIL CODE, Art. 1491. The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:

(1) The guardian, the property of the person or persons who may be under his guardianship;

(2) Agents, the property whose administration or sale may have been entrusted to them, unless the consent of the principal has been given;

(3) Executors and administrators, the property of the estate under administration;

Civil Code, explicitly provides that lawyers are prohibited from leasing, either in person or through an agent, property and rights which may be the object of any litigation to which they may take part by virtue of their profession.[46] The prohibition, which rests on considerations of public policy and interests is intended to curtail any undue influence of the lawyer upon his client on account of his fiduciary and confidential relationship with him.[47]

As held in the case of *Heirs of Juan De Dios E. Carlos v. Atty. Linsangan*,[48] *viz.*:

> Plainly, these acts are in direct contravention of Article 1491(5) of the Civil Code which forbids lawyers from acquiring, by purchase or assignment, the property that has been the subject of litigation in which they have taken part by virtue of their profession. **While Canon 10 of the old Canons of Professional Ethics, which states that [t]he lawyer should not purchase any interests in the subject matter of the litigation which he is conducting, is no longer reproduced in the new Code of Professional Responsibility (CPR), such proscription still applies considering that Canon 1 of the CPR is clear in requiring that *a lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal process*** and Rule 138, Sec. 3 which requires every lawyer to take an oath to

---

(4) Public officers and employees, the property of the State or of any subdivision thereof, or of any government-owned or controlled corporation, or institution, the administration of which has been intrusted to them; this provision shall apply to judges and government experts who, in any manner whatsoever, take part in the sale;

(5) **Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession.**

(6) Any others specially disqualified by law. (Emphasis Ours).

[46] *Mananquil v. Villegas*, 267 Phil. 132, 138 (1990).

[47] *Zalamea v. Atty. De Guzman, Jr.*, 798 Phil. 1, 7 (2016).

[48] A.C. No. 11494, July 24, 2017.

"obey the laws as well as the legal orders of the duly constituted authorities therein." Here, the law transgressed by Atty. Linsangan is Article 1491(5) of the Civil Code, in violation of his lawyer's oath.[49] (Emphasis ours).

Atty. Narido, Jr., to excuse himself from his unlawful act, claims that the lease is merely a strategy to prevent Guani to take possession of the property. According to him, a certain Mrs. Banaag sold the property to Guani, as such, to prevent the latter from taking possession of the property, complainant suggested to him, that the latter leased the property from complainant.

This allegation is flawed in many points. *First,* if the same was merely a strategy, Atty. Narido, Jr. should not have asserted that his lease was to expire only on December 14, 2014.[50] *Second*, if it was true that Guani already bought the property, why would the latter agree to merely leasing the property? *Third*, the Police Blotter[51] itself indicated that the "lot owned by formerly Ex Mayor Antonio Gabucan which was rented by Mr. Bernard Guani."

The fact that Atty. Narido, Jr. will go through such lengths to fabricate facts show his unethical conduct and unfitness to be a member of the Bar. Atty. Narido, Jr. took an oath that he will obey the laws, do no falsehood and conduct himself as a lawyer according to the best of his knowledge and discretion.[52]

Further, Rule 10.01 of the CPR 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."

Clearly, Atty. Narido, Jr. committed unethical conduct directly in contravention with his Lawyer's Oath and the CPR to which he must be sanctioned.

---

[49] *Id*.

[50] *Rollo*, pp. 52-53.

[51] *Id*. at 27.

[52] *Jimenez v. Atty. Francisco*, 749 Phil. 551, 556 (2014).

In the case of *Heirs of Juan De Dios E. Carlos v. Atty. Linsangan*,[53] where Atty. Jaime S. Linsangan apportioned for himself and his wife a portion of the property that is subject of the litigation, We sanctioned the lawyer to a suspension for a period of six (6) months.

In the present case, although what was involved was merely a lease of the subject property, considering that the same is also prohibited under Article 1646 of the Civil Code, a suspension of six (6) months from the practice of law is deemed proper.

***Atty. Narido, Jr. cannot be faulted from demanding ₱10,000.00 for his buried materials and preventing the dump trucks of Guani from entering the leased premises as he was only protecting his interest over his materials.***

However, Atty. Narido, Jr. cannot be faulted from demanding ₱10,000.00 for his buried materials, which the complainant unceremoniously scattered over the leased premises and were buried by the dump trucks of Guani.

The Acknowledgment with Quitclaim[54] executed by Atty. Narido, Jr. states:

Acknowledgment with Quitclaim

Know all men by these Presents:

For and in consideration of the sum of Seventy Thousand (₱70,000.00) Pesos paid to me as follows: (a) upon execution (today) ₱35,000.00; (b) fifteen (15) days after Jose Antonio G. Gabucan leaves for USA = ₱35,000.00 but not later than end of June 2011.

I hereby RELINQUISH (sic), ABANDON or waive all and whatever interest I have over lot 3934 together with all the improvements I introduced thereon.

---

[53] A.C. No. 11494, July 24, 2017, *supra* note 48.

[54] *Rollo*, p. 25.

It is understood that the cost of demolition of materials shall be for my account.

April 26, 2011. Looc, Catarman, Camiguin.

It is undisputed that the professional fee of Atty. Narido, Jr. in the amount of ₱70,000.00 was not yet fully paid. Only the first installment, amounting to ₱35,000.00 was paid by the complainant. As provided in their agreement, the complainant was obligated to pay the other ₱35,000.00, 15 days after the complainant leaves for the United States of America, but not later than June 2011. Further, the parties agreed that the cost of demolition of materials will be undertaken by Atty. Narido, Jr. in order to salvage his materials. However, in contravention with the agreement, complainant offered to pay Atty. Narido, Jr. only on November 4, 2011. Worse, the complainant immediately demolished the improvement of Atty. Narido, Jr. and scattered the materials of the latter all over the leased premises. Further, the dump trucks and boulders of Guani filled the area and buried the materials of Atty. Narido, Jr. Because of this, Atty. Narido, Jr. was not able to salvage any materials that were of value.

Be it noted that at the time the complainant demolished the improvements of Atty. Narido, Jr. and unceremoniously scattered and left the latter's materials over the leased premises, Atty. Narido, Jr. has not been fully paid his professional fees. The complainant cannot just simply demolish the improvements without notice to Atty. Narido, Jr. and without paying in full the latter's professional fee. Atty. Narido Jr. was only acting within his rights and was protecting his interest when he returned to the premises to salvage his materials and prevent the dump trucks of Guani from further burying it.

As such, We cannot subscribe to the recommendation of the IBP-CBD and the IBP Board of Governors to suspend Atty. Narido, Jr. for a period of two (2) years, especially when the latter cannot be bound by the Acknowledgment with Quitclaim, and be sanctioned for his act of re-entering the leased premises when it was the complainant who violated their agreement.

However, for Atty. Narido Jr.'s violation of the prohibition contained in Article 1646 of the Civil Code, he is hereby suspended for a period of six (6) months from the practice of law. Also, for his violation of Rule 18.03 and 18.04 of the CPR, Atty. Narido, Jr. is also suspended for another period of six (6) months from the practice of law. Thus, Atty. Narido, Jr. is hereby suspended for a total of one (1) year from the practice of law.

**WHEREFORE,** premises considered, this Court Resolves to **MODIFY** the findings of the Integrated Bar of the Philippines Board of Governors. Accordingly, for his violation of Article 1646, in relation to Article 1491 of the Civil Code, Atty. Florencio A. Narido, Jr. is hereby **SUSPENDED** from the practice of law for a period of **SIX (6) MONTHS**, and for his violation of Rule 18.03 and 18.04 of the Code of Professional Responsibility, Atty. Florencio A. Narido, Jr. is also hereby **SUSPENDED** from the practice of law for a period of another **SIX (6) MONTHS**, for a total of **ONE (1) YEAR**.

Let a copy of this Resolution be furnished to the Office of the Bar Confidant to be entered into the records of Atty. Florencio A. Narido, Jr. Copies shall likewise be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts concerned.

**SO ORDERED.**

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

**EN BANC**

[A.M. No. MTJ-17-1889. September 3, 2019]
(Formerly OCA IPI No. 16-2822-MTJ)

**RE: ANONYMOUS COMPLAINT AGAINST PRESIDING JUDGE ANALIE C. ALDEA-AROCENA, Municipal Trial Court in Cities, Branch 1, San Jose City, Nueva Ecija.**

**SYLLABUS**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; IN ADMINISTRATIVE PROCEEDINGS, COMPLAINANTS BEAR THE BURDEN OF PROVING THEIR ALLEGATIONS IN THE COMPLAINTS BY SUBSTANTIAL EVIDENCE; CASE AT BAR.—** The rule in administrative proceedings is that complainants bear the burden of proving their allegations in the complaint by substantial evidence. Here, the OCA was correct in ruling that the allegations that Judge Arocena convinced litigants either to settle their civil actions, or to plead guilty to the charge/s in criminal cases, or not to appeal the conviction were unsubstantiated due to the refusal of the persons interviewed to execute sworn statements. Hence, the accusations are baseless.

**2. REMEDIAL LAW; RULES OF COURT; DISQUALIFICATION OF JUDGES; A JUDGE IS MANDATORILY DISQUALIFIED TO SIT IN ANY CASE IN WHICH HE/SHE, HIS/HER SPOUSE, OR CHILD, IS PECUNIARILY INTERESTED AS HEIR, LEGATEE, CREDITOR OR OTHERWISE; CASE AT BAR.—** As to the matter of inhibition, the Court agrees with the OCA's ruling that Judge Arocena disregarded Section 1, Rule 137 of the Rules of Court, as amended, on mandatory disqualification of judges to sit on cases involving a family member or relative. SEC. 1. Disqualification of judges. – No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he

has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record. Based on the provision above, a magistrate shall be mandatorily disqualified to sit in any case in which a judge, his/her spouse, or child, is pecuniarily interested as heir, legatee, creditor or otherwise. Here, Judge Arocena's husband is a member of the board of directors of Self-Reliant Cooperative, which has pending civil actions in her court. As a director, her husband has an interest in the outcome of the case, which should have been the basis of her inhibition. However, Judge Arocena failed to do so and violated Section 1, Rule 137 of the Rules of Court, as amended.

**3. LEGAL ETHICS; JUDGES; 2004 NEW CODE ON JUDICIAL CONDUCT; CANONS ON IMPARTIALITY AND PROPRIETY, VIOLATED IN CASE AT BAR.—** [T]he Court resolves that Judge Arocena violated the provisions on impartiality and propriety of the 2004 New Code on Judicial Conduct for the Philippine Judiciary, which superseded the Canons of Judicial Ethics and the 1989 Code of Judicial Conduct. x x x In *Palon, Jr. v. Vallarta*, the Court explained that the rationale of the rule on disqualification of judges springs from the long-standing precept that a judge should not handle a case where there is a perception, rightly or wrongly, that he is susceptible to bias and partiality because of relationship or some other ground. In another case, *In Re: Ong*, the Court emphasized the importance of impartiality and propriety in the conduct of the members of the bench, to wit: A judge must not only be impartial but must also appear to be impartial x x x. Public confidence in the Judiciary is eroded by irresponsible or improper conduct of judges. A judge must avoid all impropriety and the appearance thereof. Being the subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen. x x x Here, a reasonable observer may perceive the spousal relationship between Judge Arocena and a member of the board of directors of a cooperative, which has pending civil actions in her court, as cause for bias and partiality. In order to avoid a negative public perception, the right thing to do for a judge is to recuse from the case. However, Judge Arocena failed to

do so in disregard of the canons on impartiality and propriety of the 2004 New Code on Judicial Conduct. Thus, Judge Arocena violated the tenets of the Court.

**4. ID.; ID.; GROSS IGNORANCE OF THE LAW; FAILURE OF A MAGISTRATE TO APPLY BASIC RULES AND SETTLED JURISPRUDENCE BECAUSE OF BAD FAITH, FRAUD, DISHONEST, OR CORRUPTION; PENALTY OF DISMISSAL, PROPER IN CASE AT BAR.—** As to the compromise agreement, while the OCA ruled that Judge Arocena's Decisions in Civil Case Nos. (09)3849 and (09)3851 are in order because they were based on signed Motions for Judgment Based on Compromise Agreement, we find that they were rendered contrary to law, morals, and public policy due to excessive interests and penalties. x x x In *Spouses Castro v. Tan*, the Court established that excessive interest rates are against the law and morals, even if voluntarily agreed by the parties. x x x While x x x Central Bank Circular No. 905 s. 1982 x x x suspended the Usury Law ceiling on interest effective January 1, 1983, it is also worth stressing that interest rates whenever unconscionable may still be declared illegal. There is certainly nothing in said circular which grants lenders *carte blanche* authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets. Here, Judge Arocena failed to apply the established jurisprudence on the imposition of interest on loan obligations. The loan documents attached to the records show that the interest and penalties imposed are excessive and unreasonable. Her omission to apply the correct rule constitutes gross ignorance of the law. Gross ignorance of the law is the failure of a magistrate to apply basic rules and settled jurisprudence. It connotes a blatant disregard of clear and unambiguous provisions of law because of bad faith, fraud, dishonest, or corruption. x x x Coupled with her failure to recuse from the Self-Reliant Cooperative cases, the Court is led to the conclusion that Judge Arocena approved the unconscionable compromise agreements to favor the cooperative, of which her husband is a member of the board of directors. There is no other way to describe her conduct as gross ignorance of the law and abuse of authority. In *Panes, Jr. v. Dinopol*, the Court imposed the penalty of dismissal from the service after finding that the judge was guilty of gross ignorance of the law for failing to observe due process, which resulted to arrest and incarceration of individuals. The body of

the decision revealed that the Court also found the judge was related by affinity within the sixth civil degree to one of the plaintiffs in a civil case pending in his court. The Court held that he should have inhibited himself from hearing the case.

**5. ID.; ID.; PARAGRAPHS B (2) AND (4) OF THE OFFICE OF THE COURT ADMINISTRATOR (OCA) CIRCULAR NO. 49-2003 ON REQUIREMENTS AND PROCEDURE FOR VACATION LEAVE TO BE SPENT ABROAD BY JUDGES AND COURT PERSONNEL; VIOLATED WHEN A JUDGE LEAVES THE COUNTRY WITHOUT A TRAVEL AUTHORITY FROM THE OCA.—** As to the lack of travel authority, Judge Arocena claimed in her Comment that she had Permit to Travel from the Court when she went to Singapore in March 2009. However, she did not attach a copy of the travel authority as proof of her allegation. On the contrary, the Certification from the OCA dated October 28, 2014 shows that Judge Arocena "has not filed any application for travel abroad for the period of March 2009." x x x Paragraphs B(2) and (4) of OCA Circular No. 49-2003 provide the requirements and procedure for vacation leave to be spent abroad by judges and court personnel. x x x In *Concerned Citizens v. Suarez-Holguin*, the Court held that judges and court personnel who wish to travel abroad must secure a travel authority from the OCA, and that those who leave the country without the required travel authority shall be subject to disciplinary action. Therefore, Judge Arocena must be held administratively liable for traveling to Singapore in March 2009 without a travel authority from the Court.

**6. REMEDIAL LAW; RULES OF COURT; IF A 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.—** On the imposable penalty for multiple offenses, we apply *Boston Finance and Investment Corp. v. Gonzalez*. 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[.]

## D E C I S I O N

***PER CURIAM*:**

This case stemmed from an anonymous complaint against Judge Analie C. Aldea-Arocena (Judge Arocena) of the Municipal Trial Court in Cities (MTCC), Branch 1, San Jose City, Nueva Ecija for conduct unbecoming of a judge and abuse of authority.

### The Facts

Upon receipt of the anonymous complaint[1] by the Office of the Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino on July 3, 2014, the Office of the Court Administrator (OCA) ordered Executive Judge Cynthia Martinez-Florendo (Judge Florendo) of Regional Trial Court (RTC), San Jose City, Nueva Ecija to conduct an investigation and submit a report on the matter.[2]

The anonymous complaint contained four accusations:

First, Judge Arocena was frequently seen talking to litigants inside or outside the office, and would utter prejudging remarks on cases pending before her court.[3]

In Judge Florendo's November 4, 2014 Report, she discovered that there is truth to the allegations. Judge Arocena would convince the litigants to settle the case; otherwise, she would rule against them for after all she is the presiding judge.[4]

Second, it has been Judge Arocena's habit to tell the accused to admit the charge/s against him/her, because as judge, she knows that the accused would be convicted. For those convicted,

---

[1] *Rollo*, p. 13.

[2] *Id*. at 1.

[3] *Supra* note 1.

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

she would threaten them not to appeal his/her conviction, because they would lose their right to probation.[5]

Judge Florendo also found truth to the said allegations. She further reported that one lawyer revealed that Judge Arocena penalized an accused based on a law different from that charged in the Information. The accused was charged and convicted of violation of Republic Act (R.A.) No. 3553[6] for possession of a deadly arrow. However, Judge Arocena imposed the penalty of fine of ₱1,000.00 under Batas Pambansa Bilang 6,[7] which is not the law violated as indicated in the Information. The error was not corrected because upon filing of a notice of appeal, Judge Arocena denied it.[8]

Third, the anonymous complaint avers that Judge Arocena has no *delicadeza*, because she hears and decides cases involving the cooperative, in which her husband is a member of the board of directors. She also mistreated the defendants, and the cooperative did not pay the legal and filing fees.[9]

The Report shows that Judge Arocena's husband, Ferdinand D. Arocena, is one of the board of directors of Self-Reliant Team Primary Multi-Purpose Cooperative (Self-Reliant Cooperative), who filed two civil actions (Civil Case Nos. [09]3849 and [09]3851)[10] for collection of money against Teresita M. Palma (Palma) and Rowena C. Anicete (Anicete). The actions were pending before Judge Arocena's court, and she did not inhibit from them.[11]

---

[5] *Supra* note 1.

[6] Anti-Deadly Arrow Law.

[7] AN ACT REDUCING THE PENALTY FOR ILLEGAL POSSESSION OF BLADED, POINTED OR BLUNT WEAPONS, AND FOR OTHER PURPOSES, AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE 9, Batas Pambansa Blg. 6, November 21, 1978.

[8] *Rollo* p. 8.

[9] *Supra* note 1.

[10] Civil Case Nos. 3849 and 3851 in some parts of the *rollo*.

[11] *Id.* at 9.

The Report further mentions that at the time of filing of the civil cases on February 17, 2009, cooperatives were exempted from payment of legal fees, which explained why no court fees were collected. It was only when OCA Circular 42-2012 took effect on May 7, 2010 that cooperatives were required to pay legal fees.[12]

The Report notes that the penalty of 30% per annum was not indicated in the promissory note.[13] However, the Court's own examination of records uncovers that there is a penalty of 2.5% per month or 30% per annum specified in the promissory note.[14] The Statements of Account attached to the Report are the bases of the compromise agreements, which Judge Arocena approved.[15] However, Judge Florendo observed that the interest and penalty rates are against the law and public policy for being iniquitous and unconscionable, which Judge Arocena should have disapproved.[16]

Lastly, the anonymous complaint alleges that Judge Arocena went abroad in March 2009 without a travel authority from the Court.[17] The Report reveals that Judge Arocena attended a church activity in Singapore in March 2009.[18] A certification from the Office of the Administrative Services states that she did not file any application to travel abroad in May 2009.[19]

In her Comment, Judge Arocena denied the accusations against her. She claimed that she is not influenced by anyone, nor has a reputation of favoring anyone and/or receiving bribe money. She contended that lawyers represent the litigants to protect

---

[12] *Id*.

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

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

[15] *Id*. at 9-11.

[16] *Supra* note 13.

[17] *Supra* note 1.

[18] *Rollo*, p. 11.

[19] *Id*. at 5.

their respective rights and interests, including those in Civil Case Nos. (09)3849 and (09)3851. As for the latter cases, she rendered a decision based on a submitted compromise agreement. Finally, she insisted that she secured a permit to travel from the Court when she went to Singapore in March 2009.[20]

Considering the gravity of the allegations against Judge Arocena and in compliance with the basic rules on evidence, the OCA required the submission of affidavits of the individuals interviewed during the investigation.[21]

In the July 11, 2016 Compliance, Judge Florendo explained that the lawyer she interviewed refused to execute an affidavit to avoid getting the ire of Judge Arocena as he/she is continuously appearing before her court.[22] Judge Florendo subpoenaed three witnesses to appear before her court. One of them was the accused in the criminal case for violation of Anti-Deadly Arrow Law. However, he could no longer be found in his last known address and had abandoned his appeal. The two other witnesses were the defendants in the civil actions filed by Self-Reliant Cooperative. They refused to execute an affidavit, but were willing to be questioned under oath.[23]

In her affidavit, Palma admitted borrowing ₱44,735.35 from Self-Reliant Cooperative, and that Judge Arocena talked to her to settle the amount on installment basis. Palma stressed that she did not sign a compromise agreement nor agreed to pay ₱97,000.00 as stated in the July 6, 2009 MTCC Decision. Palma only assented to pay the principal amount of ₱44,735.35, of which a portion was paid. Thus, it was a surprise for her to read the decision stating that she consented to a compromise agreement of ₱97,000.00.[24]

---

[20] *Id*. at 67.

[21] *Id*. at 74.

[22] *Id*. at 79.

[23] *Id*. at 80.

[24] *Id*. at 84-89.

On the other hand, Anicete also admitted in her affidavit that she borrowed ₱46,395.60 from Self-Reliant Cooperative. Like Palma, Anicete did not sign a compromise agreement nor acceded to pay ₱127,609.00 as stated in the September 9, 2009 MTCC Decision. She was surprised how the principal amount of ₱46,395.60.00 ballooned to ₱127,609.00 because she paid some amount and expected to have lesser remaining balance. She revealed that there was a verbal agreement entered into in Judge Arocena's chamber that she will pay any amount during harvest time. She also disclosed that she did not receive a copy of the court's decision.[25]

**The OCA's Recommendation**

On October 19, 2016, the OCA issued a Memorandum containing its evaluation of the administrative matter. As to the allegations that Judge Arocena convinced litigants to settle their civil actions, and influenced accused to plead guilty to the charge/s or not to appeal their conviction, the OCA found the accusations unsubstantiated due to the refusal of the persons interviewed to execute a sworn statement.[26]

As to the compromise agreement, the OCA ruled that the records show that the Motions for Judgment Based on Compromise Agreement for Civil Case Nos. (09)3849 and (09)3851 were signed by Palma and Anicete; thus, the July 6, 2009 and September 9, 2009 Decisions were in order.[27]

As to the inhibition, Judge Arocena did not deny that her husband is a member of the board of directors of Self-Reliant Cooperative. The OCA held that there were ethical violations, particularly Rule 3.12,[28] Canon 3 of the Code of Judicial Conduct;

---

[25] *Id*. at 93-98.

[26] *Id*. at 110.

[27] *Id*. at 110-111.

[28] CODE OF JUDICIAL CONDUCT, Rule 3.12. A judge should take no part in a proceeding where the Judge's impartiality might reasonably be questioned. These cases include, among others, proceedings where:
x x x x x x x x x

Section 1, Rule 137 of the Rules of Court;[29] and Sections 1 and 2, Canon 2[30] of the New Code of Judicial Conduct for the Philippine Judiciary. The OCA explained that Judge Arocena's failure to inhibit from the civil actions created an appearance of impropriety and put a question on the trial court's integrity.[31]

As to the lack of travel authority from the Court, the OCA determined that there is merit to the allegation because there is no record in the Office of Administrative Services (OAS) of OCA that Judge Arocena applied for a travel authority in 2009 when she went to Singapore. Judge Arocena violated Paragraphs B(2) and (4) of OCA Circular No. 49-2003[32] on the procedure

---

d) [T]he judge is related by consanguinity or affinity to a party litigant within the sixth degree or to counsel within the fourth degree; Code of Judicial Conduct, September 5, 1989.

[29] RULES OF COURT, Rule 137, Sec. 1, as amended. *Disqualification of judges*.– No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either patty within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has been presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

[30] Sec. 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.

Sec. 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. (New Code of Judicial Conduct for the Philippine Judiciary, A.M. No. 03-05-01-SC, April 27, 2004).

[31] *Rollo*, p. 112.

[32] OCA Circular No. 49-2003, Guidelines on Requests for Travel Abroad and Extensions for Travel/Stay Abroad, May 20, 2003.

x x x x x x x x x

B. VACATION LEAVE TO BE SPENT ABROAD

Pursuant to the resolution in A.M. No. 99-12-08-SC dated 06 November 2000, all foreign travels of judges and court personnel, regardless of the number of days, must be with prior permission from the Supreme Court through the Chief Justice and the Chairmen of the Divisions.

and requirements before traveling abroad.[33] The lack of travel authority is a violation of reasonable office rules and regulations, which is a light offense under the Revised Rules on Administrative Cases in the Civil Service.[34]

The OCA explained that Section 9, Rule 140 of the Rules of Court provides that a violation of Supreme Court rules is a less serious charge. Section 11 of the same rule states that the following sanction may be imposed: (a) suspension from office without salary and other benefits for not less than one month nor more than three months; or a fine of more than ₱10,000, but not exceeding ₱20,000.00.[35]

The OCA elucidated that Section 50, Rule 10 of the Revised Rules on Administrative Cases on the Civil Service, provides that if the respondent is found guilty of two or more charges/ counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.[36]

The OCA determined that Judge Arocena is guilty of violation of: (1) reasonable office rules and regulations; (2) Section 1, Rule 137 of the Rules of Court; and (3) Rule 3.12, Canon 3 of

---

x x x x x x x x x

2. Complete requirements should be submitted to and received by the Office of the Court Administrator at least two weeks before the intended period. No action shall be taken on requests for travel authority with incomplete requirements. Likewise, applications for travel abroad received less than two weeks of the intended travel shall not be favorably acted upon.

x x x x x x x x x

4. Judges and personnel who shall leave the country without travel authority issued by Office of the Court Administrator shall be subject to disciplinary action.

[33] *Rollo*, p. 111.

[34] *Id*.

[35] *Id*. at 113.

[36] *Id*.

the Code of Judicial Conduct, and recommended a penalty of fine of ₱15,000.00 with a stern warning that a repetition of the same and similar acts shall be dealt with more severely.[37]

**The Court's Ruling**

The Court resolves to adopt with modification the OCA's recommendation.

The rule in administrative proceedings is that complainants bear the burden of proving their allegations in the complaint by substantial evidence.[38] Here, the OCA was correct in ruling that the allegations that Judge Arocena convinced litigants either to settle their civil actions, or to plead guilty to the charge/s in criminal cases, or not to appeal the conviction were unsubstantiated due to the refusal of the persons interviewed to execute sworn statements. Hence, the accusations are baseless.

As to the matter of inhibition, the Court agrees with the OCA's ruling that Judge Arocena disregarded Section 1, Rule 137 of the Rules of Court, as amended, on mandatory disqualification of judges to sit on cases involving a family member or relative.

> SEC. 1. Disqualification of judges. — **No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise,** or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record. (Emphasis supplied)

Based on the provision above, a magistrate shall be mandatorily disqualified to sit in any case in which a judge, his/her spouse, or child, is pecuniarily interested as heir, legatee,

---

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

[38] *Concerned Citizens v. Suarez-Holguin*, A.M. No. P-18-3843 Resolution, January 30, 2019.

creditor or otherwise.[39] Here, Judge Arocena's husband is a member of the board of directors of Self-Reliant Cooperative, which has pending civil actions in her court. As a director, her husband has an interest in the outcome of the case, which should have been the basis of her inhibition. However, Judge Arocena failed to do so and violated Section 1, Rule 137 of the Rules of Court, as amended.

Furthermore, the Court resolves that Judge Arocena violated the provisions on impartiality and propriety of the 2004 New Code on Judicial Conduct for the Philippine Judiciary, which superseded the Canons of Judicial Ethics and the 1989 Code of Judicial Conduct.

CANON 3
IMPARTIALITY

x x x x x x x x x

SEC. 5. Judges shall disqualify themselves from participating in any [proceeding] in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where

x x x x x x x x x

> (g) The judge knows that his or her spouse or child has a financial interest, as heir, legatee, creditor, fiduciary, or otherwise, in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceedings[.]

x x x x x x x x x

CANON 4
PROPRIETY

x x x x x x x x x

---

[39] *Philippine Commercial International Bank v. Spouses Dy*, 606 Phil. 615, 636 (2009).

SEC. 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

x x x x x x x x x

SEC. 4. Judges shall not participate in the determination of a case in which any member of their family represents a litigant or is associated in any manner with the case.[40]

In *Paton, Jr. v. Vallarta*,[41] the Court explained that the rationale of the rule on disqualification of judges springs from the long-standing precept that a judge should not handle a case where there is a perception, rightly or wrongly, that he is susceptible to bias and partiality because of relationship or some other ground.

In another case, *In Re: Ong*,[42] the Court emphasized the importance of impartiality and propriety in the conduct of the members of the bench, to wit:

A judge must not only be impartial but must also appear to be impartial x x x. Public confidence in the Judiciary is eroded by irresponsible or improper conduct of judges. A judge must avoid all impropriety and the appearance thereof. Being the subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen.

x x x x x x x x x

> Judges must, at all times, be beyond reproach and should avoid even the mere suggestion of partiality and impropriety. Canon 4 of the New Code of Judicial Conduct states that propriety and the appearance of propriety are essential to the performance of all the activities of a judge. (Citation omitted)

---

[40] New Code of Judicial Conduct for the Philippine Judiciary, A.M. No. 03-05-01-SC, April 27, 2004.

[41] *Palon, Jr. v. Judge Vallarta*, 546 Phil. 453, 459 (2007).

[42] *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, 673 (2014).

Here, a reasonable observer may perceive the spousal relationship between Judge Arocena and a member of the board of directors of a cooperative, which has pending civil actions in her court, as cause for bias and partiality. In order to avoid a negative public perception, the right thing to do for a judge is to recuse from the case. However, Judge Arocena failed to do so in disregard of the canons on impartiality and propriety of the 2004 New Code on Judicial Conduct. Thus, Judge Arocena violated the tenets of the Court.

As to the compromise agreement, while the OCA ruled that Judge Arocena's Decisions in Civil Case Nos. (09)3849 and (09)3851 are in order because they were based on signed Motions for Judgment Based on Compromise Agreement, we find that they were rendered contrary to law, morals, and public policy due to excessive interests and penalties.

In Judge Florendo's Report, she observed that the statements of accounts were the bases of the compromise agreements, and the documents reflect iniquitous and unconscionable interests and penalties. We agree with Judge Florendo's observations. A summary of the loan details are as follows:[43]

| | Principal | Interest (21%) per annum | Penalty (30% per annum) | Total Obligation | Payment made | Outstanding Balance | Compromise Agreement Approved |
|---|---|---|---|---|---|---|---|
| Civil Case (09)3849 | ₱44,735.38 | ₱30,297.00 | ₱36,571.00 | ₱111,603.35 | ₱44,000.00 | ₱67,603.35 | ₱97,000.00 |
| Civil Case (09)3851 | ₱44,395.60 | ₱33,637.00 | ₱33,464.00 | ₱114,496.60 | ₱17,000.00 | ₱97,496.60 | ₱127,609.00 |

Furthermore, in Civil Case No. (09)3851, Judge Arocena approved additional interest and penalty provisions in the Decision, and found them not contrary to law, morals, customs, public order, and public policy.

> 1. Defendant hereby admits indebtedness in favor of the plaintiff in the total amount of ONE HUNDRED TWENTY SEVEN THOUSAND SIX HUNDRED NINE PESOS (₱127,609.00) as of the signing of this document;

---

[43] *Id*. at 9-11, 34, 51.

2. Defendant and plaintiff agreed that defendant will pay the said ₱127,609.00 without interest, as follows:

| | |
|---|---|
| a) September 3, 2009 | ₱5,000.00 |
| b) December 30, 2009 | 55,000.00 |
| c) May 30, 2010 | 47,000.00 |
| d) November 30, 2010 | 20,609.00 |

**PROVIDED that any amount unpaid on due date shall earn interest at the rate of 21% per annum and penalty charge of 30% per annum.**

3. x x x x x x x x x

4. **This compromise agreement is not contrary to law, morals, good customs, public order and public policy and may be the basis of judgment in the instant case**.

WHEREFORE, **finding the said Compromise Agreement not contrary to law, customs, morals, public order and public policy, the same is hereby approved**. The parties are enjoined to comply strictly and faithfully with the terms and conditions of the said compromise agreement.[44] (Emphases supplied)

While there are no additional interest and penalty provisions in the Decision of Civil Case No. (09)3849, Judge Arocena likewise included in the dispositive portion that the compromise agreement is not contrary to law, customs, morals, public order and public policy despite the unconscionable interests and penalties.

WHEREFORE, **finding the said Compromise Agreement not contrary to law, customs, morals, public order and public policy, the same is hereby approved**. The parties are enjoined to comply strictly and faithfully with the terms and conditions of the said compromise agreement.[45] (Emphasis supplied)

In *Spouses Castro v. Tan*,[46] the Court established that excessive interest rates are against the law and morals, even if voluntarily agreed by the parties. Thus:

---

[44] *Id*. at 64.

[45] *Id*. at 63.

[46] 620 Phil. 239, 242-243, 247 (2009).

The imposition of an unconscionable rate of interest on a money debt, even if knowingly and voluntarily assumed, is immoral and unjust. It is tantamount to a repugnant spoliation and an iniquitous deprivation of property, repulsive to the common sense of man. It has no support in law, in principles of justice, or in the human conscience nor is there any reason whatsoever which may justify such imposition as righteous and as one that may be sustained within the sphere of public or private morals.

x x x x x x x x x

While x x x Central Bank Circular No. 905 s. 1982 x x x suspended the Usury Law ceiling on interest effective January 1, 1983, it is also worth stressing that interest rates whenever unconscionable may still be declared illegal. There is certainly nothing in said circular which grants lenders *carte blanche* authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets.

Here, Judge Arocena failed to apply the established jurisprudence on the imposition of interest on loan obligations. The loan documents attached to the records show that the interest and penalties imposed are excessive and unreasonable. Her omission to apply the correct rule constitutes gross ignorance of the law.

Gross ignorance of the law is the failure of a magistrate to apply basic rules and settled jurisprudence. It connotes a blatant disregard of clear and unambiguous provisions of law because of bad faith, fraud, dishonest, or corruption.[47]

In *OCA v. Dumayas*,[48] the Court elucidated on gross ignorance of the law, to wit:

For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties

---

[47] *Re: Complaint-Affidavit of Elvira N. Enalbes, et al. Against Chief Justice Teresita J. Leonardo-De Castro (Ret.)*, A.M. No. 18-11-09-SC, January 22, 2019.

[48] *Office of the Court Administrator v. Judge Dumayas*, A.M. No. RTJ-15-2435, March 6, 2018.

must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other similar motive. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. Thus, unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. When a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts. Ignorance of the law is the mainspring of injustice. Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules; they must know them by heart.

Here, Judge Arocena is required to be knowledgeable about the rules and jurisprudence on interest rates because it is the duty of a judge to be abreast with legal developments. The records show that there are several civil actions for collection of money involving cooperatives that are or were pending in her court.[49] With her exposure to suits on loan obligations, the public expects that the correct interest rates are within her fingertips for proper application in her decisions. As a member of the judiciary for 25 years,[50] it is presumed that she is aware of what constitutes as reasonable interest rate from what is not. The Court finds it hard to believe that Judge Arocena failed to see that the unconscionable interests and penalties of the loan agreement in the promissory notes and statements of account were mirrored in the compromise agreements.

Coupled with her failure to recuse from the Self-Reliant Cooperative cases, the Court is led to the conclusion that Judge Arocena approved the unconscionable compromise agreements to favor the cooperative, of which her husband is a member of the board of directors. There is no other way to describe her conduct as gross ignorance of the law and abuse of authority.

---

[49] *Rollo*, pp. 54-57, 59, 61-64.

[50] *Id*. at 67.

In *Panes, Jr. v. Dinopol*,[51] the Court imposed the penalty of dismissal from the service after finding that the judge was guilty of gross ignorance of the law for failing to observe due process, which resulted to arrest and incarceration of individuals. The body of the decision revealed that the Court also found the judge was related by affinity within the sixth civil degree to one of the plaintiffs in a civil case pending in his court. The Court held that he should have inhibited himself from hearing the case.

> A judge should be the embodiment of competence, integrity and independence. He should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary. He shall be faithful to the law and maintain professional competence.[52]

In *Mangandingan v. Adiong*,[53] the Court also meted out the penalty of dismissal from the service on a judge for gross ignorance of the law for improperly serving summons and for violating the rules on issuance of a temporary restraining order. The Court also found him guilty of gross misconduct due to bias and partiality. The Court held:

> This Court cannot countenance the complacence of Judge Adiong manifested in his gross ignorance and his deliberate misapplication or misinterpretation of the very basic procedures subject of the present case to justify his actions that favor certain litigants. Under the circumstances, and considering his propensity for disregarding elementary rules of procedure, the extreme sanction of dismissal is called for.[54]

As to the lack of travel authority, Judge Arocena claimed in her Comment that she had Permit to Travel from the Court when she went to Singapore in March 2009.[55] However, she

---

[51] 703 Phil. 289 (2013).

[52] *Id*. at 304.

[53] 568 Phil. 39 (2008).

[54] *Id*. at 58.

[55] *Rollo*, p. 67.

did not attach a copy of the travel authority as proof of her allegation. On the contrary, the Certification from the OCA dated October 28, 2014 shows that Judge Arocena "has not filed any application for travel abroad for the period of March 2009."[56]

x x x x x x x x x

This is to certify that, according to the records of this Office, HONORABLE ANALIE C. ALDEA-AROCENA, Presiding Judge, Municipal Trial Court in Cities, Branch 1, San Jose City, Nueva Ecija, has not filed any application for travel abroad for the period of March 2009.[57]

Paragraphs B(2) and (4) of OCA Circular No. 49-2003 provide the requirements and procedure for vacation leave to be spent abroad by judges and court personnel.

B. Vacation Leave to be Spent Abroad

Pursuant to the resolution in A.M. No. 99-12-08-SC dated 06 November 2000, all foreign travels of judges and court personnel, regardless of the number of days, must be with prior permission from the Supreme Court through the Chief Justice and the Chairmen of the Divisions.

x x x x x x x x x

2. Complete requirements should be submitted to and received by the Office of the Court Administrator at least two weeks before the intended period. No action shall be taken on requests for travel authority with incomplete requirements. Likewise, applications for travel abroad received less than two weeks of the intended travel shall not be favorably acted upon.

x x x x x x x x x

4. Judges and personnel who shall leave the country without travel authority issued by Office of the Court Administrator shall be subject to disciplinary action; Guidelines on Requests for Travel Abroad

---

[56] *Id.* at 5.

[57] *Id.*

and Extensions for Travel/Stay Abroad, OCA Circular No. 49-03, May 20, 2003.

In *Concerned Citizens v. Suarez-Holguin*,[58] the Court held that judges and court personnel who wish to travel abroad must secure a travel authority from the OCA, and that those who leave the country without the required travel authority shall be subject to disciplinary action. Therefore, Judge Arocena must be held administratively liable for traveling to Singapore in March 2009 without a travel authority from the Court.

As a reminder to the members of the bench, the Court reiterates its pronouncement in *Gandeza, Jr. v. Tabin*:[59]

> We have repeatedly reminded members of the Judiciary to be irreproachable in conduct and to be free from any appearance of impropriety in their personal behavior, not only in the discharge of their official duties, but also in their daily life. For no position exacts a greater demand for moral righteousness and uprightness of an individual than a seat in the Judiciary. The imperative and sacred duty of each and everyone in the Judiciary is to maintain its good name and standing as a temple of justice. The Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability or tend to diminish the faith of the people in the Judiciary, as in the case at bar.

In sum, the Court finds Judge Arocena administratively liable for:

1. Violation of Section 1, Rule 137 of the Rules of Court, as amended,
2. Violation of Section 5 (g) of Canon 3, and Sections 1 and 4 of Canon 4 of the 2004 New Code of Judicial Conduct;
3. Gross ignorance of the law; and

---

[58] *Supra* note 37.

[59] 669 Phil. 536, 544-545 (2011).

4. Violation of reasonable office rules and regulations, particularly Paragraph B (2) and (4) of OCA Circular 49-2003.

On the imposable penalty for multiple offenses, we apply *Boston Finance and Investment Corp. v. Gonzalez.*[60]

> 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[.]

Rule 140 of the Rules of Court, as amended, enumerates the classification of charges with lists of acts and omissions, and specifies the corresponding penalties.

> SEC. 7. *Classification of charges.* — Administrative charges are classified as serious, less serious, or light.
>
> SEC. 8. *Serious charges.* — Serious charges include:
>
> 1. Bribery, direct or indirect;
> 2. Dishonesty and violations of the Anti-Graft and Corrupt Practices Law (R.A. No. 3019);
> **3. Gross misconduct constituting violations of the Code of Judicial Conduct;**
> 4. Knowingly rendering an unjust judgment or order as determined by a competent court in an appropriate proceeding;
> 5. Conviction of a crime involving moral turpitude;
> 6. Willful failure to pay a just debt:
> 7. Borrowing money or property from lawyers and litigants in a case pending before the court;
> 8. Immorality;
> **9. Gross ignorance of the law or procedure;**
> 10. Partisan political activities; and
> 11. Alcoholism and/or vicious habits.

---

[60] A.M. No. RTJ-18-2520, October 9, 2018.

SEC. 9. *Less Serious Charges*. — Less serious charges include:

1. Undue delay in rendering a decision or order, or in transmitting the records of a case;
2. Frequent and unjustified absences without leave or habitual tardiness;
3. Unauthorized practice of law;
4. **Violation of Supreme Court rules, directives, and circulars;**
5. Receiving additional or double compensation unless specifically authorized by law;
6. Untruthful statements in the certificate of service; and
7. Simple Misconduct

x x x x x x x x x

SEC. 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.

B. If the respondent is guilty of a **less serious charge**, any of the following sanctions shall be imposed:

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.[61] (Emphases supplied)

Here, Judge Arocena's administrative liabilities are classified as follows with the corresponding penalties imposed:

---

[61] RULES OF COURT, Rule 140, as amended, July 1, 1997.

| Offense | Classification under Rule 140 | Penalty Imposed |
|---|---|---|
| 1. Violation of Section 1, Rule 137 of the Rules of Court, as amended. | Sec. 9(4) Less serious charge – Violation of Supreme Court rules, directives, and circulars. | ₱15,000.00 |
| 2. Violation of Section 5(g) of Canon 3, and Sections 1 and 4 of Canon 4 of the 2004 New Code of Judicial Conduct. | Sec. 8(3) Serious charge – Gross misconduct constituting violations of the Code of Judicial Conduct. | Dismissal from the service, with forfeiture of benefits and disqualification from holding government office. |
| 3. Gross ignorance of the law | Sec. 8(9) Serious charge – Gross ignorance of the law or procedure. | Dismissal from the service, with forfeiture of benefits and disqualification from holding government office. |
| 4. Violation of reasonable office rules and regulations, particularly Paragraphs B(2) and (4) of OCA Circular No. 49-2003. | Sec. 9(4) Less serious charge – Violation of Supreme Court rules, directives, and circulars. | ₱15,000.00 |

**WHEREFORE**, premises considered, the Court finds Judge Analie C. Aldea-Arocena of Municipal Trial Court in the Cities, San Jose City, Nueva Ecija **GUILTY** of:

1. Violation of Section 1, Rule 137 of the Rules of Court, as amended;
2. Violation of Section 5(g), Canon 3, and Sections 1 and 4, Canon 4 of the 2004 New Code of Judicial Conduct;

3. Gross ignorance of the law; and

4. Violation of reasonable office rules and regulations, particularly Paragraphs B(2) and (4) of OCA Circular No. 49-2003.

**ACCORDINGLY,** for the serious charges under Items 2 and 3, she is meted the penalty of **DISMISSAL** from the service with **FORFEITURE** of all retirement benefits, except accrued leave credits, and perpetual disqualification from holding public office in any branch or instrumentality of the government, including government-owned or controlled corporations.

For the less serious charges under Items 1 and 4, she is meted the penalty of **FINE** of ₱15,000.00 for each charge or a total of ₱30,000.00.

**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-17-2486. September 3, 2019]
(Formerly A.M. No. 17-02-45-RTC)

## RE: INVESTIGATION REPORT ON THE ALLEGED EXTORTION ACTIVITIES OF PRESIDING JUDGE GODOFREDO B. ABUL, JR., BRANCH 4, REGIONAL TRIAL COURT, BUTUAN CITY, AGUSAN DEL NORTE

**SYLLABUS**

**1. LEGAL ETHICS; THE NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY; BY**

**SIMPLY MEETING AND TALKING WITH THE ACCUSED WHOSE CASES WERE THEN PENDING BEFORE HIS SALA, A JUDGE HAS ALREADY TRANSGRESSED ETHICAL NORMS AND COMPROMISED HIS INTEGRITY AND IMPARTIALITY AS THE TRIAL JUDGE; CASE AT BAR.—** The *Code of Judicial Ethics* mandates that the conduct of a judge must be free of every whiff of impropriety not only in regard to his discharge of judicial duties, but also to his behavior outside his office and even as a private individual. Indeed, judges should be extra prudent in associating with litigants and counsel who have matters pending before them in order to avoid even the mere perception of possible bias or partiality. They should be scrupulously careful with respect to pending or prospective litigations before them to avoid anything that may tend to awaken the suspicion that their personal, social or sundry relations could influence their objectivity, for not only must they possess proficiency in law but they must also act and behave in such manner that would assure litigants and their counsel, with great comfort, of the judges' competence, integrity and independence. In view of this, whether or not Judge Abul really demanded money in exchange for either the liberty of Reyes and Montilla or the dismissal of the criminal case filed against them even became immaterial herein. By simply meeting and talking with them as the accused whose cases were then pending in his sala, Judge Abul already transgressed ethical norms and compromised his integrity and impartiality as the trial judge. His actuations flagrantly violated the following norms and canons of *The New Code of Judicial Conduct for the Philippine Judiciary.*

**2. ID.; DISCIPLINE OF JUDGES; GRAVE MISCONDUCT; GRAVE MISCONDUCT EXISTS WHERE THE REQUISITES OF CORRUPTION, CLEAR INTENT TO VIOLATE THE LAW OR FLAGRANT DISREGARD OF ESTABLISHED RULES ARE PRESENT; THE DEATH OF THE RESPONDENT JUDGE SHOULD NOT RESULT IN THE DISMISSAL OF THE ADMINISTRATIVE COMPLAINT AGAINST HIM; CASE AT BAR.—** Plainly enough, Judge Abul's actuations and behavior constituted grave misconduct. It is settled that grave misconduct exists where the requisites of corruption, clear intent to violate the law or flagrant disregard of established rule are present. As an element of grave

misconduct, corruption 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. Judge Abul's death intervened in the meantime. Nonetheless, and as recommended by the OCA, his death should not result in the dismissal of the administrative complaint. In *Gonzales v. Escalona*, we held that the Court is not ousted of its jurisdiction by the mere fact that the respondent public official had meanwhile ceased to hold office. Verily, jurisdiction over the case or subject matter, once acquired, continues until final resolution. With more reason is this true herein because Judge Abul was fully afforded due process during the investigation. Worth noting is that the Court already sternly warned Judge Abul in *Calo v. Judge Abul, Jr.* "to be more circumspect in issuing orders which must truly reflect the actual facts they represent to obviate engendering views of partiality among others." The warning evidently fell on deaf ears in view of the clear showing that Judge Abul still committed another serious offense.

**3. ID.; ID.; ID.; IMPOSABLE PENALTY; CASE AT BAR.—** Under Section 11, Rule 140 of the *Rules of Court,* grave misconduct constituting violations of the *Code of Judicial Conduct* is a serious offense that results in dismissal from the service, forfeiture of all or part of the benefits, and perpetual disqualification from reappointment or appointment to any public office, including government-owned and controlled corporations, except accrued leave credits. Had Judge Abul not died, he would have been meted the extreme penalty of dismissal, with the concomitant forfeiture of all retirement and allied benefits due to him, except accrued leaves, as an accessory penalty. Considering that his intervening death has rendered his dismissal no longer feasible, the accessory penalty of forfeiture of all such retirement and allied benefits, except accrued leaves, then becomes the viable sanction.

**LEONEN*, J.*, *dissenting opinion:***

**1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS OF LAW; DUE PROCESS IS GENERALLY PREMISED ON THE IDEA OF FAIRNESS OR FREEDOM FROM ARBITRARINESS.—** The

fundamental right to due process of law is found in Article I, Section 1 of the Constitution: x x x Procedural due process is canonically a part of this provision. Due process has no controlling and precise definition but is generally premised on the idea of fairness or "freedom from arbitrariness." It is considered to be "the embodiment of the sporting idea of fair play." x x x Due process encompasses both procedural and substantive due process. Procedural due process "concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere."

**2. ID.; ADMINISTRATIVE LAW; SEVEN (7) CARDINAL RIGHTS IN TRIAL AND INVESTIGATION OF AN ADMINISTRATIVE CHARACTER FOR DUE PROCESS, ENUMERATED; EXPLAINED.—** In this jurisdiction, *Ang Tibay v. Court of Industrial Relations* states the seven (7) cardinal primary rights in "trials and investigations of an administrative character" for due process to be satisfied: (1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. x x x (2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented. x x x (3) "While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. x x x (4) Not only must there be some evidence to support a finding or conclusion, but the evidence must be "substantial." "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." . . . x x x (5) The decision must be rendered on the evidence presented at the healing, or at least contained in the record and disclosed to the parties affected. x x x (6) [The tribunal or officer], therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision. . . . (7) [The tribunal or officer] should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority

conferred upon it. In *Gas Corporation of the Philippines v. Inciong*, this Court clarified that while *Ang Tibay* remains to be good law, the failure to strictly apply the formalities of an adversarial proceeding before an administrative tribunal does not necessarily result in a denial of due process: x x x Thus, due process in administrative proceedings generally does not require that the respondent *must* be heard. It merely requires that the respondent is *given the opportunity* to be heard. This opportunity to be heard, however, is not lost even after a judgment is rendered. Due process in administrative proceedings requires that the respondent still be given the opportunity to question the unfavorable judgment. x x x The opportunity to be heard should be present in *all* aspects of the procedure until the finality of the judgment, decision, or resolution. It is not a mere formality but an intrinsic and substantial part of the constitutional right to due process. This is what inspires the Revised Penal Code provision that dismisses a case against an accused for any crime when he or she dies.

3. **ID.; ID.; THE SUPREME COURT'S JURISDICTION OVER A DISCIPLINARY CASE AGAINST A COURT OFFICIAL OR EMPLOYEE, ONCE ACQUIRED, IS NOT LOST SIMPLY BECAUSE THE RESPONDENT HAS CEASED HOLDING OFFICE DURING THE PENDENCY OF THE CASE; CESSATION FROM PUBLIC OFFICE DURING THE PENDENCY OF THE CASE MAY OCCUR IN THREE (3) WAYS; (1) RESIGNATION (2) RETIREMENT, OR (3) DEATH; EFFECT THEREOF, DISTINGUISHED.—** It is settled that this Court's jurisdiction over a disciplinary case against a court official or employee, once acquired, is not lost simply because the respondent has ceased holding office during the pendency of the case. Cessation from public office during the pendency of the case may occur in three (3) different ways: (1) resignation; (2) retirement; or (3) death. x x x Resignation requires intent. It is a *voluntary* cessation from public office. Sometimes, however, respondents in disciplinary proceedings opt to resign to avoid being forcibly dismissed from service. Thus, this Court has stated that resignation "should be used neither as an escape nor as an easy way out to evade administrative liability by a court personnel facing administrative sanction." Therefore, once this Court assumes jurisdiction—that is, after an administrative case has been filed—resignation from public

office will not render the case moot. x x x Retirement, meanwhile, may be optional or compulsory. Optional retirement for government employees may be availed after 20 to 30 years of service, regardless of age. Judges and justices may also opt to retire upon reaching 60 years old as long as they have rendered 15 years of service in the judiciary. Optional retirement, like resignation, is a voluntary cessation from public office. Thus, the same rationale is applied to those who avail of optional retirement during the pendency of an administrative case. x x x Respondents in an administrative case could apply for optional retirement to evade liability. Thus, optional retirement during the pendency of an administrative case, like resignation, will not render the case moot. Unlike resignation, however, retirement may also be *involuntary*. Retirement from public service is compulsory for government employees who have reached 65 years old or for judges and justices who have reached 70 years old. x x x As this doctrine developed, this Court has interpreted "some other similar cause" to include death. Death, however, cannot be placed on the same footing as resignation or retirement. Resignation and optional retirement are *voluntary* modes of cessation. The respondent may avail of them as a way to escape or evade liability. This Court, therefore, should not be ousted of its jurisdiction to continue with the administrative complaint even if the resignation is accepted or the application for retirement is approved. Death, unless self-inflicted, is *involuntary*. Respondents who die during the pendency of the administrative case against them do not do so with the intent to escape or evade liability. The rationale for proceeding with administrative cases despite resignation or optional retirement, therefore, cannot apply. x x x The essence of due process in administrative cases is simply the opportunity to be heard. Respondents must be given the opportunity to be informed of and refute the charges against them in all stages of the proceedings. Only in resignation and retirement can there be a guarantee that respondents will be given the opportunity to be heard. Even if they resign or retire during the pendency of the administrative case, they can still be aware of the proceedings and actively submit pleadings. Thus, they should not be allowed to evade liability by the simple expediency of separation from public service. It would be illogical and impractical to treat dead respondents as equal to resigned or retired respondents. Dead respondents are neither aware of the continuation of the

proceedings against them, nor are in any position to submit pleadings. Death forecloses any opportunity to be heard. Continuing with the administrative proceedings even after the respondent's death, therefore, is a violation of the right to due process.

**4. REMEDIAL LAW; DISCIPLINE OF JUSTICES AND JUDGES; A.M. NO. 01-8-10-SC PROVIDES THAT JUSTICES AND JUDGES FOUND GUILTY OF SERIOUS CHARGES, OR THE WORST POSSIBLE OFFENSES THAT MAY BE COMMITTED, ARE SANCTIONED; PENALTIES.—** A.M. No. 01-8-10-SC provides that justices and judges found guilty of serious charges, or the worst possible offenses that may be committed, are sanctioned with the following penalties: 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. For the first two (2) sanctions to be satisfied, they require the respondent judge or justice to *still be in public service*.

**5. ID.; ID.; RESPONDENT JUDGE'S SUBMISSION OF A COMMENT OR EXPLANATION BEFORE DEATH IS NOT ENOUGH TO SATISFY THE REQUIREMENTS OF DUE PROCESS; IT WOULD BE INAPPROPRIATE TO IMPOSE THE PENALTY WITHOUT RUNNING AFOUL OF THE BASIC TENETS OF PROCEDURAL DUE PROCESS; CASE AT BAR.—** This is not the first time that this Court addresses the impracticability of imposing an administrative penalty on a respondent who had already died. x x x Even the doctrine in *Gonzales* was not without exceptions. There, this Court held that when the respondent dies while the disciplinary case was pending, the presence of any of the following circumstances is enough to warrant the dismissal of the case against him or her: "first, the observance of respondent's right to due process; second, the presence of exceptional circumstances in the case on the

grounds of equitable and humanitarian reasons; and third, it may also depend on the kind of penalty imposed." In *Baikong Akang Camsa vs. Judge Aurelio Rendon*, this Court found it inappropriate to proceed with the investigation of a judge "who could no longer be in any position to defend himself" as it "would be a denial of his right to be heard, our most basic understanding of due process. "The respondent judge's submission of a comment or explanation before death is likewise not enough to satisfy the requirements of due process. As stated in *Lumiqued*, the right to due process "is deemed satisfied if a person is granted an opportunity to seek reconsideration of the action or ruling complained of." x x x In *Re: Judicial Audit Conducted in the Municipal Trial Court (MTC) of Tambulig and the 11th Municipal Circuit Trial Court (MCTC) of Mahayag-Dumingag-Josefina, both in Zamboanga del Sur*, Judge Ricardo Salvanera was able to submit his explanation but died before this Court could rule on his case. Thus, despite finding him guilty of gross inefficiency and gross ignorance of the law, this Court was constrained to dismiss the case and release his retirement benefits to his heirs. The same procedural antecedents are present here. This Court was informed of respondent's death in a September 13, 2017 letter after he had been killed by an unidentified motorcycle-riding assailant. While he was able to submit his Comment/ Answer to the investigation report of the judicial audit team, the Office of the Court Administrator only concluded its investigation on the allegations against respondent on February 20, 2018, when it submitted its Report and Recommendation to this Court. x x x In this instance, respondent had only been aware of the investigation report at the time of his death. His Comment/Answer was in response only to the judicial audit team's findings. It would have been impossible for him to know, before his sudden death, that the Office of the Court Administrator and this Court would merely adopt the factual findings of the judicial audit team. Respondent is no longer in a position to defend himself from the Office of the Court Administrator's findings. He can no longer be informed of the conclusions of this Court. The recommended penalty can no longer be served. He is not in any position to move for reconsideration, to plead his innocence, or to express his remorse. It would be inappropriate to impose a penalty without running afoul of the basic tenets of procedural due process. Likewise, the forfeiture of respondent's retirement benefits is unusually cruel. The only people who will

be affected by the penalty are his heirs, who had nothing to do with the administrative charges against him. x x x This Court should not make respondent's grieving family bear the burden of his faults. I disagree with the majority that the dismissal of this case weakens our ability to retain integrity within the ranks of the judiciary.

**HERNANDO*, J.*, *dissenting opinion:***

**1. REMEDIAL LAW; DISCIPLINE OF JUDGES; INSTANCES WHEN THE DEATH OF A RESPONDENT PUBLIC SERVANT DURING THE PENDENCY OF AN ADMINISTRATIVE CASE AGAINST HIM/HER WILL RESULT IN THE DISMISSAL OF THE CASE, ENUMERATED.— The death of an accused even after conviction but during the pendency of his/her appeal shall result in the dismissal of the criminal case against said accused. This dismissal is triggered by the presumption of innocence accorded every accused under the Constitution.** Meanwhile, the death of a respondent public servant during the pendency of a mere administrative case against him/her shall not result in the dismissal of said case except in the following instances: a) if respondent's right to due process was not observed; b) there is presence of exceptional circumstances in the case of equitable and humanitarian reasons; and c) the kind of penalty imposed. This principle is not founded on any express Constitutional or statutory provision. Its only basis, per jurisprudence, is public policy, and that is, that public office is a public trust.

**2. ID.; ID.; GROSS MISCONDUCT CONSTITUTING VIOLATION OF THE CODE OF JUDICIAL CONDUCT IS CONSIDERED AS A SERIOUS CHARGE; PENALTIES WHICH MAY BE IMPOSED.—** According to Section 8 of A.M. No. 01-8-10-SC or the Amendment to Rule 140 of the Rules of Court Re: Discipline of Justices and Judges, gross misconduct constituting violations of the Code of Judicial Conduct is considered as a serious charge. Section 11 of the same issuance provides for the following penalties: **SEC. 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.

**3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; PRESUMPTION OF INNOCENCE; IN THIS ADMINISTRATIVE CASE, THE PRESUMPTION BY ANALOGY SHALL APPLY SINCE THE DEATH OF RESPONDENT PRECEDED THE PROMULGATION OF THE DECISION WHICH IMPOSED UPON HIM THE PENALTY OF DISMISSAL; CASE AT BAR.—** [T]he presumption of innocence should stand before a decision on the administrative case is rendered. x x x Article 3, Section 14 of the 1987 Constitution provides that "[i]n all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved." Indeed, until an accused is adjudged guilty by proof beyond reasonable doubt, there is a presumption of his or her innocence. Even if the case at bench is an administrative case, we should apply this presumption by analogy since Judge Abul's death preceded the promulgation of the decision which imposed upon him the penalty of dismissal. Simply put, he should be presumed innocent until a decision is finally rendered, be it in his favor or not. Unfortunately, even if Judge Abul was able to file his Comment on the charges against him, he could no longer submit other evidence which could have helped his cause if he truly was innocent like he previously claimed. Nonetheless, the Court declared him guilty of gross misconduct based on the existing evidence and the investigation conducted by the OCA, and then imposed the ultimate penalty of forfeiture of all of his benefits despite his death.

**4. REMEDIAL LAW; DISCIPLINE OF JUDGES; THE COURT CAN EXERCISE ITS SOUND DISCRETION IN THE IMPOSITION OF PENALTIES DEPENDING ON THE CIRCUMSTANCES SURROUNDING THE CASE; SUSTAINED.—** [S]ince death of an accused extinguishes personal criminal liability as well as pecuniary penalties arising from the felony when the death occurs before final judgment in criminal cases, the standard for an administrative case should be similar or less punitive. x x x Based on Article 89(1) of the

Revised Penal Code, the death of the accused extinguishes the criminal liability. Meanwhile, the pecuniary penalties will only be extinguished if the accused dies before final judgment is rendered. If this is the standard for criminal cases wherein the quantum of proof is proof beyond reasonable doubt, then a lower standard for administrative proceedings such as the case at bar should be followed, even if the quantum of proof therein is substantial evidence. I am aware, however, that the Court has previously pronounced in *Gonzales v. Escalona* that an administrative case, which is not strictly personal in nature, is not automatically terminated upon the death of respondent. This is because public office is a public trust which needs to be protected at all costs, even beyond the death of the concerned public officer. I reiterate that this is against the Constitution. Even then, I wish to point out that if in criminal cases, death extinguishes criminal and civil liability (arising from the offense), why should it be so much stricter when it comes to administrative cases with exceptional or justifiable factors that require special consideration, such as in this case? Not surprisingly, the Court, using its sound discretion, previously imposed fines or less stringent penalties upon respondents in administrative cases who were found guilty even if they already retired or passed away while their cases were still pending. x x x As one can infer from the aforementioned cases, in spite of the death or retirement of the respondents while their respective administrative cases were still pending, only a fine or deduction from their benefits was eventually imposed upon each of them. Notably, their retirement or survivorship benefits were not all automatically forfeited. In light of this, it is clear that the Court can exercise its sound discretion in the imposition of penalties depending on the circumstances surrounding the case.

5. **ID.; ID.; THERE ARE INSTANCES WHEREIN THE DEATH OF THE RESPONDENT NECESSITATES THE DISMISSAL OF THE ADMINISTRATIVE CASE AGAINST HIM/HER, SUCH AS THE PRESENCE OF EXCEPTIONAL CIRCUMSTANCES IN THE CASE ON THE GROUNDS OF EQUITABLE AND HUMANITARIAN REASONS; PRESENT IN CASE AT BAR.—** [H]umanitarian reasons call for the grant of death and survivorship benefits in favor of the spouse and the heirs, if the case will not be dismissed. x x x It should be emphasized that according to the *ponencia*, Judge

Abul should be stripped of his retirement benefits even if he passed away around two years before the decision in his administrative case was released. This is in addition to the fact that he was actually murdered mere days after he turned 68 years old. Moreover, he would have turned 70 years old this year (2019), the compulsory age for retirement for judges, if not for his untimely demise. Considering these circumstances, it is my opinion that all of Judge Abul's death and retirement benefits should not be forfeited because his death preceded the release of a judgment concerning his administrative case. More importantly, I believe that for humanitarian reasons, Judge Abul's death and survivorship benefits should be released. Even if the general rule is that the death of the respondent does not preclude a finding of administrative liability, there are instances wherein such death necessitates the dismissal of the administrative case. According to *Gonzales v. Espinosa*, the recognized exceptions are anchored on the following factors: "*first*, the observance of respondent's right to due process; *second*, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and *third*, it may also depend on the kind of penalty imposed." I believe that the second exception pertaining to humanitarian reasons should be applied in this case. Thus, if the case will not be dismissed, then at least the death and survivorship benefits should not all be forfeited. x x x Given the specific circumstances of Judge Abul's case, it is my view that his mistakes should not unduly punish his spouse or his heirs, especially if they had no hand in or knowledge about the alleged extortions. Judge Abul's liability should be considered personal and extinguished by reason of his death, and should not extend beyond the said death only to be shouldered by his spouse or his son. Doing so would indirectly impose a harsh penalty upon innocent individuals who not only have to come to terms with the unjust death of a loved one but also live without one henceforth. Without a doubt, forfeiture of all of Judge Abul's death and survivorship benefits would add to the grief and hardships that his family is already enduring. Thus, it is my humble position that assuming that the Court would maintain the non-dismissal rule in administrative cases in case of death of the respondent, the Court should, instead of imposing such a strict and unforgiving punishment even when Judge Abul has already passed away, impose a fine to be deducted from his retirement benefits.

**APPEARANCES OF COUNSEL**

*Tristan B. Zoleta* for respondent.

**D E C I S I O N**

***PER CURIAM*:**

Death of the respondent judge during the pendency of his administrative case shall not terminate the proceedings against him, much less absolve him, or cause the dismissal of the complaint if the investigation was completed prior to his demise. If death intervenes before he has been dismissed from service, the appropriate penalty is forfeiture of all retirement and other benefits, except accrued leaves.

Such is the situation in this administrative matter initiated against Judge Godofredo B. Abul, Presiding Judge of Branch 4, Regional Trial Court (RTC) in Butuan City, Agusan del Norte, in which the complaint charged him with extortion committed against prison inmates detained for violation of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*).

**Antecedents**

On April 7, 2015, the Office of the Court Administrator (OCA) received the letter sent by Rev. Father Antoni A. Saniel, Director of the Prison Ministry of the Diocese of Butuan,[1] denouncing the extortionate activities committed by Judge Abul against the detainees of the Provincial Jail of Agusan.[2] Allegedly, Judge Abul had demanded money ranging from ₱200,000.00 to ₱300,000.00 in exchange for the detainees' release from jail or the dismissal of the criminal cases.[3] Father Saniel submitted with his letter the affidavits of Hazel D. Reyes (Reyes)[4] and

---

[1] *Rollo*, pp. 13-14.

[2] *Id.* at 20-22.

[3] *Id.* at 13.

[4] *Id.* at 15-19.

Anna Marie B. Montilla (Montilla) that attested to the extortion activities of Judge Abul.

In her affidavit, Reyes claimed that she was an "asset" of the Philippine Drug Enforcement Agency (PDEA); that Judge Abul had extorted money from detainees accused of and undergoing trial for drug-related charges in exchange for their liberty; that a certain Naomi Saranggani, the wife of a detainee, had approached and asked her if she wanted her criminal case to be dismissed; that Saranggani had told her that Judge Abul summoned her to look for detainees facing drug-related charges who wanted their cases to be favorably resolved; that Saranggani had told her and Montilla that they should start raising money totalling ₱200,000.00 to pay Judge Abul; and that Montilla had related that when she attended her December 5, 2014 hearing, Judge Abul asked for her cellphone number so that they could directly communicate with each another.

On her part, Montilla averred that she had met Saranggani on November 4, 2014 when the latter went to the Agusan del Norte Provincial Jail to await the release of her husband, Walid Saranggani; that Saranggani had asked if she (Montilla) had wanted to be released from prison herself because Judge Abul could arrange her release in exchange for the sum of ₱200,000.00; that Saranggani had then used her phone to call someone whom she kept addressing as "judge"; that Saranggani had then handed the phone to her to talk to the person, who introduced himself as Judge Abul, and asked if she could pay ₱100,000.00 in exchange for her release; that she had later on personally met Judge Abul during her scheduled hearing on December 5, 2014, and he had told her that they should help one another because she could be convicted based on the document that she had signed; that Judge Abul had asked her phone number in case he would want to see her after her release; that Saranggani had intimated to her that they paid ₱250,000.00 to Judge Abul to secure the release of her husband; and that she had learned through Saranggani that Judge Abul had also been instrumental in the release of other prisoners after they had paid him.

## Investigation and Report of the Judicial Audit Team

The OCA conducted a fact-finding investigation of the complaint filed by Father Saniel through a team led by Atty. Rullyn S. Garcia.[5]

The team interviewed Reyes and Montilla who confirmed their affidavits. Reyes and Montilla also separately confirmed that in February 2015, Judge Abul arrived at the provincial jail and talked to them; that Judge Abul asked Reyes to execute a disclaimer that he would prepare and that he would ensure her release from detention; that as to Montilla, Judge Abul appeared to be annoyed by her affidavit, and said to her that he would just inhibit but would see to it that she would be convicted.[6]

The team reviewed the records of Criminal Case No. 15630 charging Walid Saranggani, Shaira Salic, Mike Saranggani and Ryan Umpa for violating Section 5 of Republic Act No. 9165 and raffled to the RTC Branch presided by respondent. The team concluded that Criminal Case No. 15630 had been decided in haste and without regard to procedural rules that cast doubt on the regularity of the acquittal of all accused.[7]

On February 28, 2017, the Court *En Banc* issued a resolution placing Judge Abul under preventive suspension, and required him to comment on the complaint and the investigation report.[8]

## Comment/Answer of Judge Abul

In his comment/answer,[9] Judge Abul denied all the accusations, and insisted that the same were false, baseless

---

[5] *Id*. at 4.

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

[7] *Id*. at 10.

[8] *Id*. at 58-59.

[9] *Id*. at 61-77.

and concocted by an evil and malicious mind for the sole purpose of besmirching his unblemished record of service in the Judiciary. He maintained that Fr. Saniel had no personal knowledge of the alleged extortion activities; that the declarations of Reyes and Montilla were not based on their personal knowledge and were thus inadmissible against him; that he did not go to the provincial jail to confront Reyes and Montilla, but only to talk to the jail warden to inquire if the prisoners were being allowed to leave jail; that the affidavits of Reyes and Montilla had been notarized before notary public Atty. Nelbert T. Poculan, but the representative of the latter had stated that said affidavits were not notarized by Atty. Poculan; and that it was improbable for him to demand money from Reyes and Montilla considering that they had appeared to have no visible income to support themselves.

Pending review of this administrative case, the Court received the letter from the respondent's wife dated September 13, 2017 informing about Judge Abul's demise.[10] Subsequently, the counsel for the late judge filed a Notice of Death and Motion to Dismiss,[11] praying for the dismissal of the complaint in view of the respondent's death and the punitive nature of the administrative liabilities.[12]

## OCA Report and Recommendation

On February 20, 2018, the OCA submitted its report,[13] and recommended therein as follows:

**PREMISES CONSIDERED**, we respectfully recommend for the consideration of the Honorable Court that:

1. The motion to dismiss filed by respondent Judge's counsel, Atty. Teristram B. Zoleta, be **DENIED** for lack of merit; and

---

[10] *Id*. at 91.

[11] *Id*. at 95-97.

[12] *Id*. at 96.

[13] *Id*. at 104-119.

2. Judge Godofredo B. Abul, Jr., Branch 4, Regional Trial Court, Butuan City, Agusan del Norte, be **ADJUDGED GUILTY** of grave misconduct constituting violations of the New Code of Judicial Conduct for the Philippine Judiciary and **FINED** in the amount of Five Hundred Thousand Pesos (Php500,000.00), to be deducted from his retirement gratuity.

RESPECTFULLY SUBMITTED.[14]

The OCA disagreed with the urging of the respondent's counsel to dismiss the complaint in view of his intervening demise, observing:

It has been settled that the death of a respondent does not preclude a finding of administrative liability. However, it may necessitate the dismissal of the case upon a consideration of the following factors: *first*, if the respondent's right to due process was not observed; *second*, the presence of exceptional circumstances in the case on the grounds equitable and humanitarian reasons; and *third*, the kind of penalty imposed.

In this case, none of the foregoing factors exists. *First*, respondent Judge's right to due process was not violated. As borne by the records, he was duly informed of the accusations against him, having been furnished with a copy of the letter-complaint of Fr. Saniel and its attached affidavits, as well as a copy of the investigation report of Atty. Garcia. In fact, he filed his comment thereon, which the Court received on 19 April 2017. *Second*, his death alone is insufficient to justify the dismissal of the case on the ground of equitable or humanitarian consideration. A case was ordered dismissed by the Court by reason of the respondent's death for equitable and humanitarian considerations as the liability was incurred by reason of respondent's poor health. In this case, there was no circumstance other than respondent Judge's death that may warrant the invocation of equitable or humanitarian ground in his favor. *Third*, the penalty of fine may still be imposed notwithstanding his death. In fact, in one case, the respondent who died before the investigating judge was able to finish and submit his report but was duly notified of the proceedings against him and was directed to file his answer, although he opted not to comply therewith, was still meted the penalty of forfeiture of his

---

[14] *Id*. at 119.

retirement benefits, except his accrued leave credits, after having been found guilty of grave misconduct.[15]

The OCA found that the allegations against Judge Abul had been confirmed and validated by Judge Abul himself and by the court records; that the affidavits of Reyes and Montilla had appeared to be credible in light of Judge Abul's inability to impute any ill-motive, malice or bad faith to the accusers; and that based on the results of the investigation Judge Abul had violated Canon 2, Canon 3 and Canon 4 of the *New Code of Judicial Conduct for the Philippine Judiciary* in a manner that amounted to grave misconduct.[16]

**Issue**

Did Judge Abul's actuations amount to gross misconduct constituting violations of the *New Code of Judicial Conduct for the Philippine Judiciary?*

**Ruling of the Court**

We adopt the findings of the OCA but modify its recommendation.

Based on the sworn declarations of Reyes and Montilla, as well as the court records of Criminal Case No. 15630, there appeared to be sufficient grounds to hold Judge Abul administratively liable for extortion as charged against him. Consequently, the Court concurs with the following observations of the OCA, *viz.*:

> Going into the merits of the case, it may be true that some of the statements made by Reyes and Montilla in their respective affidavits and before Atty. Garcia were not necessarily based on their own personal knowledge since they were just mostly conveyed to them by Naomi. Nonetheless, these statements cannot simply be brushed aside as hearsay and, therefore, inadmissible in evidence against respondent Judge. It

---

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

[16] *Id.* at 116-117.

bears stressing that some of these statements were confirmed and validated by respondent Judge himself and by the records of Criminal Case No. 15630.

*First*, Reyes and Montilla claimed that respondent Judge went to the Agusan del Norte Provincial Jail on 4 or 5 February 2015, and this was admitted by respondent Judge, although he denied talking with them since his supposed purpose in going there was merely to ask its Officer-In-Charge, Mr. Antenorio, whether prisoners are allowed to leave the jail premises without the court's authority in light of the complaint-affidavits of Reyes and Montilla against him that were executed before Atty. Puculan on 13 January 2015. However, the positive assertion by Reyes and Montilla that he personally talked with them inside the Provincial Warden's office is more credible than his bare denial. Notably, Montilla claimed that it was Mr. Antenorio who convinced them to talk with respondent Judge. If, indeed, he did not purposely talk with Reyes and Montilla, he could have easily obtained an affidavit or statement from Mr. Antenorio to refute such allegation, but he conveniently failed to do so.

*Second*, the allegation of Reyes that Naomi told her and Montilla that the drugs case against her (Naomi's) husband and his co-accused was dismissed by respondent Judge on 24 November 2014, as well as the allegation of Montilla that Naomi went to the Provincial Jail sometime in November 2014 to fetch her husband and relatives after they were acquitted by respondent Judge, are not without factual basis. As borne by the records of Criminal Case No. 15630, the Decision acquitting the accused in said case was promulgated on 24 November 2014 without the presence of all the accused, even if such presence is required under Section 6, Rule 120 of the Rules of Criminal Procedure, thereby making it necessary for Naomi to fetch her husband and his co-accused from the Provincial Jail. The consistency between the statements of Reyes and Montilla and the circumstances of said case, as borne by the records, makes the allegations of Reyes and Montilla credible.

It bears stressing that respondent Judge was furnished with a copy of the Investigation Report dated 10 February 2017 of Atty. Garcia, where said statements and circumstances of the subject criminal case were clearly outlined. It was also stated therein that Reyes claimed that Naomi told her that her husband and his co-accused obtained a favorable decision after paying respondent Judge the amount of Php 250,000.00. Atty. Garcia characterized the proceedings in the

same criminal case as a "*patent irregularity*" since respondent Judge "*decided it with undue haste and without due regard to the procedural rules, resulting in the questionable acquittal of all the accused.*" However, despite the gravity of the irregularity imputed to him and despite being required to comment thereon, respondent Judge offered not a single word to refute the findings and observations of Atty. Garcia, thereby giving the impression that respondent Judge has admitted such findings and observations.

The foregoing circumstances render the allegations of Reyes and Montilla not only admissible in evidence but also convincing, especially so that respondent Judge failed to offer any plausible imputation of ill motive, malice or bad faith on their part to make any false accusation against him. Montilla claims that she negotiated with respondent Judge over the phone regarding the amount he was asking in exchange for the dismissal of her case in the presence of Reyes and Naomi. Reyes corroborated Montilla's statement, having overheard the conversation between respondent Judge and Montilla as the phone was set on speaker mode. Montilla further claims that during the scheduled hearing of her case on 5 December 2014, respondent Judge called her to the lawyer's table, and admonished her for asking that the Php 200,000.00 she was supposed to pay him be reduced even if the affidavit she executed showed that she is guilty.[17]

The *Code of Judicial Ethics* mandates that the conduct of a judge must be free of every whiff of impropriety not only in regard to his discharge of judicial duties, but also to his behavior outside his office and even as a private individual.[18] Indeed, judges should be extra prudent in associating with litigants and counsel who have matters pending before them in order to avoid even the mere perception of possible bias or partiality. They should be scrupulously careful with respect to pending or prospective litigations before them to avoid anything that may tend to awaken the suspicion that their personal, social or sundry relations could influence their objectivity, for not only must they possess proficiency in law but they must also act

---

[17] *Id*. at 115-116.

[18] *Munsayac-De Villa v. Reyes*, A.M. Nos. RTJ-05-1925, RTJ-05-1926, RTJ-05-1927, RTJ-05-1928, RTJ-05-1929, RTJ-05-1930 & P-05-2020, June 26, 2006, 492 SCRA 404, 426.

and behave in such manner that would assure litigants and their counsel, with great comfort, of the judges' competence, integrity and independence.[19]

In view of this, whether or not Judge Abul really demanded money in exchange for either the liberty of Reyes and Montilla or the dismissal of the criminal case filed against them even became immaterial herein. By simply meeting and talking with them as the accused whose cases were then pending in his sala, Judge Abul already transgressed ethical norms and compromised his integrity and impartiality as the trial judge. His actuations flagrantly violated the following norms and canons of *The New Code of Judicial Conduct for the Philippine Judiciary,* to wit:

CANON 2
Integrity

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

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 3
Impartiality

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision to made.

SECTION 1. Judges shall perform their judicial duties without favor, bias or prejudice.

SECTION 2. Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public,

---

[19] *Sibayan-Joaquin v. Javellana*, A.M. No. RTJ-00-1601, November 13, 2001, 368 SCRA 503, 508.

the legal profession and litigants in the impartiality of the judge and of the judiciary.

SECTION 3. Judges shall, so far as is reasonable, so conduct themselves as to minimize the occasions on which it will be necessary for them to be disqualified from hearing or deciding cases.

x x x x x x x x x

CANON 4
Propriety

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

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

As regards the acquittal of the accused in Criminal Case No. 15630, the Court agrees with and adopts the following relevant findings thereon by the OCA, to wit:

While there was no direct evidence that respondent Judge was paid Php 250,000.00 in consideration for the acquittal of all the accused in Criminal Case No. 15630, the highly questionable circumstances surrounding their acquittal on reasonable doubt give credence to the allegation of corruption against him. The decision was premature and grossly unprocedural, the same being in violation of Section 5, Rule 30 of the Rules of Court. Notably, he allowed the accused to manipulate the proceedings when he unduly acted favorably on their memorandum praying for their acquittal despite the vehement opposition thereto of the prosecution, correctly pointing out that the same could not be treated as demurrer to evidence having been filed out of time. Worse, without considering the merits of the prosecution's opposition to the memorandum despite its legal and logical soundness, he submitted the case for decision by merely stating in his order that "the defense has filed a memorandum indicating that they (sic) are submitting the case for decision based on prosecution's evidence and the prosecution has submitted its comment." With extraordinary and undue speed, he penned the decision on the same day that the case was submitted for decision, and he promulgated the decision without the presence of the accused in violation of Section 6, Rule 120 of the Revised Rules of Criminal Procedure.

Plainly enough, Judge Abul's actuations and behavior constituted grave misconduct. It is settled that grave misconduct exists where the requisites of corruption, clear intent to violate the law or flagrant disregard of established rule are present. As an element of grave misconduct, corruption 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.[20]

Judge Abul's death intervened in the meantime. Nonetheless, and as recommended by the OCA, his death should not result in the dismissal of the administrative complaint. In *Gonzales v. Escalona*,[21] we held that the Court is not ousted of its jurisdiction by the mere fact that the respondent public official had meanwhile ceased to hold office. Verily, jurisdiction over the case or subject matter, once acquired, continues until final resolution. With more reason is this true herein because Judge Abul was fully afforded due process during the investigation.

Worth noting is that the Court already sternly warned Judge Abul in *Calo v. Judge Abul, Jr.*[22] "to be more circumspect in issuing orders which must truly reflect the actual facts they represent to obviate engendering views of partiality among others." The warning evidently fell on deaf ears in view of the clear showing that Judge Abul still committed another serious offense.

It is now time to impose the stiffer penalty on him.

Under Section 11, Rule 140 of the *Rules of Court,* grave misconduct constituting violations of the *Code of Judicial Conduct* is a serious offense that results in dismissal from the service, forfeiture of all or part of the benefits, and perpetual

---

[20] *Office of the Ombudsman v. Asis*, G.R. No. 237503 (Notice), June 20, 2018.

[21] A.M. No. P-03-1715, September 19, 2008, 566 SCRA 1.

[22] A.M. No. RTJ-06-1996 (Resolution), July 25, 2006, 496 SCRA 416.

disqualification from reappointment or appointment to any public office, including government-owned and controlled corporations, except accrued leave credits.[23]

Had Judge Abul not died, he would have been meted the extreme penalty of dismissal, with the concomitant forfeiture of all retirement and allied benefits due to him, except accrued leaves, as an accessory penalty. Considering that his intervening death has rendered his dismissal no longer feasible, the accessory penalty of forfeiture of all such retirement and allied benefits, except accrued leaves, then becomes the viable sanction.

**WHEREFORE,** the Court **FINDS** and **DECLARES** the late Presiding Judge Godofredo B. Abul, Jr. of Branch 4, Regional Trial Court, Butuan City, Agusan del Norte **GUILTY** of **GROSS MISCONDUCT**; and, accordingly, **FORFEITS** all benefits, including retirement gratuity, exclusive of his accrued leaves, which shall be released to his legal heirs.

**SO ORDERED.**

*Bersamin, C.J., Carpio, Peralta, Perlas-Bernabe, Jardeleza, Reyes, J. Jr., Carandang,* and *Inting, JJ.,* concur.

*Leonen, J.,* joins the dissent, see separate opinion.

*Hernando, J.,* dissents, please see dissenting opinion.

*Caguioa, Reyes, A. Jr., Gesmundo, Lazaro-Javier,* and *Zalameda, JJ.*, join the dissent of *J. Hernando.*

## DISSENTING OPINION

**LEONEN, *J.*:**

I join the able dissent of Associate Justice Ramon Paul Hernando and add the following thoughts for emphasis. In my view, the death of respondent Judge Godofredo B. Abul, Jr. prior to the promulgation and finality of a decision moots the

---

[23] Section 11, Rule 140, Rules of Court.

administrative case against him. Proceeding further and imposing any penalty that will be suffered by his widow violates the principle of due process of law, a fundamental part of our Constitution.

To recall, a judicial audit was conducted based on a complaint filed by Reverend Father Antoni A. Saniel, the director of the Prison Ministry of the Diocese of Butuan, alleging that respondent was demanding money ranging from ₱200,000.00 to ₱300,000.00 from detainees of the Provincial Jail of Agusan in exchange for their release or the cases' dismissal.[1]

The judicial audit team subsequently filed their investigation report, in which the witnesses interviewed confirmed respondent's alleged extortion activities. On February 28, 2017, this Court issued a Resolution placing him on preventive suspension and requiring him to comment on the complaint and investigation report.[2]

In his Comment/Answer, respondent denied the charges against him and claimed that they were "false, baseless[,] and concocted by an evil and malicious mind with the sole purpose of besmirching his unblemished record of service in the judiciary."[3]

On August 5, 2017, respondent was killed by an unidentified motorcycle-riding assailant outside his house.[4] This Court was informed of his death in a September 13, 2017 letter sent by his widow.[5]

In a February 20, 2018 Report and Recommendation, the Office of the Court Administrator found respondent guilty of grave misconduct. While the offense is punishable by dismissal

---

[1] *Ponencia*, p. 2.

[2] *Id*. at 3.

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

[4] *J*. Hernando, Opinion, p. 2.

[5] *Ponencia*, p. 4.

from service, the Office of the Court Administrator instead recommended the penalty of a fine of ₱500,000.00, to be deducted from respondent's retirement gratuity in view of his death.[6]

The majority adopted the Office of the Court Administrator's findings. However, it modified the recommended penalty to the forfeiture of all benefits, including retirement gratuity, on the ground that the death of a respondent in an administrative case does not oust this Court of its jurisdiction to proceed with the case or to impose accessory penalties.[7]

I disagree.

**I**

The fundamental right to due process of law is found in Article I, Section 1 of the Constitution:

> ARTICLE III
> Bill of Rights
>
> SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Procedural due process is canonically a part of this provision. Due process has no controlling and precise definition but is generally premised on the idea of fairness or "freedom from arbitrariness."[8] It is considered to be "the embodiment of the sporting idea of fair play."[9] In *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila:*[10]

---

[6] *Id.*

[7] *Id.* at 10.

[8] *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila,* 127 Phil. 306, 319 (1967) [Per *J.* Fernando, *En Banc*].

[9] *Id.* citing FELIX FRANKFURTER, MR. JUSTICE HOLMES AND THE SUPREME COURT 32-33 (1938).

[10] 127 Phil. 306 (1967) [Per *J.* Fernando, *En Banc*].

There is no controlling and precise definition of due process. It furnishes though a standard to which governmental action should conform in order that deprivation of life, liberty or property, in each appropriate case, be valid. What then is the standard of due process which must exist both as a procedural and as substantive requisite to free the challenged ordinance, or any government action for that matter, from the imputation of legal infirmity; sufficient to spell its doom? It is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively put, arbitrariness is ruled out and unfairness avoided. To satisfy the due process requirement, official action, to paraphrase Cardozo, must not outrun the bounds of reasons and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly has it been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play. It exacts fealty "to those strivings for justice" and judges the act of officialdom of whatever branch" in the light of reason drawn from considerations of fairness that reflect [democratic] traditions of legal and political thought." It is not a narrow or "technical conception with fixed content unrelated to time, place and circumstances," decisions based on such a clause requiring a "close and perceptive inquiry into fundamental principles of our society." Questions of due process are not to be treated narrowly or pedantically in slavery to form or phrases.[11]

Due process encompasses both procedural and substantive due process. Procedural due process "concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere."[12] In his opinion in *Perez v. Philippine Telegraph and Telephone Company*.,[13] now-retired Associate Justice Arturo Brion traced the history of procedural due process:

---

[11] *Id.* at 318-319 *citing* FELIX FRANKFURTER, MR. JUSTICE HOLMES AND THE SUPREME COURT 32-33 (1938); *Hannah v. Larche*, 363 U.S. 420, 487 (1960); *Cafeteria Workers v. McElroy*, 367 U.S. 1230 (1961); *Bartkus v. Illinois*, 359 U.S. 121 (1959); and *Pearson v. McGraw*, 308 U.S. 313 (1939).

[12] *White Light Corporation v. City of Manila*, 596 Phil. 444, 461 (2009) [Per *J.* Tinga, *En Banc*].

[13] 602 Phil. 522, 544 (2009) [Per *J.* Corona, *En Banc*].

At its most basic, procedural due process is about fairness in the mode of procedure to be followed. It is not a novel concept, but one that traces its roots in the common law principle of natural justice.

Natural justice connotes the requirement that administrative tribunals, when reaching a decision, must do so with procedural fairness. If they err, the superior courts will step in to quash the decision by certiorari or prevent the error by a writ of prohibition. The requirement was initially applied in a purely judicial context, but was subsequently extended to executive regulatory fact-finding, as the administrative powers of the English justices of the peace were transferred to administrative bodies that were required to adopt some of the procedures reminiscent of those used in a courtroom. Natural justice was comprised of two main sub-rules: *audi alteram partem* — that a person must know the case against him and be given an opportunity to answer it; and *nemo judex in sua cause debe esse* — the rule against bias. Still much later, the natural justice principle gave rise to the duty to be fair to cover governmental decisions which cannot be characterized as judicial or quasi-judicial in nature.

While the *audi alteram partem* rule provided for the right to be notified of the case against him, the right to bring evidence, and to make argument — whether in the traditional judicial or the administrative setting — common law maintained a distinction between the two settings. "An administrative tribunal had a duty to act in good faith and to listen fairly to both sides, but not to treat the question as if it were a trial. There would be no need to examine under oath, nor even to examine witnesses at all. Any other procedure could be utilized which would obtain the information required, as long as the parties had an opportunity to know and to contradict anything which might be prejudicial to their case."[14]

In *Medenilla v. Civil Service Commission*,[15] procedural due process has been summarized as:

. . . the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty,

---

[14] *Id*. at 545-546 *citing* DAVID PHILLIP JONES AND ANNE DE VILLARS, *PRINCIPLES OF ADMINISTRATIVE LAW* 148-149, 157-160 (1985 ed.), and *Ridge v. Baldwin*, [1963] 2 All E.R. 66 (H.L.)

[15] 272 Phil. 107 (1991) [Per *J*. Gutierrez, Jr., *En Banc*].

and property in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of the right in the matter involved.[16]

In this jurisdiction, *Ang Tibay v. Court of Industrial Relations*[17] states the seven (7) cardinal primary rights in "trials and investigations of an administrative character"[18] for due process to be satisfied:

(1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. In the language of Chief Justice Hughes, in *Morgan v. U.S.*, . . ., "the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play."

(2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented. In the language of this court in *Edwards vs. McCoy*, . . ., "the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration."

(3) "While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision with absolutely nothing to support it is a nullity, a place when directly attached." This principle emanates from the more fundamental principle that the genius of constitutional government is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.

(4) Not only must there be some evidence to support a finding or conclusion, but the evidence must be "substantial." "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

---

[16] *Id*. at 115 citing *BLACK'S LAW DICTIONARY*, 590 (4th ed.).

[17] 69 Phil. 635 (1940) [Per *J*. Laurel, *En Banc*].

[18] *Id*. at 641-642.

. . . The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence.

(5) The decision must be rendered on the evidence presented at the healing, or at least contained in the record and disclosed to the parties affected. Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them. It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. . . .

(6) [The tribunal or officer], therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision. . . .

(7) [The tribunal or officer] should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority conferred upon it.[19] (Citations omitted)

In *Gas Corporation of the Philippines v. Inciong*,[20] this Court clarified that while *Ang Tibay* remains to be good law, the failure to strictly apply the formalities of an adversarial proceeding before an administrative tribunal does not necessarily result in a denial of due process:

---

[19] *Id*. at 642-644.

[20] 182 Phil. 215 (1979) [Per *C.J.* Fernando, Second Division].

The vigor with which counsel for petitioner pressed the claim that there was a denial of procedural due process is inversely proportional to the merit of this certiorari and prohibition suit as is quite evident from the Comment of the office of the Solicitor General. It is undoubted that the due process mandate must be satisfied by an administrative tribunal or agency. So it was announced by Justice Laurel in the landmark case of *Ang Tibay v. Court of Industrial Relations*. That is still good law. It follows, therefore, that if procedural due process were in fact denied, then this petition must prosper. It is equally well-settled, however, that the standard of due process that must be met in proceedings before administrative tribunals allows a certain latitude as long as the element of fairness is not ignored. So the following recent cases have uniformly held: *Maglasang v. Ople, Nation Multi Service Labor Union v. Agcaoili, Jacqueline Industries v. National Labor Relations Commission, Philippine Association of Free Labor Unions v. Bureau of Labor Relations, Philippine Labor Alliance Council v. Bureau of Labor Relations,* and *Montemayor v. Araneta University Foundation*. From the Comment of the office of the Solicitor General, it is quite clear that no imputation of arbitrariness can be justified. The opportunity to present its side of the case was given both parties to the controversy. If, for reasons best known to itself, petitioner did not avail of its right to do so, then it has only itself to blame. No constitutional infirmity could then be imputed to the proceeding before the labor arbiter.[21] (Citations omitted)

Thus, due process in administrative proceedings generally does not require that the respondent *must* be heard. It merely requires that the respondent is *given the opportunity* to be heard.[22] This opportunity to be heard, however, is not lost even after a judgment is rendered. Due process in administrative proceedings requires that the respondent still be given the opportunity to question the unfavorable judgment.

In *Lumiqued v. Exevea*,[23] this Court further explains:

---

[21] *Id*. at 220-221.

[22] *Legarda v. Court of Appeals*, 345 Phil. 890, 905 (1997) [Per *J*. Romero, *En Banc*].

[23] 346 Phil. 807 (1997) [Per *J*. Romero, *En Banc*].

In administrative proceedings, the essence of due process is simply the opportunity to explain one's side. One may be heard, not solely by verbal presentation but also, and perhaps even much more creditably as it is more practicable than oral arguments, through pleadings. An actual hearing is not always an indispensable aspect of due process. As long as a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process. Moreover, *this constitutional mandate is deemed satisfied if a person is granted an opportunity to seek reconsideration of the action or ruling complained of*.[24] (Emphasis supplied)

The opportunity to be heard should be present in *all* aspects of the procedure until the finality of the judgment, decision, or resolution. It is not a mere formality but an intrinsic and substantial part of the constitutional right to due process. This is what inspires the Revised Penal Code provision that dismisses a case against an accused for *any* crime when he or she dies.[25]

## II

This Court's disciplinary powers should always be read alongside the guarantee of any respondent's fundamental rights. After all, it is this Court that is granted both the power of judicial review and the competence to promulgate rules for the enhancement and protection of constitutional rights.

---

[24] *Id*. at 828 citing *Concerned Officials of MWSS v. Vasquez*, 310 Phil. 549 (1995) [Per *J*. Vitug, *En Banc*]; *Mutuc v. Court of Appeals*, 268 Phil. 37 (1990) [Per *J*. Paras, Second Division]; *Pamantasan ng Lungsod ng Maynila (PLM) v. Civil Service Commission*, 311 Phil. 573 (1995) [Per *J*. Vitug, *En Banc*]; *Legarda v. Court of Appeals*, 345 Phil. 890, 905 (1997) [Per *J*. Romero, *En Banc*]; and *Pizza Hut/Progressive Development Corporation v. National Labor Relations Commission,* 322 Phil. 579 (1996) [Per *J*. Puno, Second Division].

[25] *See* REV. PEN. CODE, Art. 89, which provides:

ARTICLE 89. How criminal liability is totally extinguished. — Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment[.]

It is settled that this Court's jurisdiction over a disciplinary case against a court official or employee, once acquired, is not lost simply because the respondent has ceased holding office during the pendency of the case.[26]

Cessation from public office during the pendency of the case may occur in three (3) different ways: (1) resignation; (2) retirement; or (3) death.

On resignation, this Court stated:

> [T]o constitute a complete and operative resignation of public office, there must be an intention to relinquish a part of the term, accompanied by the act of relinquishment . . . and a resignation implies an expression by the incumbent in some form, express or implied of the intention to surrender, renounce, or relinquish, the office, and an acceptance by competent and lawful authority.[27]

Resignation requires intent. It is a *voluntary* cessation from public office. Sometimes, however, respondents in disciplinary proceedings opt to resign to avoid being forcibly dismissed from service. Thus, this Court has stated that resignation "should be used neither as an escape nor as an easy way out to evade administrative liability by a court personnel facing administrative sanction."[28]

Therefore, once this Court assumes jurisdiction—that is, after an administrative case has been filed—resignation from public office will not render the case moot. In *Pagano v. Nazarro, Jr.*:[29]

---

[26] *Perez v. Abiera*, 159-A Phil. 575, 580 (1975) [Per *J*. Muñoz Palma, *En Banc*].

[27] *Gonzales v. Hernandez*, 112 Phil. 160, 165 (1961) [Per *J*. Labrador, *En Banc*] *citing* 43 Am. Jur. p. 22; *Nome v. Rice*, 3 Alaska 602; and 2 *BOUVIER'S LAW DICTIONARY*, p. 2407.

[28] *Cajot v. Cledera*, 349 Phil. 907, 912 (1998) [*Per Curiam*, *En Banc*].

[29] 560 Phil. 96 (2007) [Per *J*. Chico-Nazaro, Third Division].

Petitioner argues that a government employee who has been separated from service, whether by voluntary resignation or by operation of law, can no longer be administratively charged. Such argument is devoid of merit.

In *Office of the Court Administrator v. Juan*, this Court categorically ruled that the precipitate resignation of a government employee charged with an offense punishable by dismissal from the service does not render moot the administrative case against him. Resignation is not a way out to evade administrative liability when facing administrative sanction. The resignation of a public servant does not preclude the finding of any administrative liability to which he or she shall still be answerable.

A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case. The instant case is not moot and academic, despite the petitioner's separation from government service. Even if the most severe of administrative sanctions — that of separation from service — may no longer be imposed on the petitioner, there are other penalties which may be imposed on her if she is later found guilty of administrative offenses charged against her, namely, the disqualification to hold any government office and the forfeiture of benefits.

Moreover, this Court views with suspicion the precipitate act of a government employee in effecting his or her separation from service, soon after an administrative case has been initiated against him or her. An employee's act of tendering his or her resignation immediately after the discovery of the anomalous transaction is indicative of his or her guilt as flight in criminal cases.[30]

Likewise, in *Baquerfo v. Sanchez*:[31]

---

[30] *Id*. at 104-105 citing *Office of the Court Administrator v. Juan*, 478 Phil. 823 (2004) [*Per Curiam*, *En Banc*]; *Baquerfo v. Sanchez*, 495 Phil. 10 (2005) [*Per Curiam*, *En Banc*]; *Tantoy, Sr. v. Abrogar*, 497 Phil. 615 (2005) [Per *J*. Quisumbing, First Division]; and *Re: (1) Lost Checks Issued to the Late Roderick Roy P. Melliza, Former Clerk II, MCTC, Zaragga, Iloilo and (2) Dropping from the Rolls of Ms. Esther T. Andres*, 537 Phil. 634 (2006) [*Per Curiam*, *En Banc*].

[31] 495 Phil. 10 (2005) [*Per Curiam*, *En Banc*].

Cessation from office of respondent by resignation or retirement neither warrants the dismissal of the administrative complaint filed against him while he was still in the service nor does it render said administrative case moot and academic. The jurisdiction that was this Court's at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. Respondent's resignation does not preclude the finding of any administrative liability to which he shall still be answerable.[32]

Retirement, meanwhile, may be optional or compulsory. Optional retirement for government employees may be availed after 20 to 30 years of service, regardless of age.[33] Judges and justices may also opt to retire upon reaching 60 years old as long as they have rendered 15 years of service in the judiciary.[34] Optional retirement, like resignation, is a *voluntary* cessation from public office. Thus, the same rationale is applied to those who avail of optional retirement during the pendency of an administrative case. In *Aquino, Jr. v. Miranda*:[35]

---

[32] *Id*. at 16-17 citing *Reyes v. Cristi*, 470 Phil. 617 (2004) [Per *J*. Callejo, Sr., Second Division]; *Re: Complaint Filed by Atty. Francis Allan A. Rubio on the Alleged Falsification of Public Documents and Malversation of Public Funds*, 482 Phil. 318 (2004) [Per *J*. Tinga, *En Banc*]; *Caja v. Nanquil*, 481 Phil. 488 (2004) [Per *J*. Chico-Nazario, *En Banc*]; *Tuliao v. Ramos*, 348 Phil. 404, 416 (1998) [Per *J*. Bellosillo, First Division]; *Perez v. Abiera*, 159-A Phil. 575 [Per *J*. Muñoz Palma, *En Banc*]; *Secretary of Justice v. Marcos*, 167 Phil. 42 (1977) [Per *J*. Fernando, *En Banc*]; *Sy Bang v. Mendez*, 350 Phil. 524, 533 (1998) [Per *J*. Kapunan, Third Division]; *Flores v. Sumaljag*, 353 Phil. 10, 21 (1998) [Per *J*. Mendoza, Second Division]; and *Office of the Court Administrator v. Fernandez*, 480 Phil. 495 (2004) [Per *J*. Ynares-Santiago, First Division].

[33] See Republic Act No. 1616 (1957), Sec. 1.

[34] See *Re: Requests for survivorship benefits of spouses of justices and judges who died prior to the effectivity of Republic Act (R.A.) No. 9946*, A.M. No. 17-08-01-SC, September 19, 2017, 840 SCRA 62, 75 [Per *J*. Martires, *En Banc*].

[35] 473 Phil. 216 (2004) [*Per Curiam*, *En Banc*].

A public servant whose career is on the line would normally want the investigating body to know his or her whereabouts for purposes of notice. The timing of respondent's application for leave, for optional retirement, and her sudden unexplained disappearance, taken together, leads us to conclude that hers is not a mere case of negligence. Respondent's acts reveal a calculated design to evade or derail the investigation against her. Her silence at the least serves as a tacit waiver of her opportunity to refute the charges made against her.

Neither respondent's disappearance nor her retirement precludes the Court from holding her liable. Her disappearance constitutes a waiver of her right to present evidence in her behalf. The Court is not ousted of its jurisdiction over an administrative case by the mere fact that the respondent public official ceases to hold office during the pendency of respondent's case.[36]

In *Office of the Court Administrator v. Ruiz*:[37]

The records show that the respondent wrote the Court a letter on May 27, 2013 (or soon after his Sandiganbayan convictions), requesting that he "be allowed to optionally retire effective November 30, 2013." He later requested, in another letter, that the effectivity date of his optional retirement be changed from November 30, 2013 to December 31, 2013.

The Court has not acted on the respondent's request for optional early retirement in view of his standing criminal convictions; he stands to suffer accessory penalties affecting his qualification to retire from office should his convictions stand. The OCA records also show that he is currently on "on leave of absence" status. In any case, that a judge has retired or has otherwise been separated from the service does not necessarily divest the Court of its jurisdiction to rule on complaints filed while he was still in the service.[38] (Citations omitted)

In *Re: Report on the Judicial Audit Conducted in the RTC, Branch 4, Dolores, Eastern Samar*:[39]

---

[36] *Id*. at 227-228 citing *Perez v. Abiera*, 159-A Phil. 575 (1975) [Per *J*. Muñoz Palma, *En Banc*].

[37] 780 Phil. 133 (2016) [*Per Curiam*, *En Banc*].

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

[39] 562 Phil. 301 (2007) [*Per Curiam*, *En Banc*].

Judge Bugtas contended that the Court lacked jurisdiction over the instant case because of the approval of his optional retirement effective 31 January 2006. This is unacceptable. In *Concerned Trial Lawyers of Manila v. Veneracion*, the Court held that cessation from office because of retirement does not render the administrative case moot or warrant its dismissal[.][40]

Respondents in an administrative case could apply for optional retirement to evade liability. Thus, optional retirement during the pendency of an administrative case, like resignation, will not render the case moot.

Unlike resignation, however, retirement may also be *involuntary*. Retirement from public service is compulsory for government employees who have reached 65 years old[41] or for judges and justices who have reached 70 years old.[42]

In the leading case of *Perez v. Abiera*,[43] this Court was confronted with the issue of whether an administrative complaint against a judge, was rendered moot when he compulsorily retired while the case was pending. Citing *Diamalon v. Quintillan*,[44] respondent Judge Carlos Abiera argued that he could not be meted the penalty of dismissal since he was no longer in service.

In *Quintillan*, this Court dismissed the complaint against Judge Jesus Quintillan since he had already resigned from service before a judgment could be rendered:

[T]he petition for dismissal must be granted. There is no need to inquire further into the charge imputed to respondent Judge that his actuation in this particular case failed to satisfy the due process requirement. As an administrative proceeding is predicated on the holding of an office or position in the Government and there being

---

[40] *Id*. at 325 citing *Concerned Trial Lawyers of Manila v. Veneracion*, 522 Phil. 247 (2006) [Per J. Corona, Second Division].

[41] *See* Presidential Decree No. 1146 (1977), Sec. 1l(b).

[42] *See* Republic Act No. 9946 (2010), Sec. 1.

[43] 159-A Phil. 575 (1975) [Per *J*. Muñoz Palma, *En Banc*].

[44] 139 Phil. 654 (1969) [Per *J*. Fernando, *En Banc*].

no doubt as to the resignation of respondent Judge having been accepted as of August 31, 1967, there is nothing to stand in the way of the dismissal prayed for.[45]

In *Abiera*, however, this Court clarified that *Quintillan* was not meant to be a precedent to immediately dismiss complaints against judges who resigned or retired while the administrative cases were pending:

It was not the intent of the Court in the case of *Quintillan* to set down a hard and fast rule that the resignation or retirement of a respondent judge as the case may be renders (*sic*) moot and academic the administrative case pending against him; nor did the Court mean to divest itself of jurisdiction to impose certain penalties short of dismissal from the government service should there be a finding of guilt on the basis of the evidence. In other words, *the jurisdiction that was Ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof.* A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. For what remedy would the people have against a judge or any other public official who resorts to wrongful and illegal conduct during his last days in office? What would prevent some corrupt and unscrupulous magistrate from committing abuses and other condemnable acts knowing fully well that he would soon be beyond the pale of the law and immune to all administrative penalties? If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public. If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he served well and faithfully, if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.[46] (Emphasis supplied)

---

[45] *Id*. at 656-657.

[46] *Perez v. Abiera*, 159-A Phil. 575, 580-581 (1975) [Per *J*. Muñoz Palma, *En Banc*].

This Court, thus, established that:

> In short, the cessation from office of a respondent Judge either because of resignation, retirement or some other similar cause does not per se warrant the dismissal of an administrative complaint which was filed against him while still in the service. Each case is to be resolved in the context of the circumstances present thereat.[47]

As this doctrine developed, this Court has interpreted "some other similar cause" to include death. Death, however, cannot be placed on the same footing as resignation or retirement. Resignation and optional retirement are *voluntary* modes of cessation. The respondent may avail of them as a way to escape or evade liability. This Court, therefore, should not be ousted of its jurisdiction to continue with the administrative complaint even if the resignation is accepted or the application for retirement is approved.

Death, unless self-inflicted, is *involuntary*. Respondents who die during the pendency of the administrative case against them do not do so with the intent to escape or evade liability. The rationale for proceeding with administrative cases despite resignation or optional retirement, therefore, cannot apply.

It is conceded that compulsory retirement is also involuntary. Respondents or this Court cannot fight against the passage of time.

*Abiera*, however, had a different rationale for respondents who have reached the compulsory age of retirement:

> A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. *For what remedy would the people have against a judge or any other public official who resorts to wrongful and illegal conduct during his last days in office? What would prevent some corrupt and unscrupulous magistrate from committing abuses and other condemnable acts knowing fully well that he would soon be beyond the pale of the law and immune to all administrative penalties?* If only for reasons of public policy, this

---

[47] *Id*. at 582.

Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public.[48] (Emphasis supplied)

In formulating the doctrine, this Court was trying to guard against corrupt and unscrupulous magistrates who would commit abuses knowing fully well that after retirement, they could no longer be punished.

It is this *certainty of cessation* that differentiates compulsory retirement from death as a mode of cessation from public service. A respondent judge knows when he or she will compulsorily retire. In contrast, nobody knows when one will die, unless the cause of death is self-inflicted. Even those with terminal illnesses cannot pinpoint the exact day when they will die.

The essence of due process in administrative cases is simply the opportunity to be heard. Respondents must be given the opportunity to be informed of and refute the charges against them in all stages of the proceedings.

Only in resignation and retirement can there be a guarantee that respondents will be given the opportunity to be heard. Even if they resign or retire during the pendency of the administrative case, they can still be aware of the proceedings and actively submit pleadings. Thus, they should not be allowed to evade liability by the simple expediency of separation from public service.

It would be illogical and impractical to treat dead respondents as equal to resigned or retired respondents. Dead respondents are neither aware of the continuation of the proceedings against them, nor are in any position to submit pleadings. Death forecloses any opportunity to be heard. Continuing with the administrative proceedings even after the respondent's death, therefore, is a violation of the right to due process.

---

[48] *Id*. at 580-581.

## III

Indeed, here, had respondent's liability been proven, the penalty of dismissal should have been meted out to him. However, the entire process had not yet been completed before he died.

It is settled that "[p]ublic office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."[49] Public trust requires mechanisms for public officers and employees to be accountable to the people. Any party may file administrative complaints against any erring public officer or employee. If, after investigation, the public officer or employee is found guilty, he or she is penalized accordingly.

Penalties against erring public officers or employees will vary according to the type of infraction or the frequency of its commission. What is certain, however, is that civil service regulations and jurisprudence reserve the *highest* penalty for the *gravest* infraction: dismissal from service.

Thus, the Revised Rules on Administrative Cases in the Civil Service provides:

> SECTION 46. Classification of Offenses. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.
>
> A. The following grave offenses shall be punishable by dismissal from the service:
>
> 1. Serious Dishonesty;
> 2. Gross Neglect of Duty;
> 3. Grave Misconduct;
> 4. Being Notoriously Undesirable;
> 5. Conviction of a crime involving moral turpitude;
> 6. Falsification of official document;
> 7. Physical or mental incapacity or disability due to immoral or vicious habits;

---

[49] CONST., Art. XI, Sec. 1.

8. Receiving for personal use of a fee, gift or other valuable thing in the course of official duties or in connection therewith when such fee, gift or other valuable thing is given by any person in the hope or expectation of receiving a favor or better treatment than that accorded to other persons, or committing acts punishable under the anti-graft laws;
9. Contracting loans of money or other property from persons with whom the office of the employee has business relations;
10. Soliciting or accepting directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value which in the course of his/her official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of his/her office. The propriety or impropriety of the foregoing shall be determined by its value, kinship, or relationship between giver and receiver and the motivation. A thing of monetary value is one which is evidently or manifestly excessive by its very nature;
11. Nepotism; and
12. Disloyalty to the Republic of the Philippines and to the Filipino people.

When a civil servant commits the most deplorable of crimes against the Republic and the Filipino people, it is in the public interest to remove him or her from public service, so that this person can no longer pollute the ranks of civil service and diminish the public's confidence in its government institutions. In *City Mayor of Zamboanga v. Court of Appeals*,[50] this Court meted out the penalty of dismissal on a city veterinarian found guilty of grave misconduct by the Civil Service Commission, instead of reinstatement with full backwages as previously declared by the Court of Appeals. It explained:

> Indeed, to reinstate private respondent to his former position with full backwages would make a mockery of the fundamental rule that a public office is a public trust and would render futile the constitutional dictates on the promotion of morale, efficiency, integrity, responsiveness, progressiveness and courtesy in the government service. Likewise, reinstatement would place private respondent in such a position where the persons whom he is supposed to lead have already

[50] 261 Phil. 936 (1990) [Per *J*. Gancayco, First Division].

lost their respect for him and where his tarnished reputation would continue to hound him.[51]

Members of the judiciary are held to an even *higher* standard. In *Astillazo v. Jamlid*:[52]

> The Court has said time and time again that the conduct and behavior of everyone connected with an office charged with the administration and disposition of justice — from the presiding judge to the lowliest clerk — should be circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the well-guarded image of the judiciary. It has always been emphasized that the conduct of judges and court personnel must not only be characterized by propriety and decorum at all times, but must also be above suspicion. Verily, the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women, from the judge to the least and lowest of its personnel, hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice. Thus, every employee of the court should be an exemplar of integrity, uprightness, and honesty.[53] (Citations omitted)

A.M. No. 01-8-10-SC[54] provides that justices and judges found guilty of serious charges, or the worst possible offenses that may be committed, are sanctioned with the following penalties:

> 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;

---

[51] *Id*. at 945.

[52] 342 Phil. 219 (1997) [*Per Curiam*, *En Banc*].

[53] *Id*. at 232-233.

[54] *Amendment of Rule 140 of the Rules of Court Re: the Discipline of Justices and Judges* (2001).

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.

For the first two (2) sanctions to be satisfied, they require the respondent judge or justice to *still be in public service*.

For obvious reasons, a person who is no longer in the public service cannot be removed, either temporarily or permanently, from public service. This was why this Court formulated the doctrine in *Abiera*, ruling that its jurisdiction "at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case."[55]

This doctrine was further refined in *Gonzales v. Escalona*:[56]

Respondent Escalona had already resigned from the service. His resignation, however, does not render this case moot, nor does it free him from liability. In fact, the Court views respondent Escalona's resignation before the investigation as indication of his guilt, in the same way that flight by an accused in a criminal case is indicative of guilt. In short, his resignation will not be a way out of the administrative liability he incurred while in the active service. While we can no longer dismiss him, we can still impose a penalty sufficiently commensurate with the offense he committed.

We treat respondent Superada no differently. While his death intervened after the completion of the investigation, it has been settled that the Court is not ousted of its jurisdiction over an administrative matter by the mere fact that the respondent public official ceases to hold office during the pendency of the respondent's case; jurisdiction once acquired, continues to exist until the final resolution of the case. *In Loyao, Jr. v. Caube, we held that the death of the respondent in an administrative case does not preclude a finding of administrative liability*[.][57] (Emphasis supplied, citations omitted)

---

[55] *Perez v. Abiera*, 159-A Phil. 575, 580 (1975) [Per *J.* Muñoz Palma, *En Banc*].

[56] 587 Phil. 448 (2008) [Per *J.* Brion, Second Division].

[57] *Id.* at 462-463.

In its *ponencia*, the majority merely reiterates *Gonzales* as basis for continuing with the case against respondent, who had died before the judgment was rendered.[58] What *Gonzales* failed to explain, however, was that in *Loyao, Jr. v. Caube*,[59] while this Court asserted its jurisdiction despite the respondent's death, it also conceded that the penalty could no longer be served. Thus, this Court was constrained to actually *dismiss the case and consider it closed and terminated:*

> To be sure, respondent Caube's death has permanently foreclosed the prosecution of any other actions, be it criminal or civil, against him for his malfeasance in office. We are, however, not precluded from imposing the appropriate administrative sanctions against him. Respondent's misconduct is so grave as to merit his dismissal from the service, were it not for his untimely demise during the pendency of these proceedings. However, since the penalty can no longer be carried out, this case is now declared closed and terminated.[60]

Indeed, if the respondent could no longer be removed from the Bench, the full effect of the penalty can no longer be carried out. Even this Court in *Gonzales* found that the respondent's liability must be tempered "with compassion in light of his untimely demise"[61] and limited the imposable penalty to a ₱10,000.00 fine.

This is not the first time that this Court addresses the impracticability of imposing an administrative penalty on a respondent who had already died.

In *Government Service Insurance System v. Civil Service Commission*,[62] this Court upheld the Civil Service Commission's ruling that back salaries could be released to the deceased

---

[58] *Ponencia*, p. 9.

[59] 450 Phil. 38 (2003) [*Per Curiam*, *En Banc*].

[60] *Id*. at 47.

[61] *Gonzalez v. Escalona*, 587 Phil. 448,465 (2008) [Per *J*. Brion, Second Division].

[62] 279 Phil. 866 (1991) [Per *J*. Narvasa, *En Banc*].

employees' heirs. This, despite this Court's prior Resolution that any payment should await the outcome of the disciplinary cases filed by the Government Service Insurance System against them:

> The Court agrees that the challenged orders of the Civil Service Commission should be upheld, and not merely upon compassionate grounds, but simply because there is no fair and feasible alternative in the circumstances. To be sure, if the deceased employees were still alive, it would at least be arguable, positing the primacy of this Court's final dispositions, that the issue of payment of their back salaries should properly await the outcome of the disciplinary proceedings referred to in the Second Division's Resolution of July 4, 1988.
>
> Death, however, has already sealed that outcome, foreclosing the initiation of disciplinary administrative proceedings, *or the continuation of any then pending*, against the deceased employees. Whatever may be said of the binding force of the Resolution of July 4, 1988 so far as, to all intents and purposes, it makes exoneration in the administrative proceedings a condition precedent to payment of back salaries, it cannot exact an impossible performance or decree a useless exercise. Even in the case of crimes, the death of the offender extinguishes criminal liability, not only as to the personal, but also as to the pecuniary, penalties if it occurs before final judgment. *In this context, the subsequent disciplinary proceedings, even if not assailable on grounds of due process, would be an inutile, empty procedure in so far as the deceased employees are concerned*; they could not possibly be bound by any substantiation in said proceedings of the original charges: irregularities in the canvass of supplies and materials. The questioned orders of the Civil Service Commission merely recognized the impossibility of complying with the Resolution of July 4, 1988 and the legal futility of attempting a post-mortem investigation of the character contemplated.[63] (Emphasis supplied)

Even the doctrine in *Gonzales* was not without exceptions. There, this Court held that when the respondent dies while the disciplinary case was pending, the presence of any of the following circumstances is enough to warrant the dismissal of

---

[63] *Id*. at 876.

the case against him or her: "first, the observance of respondent's right to due process; second, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and third, it may also depend on the kind of penalty imposed."[64]

In *Baikong Akang Camsa vs. Judge Aurelio Rendon*,[65] this Court found it inappropriate to proceed with the investigation of a judge "who could no longer be in any position to defend himself" as it "would be a denial of his right to be heard, our most basic understanding of due process."[66]

The respondent judge's submission of a comment or explanation before death is likewise not enough to satisfy the requirements of due process. As stated in *Lumiqued*, the right to due process "is deemed satisfied if a person is granted an opportunity to seek reconsideration of the action or ruling complained of."[67]

In *Apiag v. Cantero*,[68] respondent Judge Esmeraldo Cantero (Judge Cantero), who had been charged with gross misconduct for committing bigamy and falsification of public documents, was able to submit a comment. The Office of the Court Administrator later submitted a Report and Recommendation finding him guilty and recommending his dismissal from service. However, Judge Cantero died while the case was pending before this Court. In dismissing the case and allowing the release of his retirement benefits to his heirs, this Court held:

[W]e . . . cannot just gloss over the fact that he was remiss in attending to the needs of his children of his first marriage — children whose

---

[64] *Gonzalez v. Escalona*, 587 Phil. 448, 463 (2008) [Per *J*. Brion, Second Division].

[65] 427 Phil. 518 (2002) [Per *J*. Vitug, Third Division].

[66] *Id*. at 525.

[67] *Lumiqued v. Exevea*, 346 Phil. 807, 828 (1997) [Per *J*. Romero, *En Banc*].

[68] 335 Phil. 511 (1997) [Per *J*. Panganiban, Third Division].

filiation he did not deny. He neglected them and refused to support them until they came up with this administrative charge. For such conduct, this Court would have imposed a penalty. But in view of his death prior to the promulgation of this Decision, dismissal of the case is now in order.[69]

In *Re: Judicial Audit Conducted in the Municipal Trial Court (MTC) of Tambulig and the 11th Municipal Circuit Trial Court (MCTC) of Mahayag-Dumingag-Josefina, both in Zamboanga del Sur*,[70] Judge Ricardo Salvanera was able to submit his explanation but died before this Court could rule on his case. Thus, despite finding him guilty of gross inefficiency and gross ignorance of the law, this Court was constrained to dismiss the case and release his retirement benefits to his heirs.

The same procedural antecedents are present here. This Court was informed of respondent's death in a September 13, 2017 letter[71] after he had been killed by an unidentified motorcycle-riding assailant.[72] While he was able to submit his Comment/Answer to the investigation report of the judicial audit team, the Office of the Court Administrator only concluded its investigation on the allegations against respondent on February 20, 2018, when it submitted its Report and Recommendation to this Court.[73]

The Office of the Court Administrator is not precluded from making its own findings on the administrative complaint, or even to make contrary or additional findings of fact. It is not exclusively bound by the factual findings of the judicial audit team. Just the same, this Court has the full discretion *not* to adopt the Office of the Court Administrator's findings, or to consider other evidence that it may have taken for granted. Thus, a respondent's knowledge of and comment on the judicial

---

[69] *Id*. at 526.

[70] 509 Phil. 401 (2005) [Per *C.J.* Davide, Jr., First Division].

[71] *Ponencia*, p. 4.

[72] *J*. Hernando, Opinion, p. 2.

[73] *Ponencia*, p. 4.

audit team's initial findings cannot be sufficient to satisfy the requirements of due process. He or she must also be informed of the eventual findings of the Office of the Court Administrator or this Court.

In this instance, respondent had only been aware of the investigation report at the time of his death. His Comment/Answer was in response only to the judicial audit team's findings. It would have been impossible for him to know, before his sudden death, that the Office of the Court Administrator and this Court would merely adopt the factual findings of the judicial audit team.

Respondent is no longer in a position to defend himself from the Office of the Court Administrator's findings. He can no longer be informed of the conclusions of this Court. The recommended penalty can no longer be served. He is not in any position to move for reconsideration, to plead his innocence, or to express his remorse. It would be inappropriate to impose a penalty without running afoul of the basic tenets of procedural due process.

Likewise, the forfeiture of respondent's retirement benefits is unusually cruel. The only people who will be affected by the penalty are his heirs, who had nothing to do with the administrative charges against him. It will punish respondent's widow, who had sustained gunshot wounds during the attack on him, and who had explained before this Court that she was a homemaker without any other source of income.[74] This Court should not make respondent's grieving family bear the burden of his faults.

I disagree with the majority that the dismissal of this case weakens our ability to retain integrity within the ranks of the judiciary.

In the first place, respondent did not choose to die. In all indications, he was assassinated. To believe, then, that death would be a way to escape administrative liability is beyond

---

[74] *J.* Hernando, Opinion, p. 7.

the rational. Besides, perhaps death is a penalty supreme to what this Court could ever impose. Perhaps, even, it is a judgment that the universe has imposed more definitely and profoundly than this Court.

**ACCORDINGLY,** I vote to **DISMISS** the administrative complaint against respondent Judge Godofredo B. Abul, Jr. of Branch 4, Regional Trial Court, Butuan City, Agusan del Norte, in view of his death during the pendency of this case.

## DISSENTING OPINION

**HERNANDO, *J.*:**

I dissent in this case.

**The death of an accused even after conviction but during the pendency of his/her appeal shall result in the dismissal of the criminal case against said accused. This dismissal is triggered by the presumption of innocence accorded every accused under the Constitution.**

Meanwhile, the death of a respondent public servant during the pendency of a mere administrative case against him/her shall not result in the dismissal of said case except in the following instances: a) if respondent's right to due process was not observed; b) there is presence of exceptional circumstances in the case of equitable and humanitarian reasons; and c) the kind of penalty imposed. This principle is not founded on any express Constitutional or statutory provision. Its only basis, per jurisprudence, is public policy, and that is, that public office is a public trust.

**I respectfully submit that the non-dismissal rule in case of death of a respondent public servant in administrative cases is against the Constitutional right to presumption of innocence of an accused,** as I shall discuss below.

The case at bench involves the alleged extortion activities of Judge Godofredo B. Abul, Jr. (Judge Abul) wherein he purportedly asked for amounts ranging from PhP 200,000.00

to PhP 300,000.00 from detainees of the Provincial Jail of Agusan in exchange for their release from prison or dismissal of their criminal cases. After the Office of the Court Administrator (OCA) received a letter from Rev. Father Antoni A. Saniel alleging Judge Abul's activities, it conducted an investigation on the matter. Eventually, the OCA found that Judge Abul committed grave misconduct constituting violations of the Code of Judicial Conduct, a serious offense, and thereafter recommended that he be fined in the amount of PhP 500,000.00, to be deducted from his retirement gratuity.

It is important to note, however, that before the Court could render a judgment on Judge Abul's administrative case, he met an untimely death[1] when he was targeted and killed by an unidentified motorcycle-riding shooter while he was about to leave his house. In fact, his spouse likewise sustained gunshot wounds during the ambuscade but fortunately survived.[2]

Because of jurisprudence, Judge Abul's death does not result in the dismissal of the administrative complaint against him since the Court already acquired jurisdiction over the case and continues to exercise the same until it is finally resolved.[3] In other words, "[t]he death or retirement of any judicial officer from the service does not preclude the finding of any administrative liability to which he shall still be answerable."[4]

The *ponencia*, while adopting the findings and recommendation of the OCA, modifies the penalty to be imposed on the late Judge Abul. Due to the latter's guilt as to the administrative charge of gross misconduct, the *ponencia* declares and orders the forfeiture of **all** of his retirement benefits, excluding accrued leaves.

---

[1] Died on August 5, 2017 by multiple gunshot wounds at 68 years old.

[2] *Rollo*, pp. 95-96.

[3] *Gonzales v. Escalona*, 587 Phil. 448, 462-463 (2008).

[4] *San Buenaventura v. Migriño*, 725 Phil. 151, 162 (2014).

According to Section 8 of A.M. No. 01-8-10-SC or the Amendment to Rule 140 of the Rules of Court Re: Discipline of Justices and Judges, gross misconduct constituting violations of the Code of Judicial Conduct is considered as a serious charge. Section 11 of the same issuance provides for the following penalties:

**SEC. 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.[5]

The second sanction can no longer be imposed since Judge Abul already passed away (although he was preventively suspended), while the third sanction appears to be too mild a penalty and not commensurate with the offense. Presumably recommending the first sanction and considering the gravity of his offense and his intervening death, the OCA recommended that Judge Abul be fined in the amount of PhP 500,000.00 to be deducted from his retirement gratuity. However, the *ponente* went further and ordered the forfeiture of all of Judge Abul's benefits, excluding accrued leaves, even after his death.

Although I subscribe to the *ponencia* in finding that Judge Abul may be adjudged guilty of gross misconduct which is a serious offense, I am compelled to register my reservations to its pronouncement that the administrative case against the late jurist should continue notwithstanding his death and that **all**

---

[5] Section 11, A.M. No. 01-8-10-SC, RE: Proposed Amendment to Rule 140 of the Rules of Court Re: Discipline of Justices and Judges, September 11, 2001.

of his retirement benefits, excluding accrued leaves, should be forfeited.

I berth my reservations on the following grounds: (1) the presumption of innocence should stand before a decision on the administrative case is rendered; (2) since death of an accused extinguishes personal criminal liability as well as pecuniary penalties arising from the felony when the death occurs before final judgment in criminal cases, the standard for an administrative case should be similar or less punitive; and (3) humanitarian reasons call for the grant of death and survivorship benefits in favor of the spouse and the heirs, if the case will not be dismissed.

*On the first ground*

Article 3, Section 14 of the 1987 Constitution provides that "[i]n all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved." Indeed, until an accused is adjudged guilty by proof beyond reasonable doubt, there is a presumption of his or her innocence. Even if the case at bench is an administrative case, We should apply this presumption by analogy since Judge Abul's death preceded the promulgation of the decision which imposed upon him the penalty of dismissal. Simply put, he should be presumed innocent until a decision is finally rendered, be it in his favor or not. Unfortunately, even if Judge Abul was able to file his Comment on the charges against him, he could no longer submit other evidence which could have helped his cause if he truly was innocent like he previously claimed. Nonetheless, the Court declared him guilty of gross misconduct based on the existing evidence and the investigation conducted by the OCA, and then imposed the ultimate penalty of forfeiture of all of his benefits despite his death.

*On the second ground*

Article 89(1) of the Revised Penal Code states:

Article 89. *How criminal liability is totally extinguished*. – Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment[.]

Based on the aforementioned provision, the death of the accused extinguishes the criminal liability. Meanwhile, the pecuniary penalties will only be extinguished if the accused dies before final judgment is rendered. If this is the standard for criminal cases wherein the quantum of proof is proof beyond reasonable doubt, then a lower standard for administrative proceedings such as the case at bar should be followed, even if the quantum of proof therein is substantial evidence.[6]

I am aware, however, that the Court has previously pronounced in *Gonzales v. Escalona*[7] that an administrative case, which is not strictly personal in nature, is not automatically terminated upon the death of respondent. This is because public office is a public trust which needs to be protected at all costs, even beyond the death of the concerned public officer. I reiterate that this is against the Constitution. Even then, I wish to point out that if in criminal cases, death extinguishes criminal and civil liability (arising from the offense), why should it be so much stricter when it comes to administrative cases with exceptional or justifiable factors which require special consideration such as in this case? Not surprisingly, the Court, using its sound discretion, previously imposed fines or less stringent penalties upon respondents in administrative cases who were found guilty even if they already retired or passed away while their cases were still pending.

Relevantly, the said *Gonzales* case cited *Sexton v. Casida*[8] "where the respondent, who in the meantime died, was found

---

[6] That amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion; *Office of the Court Administrator v. Yu*, 807 Phil. 277, 293 (2017).

[7] *Gonzales v. Escalona*, *supra* note 3 at 465.

[8] 508 Phil. 166 (2005), as cited in *Gonzales v. Escalona*, *supra* note 3 at 465.

guilty of act unbecoming a public official and acts prejudicial to the best interest of the service, and fined Five Thousand Pesos (₱5,000.00), deductible from his terminal leave pay."

In *Agarao v. Parentela, Jr.,*[9] Judge Parentela was found guilty of immorality, a serious offense penalized with dismissal from the service and forfeiture of all or part of the benefits as the Court may determine. However, since the respondent judge passed away before a decision on his case was rendered, the Court instead forfeited one half of all of his retirement benefits excluding his accrued leave credits.

In *Kaw v. Judge Osorio*,[10] while the Court held that the respondent judge may not necessarily be held liable for extortion and graft and corruption as it was not substantially proven, he was instead found accountable for violating Canons 2 and 5 of the Code of Judicial Conduct. As a consequence, a fine in the amount of PhP 40,000.00 was ordered to be deducted from his retirement benefits given that he mandatorily retired before the penalty of dismissal or suspension could be imposed upon him.

In *San Buenaventura v. Migriño*,[11] the respondent was found guilty of simple neglect of duty. The Executive Judge who investigated the case recommended that a penalty of fine equivalent to two months' salary should be imposed. After receipt of the said recommendation, the OCA modified and reduced the penalty to a fine equivalent to one-month salary for humanitarian consideration and by reason of the death of the respondent, then submitted it to the Court for final determination. Subsequently, the Court adopted the recommendation of the OCA to just impose a fine.

---

[9] 421 Phil. 677 (2001).

[10] 469 Phil. 896 (2004).

[11] *Supra* note 4.

In *Re: Evaluation of Administrative Liability of Judge Lubao,*[12] Judge Lubao was only fined given that he has already retired. This is considering that he committed numerous serious, less serious, and light offenses[13] while he was still in the service which would have merited the penalty of dismissal and forfeiture of all his benefits. Thence, if Judge Lubao, who admittedly committed more offenses than Judge Abul and yet previously received his retirement benefits[14] in spite of his infractions, was only fined, then a similar concession should be extended to Judge Abul, especially since he was murdered while in service and while his administrative case was still pending.

As one can infer from the aforementioned cases, in spite of the death or retirement of the respondents while their respective administrative cases were still pending, only a fine or deduction from their benefits was eventually imposed upon each of them. Notably, their retirement or survivorship benefits were not all automatically forfeited. In light of this, it is clear that the Court can exercise its sound discretion in the imposition of penalties depending on the circumstances surrounding the case.

*On the third ground*

It should be emphasized that according to the *ponencia*, Judge Abul should be stripped of his retirement benefits even if he passed away around two years before the decision in his administrative case was released. This is in addition to the fact that he was actually murdered mere days after he turned 68 years old.[15] Moreover, he would have turned 70 years old this

---

[12] 785 Phil. 14 (2016).

[13] Judge Lubao was found guilty of the following offenses: gross misconduct; violation of Supreme Court rules, directives and circulars; undue delay in rendering a decision or order; and undue delay in the submission of monthly reports.

[14] Except for an amount of PhP 100,000.00 withheld by the Court from his benefits which served as security until a final judgment in his case was rendered.

[15] Judge Abul's birthday was on August 1, 1949.

year (2019), the compulsory age for retirement for judges,[16] if not for his untimely demise. Considering these circumstances, it is my opinion that all of Judge Abul's death and retirement benefits should not be forfeited because his death preceded the release of a judgment concerning his administrative case. More importantly, I believe that for humanitarian reasons,[17] Judge Abul's death and survivorship benefits should be released.

Even if the general rule is that the death of the respondent does not preclude a finding of administrative liability,[18] there are instances wherein such death necessitates the dismissal of the administrative case. According to *Gonzales v. Espinosa*,[19] the recognized exceptions are anchored on the following factors: "*first*, the observance of respondent's right to due process; *second*, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and *third*, it may also depend on the kind of penalty imposed."[20] I believe that the second exception pertaining to humanitarian reasons should be applied in this case. Thus, if the case will not be dismissed, then at least the death and survivorship benefits should not all be forfeited.

---

[16] Republic Act No. 9946, An Act Granting Additional Retirement, 'Survivorship, and Other Benefits to Members of the Judiciary, Amending For the Purpose Republic Act No. 910, As Amended, Providing Funds Therefor and For Other Purposes (2009).

[17] *Limliman v. Judge Ulat-Marrero*, 443 Phil. 732, 736 (2003).

[18] *Gonzales v. Escalona*, *supra* note 3, citing *Loyao, Jr. v. Caube*, 450 Phil. 38, 47 (2003).

[19] *Supra* note 3.

[20] *Gonzales v. Escalona*, *supra* note 3 at 463, citing *Limliman v. Judge Ulat-Marrero*, *supra* note 17, which cited *Loyao, Jr. v. Caube*, *supra* note 18; *Baikong Akang Camsa v. Rendon*, 427 Phil. 518 (2002); *Judicial Audit Report*, 397 Phil. 476 (2000); *Report on the Judicial Audit Conducted in RTC, Br. 1, Bangued, Abra* 388, Phil. 60 (2000); *Apiag v. Cantero*, 335 Phil. 511 (1997); *Mañozca v. Domagas*, 318 Phil. 744 (1995); and *Hermosa v. Paraiso*, 159 Phil. 417 (1975).

Relevantly, in a few cases, the Court mitigated the penalties of the respondents in view of humanitarian considerations.

In *Geocadin v. Peña*,[21] Judge Peña was adjudged guilty of grave misconduct. However, since he was overcome by serious illnesses, he was not able to present his evidence during the investigation. The Court noted that there is a presumption of innocence in his favor and that due to his unfortunate condition, he deserved compassion and humanitarian consideration. Hence, the Court imposed a penalty of reprimand and forfeiture of three months' salary to be deducted from his retirement benefits.

In *Re: Financial Audit on the Accountabilities of Restituto Tabucon, Jr.*,[22] the respondent, Tabucon, failed to remit Judiciary Development Fund (JDF) collections for a time because he purportedly used the funds to feed his family. He eventually restituted the said amounts, after he borrowed money with interest from a friend. The Court ruled that his failure to remit the cash deposited to him on time constituted gross dishonesty, if not malversation. Yet, since dismissal from the service is no longer possible given that Tabucon has compulsorily retired from service, the Court held that forfeiture of all his retirement and other benefits may be too harsh under the circumstances. Since he restituted his shortages, a fine in the amount of PhP 10,000.00 was imposed upon Tabucon instead.

According to *Liwanag v. Lustre*,[23] the Court found substantial evidence showing that the respondent judge sexually molested the complainant which constitutes gross misconduct. While the OCA recommended that he should be dismissed from service and that all his retirement benefits be forfeited, the Court modified the penalty by imposing a fine on his retirement benefits because he already retired from service. It further stated that the OCA's recommendation to forfeit all of the judge's retirement benefits, "while directed at respondent, might adversely affect

---

[21] 195 Phil. 344 (1981).

[22] 504 Phil. 512 (2005).

[23] 365 Phil. 496 (1999).

innocent members of his family, who are dependent on him and his retirement gratuity."[24] Hence, the Court deemed it best to impose a PhP 40,000.00 fine taking into account the attendant circumstances.

In this case, notably, Judge Abul's wife, Bernadita C. Abul, who also sustained gunshot wounds but survived, wrote the Court a letter dated September 13, 2017.[25] She explains that she is a housewife who has no work and other source of income and that ever since Judge Abul's preventive suspension from office, their family faced financial crisis. She therefore implores from the Court to release the accrued leave benefits of Judge Abul as well as other benefits or assistance which the Court could extend to them in order to help their family sustain their daily needs and to fund her son's education in medical school.

Given the specific circumstances of Judge Abul's case, it is my view that his mistakes should not unduly punish his spouse or his heirs, especially if they had no hand in or knowledge about the alleged extortions. Judge Abul's liability should be considered personal and extinguished by reason of his death, and should not extend beyond the said death only to be shouldered by his spouse or his son. Doing so would indirectly impose a harsh penalty upon innocent individuals who not only have to come to terms with the unjust death of a loved one but also live without one henceforth. Without a doubt, forfeiture of all of Judge Abul's death and survivorship benefits would add to the grief and hardships that his family is already enduring. Thus, it is my humble position that assuming that the Court would maintain the non-dismissal rule in administrative cases in case of death of the respondent, the Court should, instead of imposing such a strict and unforgiving punishment even when Judge Abul has already passed away, impose a fine to be deducted from his retirement benefits. This is what the OCA had in fact recommended in the first place.

---

[24] *Id*. at 510.

[25] *Rollo*, p. 91.

Pertinent to the death of a member of the Judiciary while still in actual service, Sections 2 to 3-A of Republic Act (R.A.) No. 9946[26] state that:

SEC. 2. In case a Justice of the Supreme Court or Court of Appeals, the Sandiganbayan or of the Court of Tax Appeals, or a Judge of the regional trial court, metropolitan trial court, municipal trial court in cities, municipal trial court, municipal circuit trial court, shari'a district court, shari'a circuit court, or any other court hereafter established, dies while in actual service, regardless of his/her age and length of service as required in Section 1 hereof, his/her heirs shall receive a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation, representation and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance received by him/her as such Justice or Judge: *Provided, however*, That where the deceased Justice or Judge has rendered at least fifteen (15) years either in the Judiciary or in any other branch of Government, or both, his/her heirs shall instead be entitled to a lump sum of ten (10) years gratuity computed on the same basis as indicated in this provision: *Provided, further*, That the lump sum of ten (10) years gratuity shall be received by the heirs of the Justice or the Judge who was killed because of his/her work as such: *Provided*, That the Justice or Judge has served in Government for at least five (5) years regardless of age at the time of death. When a Justice or Judge is killed intentionally while in service, the presumption is that the death is work-related.

SEC. 3. Upon retirement, a Justice of the Supreme Court or of the Court of Appeals, the Sandiganbayan or of the Court of Tax Appeals, or a Judge of the regional trial court, metropolitan trial court, municipal trial court in cities, municipal trial court, municipal circuit trial court, shari'a district court, shari'a circuit court, or any other court hereafter established shall be automatically entitled to a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation, representation and other allowances such as personal economic relief allowance

---

[26] Republic Act No. 9946, An Act Granting Additional Retirement, Survivorship, and Other Benefits to Members of the Judiciary, Amending For the Purpose Republic Act No. 910, As Amended, Providing Funds Therefor and For Other Purposes (2009).

(PERA) and additional compensation allowance he/she was receiving on the date of his/her retirement and thereafter upon survival after the expiration of five (5) years, to further annuity payable monthly during the residue of his/her natural life pursuant to Section 1 hereof: *Provided, however*, That if the reason for the retirement be any permanent disability contracted during his/her incumbency in office and prior to the date of retirement, he/she shall receive a gratuity equivalent to ten (10) years' salary and the allowances aforementioned: *Provided, further,* That should the retirement under Section l(a) hereof be with the attendance of any partial permanent disability contracted during his/her incumbency and prior to the date of retirement, he/she, shall receive an additional gratuity equivalent to two (2) years lump sum that he/she is entitled to under this Act: *Provided, furthermore*, That if he/she survives after ten (10) years or seven (7) years, as the case may be, he/she shall continue to receive a monthly annuity as computed under this Act during the residue of his/her natural life pursuant to Section 1 hereof: *Provided, finally*, That those who have retired with the attendance of any partial permanent disability five (5) years prior to the effectivity of this Act shall be entitled to the same benefits provided herein.

Upon the death of a Justice or Judge of any court in the Judiciary, if such Justice or Judge has retired, or was eligible to retire optionally at the time of death, the surviving legitimate spouse shall be entitled to receive all the retirement benefits that the deceased Justice or Judge would have received had the Justice or Judge not died. The surviving spouse shall continue to receive such retirement benefits until the surviving spouse's death or remarriage.

SEC. 3-A. All pension benefits of retired members of the Judiciary shall be automatically increased whenever there is an increase in the salary of the same position from which he/she retired.

In line with this, according to A.M. No. 17-08-01-SC, in case of permanent disability due to death while in actual service, a judge is entitled to the following benefits:

*B.1 Where government service is at least 15 years, regardless of age –*

(1) Lump sum gratuity of 10 years, to be received by the heirs (*Section 2*)

(2) Full survivorship pension benefits (*Section 1*), to be received by the surviving legitimate spouse upon survival of the gratuity period of 10 years (*Section 3, first paragraph*);
(3) Automatic increase of pension benefits (*Section 3-A*).

*Provided*, The same benefits shall apply in respect to a justice or judge who, with at least 5 years of government service, was killed due to his/her work as such.

*B.2 Where government service is less than 15 years, regardless of age –*

(1) Lump sum gratuity of 5 years, to be received by the heirs (*Section 2*)
(2) Pro-rated pension benefits (*Section 1*), to be received by the surviving legitimate spouse upon survival of the gratuity period of 10 years (*Section 3, first paragraph*);
(3) Automatic increase of pension benefits (*Section 3-A*).[27]

***E. Survivorship Pension Benefits***

The legitimate surviving spouse of a Justice or Judge who (1) has retired or was eligible to retire optionally at the time of death, and (2) was receiving or would have been entitled to receive a monthly pension, shall be entitled to receive the said benefits that the deceased Justice or Judge would have received had the Justice or Judge not died, ***Provided*, That the justice or judge who, regardless of age, died or was killed while in actual service shall be considered as retired due to permanent disability. *Provided, further,* That the survivorship benefit shall be pro-rated if the deceased justice or judge had rendered government service for less than 15 years.** The surviving spouse shall continue to receive such retirement benefits until the surviving spouse's death or remarriage.[28]

In light of these, it is my view that Judge Abul's spouse and son (or heirs) should be given the death benefits granted under Section 2 of R.A. No. 9946. If Judge Abul served for at least

---

[27] *See* Republic Act No. 9946.

[28] *Re: Requests for Survivorship Pension Benefits of Spouses of Justices and Judges Who Died Prior to the Effectivity of Republic Act No. 9946*, A.M. No. 17-08-01-SC, September 19, 2017.

15 years, his heirs should receive a lump sum equivalent to ten (10) years. Alternatively, if he served for less than 15 years, the lump sum should be equivalent to five (5) years. Subsequently, after the gratuity period of ten (10) years has passed, his heirs are entitled to survivorship benefits, specifically, full monthly pension (if Judge Abul rendered at least 15 years of service) or pro-rated monthly pension (if he served for less than 15 years).

In conclusion, it is my position that: 1) Judge Abul's death extinguished any administrative penalty that may be imposed upon him and that the administrative complaint against him should be dismissed in accordance with the Constitutional principle that every accused is presumed innocent until proven guilty by the requisite quantum of proof; and 2) assuming the administrative complaint survives his demise, the spouse and son (or heirs) of Judge Abul should be granted the death benefits and survivorship pension benefits due to his death while in actual service, considering that no ruling was handed down prior to his death and no penalty yet has been imposed upon him before the said death and due to humanitarian considerations unique to his case.

Lastly, may I point out to my esteemed Brethren that this Court has been forgiving in the past when it gave due course to petitions for clemency of dismissed judges. Unlike those magistrates who were recipients of the Court's benevolent attitude, Judge Abul will never be able to file a petition for clemency simply because he has passed on to the Great Beyond. The least that can be extended to his heirs to tide them over in the aftermath of his death is some concrete form of pecuniary security.

I therefore vote to DISMISS the instant administrative complaint against the late Judge Godofredo B. Abul, Jr.

**EN BANC**

[G.R. No. 184535. September 3, 2019]

**SISTER PILAR VERSOZA,** *petitioner, vs.* **PEOPLE OF THE PHILIPPINES, MICHELINA S. AGUIRRE-OLONDRIZ, PEDRO AGUIRRE, and DR. MARISSA PASCUAL,** *respondents.*

**SYLLABUS**

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; THE ROLE OF THE PRIVATE COMPLAINANT IN A CRIMINAL ACTION IS CONFINED TO BEING A MERE WITNESS AND HIS/HER INTEREST IN THE CASE IS LIMITED TO ONLY THE CIVIL LIABILITY.—** This Court has consistently held that "[t]he authority to represent the State in appeals of criminal cases before the Supreme Court and the [Court of Appeals] is solely vested in the Office of the Solicitor General[,]" with the private complainant's role as only that of a witness. x x x As a private complainant to the criminal action, petitioner's role is confined to being a mere witness, her interest in the case limited to only the civil liability. Only the State, through the Office of the Solicitor General, can appeal the criminal aspect of the case. Thus, absent any action on the part of the Office of the Solicitor General, the appeal cannot prosper. Moreover, considering that petitioner died during the pendency of this case, she no longer has the legal capacity to pursue the appeal.

2. **ID.; ID.; PROSECUTION OF CRIMINAL OFFENSES; IT IS USUALLY THE OFFENDED PARTY OR A LAW ENFORCER WHO COMMENCES THE PROSECUTION OF A CRIMINAL CASE, EXCEPT FOR PRIVATE CRIMES AND THOSE PUNISHABLE UNDER SPECIAL LAWS; EXPLAINED.—** The prosecution of criminal offenses begins with the filing of a complaint or an information. Ordinarily, a complaint is "subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated." On the other hand, an information is subscribed by a prosecutor. It is usually the offended party or a law enforcer who commences the case's prosecution. This is the traditional concept of the prosecution

of criminal offenses. However, the rule is different in cases involving private crimes and those punishable under special laws. The crimes of adultery, concubinage, seduction, abduction, acts of lasciviousness, and defamation cannot be prosecuted except at the instance of certain persons. Rule 110, Section 5 of the Revised Rules of Criminal Procedure enumerates crimes that require the intervention of specific individuals before criminal proceedings can be had: x x x As to offenses punished under special laws, their prosecution would be governed by the relevant provisions of the special law violated.

3. **CRIMINAL LAW; REPUBLIC ACT NO. 7610 (THE SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION, AND DISCRIMINATION ACT); THE LAW ENUMERATES THE SEVEN CLASSES OF PERSONS WHO MAY INITIATE CRIMINAL PROCEEDINGS.—** In cases concerning violations of Republic Act No. 7610, Section 27 enumerates seven (7) classes of persons who may initiate criminal proceedings, namely: x x x (a) Offended party; (b)Parents or guardians; (c) Ascendant or collateral relative within the third degree of consanguinity; (d) Officer, social worker or representative of a licensed child-caring institution; (e) Officer or social worker of the Department of Social Welfare and Development; (f) Barangay chairman; or (g) At least three (3) concerned responsible citizens where the violation occurred. The literal meaning of a statute must prevail if the text is clear.

4. **ID.; ID.; THE LAW RECOGNIZES A DISTINCTION BETWEEN A PERSON'S CHRONOLOGICAL AGE AND MENTAL AGE, SUCH THAT SOMEONE WITH COGNITIVE DISABILITY, REGARDLESS OF HIS OR HER CHRONOLOGICAL AGE, WOULD AUTOMATICALLY BE ENTITLED TO THE PROTECTIVE MANTLE OF THE LAW.—** The protection afforded under Republic Act No. 7610 recognizes persons with mental or intellectual impairments that prevent them from fully engaging in the community. Our laws accord a high level of protection to those with cognitive disability. x x x Section 3(a) of Republic Act No. 7610 recognizes a distinction between a person's chronological age and mental age, such that someone with cognitive disability, regardless of his or her chronological age, would automatically be entitled to the protective mantle of the law. A person's mental age and chronological age were

differentiated in *People v. Quintos*, a case involving the rape of a person with intellectual disability. This Court defined "twelve (12) years of age" under Article 266-A(l)(d) of the Revised Penal Code as either the chronological age of a child or the mental age if a person has intellectual disability: x x x In light of this interpretation, and based on the distinction set forth in Section 3(a), a person who has a cognitive disability would be considered a child under Republic Act No. 7610 based on his or her mental age, not chronological age. In this case, it is without question that, despite his chronological age, Larry is a child under the law. He has a mild mental deficiency rendering him incapable of making crucial decisions on his own, let alone fend for himself. At the time of the vasectomy, he had a mental age of an 8-year-old.

**PERALTA*, J., separate opinion:***

**REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE, DEFINED; THE DUTY OF THE SUPREME COURT IS CONFINED TO THE ISSUE OF WHETHER THE EXECUTIVE OR THE JUDICIAL DETERMINATION OF PROBABLE CAUSE WAS DONE WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO WANT OF JURISDICTION; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.—** In *P/C Supt. Pfleider v. People,* it was held that "the determination of probable cause is not lodged with this Court. Its duty, in an appropriate case, is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction." This is consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final. There are, however, exceptions to this rule, some of which are enumerated in *Brocka v. Enrile.* None of such exceptions obtain in this case. x x x Probable cause is defined as the existence of facts and circumstances that engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty of that crime and should be held for trial. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. A finding of probable cause does not require an inquiry into whether there

is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Based on the records, the specific intent to debase, degrade or demean the intrinsic worth and dignity of a child as a human being that was so essential in the crime of child abuse, was absent on the part of accused-respondents when they had Larry undertake bilateral vasectomy. Hence, the Court of Appeals committed no reversible error in affirming the Order of the RTC, which dismissed the child abuse case against respondents for lack of probable cause. Be that as it may, the petition should be dismissed for lack of party, in light of the death of petitioner Sister Versoza and the absence of an appeal from the Office of the Solicitor General.

**LEONEN, *J., separate opinion:***

**1. CRIMINAL LAW; REPUBLIC ACT NO. 7610 (THE SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION, AND DISCRIMINATION ACT); FOUR ACTS PUNISHABLE UNDER SECTION 10 (A) OF RA 7610: (1) OTHER ACTS OF CHILD ABUSE; (2) CRUELTY; (3) EXPLOITATION; AND (4) BEING RESPONSIBLE FOR CONDITIONS PREJUDICIAL TO THE CHILD'S DEVLOPMENT; ELEMENTS.—** To provide further protection to children, Republic Act No. 7610 expands the concept of child abuse to cover other acts of abuse. x x x SECTION 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. (a) Any person who shall commit any *other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603*, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period. Section 10(a) punishes four (4) distinct acts in addition to those already covered by Article 59 of Presidential Decree No. 603, as amended, namely: (1) other acts of child abuse; (2) cruelty; (3) exploitation; and (4) being responsible for conditions prejudicial to the child's development. These offenses are independent of the child abuse acts specified in Republic Act No. 7610. For the acts in Section 10(a) to be punishable, the following elements must be accounted for: (1) the victim must

be a child under the law; (2) the act committed is either abusive, cruel, or exploitative of the child, or is prejudicial to the child's development; and (3) the accused committed or is responsible for the act. x x x The important element in determining if there was a violation of Section 10(a) of Republic Act No. 7610 is whether the act is or can be prejudicial to a child's development. This should be read together with Section 3(b). A fundamental rule of statutory construction is that courts should not distinguish where the law does not distinguish—"*ubi lex non distinguit, nec nos distinguire debemus*."

**2. ID.; ID.; RECOGNIZING THE CONCEPT OF MENTAL AGE, THE LAW DEEMS THAT A PERSON WITH COGNITIVE DISABILITY IS A CHILD REGARDLESS OF HIS OR HER CHRONOLOGICAL AGE; HENCE, HE/SHE WOULD STILL BE UNDER THE PROTECTION OF THE LAW; CASE AT BAR.—** Section 3(a) of Republic Act No. 7610 defines a child as a "person below eighteen (18) years of age *or* those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition[.]" Recognizing the concept of mental age, the law deems that a person with cognitive disability is a child regardless of his or her chronological age. He or she would still be under the protection of the law. x x x Though Larry was chronologically 24 years old when the procedure was conducted on him, he actually had a mental age of an 8-year-old. He also has a mild mental deficiency, which rendered him unfit to decide on matters on his own. Larry is, therefore, a child under the law. x x x Section 10(a) of Republic Act No. 7610 is unique in that it was designed to protect children from any and all forms of abuse. It broadened the definition and scope of child abuse to supply inadequacies in our existing laws, thus strengthening the State's policy on the protection of "the most vulnerable members of the population, the Filipino children[.]"

**3. ID.; ID.; IMPLEMENTING RULES AND REGULATIONS; CHILD ABUSE; IN RECONCILING THE GUIDELINES, COURTS SHOULD CAREFULLY EXAMINE THE PARTICULAR ACT THAT IS ALLEGED TO CONSTITUTE CHILD ABUSE WITH DUE REGARD TO THE CHILD'S INTRINSIC WORTH AND DIGNITY.—** For guidance, the Implementing Rules and Regulations of Republic Act No. 7610 defines "child abuse,"

"cruelty," "neglect," and "exploitation" x x x The infliction of physical injury as abuse is not difficult to comprehend. In *Torres v. People* this Court deemed the act of whipping a child thrice with a wet t-shirt as child abuse: x x x Unlike physical abuse, which ordinarily requires overt acts, neglect is committed by omission. It pertains to the withholding of a child's needs to fully participate in society, such as access to food, education, shelter, and care, all of which children are legally entitled to in recognition of their right to grow into adulthood under the best circumstances. Neglect may be typified as: (1) physical; (2) educational; (3) emotional; and (4) medical. Physical neglect refers to the failure to provide a child's basic needs, which consists of food, clothing, and shelter. Educational neglect consists in the failure to ensure that the child receives proper and adequate education. Emotional neglect is the failure to nurture by, among others, ignoring or isolating the child. Medical neglect pertains to the failure to provide proper healthcare to a child, as when, for instance, one ignores medical recommendations. Neglect has also been expanded to recognize environmental neglect and supervisory neglect. Environmental neglect pertains to a situation where a child is left in a hazardous or unclean location. Supervisory neglect refers to a situation where a child is abandoned or left under the custody of an inappropriate substitute. Cruelty, on the other hand, is a much broader term as it includes acts done by word or deed. In any case, the act targets the child's intrinsic worth and dignity without regard to his or her humanity. What comprises abuse depends on the circumstances of each case. For instance, this Court held in *Bongalon v. People* that not every physical harm done on the child is child abuse: x x x In reconciling the guidelines, courts should carefully examine the particular act that is alleged to constitute child abuse with due regard to the child's intrinsic worth and dignity. The ultimate determination depends on whether the act done on the child debilitates or debases his fundamental integrity, harming his or her future growth and development.

**4. ID.; ID.; ID.; ID.; THE VASECTOMY ON SOMEONE WITH COGNITIVE DISABILITY, WITHOUT HIS OR HER CONSENT, IS BOTH AN ACT OF CRUELTY AND AN ACT PREJUDICIAL TO THE PERSON'S DEVELOPMENT; RATIONALE.—** The vasectomy conducted on Larry violates his fundamental right to life and liberty. Article III, Section 1 of the Constitution states

that "[n]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." x x x Although the right to privacy is intertwined with the right to liberty, it is a distinct right that is equally entitled to protection under the Constitution. Article III, Section 3(1) states that "[t]he privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law." The right to privacy, however, not only pertains to privacy of one's communication and correspondence. It has many dimensions, referred to as "zones of privacy," which are embedded in other constitutionally guaranteed freedoms. x x x Apart from the Constitution, our laws also recognize the zones of privacy. x x x One's autonomy over his or her life and body, therefore, is inextricably linked with the right to privacy. Reproductive health rights, being within the sphere of autonomy, are protected from interference by private individuals, including parents and guardians. At most, they can only provide guidance and education. Larry will still grow, and his mental capacity will be beyond 18 at some point. In their premature judgment that Larry would be incapable of becoming a responsible adult, the Aguirre Spouses curtailed his liberty and violated his decisional privacy. Ignorance and fear have infantilized persons with intellectual disability, broadly categorizing them as asexual juveniles. As a result, their display of affection and sexual behaviors are dismissed as less acceptable. Historically, this led to practices of "selective breeding" through surgical sterilization, which prevented persons with intellectual disability from fully realizing their sexual rights. x x x Moreover, Larry's ability to exercise his right to procreate goes beyond a mere invocation of his reproductive health rights. It seeps into his capacity to form relationships, to start a family, to be a responsible parent, and to live his life as fully and as meaningfully as possible. Taking away his ability to sire children effectively debilitates him as a child and a human being. While Larry is not barred from engaging in a relationship or sexual relations that could lead to having a child, the vasectomy has severely limited his options to start a family of his own. The decision to undergo vasectomy, whether reversible or not, involves an act that is part of private rights. The right to reproduce forms part of how humans define themselves. The choice of whether to reproduce should be respected, even if the person has cognitive disability. Thus, the vasectomy on

someone with cognitive disability, without his or her consent, is both an act of cruelty and an act prejudicial to the person's development.

**5. CIVIL LAW; FAMILY CODE; PARENTAL AUTHORITY; PARENTAL AUTHORITY IS BOTH A RIGHT AND OBLIGATION, GRANTED BY LAW UNDER THE PRESUMPTION THAT IT WILL BE EXERCISED FOR THE FULL DEVELOPMENT OF A CHILD'S MIND, HEART AND SENSES.—** Parental authority is both a right and an obligation, granted by law under the presumption that it will be exercised for the full development of a child's mind, heart, and senses. Under no circumstances is it allowed to be exercised in a way that is violative of human dignity or will diminish another's intrinsic worth. *Santos, Sr. v. Court of Appeals* describes the nature of parental authority as a "sum of duties": x x x The mark of a good parent is not measured by his or her material wealth or mental faculties. Rather, a good parent is one who exhibits the patience, love, and ability to sacrifice so that the child discovers what it is to be nurtured, protected, and resilient. Being cognitively disabled is not a barrier to parenthood. A person's disability has no direct correlation to being a good parent: x x x Under the philosophy of supported parenting, persons who are cognitively disabled are fully capable of being parents themselves if given wholehearted support by both their family and community. This requires that their needs be identified, including "the parent's individual learning style; the parent's current knowledge, behavior, attitudes, beliefs, values; available support systems, and available resources." x x x The State's responsibility to protect children with disabilities is both an international and constitutional commitment. When no one else is willing to take up the cudgels for Larry, the State must not renege on its duty to ensure the protection of his human dignity simply on the ground of procedural infirmity. The State must not allow the violation of a child's right made even in the misguided concept of parental authority.

**JARDELEZA, *J., separate opinion:***

**1. CRIMINAL LAW; REPUBLIC ACT NO. 7610 (THE SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION, AND DISCRIMINATION ACT); RA 7610 DOES NOT CRIMINALIZE VASECTOMY, THERE IS NO**

**SHOWING OF ANY CLEAR LEGISLATIVE INTENT TO MAKE STERILIZATION OF INTELLECTUALLY-DISABLED INDIVIDUALS, CONDUCTED WITH CONSENT OF THEIR PARENTS OR LEGALLY CONSTITUTED GUARDIANS, A CRIMINAL ACT; RATIONALE.—** In my view, RA 7610 does not criminalize vasectomy. There is no showing of any clear legislative intent to make sterilization of intellectually-disabled individuals, conducted with the consent of their parents or legally-constituted guardians, a criminal act. In fact, and contrary to what Justice Leonen suggests, legislative deliberations would appear to define acts of cruelty as "unreasonable infliction of physical injury or inhuman treatment on the physical being of a child" citing physical maltreatment and beatings, as examples. Basic rules of statutory construction would therefore instruct against such reading, especially when, as pointed out by the Office of the Solicitor General, such procedure, a "recognized" and "medically accepted" method of contraception, was conducted with the consent of Larry's legally-appointed guardian, after much deliberation and in consultation with a psychiatrist. Existing laws also militate against Justice Leonen's proposed reading of RA 7610. The Congress, through several legislative enactments, has identified *other* equally important interests, including those of parents and the State, which arguably have a direct bearing on the asserted liberty interest to procreation and parenthood. These should be properly taken into account. x x x Vasectomy is a legitimate modern family planning method under RA 10354. As such, and consistent with *Imbong* where the Court recognized as constitutionally permissible family planning methods which work prior to fertilization, parents/legal guardians of an intellectually-disabled child can arguably claim a constitutional right and duty to decide whether vasectomy or tubal ligation would be in the latter's best interests. Whether the decision *is* in the best interest of said child in a particular case would, of course, be a triable question of fact to be resolved after the reception of evidence on the condition of the child and the situation of the parent/ legal guardian.

**2. POLITICAL LAW; SOCIAL JUSTICE; HEALTH; REPUBLIC ACT NO. 11036 (MENTAL HEALTH ACT); AFTER DEFINING A MENTAL HEALTH CONDITION, THE LAW ENUMERATES THE RIGHTS OF THE PERSON WITH A HEALTH CONDITION WHOM IT CALLS THE SERVICE USER,**

**CITED.—** There is also Republic Act No. 11036 (RA 11036), otherwise known as the "Mental Health Act," which was approved only in June of last year. Under this law, the Congress, after consultation with a wide range of public mental health individuals, experts, academics, professionals, governmental and non-government associations, declared as policy that mental health conditions be treated and that persons affected by mental health conditions are able to exercise the full range of human rights. RA 11036 further states as an objective the protection of the rights and freedoms of persons with psychiatric, neurologic, and psychosocial health needs. After defining a mental health condition x x x the law goes on to enumerate the rights of the person with a health condition, whom it calls the service user. These include: (1) the right against treatment that are cruel, inhumane, harmful or degrading and invasive procedures not backed by scientific evidence; (2) the right to give informed consent before receiving treatment, such consent is required to be in writing and recorded in the service user's record; and (3) the right to designate a person of legal age as his or her legal representative, who may act as substitute decision maker. Where the service user fails to appoint, RA 11036 identifies the persons qualified to be his/her legal representative, in a prescribed order, x x x RA 11036 further requires public and private health facilities to create internal review boards to assess and decide, *motu proprio* or upon written complaint or petition, all cases, disputes and controversies involving the treatment, restraint or confinement of service users within their facilities. Mental health professionals are also given the right to advocate for the rights of a service user, where the latter's wishes are deemed to be at odds with those of his/her family or legal representative. Through RA 11036, the Congress has put in place a legal regime requiring the informed consent of the service user prior to treatment. In the same measure, it nevertheless provided for: (1) exceptions to the requirement of informed consent, in cases of emergencies, or "when there is impairment x x x of decision-making capacity on the part of a service user," subject to certain safeguards and conditions; and (2) penalties in case of violation of its provisions.

**3. ID.; BILL OF RIGHTS; DUE PROCESS OF LAW; JURISPRUDENCE WOULD SHOW THAT ASSERTION OF FUNDAMENTAL RIGHTS, WHETHER ON DUE PROCESS OR EQUAL PROTECTION GROUNDS, ARE USUALLY MADE AT**

**THE HEELS OF A POSITIVE ACT ON THE PART OF THE STATE, AN EXERCISE OF STATE POWERS RESULTING TO UNWARRANTED INTRUSIONS INTO THE PERSONAL LIFE OF INDIVIDUALS; NOT PRESENT IN CASE AT BAR.—** Finally, I must note the peculiar process by which the asserted "fundamental" right is sought to be established by Justice Leonen in this case. Jurisprudence would show that assertion of fundamental rights, whether on due process or equal protection grounds, are usually made at the heels of a positive act on the part of the State, an exercise of State powers resulting to unwarranted intrusions into the personal life of individuals. Such exercises of governmental powers are typically manifested in the form of laws, ordinances, and executive acts or issuances which are alleged to, either facially or in its operation, actively discriminate and deprive individuals of certain fundamental rights. Here, while there is an assertion of an infringement of "fundamental" liberties, there is no claim of any law, ordinance, or executive issuance of the State which has caused the infringement alleged. In fact, the specific act in issue, that is, the vasectomy conducted on Larry, was carried out by. medical practitioners, upon guardian Pedro's request/consent, all of whom are private individuals. Clearly, there is no State action as to call for the guarantee of the protection of "fundamental" liberties. As so clearly held by this Court in *People v. Marti*: x x x **The Bill of Rights governs the relationship between the individual and the state. Its concern is not the relation between individuals, between a private individual and other individuals**. x x x The Bill of Rights, which Justice Leonen cites among his bases for his proposition, affords protection against possible State oppression against its citizens, not against an unjust or repressive conduct by *a private party* towards another, as explained by Justice Dante Tinga in his Separate Opinion in *Agabon v. National Labor Relations Commission*. Justice Leonen also seems to take the view that existing laws, as they are written, do not suitably protect the reproductive interests of the intellectually-disabled, hence, the proposed interpretation. The Court, however, has no power to dictate unto the Congress the object or subject of bills that the latter should enact into law. The judicial power to review the constitutionality of laws does not include the power to prescribe what laws to enact. In any case, the alleged "gap" in the law with respect to decision-making by parents and legal guardians on matters of

reproductive rights of the intellectually-disabled can be interpreted to mean that Congress did not intend to criminalize, but only regulate, said act.

**CAGUIOA*, J., separate opinion:***

**CRIMINAL LAW; REPUBLIC ACT NO. 7610 (THE SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION, AND DISCRIMINATION ACT); TO SUSTAIN A CONVICTION UNDER SECTION 10 (A) OF RA 7610, PROOF OF ACCUSED'S INTENT TO DEBASE, DEGRADE OR DEMEAN THE INTRINSIC WORTH AND DIGNITY OF THE CHILD AS A HUMAN BEING SHOULD BE ESTABLISHED BEYOND REASONABLE DOUBT; NOT PRESENT IN CASE AT BAR.—** To sustain a conviction under Section 10(a) of RA 7610, proof of the accused's **intent to debase, degrade or demean** the intrinsic worth and dignity of the child as a human being should be established beyond reasonable doubt. In this regard, the records show that while general allegations anent the purported degrading and demeaning effects of the vasectomy performed on Larry had been repeatedly made by Verzosa during the course of the proceedings, not a single shred of evidence was offered to show that respondents were impelled by any ill motive in facilitating the questioned procedure. To my mind, no specific intent to debase, degrade or demean Larry's intrinsic worth as a human being had been convincingly shown, thereby negating respondents' criminal liability under Section 10(a) of RA 7610. **Quite the contrary, assessed in light of their intent as Larry's parents, the act of respondents cannot, by any stretch of the imagination, be characterized as debasing, degrading or demeaning.** Indeed, my own appreciation of that intent is that it was borne out of care and love for Larry, and by extension, for any offspring Larry may bear, x x x In all these years, Larry could not prepare his own meals, do his errands, or even bathe himself without supervision from his parents or his older siblings. Yet, despite this, Larry confessed to having been in a relationship at least once and that he had learned to drink and smoke. Taking the circumstances in their totality, it is crystal clear to me that Pedro and Michelina were driven by no other motive than that of love and compassion for Larry. If Larry were to reproduce, by deliberate choice or otherwise, the task

of raising a child would be too difficult a task to undertake, given Larry's proven inability to take care of his own affairs. Inevitably, the responsibility to take care of the child would redound to the Spouses, who, as previously mentioned, are already encountering difficulty taking care of Larry alone. Thus, by no stretch of the imagination can it be said that there is any evidence of malevolent intent to debase or degrade Larry's intrinsic worth as a human being. **To declare otherwise, would be, to my mind, cruel and degrading to the adoptive parents who, by all indications, only sought the best for Larry.**

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

**1. CIVIL LAW; FAMILY CODE; PARENTAL AUTHORITY; ADOPTION OR GUARDIANSHIP TRANSFERS THE FULL PANOPLY OF PARENTAL RIGHTS AND DUTIES TO THE ADOPTIVE PARENT OR GUARDIAN, SUBJECT ONLY TO EXCEPTIONS AS PROVIDED FOR BY LAW, THUS, ONCE A LICENSED CHILD-CARING INSTITUTION HAS TRANSFERRED THE CUSTODY OF A CHILD TO A JUDICIALLY CONSTITUTED GUARDIAN, THE RIGHT OF THE INSTITUTION'S REPRESENTATIVE TO SUE ON BEHALF OF THE CHILD CEASES, EXCEPT AS PROVIDED FOR BY LAW; CASE AT BAR.—** The plenary and natural right of parental authority is vested primarily in the parent or guardian, subject only to substitution *in case of default of the parent or guardian* or to the creation of *special* parental authority under certain circumstances. Parental authority is therefore vested first and foremost in the parent or guardian, and is only lost, transferred or supplemented in accordance with law. Article 189(2) of the Family Code and Rule 96, Section 1 of the Rules of Court provides: Article 189. Adoption shall have the following effects: x x x The law is clear: adoption or guardianship transfers the full panoply of parental rights and duties to the adoptive parent or guardian, subject only to specific exceptions as provided for by law. Thus, once a licensed child-caring institution has transferred the custody of a child to a judicially constituted guardian, the right of the institution's representative to sue on behalf of the child ceases, except as provided for by law. In the case at bar, it has been established that the spouses Pedro and Lourdes Aguirre have been granted parental authority over Larry by virtue of the June 19, 1986 decision of the RTC

of Balanga, Bataan. The judicial declaration of the spouses Aguirre's guardianship over Larry therefore had the effect of divesting Sr. Versoza and the Heart of Mary Villa of parental authority over Larry. Therefore, Sr. Versoza's standing to file a complaint. for child abuse on Larry's behalf can only be based on the provision on standing under R.A. No. 7610 and not on the parental authority provisions of the Family Code. I therefore take exception to the assertion in the Resolution that "the argument that all ties have been severed between Larry and the child-caring agency to which [Sr. Versoza] belonged on account of the transfer of parental authority does not hold water", for it confuses the parental right to represent a child with standing to file a complaint under R.A. No. 7610. R.A. No. 7610's provision on standing was created precisely to address circumstances where child abuse is committed under the guise of parental authority. This grant of standing to sue on behalf of abused children is purely statutory in nature and is distinct and separate from the parents' or guardians' right to represent their children.

**2. ID.; ID.; ID.; SCOPE AND LIMITATIONS; EXPLAINED; IN THE ABSENCE OF ALLEGATIONS OR PROOF THAT THE PARENTS ACTED IN BAD FAITH OR AGAINST THE BEST INTERESTS OF THEIR CHILD, THEIR RIGHT AND DUTY TO DECIDE ON THEIR CHILD'S BEHALF MUST PREVAIL; CASE AT BAR.—** Under contemporary law, parental authority remains a plenary authority whose scope is almost all-encompassing, subject only to the limitations expressly provided for by statute and by the best interests standard. Parents and guardians are vested with this plenary power in view of their legal responsibility to support, educate, direct, and protect their children or wards. The expansive scope of this authority is illustrated by the provisions of the Family Code, x x x I submit that intellectually disabled persons, who are, for all intents and purposes, embraced under the definition of a child, are covered by the same concept of parental authority. Thus, under the aforecited provision, included in these "other duties as are imposed by law" is the duty and authority of parents or guardians to decide for their intellectually disabled children or wards on matters regarding the use of health services. Section 10 of the Mental Health Law lays down concrete guidelines regarding the consent of "persons with lived experience of any mental health condition including persons

> who require, or are undergoing psychiatric, neurologic or psychosocial care" to medical treatment, x x x In so recognizing, I understand nonetheless that despite the primacy and plenary scope of parental authority, it remains subject to the power of the state as *parens patriae*, but *only* where the exercise of parental authority is made in a manner that is harmful or abusive to the child. Nevertheless, as the natural and primary caregiver and custodian of their children, with the inherent right and duty "to develop their moral, mental and physical character and well-being" and "to represent them in all matters affecting their interests," parents are entitled to a presumption of good faith in the discharge of their *patria potestas* duties. However, the best interests of the child remain the paramount consideration, which the State, as *parens patriae* must promote; and to which, parental authority must yield in case of conflict. The sterilization of an intellectually disabled person, who is considered a child in the eyes of the law, presents one such instance, where the interests of the parents in ensuring the health and well-being of their child could conflict with the interests of the state in upholding the child's right to reproductive choice and corporal self-control. Thus, in the absence of allegations or proof that the parents acted in bad faith or against the best interests of their child, their right and duty to decide on their child's behalf must prevail.

**APPEARANCES OF COUNSEL**

*Sison & Associates* for petitioner.
*The Solicitor General* for public respondent.
*Bernas Law Office* for respondents Michelina S. Aguirre-Olondriz and Pedro Aguirre.
*Mawis Law Office* for Dr. Marissa Pascual.

## R E S O L U T I O N

***PER CURIAM*:**

A petitioner's demise extinguishes his or her legal capacity, which would warrant the dismissal of any of his or her pleadings pending in court. Moreover, when one acts as a private complainant to a criminal action, his or her role is confined to

being a mere witness whose interest is limited only to the civil liability. The criminal aspect can only be undertaken by the State through the Office of the Solicitor General or any other person specifically authorized by law. Without any action on their part, the criminal action cannot prosper.

This case involves a man with cognitive disability[1] who, at 24 years old, was made by his legal guardians to undergo bilateral vasectomy without his consent. Aware of the special circumstances of this case, this Court is called upon to draw the line between a valid exercise of parental authority over a person with disability, and the commission of child abuse as contemplated and penalized by Republic Act No. 7610, or the Special Protection of Children Against Abuse, Exploitation, and Discrimination Act. This case also seeks to establish whether the cause of action and attribution of criminal liability survive the death of petitioner Sister Pilar Versoza (Sister Versoza), pending resolution of her Petition.

This Court resolves the Petition for Review on *Certiorari*[2] filed by Sister Versoza, assailing the Decision[3] and Resolution[4]

---

[1] While a legitimate medical term, "mental retardate" is no longer preferred due to its derogatory implications. Cognitive disability or intellectual disability was explained in *People v. Quintos*, 746 Phil. 809 (2014) [Per *J*. Leonen, Second Division]: "[a]n intellectually disabled person is not necessarily deprived of reason or demented. This court had even ruled that they may be credible witnesses. However, his or her maturity is not there despite the physical age. He or she is deficient in general mental abilities and has an impaired conceptual, social, and practical functioning relative to his or her age, gender, and peers. Because of such impairment, he or she does not meet the "socio-cultural standards of personal independence and social responsibility." (Citations omitted)

[2] *Rollo*, pp. 9-23. Filed under Rule 45 of the Rules of Court.

[3] *Id*. at 24-39. The Decision dated May 16, 2008 in CA-G.R. CR. No. 30082 was penned by Associate Justice Juan Q. Enriquez, Jr., and concurred in by Associate Justices Isaias P. Dicdican and Ramon R. Garcia of the Twelfth Division, Court of Appeals, Manila.

[4] *Id*. at 46-47. The Resolution dated September 17, 2008 in CA-G.R. CR. No. 30082 was penned by Associate Justice Juan Q. Enriquez, Jr., and concurred in by Associate Justices Isaias P. Dicdican and Ramon R. Garcia of the Former Twelfth Division, Court of Appeals, Manila.

of the Court of Appeals. The Court of Appeals affirmed the dismissal of the Information for violation of Republic Act No. 7610 filed against Pedro Aguirre (Pedro), Michelina S. Aguirre-Olondriz (Michelina), and Dr. Marissa Pascual (Dr. Pascual).[5] Sister Versoza further prays for the issuance of an order directing the Regional Trial Court "to proceed with the indictment and prosecution of the accused-respondents"[6] and to allow "petitioner through private prosecutor, to prosecute said case under the direction, supervision and control of the public prosecutor."[7]

Both this case and the 2008 case of *Aguirre v. Secretary of the Department of Justice*[8] originated from the same set of facts.

Laureano "Larry" Aguirre (Larry) was a ward of the Heart of Mary Villa, a child-caring agency under the Good Shepherd Sisters and licensed by the Department of Social Welfare and Development.[9] On June 19, 1980, Larry, then two (2) years and nine (9) months old, was taken in as a ward by Pedro and his wife, Lourdes (the Aguirre Spouses).[10] The Heart of Mary Villa, through Sister Mary Concepta Bellosillo, executed an Affidavit of Consent to Legal Guardianship in favor of the Aguirre Spouses.[11] Sister Versoza was the nursery supervisor at that time.[12]

---

[5] *Id*. at 14.

[6] *Id*. at 20.

[7] *Id*.

[8] 571 Phil. 138 (2008) [Per *J*. Chico-Nazario, Third Division].

[9] *Id*. at 143.

[10] *Rollo*, p. 12.

[11] *Id*. at 12 and *Aguirre v. Secretary of Justice,* 571 Phil. 138, 143 (2008) [Per *J*. Chico-Nazario, Third Division].

[12] *Id*. at 12.

On June 19, 1986, the Regional Trial Court, Branch 3 of Balanga, Bataan appointed the Aguirre Spouses to be the legal guardians of Larry and of his properties.[13]

Elaborating on Larry's condition, this Court noted in *Aguirre*:

> As Larry was growing up, the Aguirre spouses and their children noticed that his developmental milestones were remarkably delayed. His cognitive and physical growth did not appear normal in that "at age 3 to 4 years, Larry could only crawl on his tummy like a frog . . .;" he did not utter his first word until he was three years of age; did not speak in sentences until his sixth year; and only learned to stand up and walk after he turned five years old. At age six, the Aguirre spouses first enrolled Larry at the Colegio de San Agustin, Dasmariñas Village, but the child experienced significant learning difficulties there. In 1989, at age eleven, Larry was taken to specialists for neurological and psychological evaluations. The psychological evaluation done on Larry revealed the latter to be suffering from a mild mental deficiency. Consequent thereto, the Aguirre spouses transferred Larry to St. John Ma. Vianney, an educational institution for special children.
>
> In November of 2001, respondent Dr. Agatep, a urologist/surgeon, was approached concerning the intention to have Larry, then 24 years of age, vasectomized. Prior to performing the procedure on the intended patient, respondent Dr. Agatep required that Larry be evaluated by a psychiatrist in order to confirm and validate whether or not the former could validly give his consent to the medical procedure on account of his mental deficiency.
>
> In view of the required psychiatric clearance, Larry was brought to respondent Dr. Pascual, a psychiatrist, for evaluation. In a psychiatric report dated 21 January 2002, respondent Dr. Pascual made the following recommendation:
>
> > [T]he responsibility of decision making may be given to his parent or guardian.
>
> . . . . . .

---

[13] *Aguirre v. Secretary of the Department of Justice*, 571 Phil. 138, 143 (2008) [Per *J.* Chico-Nazario, Third Division].

Larry grew up with a very supportive adoptive family. He is the youngest in the family of four sisters. *Currently, his adoptive parents are already old and have medical problem and thus, they could no longer monitor and take care of him like before. His adoptive mother has Bipolar Mood Disorder and used to physically maltreat him.* A year ago, he had an episode of dizziness, vomiting and headaches after he was hit by his adoptive mother. Consult was done in Makati Medical Center and several tests were done, results of which were consistent with his developmental problem. There was no evidence of acute insults. *The family subsequently decided that he should stay with one of his sisters to avoid similar incident and the possibility that he would retaliate although he has never hurt anybody. There has been no episode of violent outburst or aggressive behavior. He would often keep to himself when sad, angry or frustrated.*

He is currently employed in the company of his sister and given assignment to do some photocopying, usually in the mornings. He enjoys playing billiards and basketball with his nephews and, he spends most of his leisure time watching TV and listening to music. *He could perform activities of daily living without assistance except that he still needs supervision in taking a bath. He cannot prepare his own meal and never allowed to go out and run errands alone. He does not have friends and it is only his adoptive family whom he has significant relationships. He claims that he once had a girlfriend when he was in high school who was more like a best friend to him. He never had sexual relations*. He has learned to smoke and drink alcohol few years ago through his cousins and the drivers. There is no history of abuse of alcohol or any prohibited substances.

. . . . . .

*Larry's mental deficiency could be associated with possible perinatal insults, which is consistent with the neuroimaging findings. Mental retardation associated with neurological problems usually has poorer prognosis. Larry is very much dependent on his family for his needs, adaptive functioning, direction and in making major life decisions. At his capacity, he may never understand the nature, the foreseeable risks and benefits, and consequences of the procedure (vasectomy) that, his family wants for his protection. Thus, the responsibility*

*of decision making may be given to his parent or guardian*.[14] (Emphasis supplied, citations omitted)

While no explanation was provided in Dr. Marissa Pascual's (Dr. Pascual) psychiatric report, medical journals have discussed perinatal insults as having the effect of altering brain development.[15]

Using this assessment as basis, and upon the instruction and written consent of Pedro, Dr. Juvido Agatep (Dr. Agatep) performed a bilateral vasectomy on Larry on January 31, 2002.[16]

Two (2) cases arose simultaneously after the vasectomy.

The first case, docketed as G.R. No. 170723, was *Aguirre*.

In *Aguirre*, Pedro's eldest daughter, Gloria Aguirre (Gloria), filed a criminal case on June 11, 2002 against her father and the doctors who cleared and conducted the procedure on Larry. She alleged that they violated Article 172 for falsification and Article 262 for mutilation, both under the Revised Penal Code, in relation to Sections 3 and 10 of Republic Act No. 7610.[17]

By way of defense, Pedro argued that the decision was a valid exercise of his parental authority as Larry's legal guardian. Moreover, assuming that Larry could make a decision regarding his vasectomy, Pedro argued that Gloria had no legal personality

---

[14] *Id*. at 143-147.

[15] *Id*. at 146-147. *See* Tiago Savignon, Everton Costa, Frank Tenorio, Alex C. Manhàes, and Penha C. Barradas, *Prenatal Hypoxic-Ischemic Insult Changes the Distribution and Number of NADPH- Diaphorase Cells in the Cerebellum* (2012), available at <https://journals.plos.org/plosone/article?*id*=10.1371/journal.pone.0035786 >(last visited on September 2, 2019). *See also* Abstract of the article by Richard Berger, Yves Gamier, and Arne Jensen, *Perinatal Brain Damage: Underlying Mechanisms and Neuroprotective Strategies*, 9 Journal of the Society for Gynecologic Investigation 319 (2002), available at <https://www.researchgate.net/publication/11022719_Perinatal_brain_damage_Underlying_mechanisms_and_neuroprotective_strategies>(last visited on September 2, 2019).

[16] *Id*. at 147.

[17] *Id*. at 154.

to file the criminal case, "for only Larry would have the right to do so."[18]

In a January 8, 2003 Resolution, the Assistant City Prosecutor recommended that Gloria's Complaint be dismissed for lack of probable cause and for insufficiency of evidence.[19]

On February 18, 2003, Gloria filed before the Department of Justice a Petition for Review.[20] However, in a February 11, 2004 Resolution, her Petition was dismissed.[21] Her subsequent Motion for reconsideration was likewise denied.[22]

Undeterred, Gloria filed before the Court of Appeals a Petition for *Certiorari*, Prohibition, and *Mandamus*, praying that the Resolutions of the Department of Justice be reversed.[23]

When the Court of Appeals dismissed the Petition for lack of merit, Gloria brought her case before this Court, which was docketed as G.R. No. 170723,[24] In its March 3, 2008 Decision, this Court later denied the Petition for lack of merit.[25]

The second case is this Petition filed by Sister Versoza.

When she learned about the procedure done on her former ward, Sister. Versoza filed a criminal case against Pedro, Dr. Pascual, Dr. Agatep, and Michelina, one (1) of the Aguirre Spouses' children with whom Larry grew up.[26] Sister Versoza, like Gloria, charged them of falsification under Article 172 and

---

[18] *Id*. at 151.

[19] *Id*. at 155.

[20] *Id*.

[21] *Id*. at 156.

[22] *Id*.

[23] *Id*. at 158.

[24] *Id*. at 156.

[25] *Id*. at 169.

[26] *Rollo*, pp. 10 and 12.

mutilation under Article 262, both under the Revised Penal Code and child abuse under Sections 3 and 10 of Republic Act No. 7610.[27]

In its January 8, 2003 Resolution, the Office of the City Prosecutor of Quezon City dismissed Sister Versoza's Complaint.[28]

Thus, she moved for reconsideration, praying that an information for violation of Republic Act No. 7610 be filed instead.[29] However, in an August 26, 2003 Resolution, the Office of the City Prosecutor also denied the Motion.[30]

On May 13, 2005, while Gloria's Rule 65 Petition in *Aguirre* was pending before the Court of Appeals, the Office of the City Prosecutor granted a Motion for Reconsideration filed by one "Gloria Pilar S. Versoza," which questioned the City Prosecutor's January 8, 2003 Resolution.[31] In granting the Motion, the Office of the City Prosecutor recommended the filing of an information for violation of Sections 3 and 10 of Republic Act No. 7610.[32]

Accordingly, an Information was filed against Pedro, Michelina, and Dr. Pascual for violation of Republic Act No. 7610. The case was subsequently raffled off to Branch 102 of the Regional Trial Court of Quezon City. Warrants of arrest were issued against the accused, who then posted their respective bail bonds.[33]

Pedro and Michelina respectively moved for the dismissal of the case and for the re-determination of probable cause. Dr. Pascual filed several motions seeking the quashal of the

---

[27] *Id*.

[28] *Id*.

[29] *Id*. at 11.

[30] *Id*.

[31] *Id*. at 26.

[32] *Id*.

[33] *Id*. at 27.

information and warrant of arrest and the disqualification of the private prosecutor. In addition, Pedro and Michelina filed a motion requesting a stipulation from the trial prosecutor if she intended to prosecute the case under Republic Act No. 7610 considering that the matter had been previously decided by the Department of Justice and was under the review of the Court of Appeals.[34]

On November 8, 2005, the Regional Trial Court issued an Order[35] dismissing the case as there was "no probable cause . . . to hold the accused for trial for violation[s] of Sections 3 and 10 of [Republic Act No.] 7610[.]"[36] In the Order, the Quezon City Regional Trial Court declared:

> As to the first issue of whether or not the case should be dismissed, the Court finds merit to grant the motion. After a careful re-evaluation and scrutiny of the records of the case, the Court is inclined to reverse its former Order dated August 26, 2005, finding the existence of probable cause to hold the accused for trial. It was only later after the Court made a determination of probable cause that the supporting documents were attached to the records of the case particularly the Resolution of the Prosecutor's Office dated August 26, 2003 dismissing the Complaint for violation of RA 7610. Further, the Court was not aware that there was already a Decision rendered by the Court of Appeals dismissing the Complaint for falsification and mutilation against the accused because the same evidence was only attached to the records during the filing of the motions of the parties. In the said Decision, bilateral vasectomy performed on Larry does not constitute mutilation, the same issue being raised in the instant case for violation of RA 7610 as bilateral vasectomy has never been a crime and cannot be considered a form of child abuse. It does not find print in the said law. At most, it is a widely accepted and recognized medical procedure.
>
> . . . . . .

---

[34] *Id*. at 48.

[35] *Id*. at 48-55. The Order was penned by Judge Ma. Lourdes A. Giron of Branch 102, Regional Trial Court, Quezon City.

[36] *Id*. at 55.

After going through re-evaluation of the records and evidence of the case, the Court finds merit to re-determine the existence of probable cause.

. . . . . .

In the case at bar, there was already a pronouncement made by the Court of Appeals, which was learned by this Court only after it made a prior determination of probable cause, that there was neither a case of falsification nor mutilation. This stands to reason that the Court was misled by the circumstances surrounding the case for the determination of probable cause. Had it known that there was already contradictory resolutions issued by the Public Prosecutors and the Decision rendered by the [C]ourt of Appeals touching the core issue of mutilation, this Court would have dismissed the case. However, this Court belatedly learned such facts. Consequently, there is a need to re-determine the existence of probable cause.

. . . . . .

In the case at bar, the main core for the filing of the instant Information for violation of RA 7610 sprung from the bilateral vasectomy performed on Larry Aguirre. There was already a judicial determination made by the Court of Appeals that no probable cause exists with respect to bilateral vasectomy to be considered as mutilation. Consequently, there would also be no violation of RA 7610. But then, it appears in the instant case that the prosecutors have similarly misappropriated, if not abused, their discretion by filing an Information for violation of RA 7610. There is no reason to hold the accused for trial and further expose them to an open and public accusation of the crime when no probable cause exists.

A prosecuting officer is in a peculiar and very definite sense the servant of law, the two fold aim of which is that the guilt shall not escape or innocence suffers. . . . But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much as (*sic*) his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just once (*sic*) (*Suarez vs. Judge Platon* 69 Phil. 556).

It is therefore imperative upon the fiscal or the judge as the case maybe, (*sic*) to relieve the accused from the pain of going thru a trial once it is ascertained that the evidence is *insufficient to sustain a prima facie case or that no probable cause exists* to form a sufficient belief as to the guilt of the accused.

In sum the Court finds that no probable cause exists to hold the accused for trial.[37] (Emphasis in the original)

As to Sister Versoza's standing to sue, the Regional Trial Court held:

Under the law, once an adoption has been decreed, the legal ties between the biological parents and the children severed (*sic*). By analogy, since the subject child, Larry Aguirre was under an authorized adoption agency, the relationship between the said institution and the said child was severed and parental authority is now vested with the adopting parents. This is now safe to assume that Sister Pilar is divested of personality to file a complaint against the accused for violation of Sections 3 and 10 of RA 7610. If at all, it is only the State who has the right to prosecute for violation of the said law.[38]

Sister Versoza moved for reconsideration, but her Motion was denied in the Regional Trial Court's January 31, 2006 Order.[39] The trial court again emphasized her lack of legal capacity to sue:

As to the second issue of the legal capacity of herein movant to participate in the proceedings, the Court has likewise ruled in the questioned order to the effect that inasmuch as herein movant merely represents the institution which took care of the victim Larry Aguirre prior to his adoption and facilitated the same until he was eventually legally adopted, she has, technically, no more legal capacity to appear in his behalf[.][40]

Thus, Sister Versoza appealed the Regional Trial Court Orders.[41]

---

[37] *Id*. at 49-53.

[38] *Id*. at 54-55.

[39] *Id*. at 27.

[40] *Id*. at 37.

[41] *Id*. at 24.

In its May 16, 2009 Decision,[42] the Court of Appeals denied her appeal and upheld the dismissal of the Information against Pedro, Michelina, and Dr. Pascual. It stated:

> [The] bilateral vasectomy performed on Larry Aguirre cannot be considered a form of child abuse. In fact, the bilateral vasectomy is not a surgical procedure that totally divests him of the essential organ of reproduction for the simple reason it does not entail the taking away of a part or portion of the male reproductive organ. Vasectomy as an elective surgical sterilization prevents conception from taking place but the male reproductive organs remain intact as the body continues to produce sperm, the intentional act of vasectomy procedure prevents pregnancy which is not the same thing as saying that the reproductive capacity is permanently impaired . . . While the bilateral vasectomy does not totally preclude him from siring an offspring and/or raising a family, the operation is reversible and therefore, has not caused permanent damage on his person; neither does it demeans, (*sic*) debases (*sic*) and degrades (*sic*) the intrinsic worth and dignity of Larry Aguirre as a person. Thus, the surgical procedure cannot be considered prejudicial to the child's development.
>
> Neither is the bilateral vasectomy considered an act of cruelty. *Black's Law Dictionary* defines "cruelty" as the intentional and malicious infliction of physical or mental suffering upon living creatures, particularly human beings, or, as applied to the latter, the wanton, malicious and unnecessary infliction of pain upon the body, or the feelings and emotions. The test is whether the accused deliberately and sadistically augmented the victim's suffering by causing another wrong not necessary for its commission or inhumanly increased the victim's suffering or outraged (*sic*). . .
>
> It is settled that once an information has been filed in Court, any disposition of the case such as its dismissal or its continuation rests on the sound discretion of the court. The Court remains the best and sole judge on what to do with the case before it notwithstanding the power of the prosecutor to retain the direction and control of the prosecution of criminal cases. The determination of the case is within its exclusive jurisdiction and competence[.][43] (Citations omitted)

---

[42] *Id*. at 24-39.

[43] *Id*. at 33-34.

Affirming the trial court's finding that Sister Versoza had "no personality to prosecute the [criminal] complaint[,]"[44] the Court of Appeals declared that her being part of Heart of Mary Villa did not authorize her to appear as a private complainant. It found that she was not Larry's parent, adopter, or legal guardian, and was at most only a witness who "was not actually or directly injured by the punishable act or omission complained of."[45] Citing Article 189 of the Family Code, the Court of Appeals also noted that the ties between Larry and Heart of Mary Villa were severed after adoption, when the parental authority or legal guardianship had been transferred to Larry's adopters.[46]

Sister Versoza moved for reconsideration, but her Motion was denied in the Court of Appeals' September 17, 2008 Resolution.[47] Hence, she filed this Petition.[48]

Petitioner asserts that as the nursery supervisor of the child-caring agency where Larry was a former ward, she had the duty to continuously be concerned about his welfare. She argues that, as an officer of a licensed child-caring agency, she qualifies under Section 27 of Republic Act No. 7610, which enumerates those who may file a complaint for unlawful acts committed against children.[49]

Petitioner also argues that this Court's ruling in *Aguirre*—that bilateral vasectomy was not mutilation under Article 262 of the Revised Penal Code—does not apply to this case. She posits that mutilation and child abuse are two (2) distinct criminal offenses. Although bilateral vasectomy does not constitute mutilation, it is still punishable as child abuse under Republic Act No. 7610. She asserts that vasectomy is an act of cruelty,

---

[44] *Id*. at 38.

[45] *Id*.

[46] *Id*.

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

[48] *Id*. at 9-23.

[49] *Id*. at 19-20.

especially if it is performed on a child who cannot by himself give consent, such as Larry.[50]

Though chronologically, Larry was a 24-year-old man when the procedure was conducted, petitioner claims that he was "comparable to a 7-8 year old[.]"[51] Legally, he should have been considered a child, and the forced commission of the bilateral vasectomy robbed him of his worth and dignity.[52] Petitioner says that tampering with Larry's anatomy, without his consent, "debases, degrades[,] or demeans [his] intrinsic worth and dignity . . . as a human being."[53] It is prejudicial to Larry's overall development.[54]

Respondents Michelina and Pedro counter that according merit to petitioner's line of reasoning would result in a situation where "any person from any licensed child caring agency can file a case for child abuse without need of showing one's private interest or personal knowledge on the circumstances of the alleged abuse[,] thus flooding the Court's dockets with baseless complaints."[55] They further assert that petitioner's failure to file the Petition with the conformity of the Office of the Solicitor General renders her case procedurally defective.[56]

Respondents Michelina and Pedro also argue that vasectomy is a legal, safe, and widely-accepted procedure with "little or no known side effects"[57] and has even been promoted by the government as a safe and effective family planning method.[58]

---

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

[51] *Id*. at 15.

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

[53] *Id*. at 16.

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

[55] *Id*. at 145.

[56] *Id*.

[57] *Id*. at 139.

[58] *Id*. at 139-140.

Hence, they say that it can neither be considered a form of cruelty or an act that debases, degrades, or demeans the intrinsic worth and dignity of a person.[59]

Respondent Dr. Pascual also argues that Republic Act No. 7610 does not expressly categorize vasectomy as an act of child abuse.[60] She then points out that the issue being raised is one of morality, which is not cognizable by courts.[61]

The Office of the Solicitor General, on behalf of respondent People of the Philippines, argues that petitioner neither has legal interest nor the authority to file the complaint.[62] First, petitioner is not the offended party.[63] Second, she is not covered under Rule 110, Section 3 of the Revised Rules of Criminal Procedure as she was not a peace officer or public officer charged with enforcement of the law violated.[64]

The Office of the Solicitor General further argues that the right and duty to assume care and custody of Larry belong to the Aguirre Spouses under Rule 96, Section 1 of the Rules of Court.[65] It posits that the Aguirre Spouses' appointment "as

---

[59] *Id*. at 139-143.

[60] *Id*. at 109.

[61] *Id*. at 113.

[62] *Id*. at 188.

[63] *Id*.

[64] *Id*. RULES OF COURT, Rule 110, Sec. 3 provides:

SECTION 3. *Complaint defined*. — A complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated.

[65] *Id*. at 188-190. RULES OF COURT, Rule 96, Sec. 1 provides:

SECTION 1, *To what guardianship shall extend*.— A guardian appointed shall have the care and custody of the person of his ward, and the management of his estate, or the management of the estate only, as the case may be. The guardian of the estate of a non-resident shall have the management of all' the estate of the ward within the Philippines, and no court other than

Larry's legal guardians severed the ties between the child-caring agency and Larry."[66] In supporting this claim, it quoted a portion of the Decision of the Court of Appeals, which read:

> Under the law, once an adoption has been decreed, the legal ties between the biological parents and the child severed (*sic*). By analogy, since the subject child, Larry Aguirre was under an authorized adoption agency, the relationship between the said institution and the said child was severed and parental authority is now vested with the adopting parents. This is now (*sic*) safe to assume that Sister Pilar is divested of personality to file a complaint against the accused for violation of Sections 3 and 10 of RA 7610. If at all, it is only the State who has the right to prosecute for violation of the said law[.][67]

On November 6, 2012, respondents Michelina and Pedro moved to dismiss the Petition due to petitioner's untimely demise on September 9, 2012.[68] They posit that petitioner's death extinguished her alleged cause of action against them, if any. As such, they claim that whether she had legal standing has become a moot issue. They also reiterate that petitioner failed to explain why she may be allowed to appear as a private complainant, stressing that she was not Larry's guardian and had no private interest in the case.[69]

On November 20, 2012, petitioner's counsel, Atty. Jose C. Sison (Atty. Sison), filed an Opposition[70] underscoring that the principal party in this case is respondent People of the Philippines. He argued that the main this case is respondent People of the Philippines. He argued that the main issue to be resolved is

---

that in which such guardian was appointed shall have jurisdiction over the guardianship.

[66] *Id*.

[67] *Id*. at 189.

[68] *Id*. at 210-214. They cite reports from Inquirer.net and the Catholic Bishops' Conference of the Philippines.

[69] *Id*. at 211.

[70] *Id*. at 215-217.

whether the bilateral vasectomy performed on Larry constitutes child abuse under Republic Act No. 7610.[71] Consequently, petitioner's death did not render the case moot and the criminal case can still proceed "should this Court resolve the issue in the affirmative."[72]

Atty. Sison also categorized the issue as one of "transcendent importance[,]" which survives petitioner's death.[73]

This case presents the following issues for this Court's resolution:

First, whether or not the death of petitioner Sister Pilar Versoza warrants the case's dismissal;

Second, whether or not petitioner has the legal personality to institute the criminal case against respondents Michelina S. Aguirre-Olondriz, Pedro Aguirre, and Dr. Marissa Pascual; and

Finally, whether or not respondents committed a violation of Republic Act No. 7610.

The Petition is denied.

## I

This Court has consistently held that "[t]he authority to represent the State in appeals of criminal cases before the Supreme Court and the [Court of Appeals] is solely vested in the Office of the Solicitor General[,]"[74] with the private complainant's role as only that of a witness.[75] In *Chiok v. People*:[76]

---

[71] *Id*. at 215.

[72] *Id*. at 216.

[73] *Id*.

[74] *Chiok v. People*, 774 Phil. 230, 245 (2015) [Per *J*. Jardeleza, Third Division] citing *Villareal v. Aliga*, 724 Phil. 47 (2014) [Per *J*. Peralta, Third Division].

[75] *Id*.

[76] 774 Phil. 230 (2015) [Per *J*. Jardeleza, Third Division].

The OSG is the law office of the Government.

To be sure, in criminal cases, the acquittal of the accused or the dismissal of the case against him can only be appealed by the Solicitor General, acting on behalf of the State. The private complainant or the offended party may question such acquittal or dismissal only insofar as the civil liability of the accused is concerned. . . .

. . . . . .

The rationale behind this rule is that in a criminal case, the party affected by the dismissal of the criminal action is the State and not the private complainant. The interest of the private complainant or the private offended party is limited only to the civil liability. In the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution such that when a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General. The private offended party or complainant may not take such appeal, but may only do so as to the civil aspect of the case.[77] (Citations omitted)

As a private complainant to the criminal action, petitioner's role is confined to being a mere witness, her interest in the case limited to only the civil liability. Only the State, through the Office of the Solicitor General, can appeal the criminal aspect of the case. Thus, absent any action on the part of the Office of the Solicitor General, the appeal cannot prosper.

Moreover, considering that petitioner died during the pendency of this case, she no longer has the legal capacity to pursue the appeal.

For these reasons, the Petition should be denied.

**II**

The prosecution of criminal offenses begins with the filing of a complaint or an information. Ordinarily, a complaint is "subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law

---

[77] *Id*. at 245-246.

violated."[78] On the other hand, an information is subscribed by a prosecutor.[79] It is usually the offended party or a law enforcer who commences the case's prosecution. This is the traditional concept of the prosecution of criminal offenses.

However, the rule is different in cases involving private crimes and those punishable under special laws. The crimes of adultery, concubinage, seduction, abduction, acts of lasciviousness,[80] and defamation[81] cannot be prosecuted except at the instance of certain persons. Rule 110, Section 5 of the Revised Rules of Criminal Procedure enumerates crimes that require the intervention of specific individuals before criminal proceedings can be had:

SECTION 5. *Who must prosecute criminal actions. — . . .*

*The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse*. The offended party cannot institute criminal prosecution without including the guilty parties, if both are alive, nor, in any case, if the offended party has consented to the offense or pardoned the offenders.

*The offenses of seduction, abduction and acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents or guardian, nor, in any case, if the offender has been expressly pardoned by any of them. If the offended party dies or becomes incapacitated before she can file the complaint, and she has no known parents, grandparents or guardian, the State shall initiate the criminal action in her behalf.*

The offended party, even if a minor, has the right to initiate the prosecution of the offenses of seduction, abduction and acts of lasciviousness independently of her parents, grandparents, or guardian, unless she is incompetent or incapable of doing so. Where the offended party, who is a minor, fails to file the complaint, her parents, grandparents, or guardian may file the same. The right to

---

[78] RULES OF COURT, Rule 110, Sec. 3.

[79] RULES OF COURT, Rule 110, Sec. 4.

[80] REVISED PENAL CODE, Art. 344.

[81] REVISED PENAL CODE, Art. 360.

file the action granted to parents, grandparents, or guardian shall be exclusive of all other persons and shall be exercised successively in the order herein provided, except as stated in the preceding paragraph.

*No criminal action for defamation which consists in the imputation of any of the offenses mentioned above shall be brought except at the instance of and upon complaint filed by the offended party.*

*The prosecution for violation of special laws shall be governed by the provisions thereof.* (Emphasis supplied)

As to offenses punished under special laws, their prosecution would be governed by the relevant provisions of the special law violated.[82]

In cases concerning violations of Republic Act No. 7610, Section 27 enumerates seven (7) classes of persons who may initiate criminal proceedings, namely:

SECTION 27. *Who May File a Complaint*. — Complaints on cases of unlawful acts committed against children as enumerated herein may be filed by the following:

(a) Offended party;

(b) Parents or guardians;

(c) Ascendant or collateral relative within the third degree of consanguinity;

(d) Officer, social worker or representative of a licensed child-caring institution;

(e) Officer or social worker of the Department of Social Welfare and Development;

(f) Barangay chairman; or

(g) At least three (3) concerned responsible citizens where the violation occurred.

---

[82] RULES OF COURT, Rule 110, Sec. 5.

The literal meaning of a statute must prevail if the text is clear. In *Globe-Mackay Cable and Radio Corporation v. National Labor Relations Commission*:[83]

> Under the principles of statutory construction, if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This plain-meaning rule or *verba legis* derived from the maxim *index animi sermo est* (speech is the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure.[84] (Citations omitted)

Here, petitioner hinged her legal standing on being a representative of a licensed child-caring institution under Section 27(d) of Republic Act No. 7610.[85] She brought this case as an officer or representative of the Heart of Mary Villa, the foster home that had custody of Larry before his guardianship was passed to the Aguirre Spouses.

Respondents Michelina and Pedro oppose this and claim that the Aguirre Spouses' appointment as Larry's legal guardians divested petitioner of the authority to file a criminal case for child abuse. They further argue that the parental authority and responsibility over Larry were transferred to the Aguirre Spouses, to the exclusion of all others, including the child-caring agency that took in Larry as a ward.[86]

---

[83] 283 Phil. 649 (1992) [Per *J*. Romero, *En Banc*].

[84] *Id*. at 660.

[85] *Rollo*, p. 20.

[86] *Id*. at 144-145 and 190.

By itself, respondents' position of an almost jealous monopoly of parental authority may seem to have basis. Guardianship, similar to adoption, is one (1) of the instances under the Family Code where parental authority may be legally transferred:

TITLE IX

*Parental Authority*

. . . . . .

ARTICLE 210. Parental authority and responsibility may not be renounced or transferred except in the cases authorized by law.

. . . . . .

ARTICLE 222. The courts may appoint a guardian of the child's property, or a guardian *ad litem* when the best interests of the child so require.

However, these provisions do not exist independently of other Family Code provisions pertaining to parental authority. In particular, Article 220 enumerates the rights and duties that parents and those exercising parental authority have to their children or wards:

ARTICLE 220. The parents and those exercising parental authority shall have with respect to their unemancipated children or wards the following rights and duties:

(1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;

(2) *To give them love and affection, advice and counsel, companionship and understanding;*

(3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;

(4) *To enhance, protect, preserve and maintain their physical and mental health at all times*;

(5) *To furnish them with good and wholesome educational materials, supervise their activities, recreation and*

*association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;*

(6) *To represent them in all matters affecting their interests;*

(7) To demand from them respect and obedience;

(8) To impose discipline on them as may be required under a the circumstances; and

(9) To perform such other duties as are imposed by law upon parents and guardians. (Emphasis supplied)

Taken together, the exercise of parental authority should be understood more as "a sum of duties"[87] to be exercised in favor of the child's best interest. The nature of parental authority was explained in *Santos, Sr. v. Court of Appeals*:[88]

The right of custody accorded to parents springs from the exercise of parental authority. *Parental authority* or *patria potestas* in Roman Law is the juridical institution whereby parents rightfully assume control and protection of their unemancipated children to the extent required by the latter's needs. *It is a mass of rights and obligations which the law grants to parents for the purpose of the children's physical preservation and development, as well as the cultivation of their intellect and the education of their heart and senses. As regards parental authority, "there is no power, but a task; no complex of rights, but a sum of duties; no sovereignty but a sacred trust for the welfare of the minor*."[89] (Emphasis supplied, citations omitted)

The authority granted to the Aguirre Spouses to raise Larry as their ward is a responsibility that went beyond the mere transfer of the child's physical custody. When they were granted guardianship, the Aguirre Spouses committed themselves to protect and uphold Larry's best interests. The State entrusted

---

[87] *Santos, Sr. v. Court of Appeals*, 312 Phil. 482, 488 (1995) [Per *J*. Romero, Third Division].

[88] 312 Phil. 482 (1995) [Per *J*. Romero, Third Division].

[89] *Id*. at 487-488

Larry's growth and development to the Aguirre Spouses, so that when the time comes, he may be an empowered citizen of the country, capable of making his own choices and fully undertaking his own responsibilities.

Granted, family affairs cannot always be subject to the State's inquiry, especially if no one comes forward to shed light on ongoing abuses, or worse still, if the abused merely sees the acts as matters of fact. Indeed, in child abuse cases, the parents or guardians may be the abusers themselves. Those entrusted with the care and protection of the child could very well be complicit in the abuse, if not its perpetrators. In these situations, allowing another person to represent the abused becomes apparent and more urgent, which is why barangay chairs, social workers, and concerned responsible citizens are enjoined to file a complaint.[90] When the abuse happens, no one else will protect them from such harm.

Thus, the argument that the transfer of parental authority has severed all ties between Larry and Heart of Mary Villa does not hold water. To tolerate this line of reasoning would be to allow the persistence of abuses against children. Under no circumstances must child abuse be allowed to hide behind a shroud of secrecy, even more so if it is committed under the guise of parental authority. The title of a parent or guardian is not a magic word to be wielded with immunity. With it comes the ultimate responsibility of raising the child or ward under the best conditions, allowing him or her to mature into an empowered individual.

## III

The protection afforded under Republic Act No. 7610 recognizes persons with mental or intellectual impairments that prevent them from fully engaging in the community. Our laws accord a high level of protection to those with cognitive disability.

---

[90] Republic Act No. 7610 (1992), Sec. 27.

Section 3(a) of Republic Act No. 7610 states:

> SECTION 3. Definition of Terms. —
>
> (a) "Children" refers to person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition[.]

The provision recognizes a distinction between a person's chronological age and mental age, such that someone with cognitive disability, regardless of his or her chronological age, would automatically be entitled to the protective mantle of the law.

A person's mental age and chronological age were differentiated in *People v. Quintos*,[91] a case involving the rape of a person with intellectual disability. This Court defined "twelve (12) years of age" under Article 266-A(l)(d) of the Revised Penal Code as either the chronological age of a child or the mental age if a person has intellectual disability:

> We are aware that the terms, "mental retardation" or "intellectual disability," had been classified under "deprived of reason." The terms, "deprived of reason" and "demented," however, should be differentiated from the term, "mentally retarded" or "intellectually disabled." An intellectually disabled person is not necessarily deprived of reason or demented. This court had even ruled that they may be credible witnesses. However, his or her maturity is not there despite the physical age. He or she is deficient in general mental abilities and has an impaired conceptual, social, and practical functioning relative to his or her age, gender, and peers. Because of such impairment, he or she does not meet the "socio-cultural standards of personal independence and social responsibility."
>
> Thus, a person with a chronological age of 7 years and a normal mental age is as capable of making decisions and giving consent as a person with a chronological age of 35 and a mental age of 7. Both are considered incapable of giving rational consent because both

---

[91] 746 Phil. 809 (2014) [Per *J*. Leonen, Second Division].

are not yet considered to have reached the level of maturity that gives them the capability to make rational decisions, especially on matters involving sexuality. Decision-making is a function of the mind. *Hence, a person's capacity to decide whether to give consent or to express resistance to an adult activity is determined not by his or her chronological age but by his or her mental age. Therefore, in determining whether a person is "twelve (12) years of age" under Article 266-A (1) (d), the interpretation should be in accordance with either the chronological age of the child if he or she is not suffering from intellectual disability, or the mental age if intellectual disability is established.*[92] (Emphasis supplied)

In light of this interpretation, and based on the distinction set forth in Section 3(a), a person who has a cognitive disability would be considered a child under Republic Act No. 7610 based on his or her mental age, not chronological age.

In this case, it is without question that, despite his chronological age, Larry is a child under the law. He has a mild mental deficiency rendering him incapable of making crucial decisions on his own, let alone fend for himself. At the time of the vasectomy, he had a mental age of an 8-year-old.

While the case before us presents a novel issue, this Court reached the consensus that the action must be denied for lack of a party, on account of petitioner's death, and for lack of an appeal from the Office of the Solicitor General. Therefore, the substantive issue of whether there was a violation of Republic Act No. 7610 will not be tackled here. However, in light of the ramifications and gravity of the issue involved, the *ponente* submits his own opinion separate from the opinion of this Court *En Banc*.

**WHEREFORE,** the Petition is **DENIED**.

**SO ORDERED.**

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

---

[92] *Id*. at 830-831.

*Bersamin, C.J.,* joins the separate opinions of *J. Peralta, J. Jardeleza* and *J. Caguioa.*

*Peralta, Leonen, Jardeleza, Caguioa,* and *Reyes, A. Jr., JJ.,* see separate opinions.

## SEPARATE OPINION

**PERALTA, *J.*:**

I agree with the Resolution that the Petition for Review on *Certiorari* should be dismissed for lack of party, considering the death of the petitioner Sister Pilar Versoza and absent an appeal from the Office of the Solicitor General. However, I also partly agree with Justice Marvic Mario Victor F. Leonen that because of the novelty and importance of the issue, which deals with special protection to children from all forms of abuse, the Court should still resolve the issue of whether bilateral vasectomy constitutes child abuse under Section 3(b),[1] Republic Act (*R.A.*) No. 7610 (*An Act Providing For Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties For Its Violation and For Other Purposes*), as well as whether the Court of Appeals committed reversible error in affirming the trial court's dismissal of the child abuse complaint against accused-respondents for lack of probable cause.

---

[1] **Section 3.** ***Definition of Terms*****. –**

x x x x x x x x x

(b) "Child abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

(1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

(2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

(3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or

(4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

On the merits, however, I join the opinion of Justice Alfredo Benjamin S. Caguioa inasmuch as the *ponencia* held that the vasectomy performed on Laureano "Larry" Aguirre constitutes a form of cruelty which qualifies as an act of child abuse under Section 10(a) of R.A. No. 7610. I find that the Court of Appeals committed no reversible error in affirming the Order of the trial court dismissing the child abuse case for lack of probable cause. Based on the evidence on record, the vasectomy performed on Larry does not constitute child abuse or cruelty to a child as contemplated under Section 10(a)[2] of R.A. No. 7610.

With the untimely demise of Versoza, I agree with the *ponencia* that such supervening event warrants the dismissal of the case. At any rate, for the guidance of the Bench and the Bar, the novel issue of whether the bilateral vasectomy conducted on Larry constitutes child abuse under R.A. No. 7610 should be resolved. I also have to agree that the issue of whether the bilateral vasectomy performed on Larry constitutes child abuse under R.A. No. 7610 is one of transcendental importance to others similarly situated due to mental deficiency, inasmuch as the term "child" not only refers to "a person below eighteen (18) years of age, but also to one over said age who, upon evaluation of a qualified physician, psychologist or psychiatrist, is found to be incapable of taking care of himself fully because of a physical or mental disability or condition or of protecting himself [/or herself] from abuse."[3]

---

[2] **Section 10.** ***Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.*** **–**

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period.

[3] Section 2(b) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases.

Besides, even if petitioner Versoza had already passed away during the pendency of the instant petition, Section 2, Article XI of R.A. No. 7610 mandates that the State shall intervene on behalf of the child when acts of abuse, exploitation and discrimination against the child are committed by the parent, guardian, [as in the case of respondent Pedro Aguirre] teacher or person having care and custody of the same. Section 2, Article XI explicitly states that the best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities and legislative bodies. It is in line with this provision that the Court may, in the interest of justice, resolve the issue of whether the bilateral vasectomy conducted on Larry constitutes child abuse under R.A. 7610. After all, it is not Larry who died, but Versoza, his former guardian who was then a social worker or representative of a licensed child-caring institution when she filed the complaint on behalf of Larry. It is safe to say that Larry is still alive today, there being no showing to the contrary, bearing the lingering effect of his bilateral vasectomy.

On the merits of the case, I join Justice Francis H. Jardeleza and Justice Caguioa in disagreeing with the *ponencia* that the bilateral vasectomy conducted on Larry is an act of child abuse.

In *P/C Supt. Pfleider v. People,*[4] it was held that "the determination of probable cause is not lodged with this Court. Its duty, in an appropriate case, is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction." This is consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final. There are, however, exceptions to this rule, some of which are enumerated in *Brocka v. Enrile.*[5] None of such exceptions obtain in this case.

---

[4] 811 Phil. 151, 159 (2017).

[5] 270 Phil. 271, 276-277 (1990).

Moreover, this Court is not a trier of facts, and the determination of probable cause is and will always entail a review of the facts of the case.

In finding that no probable cause exists to hold the accused for trial, the RTC ruled as follows:

In the case at bar, there was already a pronouncement made by the Court of Appeals, which was learned by this Court only after it made a prior determination of probable cause, that there was neither a case of falsification or mutilation. This stands to reason that the Court was misled by the circumstances surrounding the case or the determination of probable cause. Had it known that there was already contradictory resolutions issued by the Public Prosecutors and the Decision rendered by the Court of Appeals touching the core issue of mutilation, this Court would have dismissed the case. However,

---

a. To afford adequate protection to the constitutional rights of the accused (*Hernandez v. Albano, et al.,* 125 Phil. 513 [1967].

b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions (*Dimayuga, et al. v. Fernandez*, 43 Phil. 304 [1922]; *Hernandez v. Albano*, *supra*; *Fortun v. Labang, et al.*, 192 Phil. 125 [1981];

c. When there is a pre-judicial question which is *sub judice* (*De Leon v. Mabanag*, 70 Phil. 202 [1940]);

d. When the acts of the officer are without or in excess of authority (*Planas v. Gil*, 67 Phil. 62 [1938]);

e. Where the prosecution is under an invalid law, ordinance or regulation (*Young v. Rafferty*, 33 Phil. 556 [1916]; *Yu Cong Eng v. Trinidad*, 47 Phil. 385, 389 [1925]);

f. When double jeopardy is clearly apparent (*Sangalang v. People and Avendia*, 109 Phil. 1140 [1960]);

g. Where the court has no jurisdiction over the offense (*Lopez v. City Judge*, 124 Phil. 1211 [996]).

h. Where it is a case of persecution rather than prosecution (*Rustia v. Ocampo*, CA-G.R. No. 4760, March 25, 1960);

i. Where the charges are manifestly false and motivated by the lust for vengeance (*Recto v. Castelo*, 18 L.J., [1953], cited in *Ranoa v. Alvendia*, CA-G.R. No. 30720-R, October 8, 1962; *Cf. Guingona, Jr., et al. v. City Fiscal of Manila, et al.,* 213 Phil. 516 [1984]); and. When there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied (*Salonga v. Hon. Pano, etc., et al.,* 219 Phil. 402 (1985).

this Court belatedly learned of such facts. Consequently, there is a need to re-determine the existence of probable cause.

x x x the main core for the filing of the instant information for violation of RA 7610 sprung from the bilateral vasectomy performed on Larry Aguirre. There was already a judicial determination made by the Court of Appeals that no probable cause exists with respect to the bilateral vasectomy to be considered as mutilation. Consequently, there would be no violation of RA 7610. But then it appears that in the instant case that the prosecutors have similarly misappropriated, if not abused, their discretion in filing an Information for violation of RA 7610. There is no reason to hold the accused for trial and further expose them to an open and public accusation of the crime when no probable cause exists.

In upholding the dismissal of the complaint for child abuse, the CA aptly held, thus:

Bilateral vasectomy performed on Larry Aguirre cannot be considered a form of child abuse. In fact, the bilateral vasectomy is not a surgical procedure which totally divests him of the essential organ of reproduction for the simple reason that it does not entail the taking away of a part of portion of the male reproductive organ. Vasectomy as an effective surgical sterilization prevents conception from taking place but the male reproductive organs remain intact as the body continues to produce sperm, the intentional act of vasectomy procedure prevents pregnancy which is not the same thing as saying that the reproductive incapacity is permanently impaired. While the bilateral vasectomy does not totally preclude him from siring an offspring and/or raising a family, the operation is reversible and therefore has not caused permanent damage on his person, neither does it demean, debase and degrade the intrinsic worth and dignity of Larry Aguirre as a person. Thus, the surgical procedure cannot be considered prejudicial to the child's development.

On the issue of whether the bilateral vasectomy performed on Larry constitutes child abuse as contemplated in R.A. No. 7610, I quote with approval the opinion of Justice Caguioa, thus:

To sustain a conviction under Section 10(a) of RA 7610, proof of the accused's intent to debase, degrade or demean the intrinsic worth

and dignity of the child as a human being should be established beyond reasonable doubt.

In this regard, the records show that while general allegations anent the purported degrading and demeaning effects of the vasectomy performed on Larry had been repeatedly made by Versoza during the course of the proceedings, not a single shred of evidence was offered to show that the respondents were impelled by any ill-motive in facilitating the questioned procedure. To my mind, no specific intent to debase, degrade or demean Larry's intrinsic worth as a human being had been convincingly shown, thereby negating respondents' criminal liability under Section 10(a) of RA 7610.

Quite the contrary, assessed in light of their intent as Larry's parents, the act of respondents cannot, by any stretch of imagination, be characterized as debasing, degrading or demeaning. Indeed, my own appreciation of that intent is that it was borne out of care and love for Larry, and by extension, for any offspring Larry may bear x x x.

Probable cause is defined as the existence of facts and circumstances that engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty of that crime and should be held for trial. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. A finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.

Based on the records, the specific intent to debase, degrade or demean the intrinsic worth and dignity of a child as a human being that was so essential in the crime of child abuse,[6] was absent on the part of accused-respondents when they had Larry undertake bilateral vasectomy. Hence, the Court of Appeals committed no reversible error in affirming the Order of the RTC, which dismissed the child abuse case against respondents for lack of probable cause. Be that as it may, the petition should

---

[6] *Bongalon v. People,* 707 Phil. 11, 21 (2013).

be dismissed for lack of party, in light of the death of petitioner Sister Versoza and the absence of an appeal from the Office of the Solicitor General.

## SEPARATE OPINION

> *"Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible."*[1]
>
> United Nations Declaration on the Rights of Disabled Persons, 1975[2]

---

[1] United Nations Declaration on the Rights of Disabled Persons, 1975. This Declaration called for a national and international framework for the protection of the rights of persons with disabilities. The result was the United Nations Convention on the Rights of Persons with Disabilities, to which the Philippines became a state party on September 25, 2007, and which it ratified on April 15, 2008.

[2] Though the Declaration used "Disabled Persons," the United Nations has since adopted a People First Language, using "Persons with Disabilities." On its website <https://www.un.org/development/desa/disabilities/about-us/frequently-asked-questions-faqs.html#7>, the United Nations noted that disability is an evolving concept, along with its language:

> "The language used to refer to persons with disabilities has played a significant role in the persistence of negative stereotypes. Clearly, terms such as "crippled" or "mentally retarded" are derogative. Other terms such as "wheelchair-bound" or "disabled persons" emphasize the disability before the person.
>
> "The drafters of this Convention were clear that disability should be seen as the result of the interaction between a person and his or her environment. Disability is not something that resides in the individual as the result of some impairment. This convention recognizes that disability is an evolving concept and that legislation may adapt to reflect positive changes within society."

**LEONEN, *J.*:**

While there were doctrinal points that this Court unanimously agreed upon, I feel that we could have gone further. There are points that should have been discussed.

Parents and legal guardians have a duty to enable their children or their wards. Legal guardians commit to take care of their wards as if they were their own. They are to love and to sacrifice always in the child's best interest. They have no prerogative to deprive them of any of their faculties. Parents and legal guardians have no right to decide on the reproductive rights of their children or wards.

Society has the general duty to protect its children. The Constitution declares the State to be the ultimate defender of a child's right to a full, decent, and dignified life.[3] This role is of even greater importance in this case. Apart from being a child, Laureano "Larry" Aguirre (Larry) has a cognitive disability that rendered him incapable of fully comprehending the repercussions of a vasectomy. At the time of the procedure, he was chronologically a 24-year-old man with a mental age of an 8-year-old. It would have been impossible for him to consent to the procedure. Undergoing bilateral vasectomy requires personal reflection as it involves one's reproductive health.

This Court was confronted with a novel issue of whether the bilateral vasectomy conducted on Larry constitutes child abuse. Cases involving child abuse are public matters in which the State is necessarily involved.[4] This case is of unique importance because it deals with the rights of a child with

---

[3] CONST., Art. XV, Sec. 3(2) provides:

SECTION 3. The State shall defend:

. . . . . .

(2) The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development.

[4] Republic Act No. 7610 (1992), Sec. 2 provides:

SECTION 2. *Declaration of State Policy and Principles.* — It is hereby declared to be the policy of the State to provide special protection to

disability, who is under the People of the Philippines' special mantle of protection no less.[5]

Child abuse is often committed in the confines of a home, in secret and away from public notice. The child suffers silently, powerless against the abusive parent or guardian, and will most likely frame a world that justifies the despicable acts done to him or her. In the same vein, the child's self-esteem suffers, and he or she will grow to believe that all adults will be like their parent or guardian.

Indeed, child abuse is a crime with among the greatest propensities to remain hidden but causes the most damage.

Our traditional concept for the prosecution of crimes is that it should be initiated by a private offended party or by a law enforcer. But, definitely in this case, Larry could not have done so. Chances are, no social worker or law enforcer would have noticed the procedure done on him. The crime's novelty as a potential form of abuse conspire with the act itself having no visible consequences to ensure that the act remains hidden.

Vasectomy, in general, refers to a sterilization procedure for men[6] where a segment of the *vas deferens* is cut to obstruct the flow of spermatozoa.[7]

---

children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions, prejudicial [to] their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

[5] Republic Act No. 7610 (1992), Sec. 2.

[6] L. I. Smith-Harrison and Ryan P. Smith, *Vasectomy reversal for post-vasectomy pain syndrome* (2016), available at <http://tau.amegroups.com/article/view/14896/15147> last visited on September 2, 2019).

[7] *Aaron M. Bernia, et al., Vasectomy reversal in humans* (2012), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3521749/pdf/spmg-2-273.pdf> last visited on September 2, 2019).

Medical practitioners use various techniques in performing vasectomy.[8] The transection of the *vas deferens* can be done through a conventional vasectomy, where the *vas deferens* "usually is grasped with a towel clip or an Allis forceps."[9] A more recent method is the no-scalpel vasectomy, which uses a minimally invasive technique. Both types are done by making a midline incision or bilateral scrotal incisions using a scalpel.[10]

The most common type of vasectomy, which was conducted on Larry, is called bilateral vasectomy[11] or bilateral partial vasectomy. In this procedure, the *vas deferens* in both scrotums are cut and removed or obstructed.[12]

There is a common misconception that vasectomy is a permanent method of birth control. On the contrary, it is medically possible to restore fertility through vasectomy reversal,[13] where the cut ends of the *vas deferens* are reattached through microsurgery. The most common procedures are *vasovasostomy* and *vasoepididymostomy*.[14] Reversal may even happen accidentally as a result of other medical procedures.[15]

---

[8] *See* Ira D. Sharlip, *et al*., *Vasectomy: American Urological Association Guideline* (2012), available at <https://www.auajournals.org/doi/pdf/10.1016/j.juro.2012.09.080> (last accessed on September 2, 2019).

[9] *Id*. at 2485.

[10] *Id*.

[11] *Rollo*, p. 13.

[12] *Id*.

[13] Abhishek P Patel and Ryan P. Smith, *Vasectomy Reversal: a clinical update* (2016), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4854082/pdf/AJA-18-365.pdf> (last accessed on September 2, 2019).

[14] The American Society for Reproductive Medicine, Birmingham, Alabama in collaboration with the Society for Male Reproduction and Urology *Vasectomy reversal*, 90 FERTILITY AND STERILITY 78 (2008), available at <http://www.fertstert.org/article/S0015-0282(08)03721-7/pdf> (last visited on September 2, 2019); Jacob C. Parke, M.D., *Vasovasostomy and Vasoepididymostomy*, MEDSCAPE, December 21, 2016, available at <http://emedicine.medscape.com/article/452831-overview> (last visited on September 2, 2019).

[15] David Rosenbloom, M.D., *Reversal of Sterility Due to Vasectomy* 7 FERTILITY AND STERILITY 540 (1956), available at <http://www.

The success of vasectomy reversal, however, depends on several factors. Patient evaluation is important. Factors such as the surgical skill, the patient's medical history, and antibodies may influence its success rate.[16]

The gravity of the procedure conducted on Larry presents before this Court important questions on the extent of the right to a full and dignified life of a child with cognitive disability *vis-a-vis* parental authority as contemplated by law.

Therefore, it is necessary to determine, for the guidance of the bench, the bar, and the public, whether the bilateral vasectomy conducted on Larry is a form of child abuse. In the 17 years[17] that have passed since his unconsented vasectomy, Larry's cognition may have developed enough for him to become more aware of the procedure's ramifications.

Vital for discussion are the following: (1) whether Larry qualifies as a child under the law; (2) how abuse, neglect, and cruelty are defined in jurisprudence; and (3) whether the vasectomy made on Larry constitutes abuse, cruelty, neglect, or exploitation, or is prejudicial to his development.

## I

Child abuse, as contemplated in Republic Act No. 7610,[18] is a general concept consisting of several punishable acts. Section 3(b) of Republic Act No. 7610 provides its definition:

---

fertstert.org/article/S0015-0282(16)32525-0/pdf > (last visited on September 2, 2019).

[16] Abhishek P Patel and Ryan P. Smith, *Vasectomy Reversal: a clinical update* (2016), available at <ttps://www.ncbi.nlm.nih.gov/pmc/articles/PMC4854082/pdf/AJA-18-365.pdf> (last accessed on September 2, 2019).

[17] *Rollo*, p. 13. The vasectomy was conducted on January 31, 2002.

[18] Special Protection of Children Against Abuse, Exploitation, and Discrimination Act.

SECTION 3. *Definition of Terms*. —

. . . . . .

(b) "*Child abuse*" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

(1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

(2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

(3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or

(4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

The acts constituting child abuse are amplified in the succeeding provisions of Republic Act No. 7610. Sections 5 and 6 deal with child prostitution and other forms of sexual abuse; Sections 7 and 8 cover child trafficking; Section 9 punishes obscene publications and indecent shows that involve a child.

To provide further protection to children, Republic Act No. 7610 expands the concept of child abuse to cover other acts of abuse.[19] Section 10(a) of Republic Act No. 7610 states:

SECTION 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.

(a) Any person who shall commit any *other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603*, *as amended*, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prision mayor in its minimum period. (Emphasis supplied)

---

[19] *Araneta v. People,* 578 Phil. 876, 884 (2008) [Per *J*. Chico-Nazario, Third Division].

Section 10(a) punishes four (4) distinct acts in addition to those already covered by Article 59 of Presidential Decree No. 603, as amended, namely: (1) other acts of child abuse; (2) cruelty; (3) exploitation; and (4) being responsible for conditions prejudicial to the child's development.[20] These offenses are independent of the child abuse acts specified in Republic Act No. 7610.[21]

For the acts in Section 10(a) to be punishable, the following elements must be accounted for: (1) the victim must be a child under the law; (2) the act committed is either abusive, cruel, or exploitative of the child, or is prejudicial to the child's development; and (3) the accused committed or is responsible for the act.[22]

Recognizing an individual with cognitive disability as a child is nothing new in this jurisdiction. In *People v. Spouses Ybañez*,[23] the accused were convicted of qualified trafficking of persons. Among the three (3) victims was a girl who was more than 18 years old but was found to be "functioning within a mildly retarded level[.]"[24] She was deemed a child under Republic Act No. 9208:

> Trafficking in Persons refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms

---

[20] *Id*. at 884-886.

[21] *People v. Rayon, Sr.,* 702 Phil. 672, 682 (2013) [Per *J*. Brion, Second Division].

[22] Republic Act No. 7610 (1992), Sec. 10(a).

[23] 793 Phil. 877 (2016) [Per *J*. Peralta, Third Division].

[24] *Id*. at 884.

of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs. *When the trafficked person is a child, a person below 18 years of age or one who is over 18 but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition, the offense becomes qualified. As supported by their birth certificates, Bonete was merely 15 years old and Antonio was 16 when they were hired in 2006. Although Turado was more than 18 years old when she started at Kiray, she was found to be functioning within a mildly retarded level, and therefore, incapable of protecting herself from abuse and exploitation.*[25] (Emphasis supplied, citations omitted)

Section 3(a) of Republic Act No. 7610 defines a child as a "person below eighteen (18) years of age *or* those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition[.]" Recognizing the concept of mental age, the law deems that a person with cognitive disability is a child regardless of his or her chronological age. He or she would still be under the protection of the law.

In *People v. Quintos*,[26] where a person with intellectual disability was raped, this Court defined "twelve (12) years of age" under Article 266-A(1)(d) of the Revised Penal Code as either the chronological age of a child or the mental age if a person has intellectual disability. We held:

> We are aware that the terms, "mental retardation" or "intellectual disability," had been classified under "deprived of reason." The terms, "deprived of reason" and "demented", however, should be differentiated from the term, "mentally retarded" or "intellectually disabled." An intellectually disabled person is not necessarily deprived of reason or demented. This court had even ruled that they may be credible witnesses. However, his or her maturity is not there despite the physical age. He or she is deficient in general mental abilities and has an impaired conceptual, social, and practical

---

[25] *Id*. at 883-884.

[26] 746 Phil. 809 (2014) [Per *J*. Leonen, Second Division].

functioning relative to his or her age, gender, and peers. Because of such impairment, he or she does not meet the "socio-cultural standards of personal independence and social responsibility."

Thus, a person with a chronological age of 7 years and a normal mental age is as capable of making decisions and giving consent as a person with a chronological age of 35 and a mental age of 7. Both are considered incapable of giving rational consent because both are not yet considered to have reached the level of maturity that gives them the capability to make rational decisions, especially on matters involving sexuality. Decision-making is a function of the mind. *Hence, a person's capacity to decide whether to give consent or to express resistance to an adult activity is determined not by his or her chronological age but by his or her mental age. Therefore, in determining whether a person is "twelve (12) years of age" under Article 266-A(1)(d), the interpretation should be in accordance with either the chronological age of the child if he or she is not suffering from intellectual disability, or the mental age if intellectual disability is established.*[27] (Emphasis supplied, citations omitted)

Though Larry was chronologically 24 years old when the procedure was conducted on him, he actually had a mental age of an 8-year-old. He also has a mild mental deficiency, which rendered him unfit to decide on matters on his own. Larry is, therefore, a child under the law.

Notably, psychiatrist Marissa B. Pascual (Dr. Pascual) reported that Larry's disability "could be associated with possible perinatal insults[.]"[28] While no explanation was provided in Dr. Pascual's psychiatric report, medical journals have discussed "perinatal insults" as having the effect of altering brain development.[29]

---

[27] *Id*. at 830-831.

[28] *Aguirre v. Secretary of the Department of Justice*, 571 Phil. 138, 147 (2008) [Per *J*. Chico-Nazario, Third Division].

[29] Tiago Savignon, Everton Costa, Frank Tenorio, Alex C. Manhàes, and Penha C. Barradas, *Prenatal Hypoxic-Ischemic Insult Changes the Distribution and Number of NADPH-Diaphorase Cells in the Cerebellum* (2012), available at <https://journals.plos.org/plosone/article?*id*=10.1371/journal.pone.0035786> (last visited on September 2, 2019).

Perinatal brain injury commonly manifests with neonatal encephalopathy or brain malfunctions, including seizures.[30] It is usually brought about by "cerebral ischemia, cerebral hemorrhage, or an ascending intrauterine infection."[31] The most severe forms of perinatal brain damage lead to cerebral palsy, while a less severe damage may result in subtle changes in the child's neurodevelopment.[32] Children "who suffer from perinatal brain injury often deal with dramatic consequences of this misfortune for the rest of their lives."[33]

Through no fault of his own, Larry's cognitive development has been severely hampered. Rather than the unfounded judgment that he would be incapable of making his own choices eventually as an adult, Pedro and Lourdes Aguirre (the Aguirre Spouses) should have extended their understanding and guidance to Larry as one would to a child, for however long it takes, to prepare him for the life to which he was entitled.

The Aguirre Spouses may have the authority to substitute Larry's decision with their own, but they must make one that is always *in favor of Larry's best interests*. Their failure to do so allows the State to intervene, especially if the act is tantamount to abuse, neglect, cruelty, or one that prejudices Larry's development.

---

[30] Henrik Hagberg, A. David Edwards, and Floris Groenendaal, *Perinatal brain damage: The Term Infant*, 92 NEUROBIOLOGY OF DISEASE 102, 102 (2016), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4915441/pdf/main.pdf> (last visited on September 2, 2019).

[31] Berger, R., *et al. Perinatal brain damage: underlying mechanisms and neuroprotective strategies*, 9 J SOC GYNECOL INVESTIG. 319 (2002), available at <https://www.ncbi.nlm.nih.gov/pubmed/12445595> (last visited on September 2, 2019).

[32] Henrik Hagberg, A. David Edwards, and Floris Groenendaal, *Perinatal brain damage: The Term Infant*, 92 NEUROBIOLOGY OF DISEASE 102, 108 (2016), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4915441/pdf/main.pdf> (last visited on September 2, 2019).

[33] Berger, R., *et al. Perinatal brain damage: underlying mechanisms and neuroprotective strategies*, 9 J SOC GYNECOL INVESTIG. 319 (2002), available at <https://www.ncbi.nlm.nih.gov/pubmed/12445595> (last visited on September 2, 2019).

## II

Section 10(a) of Republic Act No. 7610 is unique in that it was designed to protect children from any and all forms of abuse. It broadened the definition and scope of child abuse to supply inadequacies in our existing laws, thus strengthening the State's policy on the protection of "the most vulnerable members of the population, the Filipino children[.]"[34]

*Araneta v. People*[35] laid the rule that Section 10(a) punishes four (4) separate and distinct acts, thus:

> Article VI of the statute enumerates the "other acts of abuse." Paragraph (a) of Section 10 thereof states:
>
> Article V
> OTHER ACTS OF ABUSE
>
> SEC. 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. —
>
> (a) Any person who shall commit **any other acts of abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development** including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period. . . .
>
> *As gleaned from the foregoing, the provision punishes not only those enumerated under Article 59 of Presidential Decree No. 603, but also four distinct acts, i.e., (a) child abuse, (b) child cruelty, (c) child exploitation and (d) being responsible for conditions prejudicial to the child's development. The Rules and Regulations of the questioned statute distinctly and separately defined child abuse, cruelty and exploitation just to show that these three acts are different from one another and from the act prejudicial to the child's development. Contrary to petitioner's assertion, an accused can be prosecuted and be convicted under Section 10 (a), Article*

---

[34] *Araneta v. People*, 578 Phil. 876, 883-884 (2008) [Per *J.* Chico-Nazario, Third Division].

[35] 578 Phil. 876 (2008) [Per *J.* Chico-Nazario, Third Division].

*VI of Republic Act No. 7610 if he commits any of the four acts therein. The prosecution need not prove that the acts of child abuse, child cruelty and child exploitation have resulted in the prejudice of the child because an act prejudicial to the development of the child is different from the former acts.*

Moreover, it is a rule in statutory construction that the word "or" is a disjunctive term signifying dissociation and independence of one thing from other things enumerated. It should, as a rule, be construed in the sense which it ordinarily implies. *Hence, the use of "or" in Section 10 (a) of Republic Act No. 7610 before the phrase "be responsible for other conditions prejudicial to the child's development" supposes that there are four punishable acts therein. First, the act of child abuse; second, child cruelty; third, child exploitation; and fourth, being responsible for conditions prejudicial to the child's development. The fourth penalized act cannot be interpreted, as petitioner suggests, as a qualifying condition for the three other acts, because an analysis of the entire context of the questioned provision does not warrant such construal.*[36] (Emphasis supplied, citations omitted)

The important element in determining if there was a violation of Section 10(a) of Republic Act No. 7610 is whether the act is or can be prejudicial to a child's development. This should be read together with Section 3(b). A fundamental rule of statutory construction is that courts should not distinguish where the law does not distinguish—"*ubi lex non distinguit, nec nos distinguire debemus*."[37]

It should be remembered that the Philippines is a signatory[38] to the Convention on the Rights of Persons with Disabilities. Its salient provisions state:

---

[36] *Id*. at 884-886.

[37] *United BF Homeowners' Association, Inc. v. The Barangay Chairman and the Sangguniang Barangay of BF Homes Parañaque*, 532 Phil. 660, 669 (2006) [Per *J*. Corona, Second Division].

[38] See *United Nations Treaty Collection*, available at <https://treaties.un.org/Pages/Viewdetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en> (last visited on September 2, 2019). The Philippines became a state party on September 25, 2007. The Convention was ratified on April 15, 2008.

Article 1: Purpose

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

. . . . . .

Article 23: Respect for home and the family

1. *States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:*

a) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;

b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;

c) *Persons with disabilities, including children, retain their fertility on an equal basis with others.*

2. *States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount*. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

3. *States Parties shall ensure that children with disabilities have equal rights with respect to family life*. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake

to provide early and comprehensive information, services and support to children with disabilities and their families. (Emphasis supplied)

This commitment to uphold everyone's fundamental right to human dignity is echoed in our very own Constitution. Article XIII, Section 1 states:

ARTICLE XIII
Social Justice and Human Rights

SECTION 1. The Congress shall give highest priority to the enactment of measures that protect and enliance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end and in relation to family and reproductive rights, laws have been enacted with no less than the express recognition of equality and non-discrimination. The Responsible Parenthood and Reproductive Health Act of 2012,[39] for one, declares as state policy the eradication of "discriminatory practices, laws and policies that infringe on a person's exercise of reproductive health rights."[40] The reproductive concerns of men are also recognized as part of male responsibility.[41] An entire section devoted on programs for persons with disabilities was included:

SECTION 18. Sexual and Reproductive Health Programs for Persons with Disabilities (PWDs). — The cities and municipalities shall endeavor that barriers to reproductive health services for PWDs are obliterated by the following:

(a) Providing physical access, and resolving transportation and proximity issues to clinics, hospitals and places where public health education is provided, contraceptives are sold or distributed or other places where reproductive health services are provided;

(b) Adapting examination tables and other laboratory procedures to the needs and conditions of PWDs;

---

[39] Republic Act No. 10354 (2012).

[40] Republic Act No. 10354 (2012), Sec. 2(6).

[41] Republic Act No. 10354 (2012), Sec. 4(i).

(c) Increasing access to information and communication materials on sexual and reproductive health in braille, large print, simple language, sign language and pictures;

(d) Providing continuing education and inclusion of rights of PWDs among health care providers; and

(e) *Undertaking activities to raise awareness and address misconceptions among the general public on the stigma and their lack of knowledge on the sexual and reproductive health needs and rights of PWDs.* (Emphasis supplied)

For guidance, the Implementing Rules and Regulations of Republic Act No. 7610[42] defines "child abuse," "cruelty," "neglect," and "exploitation" as:

SECTION 2. *Definition of Terms*. — As used in these Rules, unless the context requires otherwise —

. . . . . .

b) "Child abuse" refers to the infliction of physical or psychological injury, cruelty to, or neglect, sexual abuse or exploitation of a child;

c) "Cruelty" refers to any act by word or deed which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being. Discipline administered by a parent or legal guardian to a child does not constitute cruelty provided it is reasonable in manner and moderate in degree and does not constitute physical or psychological injury as defined herein;

. . . . . .

f) "Neglect" means failure to provide, for reasons other than poverty, adequate food, clothing, shelter, basic education or medical care so as to seriously endanger the physical, mental, social and emotional growth and development of the child;

. . . . . .

i) "Exploitation" means the hiring, employment, persuasion, inducement, or coercion of a child to perform in obscene exhibitions

---

[42] Rules and Regulations on the Reporting and Investigation of Child Abuse Cases (1993).

and indecent shows, whether live or in video or film, or to pose or act as a model in obscene publications or pornographic materials, or to sell or distribute said materials[.]

The infliction of physical injury as abuse is not difficult to comprehend. In *Torres v. People*,[43] this Court deemed the act of whipping a child thrice with a wet t-shirt as child abuse:

> [P]etitioner's intention to debase, degrade, and demean the intrinsic worth and dignity of a child can be inferred from the manner in which he committed the act complained of.
>
> To note, petitioner used a wet t-shirt to whip the child not just once but three (3) times. Common sense and human experience would suggest that hitting a sensitive body part, such as the neck, with a wet t-shirt would cause an extreme amount of pain, especially so if it was done several times. There is also reason to believe that petitioner used excessive force. Otherwise, AAA would not have fallen down the stairs at the third strike. AAA would likewise not have sustained a contusion.
>
> Indeed, if the only intention of petitioner were to discipline AAA and stop him from interfering, he could have resorted to other less violent means. Instead of reprimanding AAA or walking away, petitioner chose to hit the latter.
>
> We find petitioner liable for other acts of child abuse under Article VI, Section 10 (a) of Republic Act No. 7610, which provides that "a person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development . . . shall suffer the penalty of *prision mayor* in its minimum a period."[44] (Citations omitted)

Unlike physical abuse, which ordinarily requires overt acts, neglect is committed by omission. It pertains to the withholding of a child's needs to fully participate in society, such as access to food, education, shelter, and care, all of which children are

---

[43] 803 Phil. 480 (2017) [Per *J*. Leonen, Second Division].

[44] *Id*. at 490-491.

legally entitled to in recognition of their right to grow into adulthood under the best circumstances.[45]

Neglect may be typified as: (1) physical; (2) educational; (3) emotional; and (4) medical.[46]

Physical neglect refers to the failure to provide a child's basic needs, which consists of food, clothing, and shelter. Educational neglect consists in the failure to ensure that the child receives proper and adequate education. Emotional neglect is the failure to nurture by, among others, ignoring or isolating the child. Medical neglect pertains to the failure to provide proper healthcare to a child, as when, for instance, one ignores medical recommendations.[47]

Neglect has also been expanded to recognize environmental neglect and supervisory neglect.[48] Environmental neglect pertains to a situation where a child is left in a hazardous or unclean location. Supervisory neglect refers to a situation where a child is abandoned or left under the custody of an inappropriate substitute.[49]

Cruelty, on the other hand, is a much broader term as it includes acts done by word or deed. In any case, the act targets the child's intrinsic worth and dignity without regard to his or her humanity.

---

[45] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, Vol. 1577, p. 3. The Philippines ratified the Convention on August 21, 1990.

[46] National Security for the Prevention of Cruelty to Children, *Neglect* <https://www.aspec.org/uk/what-is-child-abuse/types-of-abuse/neglect/#types (last visited on September 2, 2019).

[47] *Id.*

[48] Ferol E. Mennen, Kihyun Kim, Jina Sang, Penelope Trickett, *Child neglect: Definition and identification of youth's experiences in official reports of maltreatment*, 34 CHILD ABUSE AND NEGLECT THE INTERNATIONAL JOURNAL 647 (2011), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2949068/ > (last visited on September 2, 2019).

[49] *Id.*

What comprises abuse depends on the circumstances of each case. For instance, this Court held in *Bongalon v. People*[50] that not every physical harm done on the child is child abuse:

> Not every instance of the laying of hands on a child constitutes the crime of child abuse under Section 10 (a) of Republic Act No. 7610. Only when the laying of hands is shown beyond reasonable doubt to be intended by the accused to debase, degrade or demean the intrinsic worth and dignity of the child as a human being should it be punished as child abuse. . .
>
> . . . . . .
>
> . . .The records showed the laying of hands on Jayson to have been done at the spur of the moment and in anger, indicative of his being then overwhelmed by his fatherly concern for the personal safety of his own minor daughters who had just suffered harm at the hands of Jayson and Roldan. With the loss of his self-control, he lacked that specific intent to debase, degrade or demean the intrinsic worth and dignity of a child as a, human being that was so essential in the crime of child abuse.[51] (Citation omitted)

Although the intent of Republic Act No. 7610 was recognized in *Amanquiton v. People*,[52] this Court cautioned that:

> . . . this noble statute should not be used as a sharp sword, ready to be brandished against an accused even if there is a patent lack of proof to convict him of the crime. The right of an accused to liberty is as important as a minor's right not to be subjected to any form of abuse. Both are enshrined in the Constitution. One need not be sacrificed for the other.[53]

In reconciling the guidelines, courts should carefully examine the particular act that is alleged to constitute child abuse with due regard to the child's intrinsic worth and dignity. The ultimate determination depends on whether the act done on the child

---

[50] 707 Phil. 11 (2013) [Per *J.* Bersamin, First Division].

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

[52] 612 Phil. 1253 (2009) [Per *J.* Corona, First Division].

[53] *Id*. at 1263.

debilitates or debases his fundamental integrity, harming his or her future growth and development.

**III**

The vasectomy conducted on Larry violates his fundamental right to life and liberty.

Article III, Section 1 of the Constitution states that "[n]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." In *Rubi v. The Provincial Board of Mindoro*,[54] Associate Justice George Malcolm elaborated on the right to liberty:

> *Civil liberty may be said to mean that measure of freedom which may be enjoyed in a civilized community, consistently with the peaceful enjoyment of like freedom in others. The right to liberty guaranteed by the Constitution includes the right to exist and the right to be free from arbitrary personal restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare*. As enunciated in a long array of authorities including epoch-making decisions of the United States Supreme Court, liberty includes the right of the citizen to be free to use his faculties in lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any avocation, and for that purpose, to enter into all contracts which may be proper, necessary, and essential to his carrying out these purposes to a successful conclusion. The chief elements of the guaranty are the right to contract, the right to choose one's employment, the right to labor, and the right of locomotion.
>
> In general, it may be said that liberty means the opportunity to do those things which are ordinarily done by free men.[55] (Emphasis supplied)

---

[54] 39 Phil. 660 (1919) [Per *J.* Malcolm, *En Banc*].

[55] *Id.* at 705.

Granted, this liberty is not impenetrable from interference. As early as 1910, this Court has recognized in *U.S. v. Toribio*[56] that "the State may interfere wherever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests."[57]

However, when public interest is not under threat, neither the State nor any individual may forcibly interfere with the life and choices of another.

There will always be a sphere of autonomy within an individual's life with which the State cannot interfere. This pertains to the exercise of his or her basic human rights. The protection of the inherent dignity of every individual is guaranteed by no less than the Constitution.[58] The State is obliged to ensure that every individual can make choices free from personal restraint, especially if what is at stake is a fundamental human right.

This is relevant in reproductive health rights. The area of freedom where decisions surrounding one's right to procreate are made is sacrosanct, the protection further bolstered by one's right to privacy.

Although the right to privacy is intertwined with the right to liberty, it is a distinct right that is equally entitled to protection under the Constitution.[59] Article III, Section 3(1) states that "[t]he privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law."

---

[56] 15 Phil. 85 (1910) [Per *J.* Carson, First Division].

[57] *Id*. at 98 citing *Lawson v. Steele*, 152 U.S., 133, 136.

[58] CONST., Art. II, Sec. 11 provides:

SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.

[59] See *Morfe v. Mutuc*, 130 Phil. 415 (1968) [Per *J.* Fernando, *En Banc*] and *Ople v. Torres*, 354 Phil. 948 (1998) [Per *J.* Puno, *En Banc*].

The right to privacy, however, not only pertains to privacy of one's communication and correspondence. It has many dimensions, referred to as "zones of privacy," which are embedded in other constitutionally guaranteed freedoms. In *Morfe v. Mutuc*:[60]

> [I]n view of the fact that there is an express recognition of privacy, specifically that of communication and correspondence which "shall be inviolable except upon lawful order of Court or when public safety and order" may otherwise require, and implicitly in the search and seizure clause, and the liberty of abode, the alleged repugnancy of such statutory requirement of further periodical submission of a sworn statement of assets and liabilities deserves to be further looked into.
>
> In that respect the question is one of first impression, no previous decision having been rendered by this Court. It is not so in the United States where, in the leading case of *Griswold v. Connecticut*, Justice Douglas, speaking for five members of the Court, stated: "Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers 'in any house' in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the 'right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' The Fifth Amendment in its Self-Incrimination clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: 'The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.'" After referring to various American Supreme Court decisions, Justice Douglas continued: "These cases bear witness that the right of privacy which presses for recognition is a legitimate one."
>
> The *Griswold* case invalidated a Connecticut statute which made the use of contraceptives a criminal offense on the ground of its amounting to an unconstitutional invasion of the right of privacy of married persons; rightfully it stressed "a relationship lying within the zone of privacy created by several fundamental constitutional

---

[60] 130 Phil. 415 (1968) [Per *J*. Fernando, *En Banc*].

guarantees." It has wider implication though. The constitutional right to privacy has come into its own.

So it is likewise in our jurisdiction. The right to privacy as such is accorded recognition independently of its identification with liberty; in itself, it is fully deserving of constitutional protection. The language of Prof. Emerson is particularly apt: "The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal life of the citizen. This is indeed one of the basic distinctions between absolute and limited government. Ultimate and pervasive control of the individual, in all aspects of his life, is the hallmark of the absolute state. In contrast, a system of limited government safeguards a private sector, which belongs to the individual, firmly distinguishing it from the public sector, which the state can control. Protection of this private sector — protection, in other words, of the dignity and integrity of the individual — has become increasingly important as modern society has developed. All the forces of a technological age — industrialization, urbanization, and organization — operate to narrow the area of privacy and facilitate intrusion into it. In modern terms, the capacity to maintain and support this enclave of private life marks the difference between a democratic and a totalitarian society."[61] (Citations omitted)

Apart from the Constitution, our laws also recognize the zones of privacy. In *Ople v. Torres*:[62]

*Indeed, if we extend our judicial gaze we will find that the right of privacy is recognized and enshrined in several provisions of our Constitution.* It is expressly recognized in Section 3(1) of the Bill of Rights:

> "Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law."

*Other facets of the right to privacy are protected in various provisions of the Bill of Rights, viz*:

---

[61] *Id*. at 434-436.

[62] 354 Phil. 948 (1998) [Per *J*. Puno *En Banc*].

"Sec. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

. . . . . .

Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

. . . . . .

Sec. 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

Sec. 17. No person shall be compelled to be a witness against himself.

*Zones of privacy are likewise recognized and protected in our laws*. The Civil Code provides that "[e]very person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons" and punishes as actionable torts several acts by a person of meddling and prying into the privacy of another. It also holds a public officer or employee or any private individual liable for damages for any violation of the rights and liberties of another person, and recognizes the privacy of letters and other private communications. The Revised Penal Code makes a crime the violation of secrets by an officer, the revelation of trade and industrial secrets, and trespass to dwelling. Invasion of privacy is an offense in special laws like the Anti-Wiretapping Law, the Secrecy of Bank Deposits Act and the Intellectual Property Code. The Rules of Court on

privileged communication likewise recognize the privacy of certain information.[63] (Emphasis supplied, citations omitted)

In his speech, "The Common Right to Privacy," retired Chief Justice Reynato S. Puno distinguished among three (3) different aspects or "strands" of the right to privacy, namely: (1) locational privacy; (2) informational privacy; and (3) decisional privacy.[64]

Locational privacy, also known as situational privacy, pertains to privacy that is felt in a physical space. It may be violated through an act of trespass or through an unlawful search.[65] Meanwhile, informational privacy refers to one's right to control "the processing—*i.e.*, acquisition, disclosure, and use—of personal information."[66]

Decisional privacy, regarded as the most controversial among the three, refers to one's right "to make certain kinds of fundamental choices with respect to their personal and reproductive autonomy."[67] It finds relevance in matters that involve one's reproductive health.

Several provisions in our Constitution, though not in express terms, are essentially related to reproductive health:

---

[63] *Id*. at 972-974.

[64] *Vivares v. St. Theresa's College*, 744 Phil. 451, 467 (2014) [Per *J*. Velasco, Jr., Third Division] *citing* Retired Chief Justice Reynato S. Puno, *The Common Right to Privacy* (Forum on The Writ of Habeas Data and Human Rights, Innotech Seminar Hall, Commonwealth Avenue, Quezon City), March 12, 2008.

[65] *See* footnote 21 in *Vivares v. St. Theresa's College*, 744 Phil. 451, 467 (2014) [Per *J*. Velasco, Jr., Third Division].

[66] William L. Prosser, Privacy, 48 CAL. L. REV. 382, 389 (1960), available at <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=3157&context=californialawrevi > (last visited on September 2, 2019); Jerry Kang, Information Privacy in Cyberspace Transactions, 50 Stan L. Rev. 1193, 1203 (1998), available at https://www.ntia.doc.gov/legacy/ntiahome/privacy/files/CPRIVACY.PDF> (last visited on September 2, 2019).

[67] *See* footnote 22 in *Vivares v. St. Theresa's College*, 744 Phil. 451, 467 (2014) [Per *J*. Velasco, Jr., Third Division].

Article II, Section 12 of the Constitution states:

> SECTION 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

Article XV, Sections 1 and 3(1) state:

> SECTION 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.
>
> . . . . . .
>
> SECTION 3. The State shall defend:
>
> (1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood[.]

One's autonomy over his or her life and body, therefore, is inextricably linked with the right to privacy.[68]

Reproductive health rights, being within the sphere of autonomy, are protected from interference by private individuals, including parents and guardians. At most, they can only provide guidance and education. Larry will still grow, and his mental capacity will be beyond 18 at some point. In their premature judgment that Larry would be incapable of becoming a responsible adult, the Aguirre Spouses curtailed his liberty and violated his decisional privacy.

Ignorance and fear have infantilized persons with intellectual disability, broadly categorizing them as asexual juveniles. As

---

[68] *See J.* Leonen, Dissenting Opinion in *Spouses Imbong v. Ochoa*, 732 Phil. 1, 554-666 (2014) [Per *J.* Mendoza, *En Banc*].

a result, their display of affection and sexual behaviors are dismissed as less acceptable.[69] Historically, this led to practices of "selective breeding" through surgical sterilization, which prevented persons with intellectual disability from fully realizing their sexual rights.[70]

At present, there are available therapies and interventions that target and minimize the impairment level and improve the functionality of one with such disability.[71] Intellectual disability does not disqualify an individual from becoming a parent.[72] With adequate support and education, those with intellectual disability may have a healthy, appropriate expression of sexuality, and eventually, parenting skills and capacity to raise their own children.[73]

The possibility of Larry understanding his right to reproduce in the future should not be disregarded simply because his development is medically considered "slow." As a child in need of greater care and consideration, respondents should have acted more humanely and responsibly.

---

[69] Abbas Ali Hosseinkhanzadeh, *et al*., *Attitudes to Sexuality in Individuals with Mental Retardation from Perspectives of their Parents and Teachers*, 4 INT. J. SOCIOL. ANTHROPOL. 134, 135 (2012), available at <https://academicjournals.org/article/ article1379603739_Hosseinkhanzadeh%20et%20al.pdf> (last visited on September 2, 2019).

[70] *Id*.

[71] Sharma A. Sane, *et al*., *Cellular Therapy, a Novel Treatment Option for Intellectual Disability: A Case Report,* 5 J. CLIN. CASE REP. 483 (2015), available at <https://www.neurogen.in/assets/frontend/pdf/scientific-publications/ID/03-ID.pdf> (last visited on September 2, 2019); Sabyasachi Bhaumik, *et al*., *Psychological Treatments in Intellectual Disability: The Challenges of Building a Good Evidence Base*, 198 THE BRITISH JOURNAL OF PSYCHIATRY 428 (2011), available at <https://www.researchgate.net/publication/51180520_Psychological_treatments_in_intellectual_disability_The challenges_of_a_good_evidence_base>nce (last visited on September 2, 2019).

[72] 1 Sherri Melrose, *et al*., *Supporting Individuals with Intellectual Disabilities and Mental Illness: What Caregivers Need to Know* 86-88, 93 (2015), available at <https://web2.mlp.cz/koweb/00/04/24/15/72/supporting_individuals_with_intellectual_disabilities.pdf > (last accessed on September 2, 2019).

[73] *Id*.

Moreover, Larry's ability to exercise his right to procreate goes beyond a mere invocation of his reproductive health rights. It seeps into his capacity to form relationships, to start a family, to be a responsible parent, and to live his life as fully and as meaningfully as possible. Taking away his ability to sire children effectively debilitates him as a child and a human being. While Larry is not barred from engaging in a relationship or sexual relations that could lead to having a child, the vasectomy has severely limited his options to start a family of his own. The decision to undergo vasectomy, whether reversible or not, involves an act that is part of private rights. The right to reproduce forms part of how humans define themselves. The choice of whether to reproduce should be respected, even if the person has cognitive disability.

Thus, the vasectomy on someone with cognitive disability, without his or her consent, is both an act of cruelty and an act prejudicial to the person's development.

Cruelty refers to something that debases, degrades, or demeans the intrinsic value of a child.[74] This may be seen in two (2) ways. On one hand, it can refer to an act and the manner by which it was done. On the other hand, it can also refer to the result of an act.

*The unconsented vasectomy on Larry is clearly a case of cruelty, not so much for the manner it was done, but because of the circumstances surrounding its commission and the resulting limitations to the way Larry will be able to live the rest of his life.*

The vasectomy was a decision made by respondents despite the medical finding that Larry, at that time, was unable to comprehend the procedure's long-term ramifications. While parents are capable of exercising authority over their children, this authority is by no means unlimited. Parental authority is both a right and an obligation, granted by law under the

---

[74] Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, Sec. 2(c).

presumption that it will be exercised for the full development of a child's mind, heart, and senses.[75] Under no circumstances is it allowed to be exercised in a way that is violative of human dignity or will diminish another's intrinsic worth. *Santos, Sr. v. Court of Appeals*[76] describes the nature of parental authority as a "sum of duties":

> [Parental authority] is a mass of rights and obligations which the law grants to parents for the purpose of the children's physical preservation and development, as well as the cultivation of their intellect and the education of their heart and senses. As regards parental authority, "there is no power, but a task; no complex of rights, but a sum of duties; no sovereignty but a sacred trust for the welfare of the minor."[77]

The mark of a good parent is not measured by his or her material wealth or mental faculties. Rather, a good parent is one who exhibits the patience, love, and ability to sacrifice so that the child discovers what it is to be nurtured, protected, and resilient.

Being cognitively disabled is not a barrier to parenthood. A person's disability has no direct correlation to being a good parent:[78]

> It is important to separate personality from disability, to acknowledge that cognitive limitation is only about how people learn. Rarely is it the most significant factor in deciding whether someone can parent adequately.
>
> A parent's disability, in itself, does not necessarily determine whether a parent will be a "good enough" parent. While the individual

---

[75] *Santos, Sr. v. Court of Appeals*, 312 Phil. 482, 487-488 (1995) [Per J. Romero, Third Division].

[76] *Id.*

[77] *Id.* at 487-488.

[78] Howard Mandeville, *Supported Parenting*, Wisconsin Coalition for Advocacy 181 <http://www.disabilityrightswi.org/wp-content/uploads/2018/09/Supported-Parenting.pdf> (last visited on September 2, 2019).

characteristics of the parent are important, the characteristics of the supports available have a lot of influence over whether parents will succeed.[79]

Under the philosophy of supported parenting, persons who are cognitively disabled are fully capable of being parents themselves if given wholehearted support by both their family and community.[80] This requires that their needs be identified, including "the parent's individual learning style; the parent's current knowledge, behavior, attitudes, beliefs, values; available support systems, and available resources."[81]

Yet, Larry's legal guardians, instead of acting *only* for his best interests, substituted his consent with their own under the guise of "protection."[82] There were other options for Larry who, in time, could have children of his own. But this was taken away from him by the people who should have acted in Larry's best interest. To deprive him of all the options his life had to offer is an act of cruelty. It was an act borne out of selfishness, not love. It was not for them to conclude that Larry cannot become a parent or care for someone other than himself.

The State's responsibility to protect children with disabilities is both an international and constitutional commitment. When no one else is willing to take up the cudgels for Larry, the State must not renege on its duty to ensure the protection of his human dignity simply on the ground of procedural infirmity. The State must not allow the violation of a child's right made even in the misguided concept of parental authority.

**ACCORDINGLY,** I vote that the bilateral vasectomy conducted on Larry be considered as child abuse and a violation of Republic Act No. 7610.

---

[79] *Id.*

[80] *Id.*

[81] *Id.*

[82] *Rollo*, p. 143. According to accused-respondent Pedro, he was prompted to act because of Larry's "emerging sexuality."

## SEPARATE OPINION

**JARDELEZA, *J.*:**

I CONCUR with the majority that the petition should be dismissed.

I submit this Opinion, however, to respond to the following views offered by Associate Justice Marvic Leonen in his Separate Opinion: (1) a person with intellectual disability[1] has a fundamental right to procreation and parenthood; (2) sterilization[2] performed on the individual, at the instance of his/her parents or guardian without the individual's express consent, violates this right; and (3) sterilization under such

---

[1] The United States Supreme Court first used the term "intellectual disability" in lieu of "mental retardation" in *Hall v. Florida*, 572 U.S. _____ (2014), concluding that both terms refer to the same identical phenomenon. Earlier, in *Atkins v. Virginia*, 536 U.S. 304 (2002), using the term "mental retardation," the Court held that the constitutional guarantee against cruel and unusual punishment renders unconstitutional the execution of a mentally retarded person. In *Hall*, the Court voided a Florida law that defines "intellectual disability" to require an intelligence quotient (IQ) test score of 70 or less, such that if a prisoner is deemed to have an IQ below 70, all further exploration of intellectual disability is foreclosed. The Court noted that the change in terminology is approved and used in the latest edition of the Diagnostic and Statistical Manual of Mental Disorders, one of the basic texts used by psychiatrists and other experts, and that the manual is often referred to by its initials "DSM," followed by its edition number, *e.g.*, "DSM-5." The Court also noted that a federal statute (Public Law 111-256), otherwise known as Rosa's Law, replaced the term "mental retardation" with "intellectual disability." See *People v. Quintos*, G.R. No. 199402, November 12, 2014, 740 SCRA 179, 201-202 where *J.* Leonen referred to, and defined, the term "intellectually disabled," citing the earlier case of *People v. Butiong*, G.R. No. 168932, October 19, 2011, 659 SCRA 557, 571-572.

[2] Vasectomy is the medical term to describe the reversible procedure involved in this case to prevent procreation in men, and salpingectomy (tubal ligation) for women. I use the generic term "sterilization" as the underlying medical and constitutional issues involved in the petition apply to both genders.

circumstances is punishable as a crime of cruelty or child abuse under Section 10(a) of Republic Act No. 7610 (RA 7610).[3]

I also submit this Opinion to clarify the concept of fundamental rights under constitutional law.

**I**

The following facts[4] of this case are not disputed:

Larry was a charge of the Heart of Mary Villa. In June 1980, he was, formally taken in as a ward by respondents Pedro Aguirre and the latter's spouse Lourdes S. Aguirre (Aguirres) by virtue of an Affidavit of Consent to Legal Guardianship executed by Sister Mary Concepta Bellosillo, Superior of the Heart of Mary Villa. Several years later, or on June 19, 1980, the Regional Trial Court (RTC), Balanga, Bataan, granted the Aguirres joint guardianship of Larry's person and property. In 1989, when Larry was eleven years old, and given his "somewhat slow mental development,"[5] he was taken to specialists for neurological and psychological evaluations which revealed that he had mild mental deficiency. In 2001, when Larry was 21 years old, the Aguirres approached respondent Dr. Juvido Agatep (Dr. Agatep), a urologist/surgeon, concerning their intention to have Larry vasectomized. Dr. Agatep, however, required that Larry first be evaluated by a psychiatrist to determine whether Larry is able, given his mental deficiency, to give consent to the requested medical procedure. In a psychiatric report dated January 21, 2002, respondent psychiatrist Dr. Marissa Pascual (Dr. Pascual) confirmed Larry's mental deficiency, finding that he is "very much dependent on his family for his needs,

---

[3] Special Protection of Children Against Abuse, Exploitation and Discrimination Act. See also *J.* Leonen Separate Opinion, pp. 18, 22.

[4] *Rollo*, pp. 12-13. See also *Aguirre v. Secretary, Department of Justice*, G.R. No. 170723, March 3, 2008, 547 SCRA 431, a case which arose from the same set of facts, involving the same parties, albeit concerning only the criminal complaints for mutilation and falsification.

[5] *Rollo*, p. 12.

adaptive functioning, direction and in making major life decisions."[6] According to Dr. Pascual, Larry, "[a]t his capacity, x x x may never understand the nature, the foreseeable risks and benefits, and consequences of the procedure (vasectomy) that his family wants for his protection. Thus, the responsibility of decision making may be given to his parent or guardian."[7] On January 31, 2002, and with respondent Pedro's written consent, respondent Dr. Agatep performed bilateral vasectomy on Larry.[8]

In two complaint-affidavits dated September 9, 2002, Gloria Pilar S. Aguirre and Sister Pilar Versoza (Versoza) charged respondents Pedro, his daughter Michelina Aguirre-Olondriz, Dr. Agatep, and Dr. Pascual of falsification and mutilation under Articles 172 and 262, respectively, of the Revised Penal Code (RPC) and/or Child Abuse under Sections 3 and 10 of RA 7610. The complaints for falsification and mutilation were dismissed by the Office of the City Prosecutor (OCP) for insufficiency of evidence.[9]

It appears, however, that the OCP reconsidered its earlier resolution and ordered the filing of criminal Informations against respondents with the RTC *for violation of RA 7610*. Upon respondents' motions, the RTC, in an Order[10] dated November 8, 2005, nevertheless dismissed the case for lack of probable cause. Petitioner thus elevated the matter to the Court of Appeals

---

[6] *Id.* at 126.

[7] *Id.*

[8] *Id.*

[9] This finding was affirmed by the Department of Justice (DOJ) in its twin Resolutions dated February 11, 2004 and November 12, 2004. It was ultimately sustained by both the Court of Appeals (CA) and this Court. In holding that the CA correctly found no grave abuse of discretion on the part of the DOJ, this Court held, among others, that a vasectomy procedure does not deprive a man, whether totally or partially, of some essential organ of reproduction as to make its perpetrator liable for the crime of mutilation under the RPC. (See *Rollo*, pp. 25-26. See also *Aguirre v. Secretary, Department of Justice*, G.R. No. 170723, March 3, 2008, 547 SCRA 431.)

[10] *Rollo*, pp. 48-55.

(CA). In its Decision[11] dated May 16, 2008, the CA held that the bilateral vasectomy performed on Larry is neither child abuse nor cruelty punishable under RA 7610. It also held that then appellant (now petitioner) Versoza is neither Larry's parent, adopter, or legal guardian, and therefore had no legal personality to institute the complaint against respondents. Aggrieved, petitioner filed this action before the Court.

In the meantime, respondents Michelina S. Aguirre-Olondriz and Pedro B. Aguirre, in a motion to dismiss, informed this Court that petitioner died on September 9, 2012, three days after suffering from a brain aneurysm.[12] This was not denied by petitioner's counsel, who also maintained that, given the "transcendent importance" of the issue at hand, the case survives petitioner Versoza's death.[13]

**II**

In my view, RA 7610 does not criminalize vasectomy. There is no showing of any clear legislative intent to make sterilization of intellectually-disabled individuals, conducted with the consent of their parents or legally-constituted guardians, a criminal act.[14] In fact, and contrary to what Justice Leonen suggests,[15] legislative deliberations would appear to define acts of cruelty as "unreasonable infliction of physical injury or inhuman treatment on the physical being of a child"[16] citing physical maltreatment and beatings, as examples.[17] Basic rules of statutory construction

---

[11] *Id*. at 24-39.

[12] *Id*. at 210.

[13] *Id*. at 215-216.

[14] I concede that I may have a different view on the matter had the sterilization procedure been conducted on Larry after RA 11036 had been passed and the procedure provided therein not strictly followed. This, however, is not the case here.

[15] *J*. Leonen Separate Opinion, pp. 11, 18.

[16] III RECORD, SENATE, 1189 (March 19, 1991).

[17] IV RECORD, SENATE, 192 (April 29, 1991).

would therefore instruct against such reading, especially when, as pointed out by the Office of the Solicitor General, such procedure, a "recognized" and "medically accepted"[18] method of contraception, was conducted with the consent of Larry's legally-appointed guardian, after much deliberation and in consultation with a psychiatrist.[19]

Existing laws also militate against Justice Leonen's proposed reading of RA 7610. The Congress, through several legislative enactments, has identified *other* equally important interests, including those of parents and the State, which arguably have a direct bearing on the asserted liberty interest to procreation and parenthood. These should be properly taken into account.

A

Republic Act No. 10354 (RA 10354), otherwise known as the "Responsible Parenthood and Reproductive Health Act of 2012," and which the Separate Opinion makes fleeting reference to,[20] provides for, and lays down, a "national policy" on "responsible parenthood and reproductive health." Examination of the provisions of RA 10354 in its entirety shows how the Congress struck a balance between the demands of responsible parenthood and reproductive rights, resting on the fulcrum of free, informed consent.

RA 10354 declares as national policy the recognition of human rights and the right to non-discrimination. It declares that the right to health includes reproductive health which, in turn, refers to the rights of individuals to decide freely and responsibly whether or not to have children.[21] It recognizes a *mental health*

---

[18] *Rollo*, p. 186.

[19] *Id.* at 188.

[20] *J.* Leonen Separate Opinion, p. 20.

[21] Republic Act No. 10354, Sec. 4(s) states:

*Reproductive health rights* refers to the rights of individuals and couples, **to decide freely and responsibly whether or not to have children**; the number, spacing and timing of their children; to. make other decisions concerning reproduction, free of discrimination, coercion and violence; to

*aspect* to reproductive health[22] and, in fact, defines the latter to refer to a state of, among others, *mental* well-being as to imply that people have the capability to reproduce and the freedom to decide if, when, and how often to do so.[23] RA 10354 also defines responsible parenthood as follows:

> Sec. 4. *Definition of Terms.* — For the purpose of this Act, the following terms shall be defined as follows:
>
> x x x x x x x x x
>
> (v) *Responsible parenthood* refers to the **will and ability** of a parent to respond to the needs and aspirations of the family and children. It is likewise a **shared responsibility between parents** to determine and achieve the desired number of children, spacing and timing of their children according to their own family life aspirations, taking into account **psychological preparedness**, health status, sociocultural and economic concerns consistent with their religious convictions. (Emphasis supplied.)

It also provides that all individuals shall have access to family planning, which is the full range of safe, affordable, effective, non-abortifacient modern methods of planning pregnancy.[24]

---

have the information and means to do so; and to attain the highest standard of sexual health and (reproductive health: *Provided, however,* That reproductive health rights do not include abortion, and access to abortifacients. (Emphasis supplied.)

[22] Republic Act No. 10354, Sec. 4(q)(12).

[23] Republic Act No. 10354, Sec. 4(p) states:

*Reproductive Health (RH)* refers to the state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. This implies that people are able to have a responsible, safe, consensual and satisfying sex life, that they have the capability to reproduce and the freedom to decide if, when, and how often to do so. This further implies that women and men attain equal relationships in matters related to sexual relations and reproduction.

[24] Republic Act No. 10354, Sec. 4(e) states:

RA 10354 recognizes the parents' shared responsibility to decide when to have children, their number and spacing, and to make the decision in light of their family life aspirations, health, and economic circumstances. Arguably, this same responsibility applies to parents of the intellectually-disabled child, over whom they owe the duty to determine, using the same guidelines, whether to beget children. This responsibility springs from the fundamental right and interest of parents over children under their care.

In the United States (US), this interest of parents in the "care, custody, and control of their children" has been held by the US Supreme Court in *Troxel v. Granville*[25] as "perhaps the oldest of the fundamental liberty interests recognized by this Court."[26] Similarly, this Court, in *Imbong v. Ochoa, Jr.*,[27] upheld the primacy of parental authority over their children when it struck down a provision in RA 10354 which does away

---

*Family planning* refers to a program which enables couples and individuals to decide freely and responsibly the number and spacing of their children and to have the information and means to do so, and to have access to a full range of safe, affordable, effective, non-abortifacient modern natural and artificial methods of planning pregnancy.

[25] 530 U.S. 57 (2000).

[26] *Id*. at 65. *Troxel* involved a petition challenging a Washington statute which allows "any person" (in this case, the children's paternal grandparents) to petition for visitation rights "at any time" and authorizes the state superior courts to allow such visitation whenever, in its view, the same may serve the child's best interests, even in disregard of a fit custodial parent's decision. There, the US Court found that there was an absence of "special factors that might justify the State's interference with [the parent's] fundamental right to make decisions concerning the rearing of her two daughters" and declared that fit parents are presumed to act in the best interests of their children. It held:

> Accordingly, so long as a parent adequately cares for his or her children (*i.e*., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children, x x x (*Id*. at 68-69.)

[27] G.R. No. 204819, April 8, 2014, 721 SCRA 146.

with the consent of parents for the conduct of a family planning procedure on their child in cases where said child is already a parent or has had a miscarriage:

> It is precisely in such situations when a minor parent needs the comfort, care, advice, and guidance of her own parents. **The State cannot replace her natural mother and father when it comes to providing her needs and comfort**. To say that their consent is no longer relevant is clearly anti-family. It does not promote unity in the family. It is an affront to the constitutional mandate to protect and strengthen the family as an inviolable social institution.
>
> More alarmingly, it disregards and disobeys the constitutional mandate that "the natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government." In this regard, Commissioner Bernas wrote:
>
> > The 1987 provision has added the adjective "primary" to modify the right of parents. It imports the assertion that the right of parents is superior to that of the State.[28] (Emphasis supplied; citations omitted.)

Vasectomy is a legitimate modern family planning method under RA 10354.[29] As such, and consistent with *Imbong* where the Court recognized as constitutionally permissible family planning methods which work prior to fertilization, parents/legal guardians of an intellectually-disabled child can arguably claim a constitutional right and duty to decide whether vasectomy or tubal ligation would be in the latter's best interests. Whether

---

[28] *Id*. at 352.

[29] In *Imbong*, the Court held:

> Equally apparent, however, is that the Framers of the Constitution did not intend to ban all contraceptives for being unconstitutional. x x x From the discussions above, contraceptives that kill or destroy the fertilized ovum should be deemed an abortive and thus prohibited. Conversely, contraceptives that actually prevent the union of. the male sperm and the female ovum, and those that similarly take action prior to fertilization should be deemed non-abortive, and thus, constitutionally permissible. (*Id*. at 299-300. Emphasis and citation omitted.)

the decision *is* in the best interest of said child in a particular case would, of course, be a triable question of fact to be resolved after the reception of evidence on the condition of the child and the situation of the parent/legal guardian.

Here, Justice Leonen cannot cite from the record sufficient scientific and medical evidence to show that Larry understands the nature and consequences of his sexuality, of his having a child, and of his being a parent. Dr. Pascual's conclusion that Larry may never understand the nature and consequences of vasectomy does not substitute for evidence that he understands the nature and consequences of bearing a child and being a parent. Neither is there evidence introduced below to show that Larry is possessed of the *will and ability* to respond to the "needs and aspirations" of children he may beget, taking into account his (Larry's) "psychological preparedness, health status" and attendant "sociocultural and economic concerns," according to the provisions of RA 10354 on responsible parenthood.

On the contrary, Dr. Pascual, after examining Larry, noted that he "still needs supervision in taking a bath," "cannot prepare his own meal" or run errands alone, and whose human figure "is comparable to a 7-8 year old."[30] Larry also does not appear to have a source of income independent from his family. These, it must be emphasized, were never controverted by petitioner.

Similarly, there is no medical or scientific evidence on record to support either Justice Leonen's claim that Larry's mental age will grow to be 18 years of age or beyond at some point in the future or its theory of "supported parenting." Given the advancing age and medical problems of Larry's guardians, and their financial standing, it is imperative that there must be some showing that they are (or will still be) possessed with the resources to meet the requirements of "supported parenting" for any of Larry's future children.

---

[30] *Aguirre v. Secretary, Department of Justice*, G.R. No. 170723, March 3, 2008, 547 SCRA 431, 437.

Notably, Justice Leonen himself, in his Opinion holding curfew ordinances on minors unconstitutional, has characterized a parent's rights with respect to his/her family as no less "fundamental," "an integral aspect of liberty and privacy," which ought to "receive the support of Government," their interests being "superior" to the State whose decision can only substitute or supplement "when parental authority is established to be absent or grossly deficient."[31]

Here, Larry's guardians claim that they made the decision to sterilize him due to the following considerations: they "are already old and have medical problem and x x x could no longer monitor and take care of him like before,"[32] and "because of Larry's emerging sexuality and inability to take care of himself much less a child."[33] Absent any clear showing that this exercise of parental authority is absent or grossly deficient, it should be considered that respondent Pedro, as Larry's legally-constituted guardian with the obligation to ensure his well-being, has an equally important right to decide matters affecting the latter. Justice Leonen conspicuously fails to cite any basis on the record which would show how respondent Pedro's exercise of parental authority in this particular instance was absent or grossly deficient, much less that it actually operated to Larry's detriment.

With respect, I also take exception to Justice Leonen's insinuation that respondent Pedro "deprive[d] him of all the options [that] his life had to offer,"[34] even expressly characterizing their decision as "an act of selfishness; not one borne out of love."[35] First, and considering that there is simply no evidence on record to support these statements, I find Justice Leonen's

---

[31] *J.* Leonen Separate Opinion, *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, G.R. No. 225442, August 8, 2017, 835 SCRA 350, 439-483.

[32] *Rollo*, p. 125.

[33] *Id.* at 143.

[34] *J.* Leonen Separate Opinion, p. 22.

[35] *J.* Leonen Separate Opinion, p. 22.

conclusions to be unfounded and unfair. Furthermore, parents, probably more than anyone else, are the ones expected to love and care for their child, to do their best to ensure and look after their child's best interests. This is even acknowledged by the law which provides a father's diligence as the default standard of care required in the general performance of obligations.[36] Absent evidence to the contrary, respondent Pedro is presumed to always act in Larry's best interests; he would never have been granted guardianship over Larry otherwise. Respondent Pedro has taken Larry, an orphan, into his house and, from all available indications, brought him up like one of his own. I thus hesitate to be so harsh as to question respondent Pedro's motivations and impute bad faith on his parenting on account of Justice Leonen's disagreement (with the decision to vasectomize) based on a still to be established legal "principle."

B

We should also consider the provisions of the Family Code which prohibits persons under the age of 18 from contracting marriage;[37] and allows the annulment of marriages contracted

---

[36] Articles 1163 and 1173 of the Civil Code provide:

Art. 1163. Every person obliged to give something is also obliged to take care of it with the **proper diligence of a good father of a family**, unless the law or the stipulation of the parties requires another standard of care.

x x x x x x x x x

Art. 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of Articles 1171 and 2201, paragraph 2, shall apply.

If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a **good father of a family** shall be required. (Emphasis supplied.) See also *Troxel v. Granville*, *supra* note 25, which held that fit parents can be presumed to act in the best interests of their child.

[37] Articles 2 and 5 of the Family Code provide:

Art. 2. No marriage shall be valid, unless these essential requisites are present:

by parties between the ages of 18 and 21 when parental consent is not secured[38] or when either party was of unsound mind at the time of marriage.[39] These provisions evince a State interest to ensure that parties contracting a marriage know their enormous responsibilities as future parents. The Family Code is replete with provisions making up the bundle of duties and responsibilities imposed upon parents/guardians with respect to their children/wards,[40] including the duty to support, educate and provide for the child's upbringing. Pursuant thereto, should the State issue a marriage license in favor of an intellectually-disabled individual? A case can *arguably* be made that the same State interest (which allows the State to prohibit minors from contracting marriage) applies in cases of intellectually-disabled individuals who may wish to marry and have children. To my mind, an assertion of an unqualified right of an intellectually-disabled person to have children, because it implicates State interests,

---

(1) Legal capacity of the contracting parties who must be a male and a female; and

(2) Consent freely given in the presence of the solemnizing officer.

x x x x x x x x x

Art. 5. Any male or female of the age of eighteen years or upwards not under any of the impediments mentioned in Articles 37 and 38, may contract marriage.

[38] FAMILY CODE, Art. 45. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

(1) That the party in whose behalf it is sought to have the marriage annulled was eighteen years of age or over but below twenty-one, and the marriage was solemnized without the consent of the parents, guardian or person having substitute parental authority over the party, in that order, unless after attaining the age of twenty-one, such party freely cohabited with the other and both lived together as husband and wife;

x x x x x x x x x

[39] FAMILY CODE, Art. 45. x x x

x x x x x x x x x

(2) That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband and wife;

x x x x x x x x x

[40] See Title IX (Parental Authority) of the Family Code.

would require the reception of evidence to prove that the individual is willing and able to meet the bundle of duties and responsibilities imposed by the State as a consequence of parenthood.[41]

C

There is also Republic Act No. 11036 (RA 11036), otherwise known as the "Mental Health Act," which was approved only in June of last year. Under this law, the Congress, after consultation with a wide range of public mental health individuals, experts, academics, professionals, governmental and non-government associations,[42] declared as policy that mental health conditions be treated and that persons affected by mental health conditions are able to exercise the full range of human rights.[43]

---

[41] See also Section 4(v) of RA 10354 which defines responsible parenthood.

[42] See Senate Committee on Health and Demography, Joint with the Committees on Local Government and Finance (Technical Working Group), Session of February 16, 2017, with the following in attendance as guests/ resource persons: 1) Ms. Sally Bongalanta, Assistant Director, Institute of Family Life and Children Studies, Philippine Women's University, and Vice President, Alliance of Filipino Families for Mental Health, Inc.; 2) Ms. Maria Jerika Ejercito, Be Healed Foundation; 3) Ms. Alexandra Santos, Be Healed Foundation; 4) Ms. Janice S. Cambri, Psychological Disability Inclusive-Philippines; 5) Dr. Dinah Palmera Nadera, Community Mental Health Consultant, Kristoffel Blindenmission; 6) Dr. Leonor Cabral-Lim, Epilepsy Council, Philippine Neurological Association; 7) Dr. Manuel Panopio, President, Philippine College of Addiction Medicine, and Medical Specialist, Treatment and Rehabilitation Center, Department of Health (DOH); 8) Dr. Bernardino A. Vicente, Medical Center Chief III, National Center for Mental Health, DOH; 9) Ms. Frances Prescilla Cuevas, Program Manager, Mental Health, DOH; 10) Dr. Ronald del Castillo, Associate Professor, College of Public Health, University of the Philippines- Manila; 11) Dr. Edgardo L. Tolentino, Philippine Psychiatric Association; 12) Mr. Jose Antonio Delos Reyes, Patient, Community Organizer Liason-Community Mental Health Program of Naga City, and Program Officer, HELP Learning Center, Inc.; 13) Mr. Patrick Angeles, No Box Transitions; 14) Mr. Lee Yarcia, No Box Transitions; 15) Atty. Daniel Dy Lising, Institute of Human Rights, University of the Philippines College of Law; and 16) Ms. Liza Martinez, Philippine Alliance for Persons with Chronic Illness, Psychosocial Disability Inclusive-Philippines.

[43] Republic Act No. 11036, Sec. 2.

RA 11036 further states as an objective the protection of the rights and freedoms of persons with psychiatric, neurologic, and psychosocial health needs.[44] After defining a mental health condition as follows:

> Sec. 4. x x x
>
> x x x x x x x x x
>
> (k) *Mental Health Condition* refers to a neurologic or psychiatric condition characterized by the existence of a recognizable, clinically-significant disturbance in an individual's cognition, emotional regulation, or behavior that reflects a genetic or acquired dysfunction in the neurobiological, psychosocial, or developmental processes underlying mental functioning. The determination of neurologic and psychiatric conditions shall be based on scientifically-accepted medical nomenclature and best available scientific and medical evidence[.][45]

the law goes on to enumerate the rights of the person with a health condition, whom it calls the service user. These include: (1) the right against treatment that are cruel, inhumane, harmful or degrading and invasive procedures not backed by scientific evidence;[46] (2) the right to give informed consent before receiving treatment, such consent is required to be in writing and recorded in the service user's record;[43] and (3) the right to designate a person of legal age as his or her legal representative, who may act as substitute decision maker.[48] Where the service user fails to appoint, RA 11036 identifies the persons qualified to be his/her legal representative, in a prescribed order, as follows:

---

[44] Republic Act No. 11036, Sec. 3(c).

[45] Republic Act No. 11036, Sec. 4(k).

[46] Republic Act No. 11036, Sec. 5(h).

[47] Republic Act No. 11036, Sec. 5(m).

[48] Republic Act No. 11036, Sec. 10.

Sec. 10. x x x

x x x x x x x x x

(c) *Failure to Appoint*. If the service user fails to appoint a legal representative, the following persons shall act as the service user's legal representative, in the order provided below:

(1) The spouse, if any, unless permanently separated from the service user by a decree issued by a court of competent jurisdiction, or unless such spouse has abandoned or been abandoned by the service user for any period which has not yet come to an end;
(2) Non-minor children;
(3) Either parent by mutual consent, if the service user is a minor;
(4) Chief, administrator, or medical director of a mental health care facility; or
(5) **A person appointed by the court**. (Emphasis supplied.)

RA 11036 further requires public and private health facilities to create. internal review boards to assess and decide, *motu proprio* or upon written complaint or petition, all cases, disputes and controversies involving the treatment, restraint or confinement of service users within their facilities.[49] Mental health professionals are also given the right to advocate for the rights of a service user, where the latter's wishes are deemed to be at odds with those of his/her family or legal representative.[50]

Through RA 11036, the Congress has put in place a legal regime requiring the informed consent of the service user prior to treatment. In the same measure, it nevertheless provided for: (1) exceptions to the requirement of informed consent, in cases of emergencies, or "when there is impairment x x x of decision-making capacity on the part of a service user,"[51] subject

---

[49] Republic Act No. 11036, Sec. 12.

[50] Republic Act No. 11036, Sec. 7(g).

[51] Republic Act No. 11036, Sec. 13; Sec. 4(g) defines impairment or temporary loss of decision-making as follows:

to certain safeguards and conditions;[52] and (2) penalties in case of violation of its provisions.[53]

---

Sec. 3. x x x

(g) *Impairment or Temporary Loss of Decision-Making Capacity* refers to a medically-determined inability on the part of a service user or any other person affected by a mental health condition, to provide informed consent. A service user has impairment or temporary loss of decision-making capacity when the service user as assessed by a mental health professional is unable to do the following:

(1) Understand information concerning the nature of a mental health condition;
(2) Understand the consequences of one's decisions and actions on one's life or health, or the life or health of others;
(3) Understand information about the nature of the treatment proposed, including methodology, direct effects, and possible side effects; and
(4) Effectively communicate consent to treatment or hospitalization, or information regarding one's own condition[.]

[52] Republic Act No. 11036, Sec. 13. *Exceptions to Informed Consent.* – During psychiatric or neurologic emergencies, or when there is impairment or temporary loss of decision-making capacity on the part of a service user, treatment, restraint or confinement, whether physical or chemical, may be administered or implemented pursuant to the following safeguards and conditions:

(a) In compliance with the service user's advance directives, if available, unless doing so would pose an immediate risk of serious harm to the patient or another person;
(b) Only to the extent that such treatment or restraint is necessary, and only while a psychiatric or neurologic emergency, or impairment or temporary loss of capacity, exists or persists;
(c) Upon the order of the service user's attending mental health professional, which order must be reviewed by the internal review board of the mental health facility where the patient is being treated within fifteen (15) days from the date such order was issued, and every fifteen (15) days thereafter while the treatment or restraint continues; and
(d) That such involuntary treatment or restraint shall be in strict accordance with guidelines approved by the appropriate authorities, which must contain clear criteria regulating the application and termination of such medical intervention, and fully documented and subject to regular external independent monitoring, review, and audit by the internal review boards established by this Act.

[53] Republic Act No. 11036, Sec. 44. *Penalty Clause.* – Any person who commits any of the following acts shall, upon conviction by final

Both RA 10354 and RA 11036 make possible alternative views on sterilization in relation to intellectually-disabled individuals. Under RA 10354, for example, vasectomy can be viewed as a family planning procedure that the parent/legal guardian of an intellectually-disabled child/individual may decide that the latter should undergo. In like manner, vasectomy can arguably qualify as a possible treatment or medical intervention for an individual with a mental health condition (to which his/her parents can give substituted consent to under certain specified conditions). By these lights, the view that vasectomy on intellectually-disabled individuals is criminal should be tested in a proper, prospective case.

D

More, it should also be considered that there are *differing* kinds and levels of intellectual disabilities; treating all of them similarly and without due consideration of their differences may only end up doing the concerned intellectually-disabled individual a disservice. The US Supreme Court, for example, has acknowledged the existence of levels of intellectual disabilities and how, in the context of the constitutional right forbidding the execution of the intellectually-disabled, they play a critical role in providing information on how intellectual disability should be measured and assessed.[54] Aside from acknowledging that

---

judgment, be punished by imprisonment of not less than six (6) months, but not more than two (2) years, or a fine of not less than Ten thousand pesos (₱10,000.00), but not more than Two hundred thousand pesos (₱200,000.00), or both, at the discretion of the court:

(a) Failure to secure informed consent of the service user, unless it falls under the exceptions provided under Section 13 of this Act;
(b) Violation of the confidentiality of information, as defined under Section 4(c) of this Act;
(c) Discrimination against a person with a mental health condition, as defined under Section 4(e) of this Act; and
(d) Administering inhumane, cruel, degrading or harmful treatment not based on medical or scientific evidence as indicated in Section 5(h) of this Act.

[54] See footnote 1.

its decisions on the matter is better informed by the views and assessments of medical experts and the professional medical community, the Court also recognized DSM-5, which provides for four severity levels for intellectual disability, namely: mild, moderate, severe and profound, as an authoritative reference.[55]

---

[55] In *Hall v. Florida* (572 U.S.___ (2014), the US Supreme Court held:

> That this Court, state courts, and state legislatures consult and are informed by the work of medical experts in determining intellectual disability is unsurprising. Those professionals use their learning and skills to study and consider the consequences of the classification schemes they devise in the diagnosis of persons with mental or psychiatric disorders or disabilities. Society relies upon medical and professional expertise to define and explain how to diagnose the mental condition at issue. And the definition of intellectual disability by skilled professionals has implications far beyond the confines of the death penalty: for it is relevant to education, access to social programs, and medical treatment plans. In determining who qualifies as intellectually disabled, it is proper to consult the medical community's opinions.
>
> x x x x x x x x x
>
> In addition to the views of the States and the Court's precedent, this determination is informed by the views of medical experts. These views do not dictate the Court's decision, yet the Court does not disregard these informed assessments. See [*Kansas v. Crane*, 534 U. S. 407, 413 (2002)] ("[T]he science of psychiatry . . . informs but does not control ultimate legal determinations. . ."). It is the Court's duty to interpret the Constitution, but it need not do so in isolation. The legal determination of intellectual disability is distinct from a medical diagnosis, but it is informed by the medical community's diagnostic framework. *Atkins* itself points to the diagnostic criteria employed by psychiatric professionals. And the professional community's teachings are of particular help in this case, where no alternative definition of intellectual disability is presented and where this Court and the States have placed substantial reliance on the expertise of the medical profession.

Here, even as it voided Florida's fixed standard of IQ of 70, the US Supreme Court reiterated the need for evidence of both subaverage intellectual functioning and significant limitations in adaptive skills. Similarly, in *Atkins v. Virginia*, 536 U.S. 304, 318 (2002), it held that "clinical definitions of mental retardation require not only subaverage intellectual functioning, but also significant limitations in adaptive skills such as communication, self-care, and self-direction that became manifest before age 18."

This Court, in a prosecution for rape and sexual assault of a 21 year-old intellectually-disabled person with a mental age of six years and an IQ of 38, has itself acknowledged differences with respect to mental/intellectual deficiencies:

> The term, "deprived of reason," is associated with insanity or madness. A person deprived of reason has mental abnormalities that affect his or her reasoning and perception of reality and, therefore, his or her capacity to resist, make decisions, and give consent.
>
> The term, "demented," refers to a person who suffers from a mental condition called dementia. Dementia refers to the deterioration or loss of mental functions such as memory, learning, speaking, and social condition, which impairs one's independence in everyday activities.
>
> We are aware that the terms, "mental retardation" or "intellectual disability," had been classified under "deprived of reason." The terms, "deprived of reason" and "demented," however, should be differentiated from the term, "mentally retarded" or "intellectually disabled." An intellectually disabled person is not necessarily deprived of reason or demented. This court had even ruled that they may be credible witnesses. However, his or her maturity is not there despite the physical age. He or she is deficient in general mental abilities and has an impaired conceptual, social, and practical functioning relative to his or her age, gender, and peers. Because of such impairment, he or she does not meet the "socio-cultural standards of personal independence and social responsibility."
>
> x x x Decision-making is a function of the mind. x x x[56] (Citations omitted.)

These viewpoints, to me, show that Justice Leonen's grand assertion of a "fundamental" right on the part of the intellectually-disabled to procreation and parenthood is not as self-evident as he makes it appear. The cited laws and court holdings, both here and abroad, underscore that rights do not exist in isolation;

---

[56] *People v. Quintos*, G.R. No. 199402, November 12, 2014, 740 SCRA 179, 201-202.

one man's liberty ends where another man's begins.[57] As a constitutional scholar writes:

> **Even when it has recognized a core kind of fundamental right, such as the right to autonomy in procreative matters, the Court should be reluctant to extend the protected interest to novel circumstances without considering countervailing factors**. x x x Instead, it should be recognized that there is a needed region of legislative flexibility to prevent negative consequences of these endeavors in which the State has legitimate interests and in which a "right" may destroy countervailing "rights." x x x **[T]he initial decision to recognize the interest as a fundamental right should not be undertaken without an inquiry into other individual interests that might be compromised by the categorization**.[58] (Emphasis supplied.)

Ignoring the reality of competing interests would mean wrongly presupposing, in the words of Justice Scalia, that "x x x there is only one side to this controversy—that one disposition can expand a 'liberty' of sorts without contracting an equivalent 'liberty' on the other side. Such a happy choice is rarely available."[59] The "ramifications and gravity of the issue involved"[60] simply does not justify traversing the complex issues pertaining to the reproductive rights of the intellectually-disabled, absent any evidence supporting the conflicting claims and arguments surveyed.

III

My views on the prematurity of reaching the constitutional issues notwithstanding, I take this occasion to discuss the concept of fundamental rights. I do so in response to Justice Leonen's

---

[57] See *State ex rel. Zillmer v. Kreutzberg*, 114 Wis. 530, 538 (1902).

[58] Crump, "*How Do the Courts Really Discover Unenumerated Fundamental Rights — Cataloguing the Methods of Judicial Alchemy*," 19 Harv. J. L. & Pub. Pol'y 795 (1996), p. 910.

[59] *Michael H. v. Gerald D.*, 491 U.S. 110, 130 (1989).

[60] *J.* Leonen Main Resolution, p. 21.

assertion that the vasectomy conducted on Larry, an intellectually-disabled person, violated his "**fundamental** right to life and liberty,"[61] particularly, his rights "to procreate,"[62] to "start a family,"[63] to be a "parent,"[64] and that the decision to subject him to vasectomy required Larry's consent.[65]

A

The concept of fundamental rights, once described as "liberties that operate as trumps,"[66] was first extensively covered by the Court, through Chief Justice Puno, in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*,[67] There, the Court, citing Gerald Gunther, traced its history and development in the context of American constitutional equal protection analysis.[68] The liberty interests declared by the US

---

[61] *J*. Leonen Separate Opinion, p. 12.

[62] *J*. Leonen Separate Opinion, p. 18.

[63] *J*. Leonen Separate Opinion, p. 18.

[64] *J*. Leonen Separate Opinion, p. 18.

[65] *J*. Leonen Separate Opinion, p. 18.

[66] Easterbrook, "*Implicit and Explicit Rights of Association,*" Vol. 10 Harvard Journal of Law and Public Policy (1987), pp. 91-92.

[67] G.R. No. 148208, December 15, 2004, 446 SCRA 299.

[68] *Id*. at 371-374. Prior to the Warren Court era of the 1960's, there was an overall attitude of marginal judicial intervention with respect to equal protection cases. This "old" variety of equal protection scrutiny was deferential; insisting merely that the classification in the contested statute reasonably relate to the avowed legislative purpose. This meant that the rational classification requirement was satisfied fairly readily. In the 1960s, the US Supreme Court, under the leadership of Chief Justice Earl Warren, embraced a "new" approach to equal protection whereby it came to find more areas where strict rather than deferential scrutiny was to be applied. Under this "new" approach, strict scrutiny was to be applied when two characteristics were found to be present: the presence of "suspect" classifications or an impact on "fundamental" rights and interests. "Suspect" classifications typically involved those based on race, but eventually also included other areas as well (such as alienage, illegitimacy, gender, and wealth). Rights and interests considered fundamental by the Warren Court included those on voting, criminal appeals and interstate travel. Years later,

Supreme Court to be "fundamental" are the right to procreation, the right to marry, the right to exercise First Amendment freedoms such as free speech, political expression, press, assembly, the right to travel and the right to vote.[69] By way of continued acceptance of the concept, this Court, very recently in *Republic v. Manalo*[70] and applying equal protection analysis, identified marriage, among others, as a fundamental right.

The recognition of an asserted liberty interest as "fundamental" has significant legal consequences. Traditionally, liberty interests are protected only against arbitrary government interference. If the government can show a rational basis for believing that its interference advances a legitimate legislative objective, a claim to a liberty interest may fail.[71] Where, however, a liberty interest has been accorded an "elevated" status by characterizing

---

the US Supreme Court under Chief Justice Warren E. Burger would retain the two-tier formulation of the Warren Court but slowed down any significant expansions with respect to defining new fundamental interests. In fact, scholars have noted a mounting discontent with the two-tier formulation such that Justice Marshall, in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973) would propose a "sliding scale" approach which provides that rather than limiting itself to two neat categories (between strict scrutiny and mere rationality), the Court should consider a spectrum of standards in reviewing discrimination allegedly violative of the Equal Protection Clause. Under this "newer" equal protection model, the Court would be less willing to supply justifying rationales by exercising its imagination. Instead, it would have to gauge the reasonableness of the challenged means on the basis of materials offered it, rather than "resorting to rationalizations created by perfunctory judicial hypothesizing." This "newer" approach of modest interventionism essentially provides the middle ground and bridges the yawning gap between the extreme deference of the "old" approach and the excessive interventionism of the "new" approach. (Gunther, "*Constitutional Laws Cases and Materials*," University Casebook Series, pp. 657-685.)

[69] Gunther, "*Constitutional Law Cases and Materials*," University Casebook Series, pp. 697-698.

[70] G.R. No. 221029, April 24, 2018.

[71] Crump, "*How do the Courts Really Discover Unenumerated Fundamental Rights - Cataloguing the Methods of Judicial Alchemy," supra* note 58 at 799-800.

it as a right (or a fundamental right), then the government is subject to a *higher* burden of proof to justify intrusions into these interests, namely, the requirements of strict scrutiny in equal protection cases[72] and that of compelling State interest in due process cases.[73] As the US Supreme Court has warned, affixing the label "fundamental" to such liberty interests would place them outside the arena of public debate and legislative action.[74] Resultantly, and as is also true in this jurisdiction, fundamental rights have been deemed to include only those basic liberties explicitly or implicitly guaranteed by the Bill of Rights of the Constitution.[75]

B

There seems to me little disagreement as to the "fundamental" nature of an asserted liberty interest when the same can be read from the text of the Bill of Rights of the Constitution itself. Thus, when a State act is alleged to have implicated an **explicit** "fundamental right," *i.e.*, a right textually found in the Bill of Rights, the Court has been wont to subject the government to a higher burden to justify its challenged action:

In *Ebralinag v. The Division Superintendent of Schools of Cebu*,[76] the Court annulled and set aside orders expelling petitioners from school, thereby upholding their right under the Constitution to refuse to salute the Philippine flag on account of their **religious beliefs** as guaranteed under Section 5, Article III.[77]

---

[72] See *Central Bank Employees Association, Inc. v. Bangko Central ng Pilipinas, supra* note 67.

[73] See *Obergefell v. Hodges*, 576 U.S. __ (2015).

[74] *Id.*

[75] *Republic v. Manalo*, *supra* note 70. citing *J.* Brion Separate Opinion, *Biraogo v. Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010, 637 SCRA 78, 359-360.

[76] G.R. No. 95770, March 1, 1993, 219 SCRA 256.

[77] CONSTITUTION, Sec. 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free

In *Legaspi v. Civil Service Commission* (CSC),[78] the CSC was ordered, *via mandamus*, to open its register of eligibles for the position of sanitarian, and to confirm or deny, the civil service eligibility of certain identified individuals for said position in the Health Department of Cebu City, in furtherance of the fundamental **right of the people to information on matters of public concern** provided under Section 7, Article III of the Constitution.[79]

In *Disini, Jr. v. Secretary of Justice*[80] the Court struck down as unconstitutional Sections 4(c)(3), 12, and 19 of the Cybercrime Law[81] for being violative of the **right to freedom of expression, right to privacy, and right against unreasonable searches and seizures**, as explicitly provided under Sections 4, 3, and 2, respectively, of Article III of the Constitution.[82]

---

exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

[78] G.R. No. 72119, May 29, 1987, 150 SCRA 530.

[79] CONSTITUTION, Sec. 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

[80] G.R. No. 203335, February 18, 2014, 716 SCRA 237.

[81] Republic Act No. 10175, Cybercrime Prevention Act of 2012.

[82] These provisions of Article III of the 1987 Constitution read as follows:

> Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.
>
> Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

The case of *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*[83] involved a challenge against curfew ordinances for minors for being violative of the constitutional **right to travel**. There, the Court chose to apply the strict scrutiny test and found that while the government was able to show a compelling State interest, it failed to show that the regulation set forth was the least restrictive means to protect such interest or the means chosen is narrowly tailored to accomplish the interest.

In *Chavez v. Gonzales*,[84] the Court nullified the official government statements warning the media against airing the alleged wiretapped conversation between the President and other personalities. According to the Court, any attempt to restrict the exercise of **freedom of the press** guaranteed under Section 4, Article III must be met with "an examination so critical that only a danger that is clear and present would be allowed to curtail it."[85]

In *Newsounds Broadcasting Network, Inc. v. Dy*,[86] on the other hand, the Court held that respondents' actions, which ranged from withholding permits to operate to the physical closure of those stations under color of legal authority, failed to pass the test of strict scrutiny which it deemed appropriate to assess content-based restrictions on **free speech and press**. According to the Court, "[a]s 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."[87] Due to the government's failure to

---

x x x x x x x x x

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.

[83] *Supra* note 31.

[84] G.R. No. 168338, February 15, 2008, 545 SCRA 441.

[85] *Id.* at 473.

[86] G.R. Nos. 170270 & 179411, April 2, 2009, 583 SCRA 333, 334.

[87] *Id.* at 355. Citation omitted.

show a compelling State interest, the Court granted petitioner's prayer for a writ of *mandamus* and ordered respondents to immediately issue the requisite permits.

In *Kabataan Party-List v. Commission on Elections (COMELEC)*,[88] a challenge was made against a COMELEC resolution setting a shorter deadline for voter registration, one outside of the period provided by Section 8 of Republic Act No. 8189, otherwise known as the "Voter's Registration Act of 1996." The Court found that existing laws grant the COMELEC the power to fix other periods and dates for pre-election activities only if the same cannot be reasonably held within the period provided by law. Since the COMELEC was unable to justify why the mandate of continuing voter registration cannot be reasonably held within the period provided, the Court nullified the deadline set by the COMELEC for being unduly restrictive of the people's **right to vote**.[89]

C.

Justice Harlan of the US Supreme Court has famously noted that "the full scope of the liberty guaranteed by the Due Process

---

[88] G.R. No. 221318, December 16, 2015, 777 SCRA 574.

[89] The Constitution devotes an entire Article on Suffrage. This Article reads:

ARTICLE V

Suffrage

Sec. 1. Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage.

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.

The Congress shall also design a procedure for the disabled and the illiterates to vote without the assistance of other persons. Until then, they shall be allowed to vote under existing laws and such rules as the Commission on Elections may promulgate to protect the secrecy of the ballot.

Clause cannot be found in, or limited by, the precise terms of the specific guarantees elsewhere provided in the Constitution."[90] Thus, American jurisprudence is replete with instances wherein their Supreme Court has given "fundamental" status to otherwise unenumerated rights.

The first **unenumerated** right to be widely recognized was the **liberty of contract** in the 1905 landmark case of *Lochner v. New York*.[91] In *Lochner*, the US Supreme Court invalidated a New York statute which provided that employees shall not be required to work in bakeries for more than 60 hours in a week, or 10 hours a day. It found the regulation "an unreasonable, unnecessary and arbitrary interference with the **right and liberty of the individual to contract** in relation to labor, and, as such, it is in conflict with, and void under, the Federal Constitution."[92]

In what became known as the *Lochner*-era, the US Supreme Court during this time focused on the term "liberty" under the

---

[90] *Poe v. Ullman*, 367 U.S. 497, 543 (1961). *J.* Harlan Dissenting Opinion.

[91] 198 U.S. 45 (1905).

[92] *Id*. at 56. The Court in *Lochner v. New York* held:

> The mandate of the statute that "no employee shall be required or permitted to work," is the substantial equivalent of an enactment that "no employee shall contract or agree to work," more than ten hours per day, and, as there is no provision for special emergencies, the statute is mandatory in all cases. It is not an act merely fixing the number of hours which shall constitute a legal day's work, but an absolute prohibition upon the employer's permitting, under any circumstances, more than ten hours work to be done in his establishment. The employee may desire to earn the extra money which would arise from his working more than the prescribed time, but this statute forbids the employer from permitting the employee to earn it.
>
> **The statute necessarily interferes with the right of contract between the employer and employees concerning the number of hours in which the latter may labor in the bakery of the employer. The general right to make a contract in relation to his business is part of the liberty of the individual protected by the Fourteenth Amendment of the Federal Constitution.** (Emphasis supplied.) *Id*. at 52-53.

Due Process Clause, construed it to include the "freedom of contract," and subjected any attempt by the State to regulate *contractual* relations to a level of review "that was as demanding as implied by the modern term 'strict scrutiny.'"[93] Thus, "liberty of contract" was used as basis to invalidate laws providing for maximum working hours,[94] minimum wage laws,[95] and even those which allowed employers to require, as

---

[93] Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court*, 26 St. Louis U. Pub. L. Rev. 203 (2007), pp. 204-205. Farrell also writes that "[w]henever the Court, in a Lochner-type case determined that a statute infringed on a protected 'liberty' interest, the statute was typically invalidated as a matter of course, usually without measuring the significance of the government's interest in regulating that activity."

[94] See *Lochner v. New York*, *supra* note 91.

[95] See *Adkins v. Childrens Hospital*, 261 U.S. 525 (1923), wherein the US Supreme Court invalidated a District of Columbia statute requiring minimum wages for women. There, the Court held:

> It is simply and exclusively a price-fixing law, confined to adult women (for we are not now considering the provisions relating to minors), who are legally as capable of contracting for themselves as men. It forbids two parties having lawful capacity — under penalties as to the employer — to freely contract with one another in respect of the price for which one shall render service to the other in a purely private employment where both are willing, perhaps anxious, to agree, even though the consequence may be to oblige one to surrender a desirable engagement and the other to dispense with the services of a desirable employee.
>
> x x x x x x x x x
>
> A statute requiring an employer to pay in money, to pay at prescribed and regular intervals, to pay the value of the services rendered, even to pay with fair relation to the extent of the benefit obtained from the service, would be understandable. **But a statute which prescribes payment without regard to any of these things and solely with relation to circumstances apart from the contract of employment, the business affected by it and the work done under it, is so clearly the product of a naked, arbitrary exercise of power that it cannot be allowed to stand under the Constitution of the United States**. (Emphasis supplied.) *Id*. at 554-555, 559.

a condition for hiring or continued employment, non-membership in unions.[96]

---

[96] *Coppage v. Kansas*, 236 U.S. 1 (1915), wherein the US Supreme Court invalidated a Kansas law prohibiting employees from requiring employees not to join a union. The Court in *Coppage* held:

> Included in the right of personal liberty and the right of private property — partaking of the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich, for the vast majority of persons have no other honest way to begin to acquire property save by working for money.
>
> An interference with this liberty so serious as that now under consideration, and so disturbing of equality of right, must be deemed to be arbitrary unless it be supportable as a reasonable exercise of the police power of the state. But, notwithstanding the strong general presumption in favor of the validity of state laws, we do not think the statute in question, as construed and applied in this case, can be sustained as a legitimate exercise of that power.
>
> x x x x x x x x x
>
> x x x **[S]ince the relation of employer and employee is a voluntary relation, as clearly as is that between the members of a labor organization, the employer has the same inherent right to prescribe the terms upon which he will consent to the relationship, and to have them fairly understood and expressed in advance.**
>
> When a man is called upon to agree not to become or remain a member of the union while working for a particular employer, he is in effect only asked to deal openly and frankly with his employer, so as not to retain the employment upon terms to which the latter is not willing to agree. And the liberty of making contracts does not include a liberty to procure employment from an unwilling employer, or without a fair understanding. Nor may the employer be foreclosed by legislation from exercising the same freedom of choice that is the right of the employee.
>
> To ask a man to agree, in advance, to refrain from affiliation with the union while retaining a certain position of employment is not to ask him to give up any part of his constitutional freedom. He is free to decline the employment on those terms, just as the employer may

Interestingly, around this time, the US Supreme Court also had occasion to interpret "liberty" outside of contracts and *in the specific context of family relations*. In *Meyer v. Nebraska,*[97] the US Supreme Court reversed a conviction of an instructor in a parochial school who taught the subject of reading in German language to a child of 10 years and who had not attained and successfully passed the eighth grade. It found that **Meyer's right thus to teach foreign languages and the right of parents to engage him so to instruct** their children fall within the liberty of the Fourth Amendment.[98]

---

decline to offer employment on any other, for "it takes two to make a bargain." Having accepted employment on those terms, the man is still free to join the union when the period of employment expires, or, if employed at will, then at any time upon simply quitting the employment. And, if bound by his own agreement to refrain from joining during a stated period of employment, he is in no different situation from that which is necessarily incident to term contracts in general. For constitutional freedom of contract does not mean that a party is to be as free after making a contract as before; he is not free to break it without accountability. Freedom of contract, from the very nature of the thing, can be enjoyed only by being exercised, and each particular exercise of it involves making an engagement which, if fulfilled, prevents for the time any inconsistent course of conduct, (Emphasis supplied.) *Id*. at 14, 20-21.

See also Samberg, The Fundamentals of Fundamental Rights, https://medium.com/@mattsamberg/the-fundamentals-of-fundamental-rights-1138ced2ad4, last accessed November 13, 2018.

[97] 262 U.S. 390 (1923).

[98] *Id*. at 399-402. The Court held:

> While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. **Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.** x x x
>
> x x x x x x x x x

Similarly, in *Pierce v. Society of Sisters*,[99] the US Supreme Court invalidated a State statute mandating, with limited exceptions, the enrollment of children in public schools within their residential districts. According to the Court, the challenged law "unreasonably interferes with the **liberty of parents and guardians to direct the upbringing and education of children** under their control:"[100]

> [A]s often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of

---

> It is said the purpose of the legislation was to promote civic development by inhibiting training and education of the immature in foreign tongues and ideals before they could learn English and acquire American ideals, and "that the English language should be and become the mother tongue of all children reared in this State." It is also affirmed that the foreign born population is very large, that certain communities commonly use foreign words, follow foreign leaders, move in a foreign atmosphere, and that the children are thereby hindered from becoming citizens of the most useful type, and the public safety is imperiled.
>
> That the State may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution — a desirable end cannot be promoted by prohibited means.
>
> x x x x x x x x x
>
> The desire of the legislature to foster a homogeneous people with American ideals prepared readily to understand current discussions of civic matters is easy to appreciate. Unfortunate experiences during the late war and aversion toward ever)' characteristic of truculent adversaries were certainly enough to quicken that aspiration. But the means adopted, we think, exceed the limitations upon the power of the State and conflict with rights assured to plaintiff in error. The interference is plain enough, and no adequate reason therefor in time of peace and domestic tranquility has been shown.

[99] 268 U.S. 510 (1925).

[100] *Id.* at 534.

> the State. **The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations**.[101] (Emphasis supplied.)

Come 1937, the US Supreme Court would abandon its "broad" stance on economic liberties, signaling the decline of the *Lochner*-era. Scholars would debate that this new attitude (reduction of judicial intervention in economic regulation) was a reaction to then President Franklin D. Roosevelt's "Court-Packing Plan,"[102] purportedly an attempt by the president to stem the Court's continuous invalidation of federal New Deal statutes.[103] In any case, by 1937, the Court would decide *West Coast Hotel Co. v. Parrish*,[104] upholding a statute providing for minimum wages (and expressly reversing its earlier ruling in *Adkins*). In a sharp retreat from the philosophy characteristic of its *Lochner*-era holdings, the Court in *Parrish* found that the liberty protected by the Due Process Clause was neither absolute nor uncontrollable but rather subject to regulation which is reasonable in relation to its subject.

---

[101] *Id.* at 535.

[102] Under President Roosevelt's plan, also known as the Judicial Procedures Reform Bill of 1937, the membership of the Supreme Court would be increased every time a Justice reaches the age of 70 and fails to retire, with the end purpose of ensuring that the Lochner majority would eventually be outvoted. This plan was eventually rejected by the Senate. (Sujit Choudh, The *Lochner* Era and Comparative Constitutionalism, 2 Int'l J. Const. L. 1 [2004], taken from https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?referer=https://www.google.com.ph/&httpsredir=l&article=3282&context=facpubs, last accessed November 23, 2018.

[103] Gunther, "*Constitutional Law Cases and Materials*," University Casebook Series, p. 583.

[104] 300 U.S. 379 (1937).

From then on, the Court never looked back, marking the demise of the now infamous *Lochner*-era. With *Parrish*, the practice of subjecting to rigid scrutiny government regulation of business and commercial matters (in the name of protecting constitutional liberty) was stopped. The Court thereafter shifted its focus to deciding "substantive" rights under the Due Process and Equal Protection Clauses. While the aspect of *Lochner* severely curtailing economic regulation waned, the future significant cases touching on fundamental "non-economic" rights would build on *Lochner* insofar as it protected "fundamentals" which, as demonstrated by *Meyer* and *Pierce*, was "not wholly limited to economic rights: to the Court of that era, there was no sharp distinction between economic and non-economic, 'personal' liberties x x x."[105]

In *Skinner v. Oklahoma ex rel Williamson*,[106] the US Court struck down a state statute providing for compulsory sterilization after a third conviction for a felony "involving moral turpitude," but excluding felonies such as embezzlement, for being violative of the guarantee of equal protection. There, it declared that the challenged legislation involved "one of the basic civil rights of man," **marriage and procreation both being "fundamental to the very existence and survival of the race**."[107] Gunther writes:

> [T]he 1942 reference in *Skinner* to "fundamental," "basic" liberties in the area of marriage and procreation was extraordinary: that decision mixing due process and equal protection considerations was virtually the only one in that period from the demise of *Lochner* x x x to exercise

---

[105] Gunther, "*Constitutional Law Cases and Materials*," University Casebook Series, p. 617.

[106] 316 U.S. 535 (1942).

[107] *Id*. at 541. The US Supreme Court held the Oklahoma statute unconstitutional on the ground that equal protection requires that the state must either (1) sterilize embezzlers along with larceners or (2) sterilize neither class of "habitual criminals." (See also James E. Fleming and Linda C. McClain, "Liberty." Oxford Handbook of the United States Constitution, www.bu/edu/law/faculty/scholarship/workingpapers/2014.html, last accessed November 13, 2018.)

special scrutiny in favor of a "basic liberty" not tied to or justifiable by a specific constitutional guarantee.[108]

Subsequently, in the 1967 case of *Loving v. Virginia*,[109] the **freedom to marry** was recognized such that any restriction of such freedom based solely on racial classifications violates the central meaning of the Equal Protection Clause.

In *Lawrence v. Texas*,[110] the Supreme Court reversed its earlier ruling in *Bowers v. Hardwick*[111] and recognized **a liberty of consensual sexual conduct.**

In *Cruzan v. Director, Missouri Department of Health*,[112] the Court found a constitutionally protected **liberty interest in refusing unwanted medical treatment**.

Furthermore, while the US Constitution does not explicitly mention it, the US Supreme Court, in a line of cases, has recognized a general **right to personal privacy**, finding that liberties extend to "certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs."[113] In *Griswold v. Connecticut*,[114] the Court recognized a privacy right in favour of married couples to use contraceptives.[115] A similar right would later on be

---

[108] Gunther, "*Constitutional Law Cases and Materials*," University Casebook Series, p. 619.

[109] 388 U.S. 1 (1967).

[110] 539 U.S. 558 (2003).

[111] 478 U.S. 186 (1986).

[112] 497 U.S. 261 (1990).

[113] *Obergefell v. Hodges, supra* note 73, citing *Eisenstadt v. Baird*, 405 U.S. 438 (1972) and *Griswold v. Connecticut*, 381 U.S. 479 (1965). See discussion in *Roe v. Wade*, 410 U.S. 113 (1973). See also liberty and privacy discussion in J. Jardeleza's Concurring Opinion in *Capin-Cadiz v. Brent Hospital and Colleges, Inc.,* G.R. No. 187417, February 24, 2016,785 SCRA 18, 41).

[114] 381 U.S. 479 (1965).

[115] *Id*. at 485-486. In striking down a Connecticut statute forbidding the use of contraceptives, the *Griswold* Court held:

recognized in *Eisenstadt v. Baird*[116] in favor of unmarried individuals.[117] *Roe v. Wade*[118] would find the Court holding that the right of privacy is broad enough to encompass a woman's decision whether or not to terminate her pregnancy

---

The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives, rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a "governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." x x x Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy surrounding the marriage relationship.

[116] 405 U.S. 438 (1972).

[117] *Id*. at 453-454. The Court, applying equal protection, held:

x x x [W]hatever the rights of the individual to access to contraceptives may be, the rights must be the same for the unmarried and the married alike.

If, under *Griswold*, the distribution of contraceptives to married persons cannot be prohibited, a ban on distribution to unmanied persons would be equally impermissible It is true that, in *Griswold*, the right of privacy in question inhered in the marital relationship. Yet the marital couple is not an independent entity, with a mind and heart of its own, but an association of two individuals, each with a separate intellectual and emotional makeup. If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child, x x x

On the other hand, if *Griswold* is no bar to a prohibition on the distribution of contraceptives, the State could not, consistently with the Equal Protection Clause, outlaw distribution to unmarried, but not to married, persons. In each case, the evil, as perceived by the State, would be identical, and the underinclusion would be invidious. x x x

[118] 410 U.S. 113 (1973).

and under what conditions.[119] Two decades later, the Court would reaffirm the essential ruling in Roe through its 1992 decision in *Planned Parenthood of Southeastern Pennsylvania v. Casey*.[120]

---

[119] *Id*. at 153, 155, 163-164. The Court, applying due process analysis, held:

> This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy, x x x [T]hat the right, nonetheless, is not absolute, and is subject to some limitations; and that, at some point, the state interests as to protection of health, medical standards, and prenatal life, become dominant, x x x
>
> x x x x x x x x x
>
> With respect to the State's important and legitimate interest in the health of the mother, the "compelling" point, in the light of present medical knowledge, is at approximately the end of the first trimester. This is so because of the now-established medical fact, x x x, that, until the end of the first trimester mortality in abortion may be less than mortality in normal childbirth, x x x
>
> With respect to the State's important and legitimate interest in potential life, the "compelling" point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the mother's womb. State regulation protective of fetal life after viability thus has both logical and biological justifications. If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period, except when, it is necessary to preserve the life or health of the mother.

[120] 505 U.S. 833 (1992). The Court held:

> It must be stated at the outset and with clarity that *Roe's* essential holding, the holding we reaffirm, has three parts. First is a recognition of the right of the woman to choose to have an abortion before viability and to obtain it without undue interference from the State. Before viability, the State's interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to the woman's effective right to elect the procedure. Second is a confirmation of the State's power to restrict abortions after fetal viability, if the law contains exceptions for pregnancies which endanger the woman's life or health. And third is the principle that the State

More recently, the American Supreme Court, in *Obergefell v. Hodges*,[121] held that the **right of same-sex couples to marry** is part of the liberty under both the Due Process and Equal Protection Clauses; that these couples may exercise their fundamental right to marry in all States; and that States have no legal basis to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character.

Not all assertions to unenumerated fundamental rights, however, are able to obtain recognition from the Court:

*San Antonio Independent School District v. Rodriguez*[122] involved a suit brought by Mexican-American parents on behalf of school children said to be members of poor families who reside in school districts having a low property tax base. Asserting an implied right to education, which they claim is necessary for their effective exercise of their rights to free speech and suffrage, petitioners challenged the Texas system of financing public education (which provides that State funding for basic education is to be supplemented by each district through an *ad valorem* tax on property within its jurisdiction) insofar as it allegedly favored children from more affluent neighborhoods, in violation of equal protection requirements. The Court found unpersuasive, the reasons for the asserted liberty claim and held as follows:

> Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected, x x x It is appellees' contention, however, that education is distinguishable from other services and benefits provided by the State, because it bears a peculiarly close relationship to other rights and liberties

---

has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child. These principles do not contradict one another; and we adhere to each. *Id*. at 846.

[121] *Supra* note 73.

[122] 411 U.S. 1 (1973).

accorded protection under the Constitution. **Specifically, they insist that education is itself a fundamental personal right, because it is essential to the effective exercise of First Amendment freedoms and to intelligent utilization of the right to vote**. x x x

x x x x x x x x x

We need not dispute any of these propositions. The Court has long afforded zealous protection against unjustifiable governmental interference with the individual's rights to speak and to vote. Yet **we have never presumed to possess either the ability or the authority to guarantee to the citizenry the most effective speech or the most informed electoral choice. That these may be desirable goals of a system of freedom of expression and of a representative form of government is not to be doubted,** x x x **These are indeed goals to be pursued by a people whose thoughts and beliefs are freed from governmental interference. But they are not values to be implemented by judicial intrusion into otherwise legitimate state activities.**

Even if it were conceded that some identifiable quantum of education is a constitutionally protected prerequisite to the meaningful exercise of either right, we have no indication that the present levels of educational expenditures in Texas provide an education that falls short. Whatever merit appellees' argument might have if a State's financing system occasioned an absolute denial of educational opportunities to any of its children, **that argument provides no basis for finding an interference with fundamental rights where only relative differences in spending levels are involved and where — as is true in the present case — no charge fairly could be made that the system fails to provide each child with an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process**.[123] (Emphasis and underscoring supplied.)

The US Supreme Court has also refused to recognize an asserted implied fundamental right to die in *Washington v. Glucksberg*.[124] In *Glucksberg*, which involved the

[123] *Id.* at 35-37.

[124] 521 U.S. 702 (1997).

constitutionality of a Washington statute prohibiting persons from aiding another to attempt suicide, the Court was confronted with the issue of whether the "liberty" protected under the Due Process Clause includes a right to commit suicide (as well as a right to assistance in doing so). After examining relevant history, tradition and practice, the Court ruled in the negative and held:

> That many of the rights and liberties protected by the Due Process Clause sound in personal autonomy does not warrant the sweeping conclusion that any and all important, intimate, and personal decisions are so protected, *San Antonio Independent School Dist. v. Rodriguez* x x x and *Casey* did not suggest otherwise.
>
> **The history of the law's treatment of assisted suicide in this country has been and continues to be one of the rejection of nearly all efforts to permit it. That being the case, our decisions lead us to conclude that the asserted "right" to assistance in committing suicide is not a fundamental liberty interest protected by the Due Process Clause**. x x x[125] (Emphasis supplied.)

The Court also sought to differentiate the liberty interest asserted in *Glucksberg* from that asserted (and recognized) in *Cruzan* which, as earlier stated, involved the right to refuse unwanted medical treatment:

> The right assumed in *Cruzan*, however, was not simply deduced from abstract concepts of personal autonomy. Given the common-law rule that forced medication was a battery, and the long legal tradition protecting the decision to refuse unwanted medical treatment, our assumption was entirely consistent with this Nation's history and constitutional traditions. The decision to commit suicide with the assistance of another may be just as personal and profound as the decision to refuse unwanted medical treatment, but it has never enjoyed similar legal protection. Indeed, the two acts are widely and reasonably regarded as quite distinct. x x x In *Cruzan* itself, we recognized that most States outlawed assisted suicide—and even more do today—and we certainly gave no intimation that the right to

---

[125] *Id*. at 727-728.

> refuse unwanted medical treatment could be somehow transmuted into a right to assistance in committing suicide. x x x[126]

It also found that the Washington ban on assisted suicide was rationally related to (or implicated) legitimate State interests, such as interests in the preservation of human life and protection of the integrity and ethics of the medical profession.

D

In this jurisdiction, this Court has also had some occasions to rule on assertions of unenumerated fundamental rights:

In the 1924 case of *People v. Pomar*,[127] and reminiscent of the *Lochner*-era rulings, this Court declared unconstitutional provisions of law which required employers to pay a woman employee, who may become pregnant, her wages for 30 days before and 30 days after confinement. Citing a long line of US Supreme Court *Lochner*-era decisions, this Court found that the right to liberty includes **the right to enter into (and terminate) contracts**. Accordingly, it held:

> [S]aid section creates a *term* or condition in every contract made by every person, firm, or corporation with any woman who may, during the course of her employment, become pregnant, and a failure to include in said contract the terms fixed by the law, makes the employer criminally liable subject to a fine and imprisonment. **Clearly, therefore, the law has deprived, every person, firm, or corporation owning or managing a factory, shop or place of labor of any description within the Philippine Islands, of his right to enter into contracts of employment upon such terms as he and the employee may agree upon. The law creates a *term* in every such contract, without the consent of the parties. Such persons are, therefore, deprived of their liberty to contract.** The [C]onstitution of the Philippine Islands guarantees to every citizen his *liberty* and one of his *liberties is the liberty to contract.*[128] (Emphasis supplied.)

---

[126] *Id* at 725-726.

[127] 46 Phil. 440 (1924).

[128] *Id* at 454.

Philippine adherence to this ruling would, however, be short-lived.[129] As Justice Fernando would later explain in *Edu v. Ericta*,[130] the decision in *Pomar* was largely brought about by the fact that "our Supreme Court had no other choice as the Philippines was then under the United States," where only a year before *Pomar*, a statute providing for minimum wages was declared in *Adkins* to be constitutionally infirm. The Court (and the Constitutional Convention) would adopt a more deferential attitude towards government regulation of economic relations and covering such subjects as "collective bargaining, security of tenure, minimum wages, compulsory arbitration, the regulation of tenancy as well as the issuance of securities, and control of public services."[131]

---

[129] See also *Calalang v. Williams*, 70 Phil. 726 (1940); *Antamok Goldfields Mining Company v. Court of Industrial Relations*, 70 Phil. 341 (1940). See also *J.* Fernando's Opinion in *Alfanta v. Noe*, G.R. No. L-32362, September 19, 1973, 53 SCRA 76.

[130] G.R. No. L-32096, October 24, 1970, 35 SCRA 481.

[131] *Id.* at 493. Citations omitted. Justice Fernando further writes:

> x x x [T]o erase any doubts, the Constitutional Convention saw to it that the concept of *laissez-faire* was rejected. **It entrusted to our government the responsibility of coping with social and economic problems with the commensurate power of control over economic affairs**. Thereby it could live up to its commitment to promote the general welfare through state action. **No constitutional objection to regulatory measures adversely affecting property rights, especially so when public safety is the aim, is likely to be heeded, unless of course on the clearest and most satisfactory proof of invasion of rights guaranteed by the Constitution**. x x x
>
> x x x x x x x x x
>
> It is in the light of such rejection of the *laissez-faire* principle that during the Commonwealth era, no constitutional infirmity was found to have attached to legislation covering such subjects as collective bargaining, security of tenure, minimum wages, compulsory arbitration, the regulation of tenancy as well as the issuance of securities, and control of public services. So it is likewise under the Republic this Court having given the seal of approval to more favorable tenancy laws, nationalization of the retail trade, limitation of the hours of labor, imposition of price control, requirement of separation pay for one month, and social security scheme. (Emphasis supplied; citations omitted.) *Id.* at 491-493.

In the meantime, and taking its cue from the US Supreme Court, this Court would also go on to recognize unenumerated, yet fundamental, non-economic rights:

Although the Bill of Rights speaks only of a right of privacy over communication and correspondence, the Court, in the 1968 case of *Morfe v. Mutuc*,[132] adopted the reasoning in *Griswold* and recognized a constitutional right to *personal* privacy. It declared that "[t]he right to privacy x x x is accorded recognition independently of its identification with liberty; in itself, it is fully deserving of constitutional protection."[133] *Morfe* concerned the validity of a law requiring the periodic submission of sworn statements of financial conditions, assets and liabilities of an official or employee of the government. Considering the avowed purpose behind the requirement of periodic submission, the Court held:

> Even with due recognition of such a view, it cannot be said that the challenged statutory provision calls for disclosure of information which infringes on the right of a person to privacy. **It cannot be denied that the rational relationship such a requirement possesses with the objective of a valid statute goes very far in precluding assent to an objection of such character.** This is not to say that a public officer, by virtue of a position he holds, is bereft of constitutional protection; it is only to emphasize that in subjecting him to such a further compulsory revelation of his assets and liabilities, including the statement of the amounts and sources of income, the amounts of personal and family expenses, and the amount of income taxes paid for the next preceding calendar year, there is no unconstitutional intrusion into what otherwise would be a private sphere.[134] (Emphasis supplied.)

In *Oposa v. Factoran, Jr.,*[135] this Court accorded fundamental right status to an asserted liberty interest in "a balanced and

---

[132] G.R. No. L-20387, January 31, 1968, 22 SCRA 424.

[133] *Id.* at 444.

[134] *Id.* at 445-446.

[135] G.R. No. 101083, July 30, 1993, 224 SCRA 792.

healthful ecology" under Section 16, Article II of the 1987 Constitution. Petitioners filed suit to question the grant of timber licensing agreements by the Secretary of Environment and Natural Resources, arguing that the continued allowance of timber licenses "to cut and deforest the remaining forest stands will work great damage and irreparable injury to plaintiffs—especially plaintiff minors and their successors—who may never see, use, benefit from and enjoy this rare and unique natural resource treasure."[136] While conceding that the asserted right cannot be found in the Bill of Rights, the Court declared that such right was "no less important" because "it concerns nothing less than self-preservation and self-perpetuation[,] x x x the advancement of which may even be said to predate all governments and constitutions."[137]

In *Imbong v. Ochoa, Jr.,*[138] which involved a number of challenges against the constitutionality of RA 10354, this Court

---

[136] *Id*. at 799. The Court, through Justice Davide, declared:

> While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation—aptly and fittingly stressed by the petitioners—the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come—generations which stand to inherit nothing but parched earth incapable of sustaining life. *Id*. at 804-805.

[137] *Id*. at 805.

[138] *Supra* note 27.

recognized the constitutional right of parents to exercise parental control over their minor-child:

> To insist on a rule that interferes with the right of parents to exercise parental control over their minor-child or the right of the spouses to mutually decide on matters which very well affect the very purpose of marriage, that is, the establishment of conjugal and family life, would result in the violation of one's privacy with respect to his family. It would be dismissive of the unique and strongly-held Filipino tradition of maintaining close family ties and violative of the recognition that the State affords couples entering into the special contract of marriage to as one unit in forming the foundation of the family and society.

The State cannot, without a compelling state interest, take over the role of parents in the care and custody of a minor child, whether or not the latter is already a parent or has had a miscarriage. Only a compelling state interest can justify a state substitution of their parental authority.[139]

A liberty interest in the access to safe and non-abortifacient contraceptives, hinged on a **right to health** under Section 15, Article II,[140] and other sections of the Constitution, was also recognized in *Imbong*. Petitioners therein questioned the inclusion of hormonal contraceptives, intrauterine devices, injectables and family products and supplies in the National Drug Formulary, the use of which, they claimed, greatly increased risks of developing breast and cervical cancer and other serious medical conditions. Although the Court declared that "the constitutional right to health" is a component of the right to life,[141] it,

---

[139] *Id*. at 352-353.

[140] CONSTITUTION, Art. II, Sec. 15:

The State shall protect and promote the right to health of the people and instill health consciousness among them.

[141] See *Imbong v. Ochoa Jr., supra* note 27, the Opinion of *J*. Del Castillo where he posited that the right to health is a fundamental right; Opinion of *J*. Perlas-Bernabe where she posited that the right to health is an inextricable adjunct of one's right to life; Opinion of *J*. Leonardo-De Castro where she stated that the right to health is itself a fundamental human right.

nevertheless, found petitioners' assertion of impairment of said right unfounded[142] and premature:[143]

The distribution of contraceptive drugs and devices must not be indiscriminately done. The public health must be protected by all possible means. As pointed out by Justice De Castro, a heavy responsibility and burden are assumed by the government in supplying contraceptive drugs and devices, for it may be held accountable for any injury, illness or loss of life resulting from or incidental to their use.[144] (Emphasis omitted.)

On the other hand, *Capin-Cadiz v. Brent Hospital and Colleges, Inc.*[145] involved a suit questioning Brent Hospital's

---

[142] The Court in this regard held:

x x x [T]he effectivity of the RH Law will not lead to the unmitigated proliferation of contraceptives since the sale, distribution and dispensation of contraceptive drugs and devices will still require the prescription of a licensed physician. With R.A. No. 4729 in place, there exists adequate safeguards to ensure the public that only contraceptives that are safe are made available to the public. x x x

x x x x x x x x x

Thus, in the distribution by the DOH of contraceptive drugs and devices, it must consider the provisions of R.A. No. 4729, which is still in effect, and ensure that the contraceptives that it will procure shall be from a duly licensed drug store or pharmaceutical company and that the actual dispensation of these contraceptive drugs and devices will [be] done following a prescription of a qualified medical practitioner, x x x (Emphasis omitted). *Id.* at 315-318.

[143] The Court said:

At any rate, it bears pointing out that not a single contraceptive has yet been submitted to the FDA pursuant to the RH Law. It behooves the Court to await its determination which drugs or devices are declared by the FDA as safe, it being the agency tasked to ensure that food and medicines available to the public are safe for public consumption. Consequently, the Court finds that, at this point, the attack on the RH Law on this ground is premature. Indeed, the various kinds of contraceptives must first be measured up to the constitutional yardstick as expounded herein, to be determined as the case presents itself. (Emphasis omitted.) *Id.* at 318.

[144] *Id.*

[145] G.R. No. 187417, February 24, 2016, 785 SCRA 18.

act of putting an unwed, pregnant employee on suspension until such time that she married her child's father in accordance with law. The Court there found the employer's condition for re-employment "coercive, oppressive, and discriminatory," depriving the employee of her "freedom to choose her status, which is a privilege that inheres in her as an intangible and inalienable right."[146] It was also proposed that the constitutional right to personal liberty and privacy should be read to include a woman's **right to choose whether to marry and to decide whether she will bear and rear her child outside of marriage**.[147]

Most recently, this Court in *Republic v. Manalo*,[148] applying equal protection analysis, upheld, pursuant to the **fundamental right to marry**, a liberty interest on the part of a Filipino spouse to be recapacitated to marry, in cases where a valid foreign divorce has been obtained.

IV

A

Unlike the case of rights that can be located on the text of the Bill of Rights, the rules with respect to locating unenumerated "fundamental" rights, however, are not clear. According to Justice Harlan, speaking in the context of identifying the full scope of liberty protected under the Due Process Clause, the endeavor essentially entails an attempt at finding a balance between "respect for the liberty of the individual x x x and the demands of organized society."[149]

The question that presents itself then is **how** one determines whether an implied liberty interest being asserted is "fundamental," as to call for the application of strict scrutiny.

---

[146] *Id*. at 37-38. Citation omitted.

[147] See *J*. Jardeleza Concurring Opinion, *id*. at 49-50.

[148] *Supra* note 70.

[149] *J*. Harlan Dissenting Opinion in *Poe v. Ullman*, *supra* note 90 at 542.

For its part, the US Supreme Court has attempted, over time, to craft principled formulations on how to identify such "unenumerated" or "implied" rights:

> [T]he Court has used a wide variety of methods, ranging from the restrained approach of locating protected interests in the constitutional text to the generous test of evaluating interests by the importance they have for contemporary individuals. Because the Justices do not uniformly agree upon these methods, it is also understandable that opinions for the Court rarely express consensus about the way the methods are chosen, or whether they fit into the hierarchy, or whether some methods are preferable in some situations and others in other situations. x x x
>
> These methods lie along a continuum, all the way from hair-trigger formulas that can support a cornucopia of fundamental rights to stingy theories that protect virtually nothing that is not undeniably enumerated. x x x [n]o one method is comprehensive or exclusive, and indeed, the Justices themselves often have used two or three different theories in combination while analyzing a single interest. x x x[150] (Citations omitted.)

*This* Court has not laid down clear guidelines on this matter. Thus, reference to American scholarly commentary is again instructive.

In his article *An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court*, Robert Farrell wrote that the US Supreme Court uses "a multiplicity of methods of identifying implied fundamental rights."[151] After a survey of US Supreme Court cases, Farrell has classified the different methods used by the Court in categorizing certain rights as

---

[150] Crump, "*How Do the Courts Really Discover Unenumerated Fundamental Rights — Cataloguing the Methods of Judicial Alchemy," supra* note 58 at 839. In his article, Crump surveyed more than 10 methodologies used by the court for recognizing unenumerated fundamental rights. These include the "history and tradition" test under *Washington v. Glucksberg*, *supra* note 124, the "essential requisite for ordered liberty" test under *Palko v. Connecticut*, 302 U.S. 319 (1937), to the "importance to the individual test" under *Goldberg v. Kelly*, 397 U.S. 254 (1970).

[151] *Supra* note 93 at 209.

fundamental. These are either because the asserted rights: (1) are important;[152] (2) are implicit in the concept of ordered liberty[153] or implicitly guaranteed by the Constitution;[154]

---

[152] *Id*. at 217-221. The US Supreme Court used the "importance" test in *Skinner v. Oklahoma, supra* note 106, in striking down a state statute providing for the sterilization of habitual criminals, which by law was limited to perpetrators of felonies involving moral turpitude. The US Supreme Court did not uphold the fundamental right to procreate on the basis of any language in the Bill of Rights; rather, it simply asserted, based on an incontrovertible fact of human existence, that marriage and procreation are fundamental to the very existence and survival of the race. This appears to be the test/approach considered and used by the Court in *Oposa v. Factoran, Jr., supra* note 135.

[153] Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court*, *supra* note 93 at 221-224. In *Palko v. Connecticut*, 302 U.S. 319 (1937), the US Supreme Court confined fundamental liberties to those that are "implicit in the concept of ordered liberty" such that "neither liberty nor justice would exist if they were sacrificed." *Palko* concerned a state statute which allowed for the re-trial of an accused if made upon the instance of the State. There, the accused, who was initially convicted for the crime of murder in the second degree and sentenced to life in prison, was, upon re-trial, convicted for the crime of murder in the first degree and sentenced to death. An action to challenge said state statute was brought before the US Supreme Court which thereafter upheld it, saying "[t]he right to trial by jury and the immunity from prosecution except as the result of an indictment may have value and importance. Even so, they are not of the very essence of a scheme of ordered liberty. To abolish them is not to violate a 'principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" See also Crump, "*How Do the Courts Really Discover Unenumerated Fundamental Rights - Cataloguing the Methods of Judicial Alchemy," supra* note 58 at 871.

[154] Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra* note 93 at 224-225. The US Supreme Court also used the "implicit" test in *San Antonio Independent School District v. Rodriguez*, *supra* note 122 at 135, where it rejected an asserted "implied right to education." In seeming rejection of the importance test, the US Supreme Court declared:

> x x x [T]he importance of a service performed by the State does not determine whether it must be regarded as fundamental for purposes of examination under the Equal Protection Clause. x x x
>
> x x x x x x x x x

(3) are deeply rooted in the Nation's history and tradition;[155] (4) need protection from government action that shocks the

---

It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. Thus, the key to discovering whether education is "fundamental" is not to be found in comparisons of the relative societal significance of education, as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution.

**Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected. As we have said, the undisputed importance of education will not, alone, cause this Court to depart from the usual standard for reviewing a State's social and economic legislation**. (Emphasis supplied.) *Id*. at 30-35.

[155] Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra* note 93 at 225-235. Under this approach, the test of whether or not a right is fundamental is to be determined by whether or not it is rooted in our Nation's history and traditions that is, whether the asserted liberty has been the subject of traditional or historical protection (See also Crump, *"How Do the Courts Really Discover Unenumerated Fundamental Rights — Cataloguing the Methods of Judicial Alchemy*" *supra* note 58 at 860). In *Bowers v. Hardwick, supra* note 111, the US Supreme Court upheld a Georgia sodomy statute. It claimed that the right asserted, which it described as "the claimed constitutional right of homosexuals to engage in acts of sodomy" was not considered fundamental within the nation's history and traditions, as is evidenced by a slew of anti-sodomy acts from the time of the enactment of the Bill of Rights to about the time the case was decided. See also the 1934 case of *Snyder v. Massachusetts*, 291 U.S. 97 (1934), where an accused sought to challenge his conviction for the crime of murder on the ground that he was denied permission to attend a view, which was ordered by the court on motion of the prosecution, at the opening of the trial. The jurors, under a sworn bailiff, visited the scene of the crime, accompanied by the judge, the counsel for both parties, and the court stenographer. The Court affirmed the conviction as there was no showing that there was a history or tradition in the State of Massachusetts affording the accused such right. It held that "[t]he constitution and statutes and judicial decisions of the Commonwealth of Massachusetts are the authentic forms through which the sense of justice of the People of that Commonwealth expresses itself in law. We are not to supersede them on the ground that they deny the essentials of a trial

conscience;[156] (5) are necessarily implied from the structure of government[157] or from the structure of the Constitution;[158]

---

because opinions may differ as to their policy or fairness." For more recent applications, see *Michael H. v. Gerald D., supra* note 59 and *Washington v. Glucksberg, supra* note 124. See, however, *J.* Kennedy's Opinion in *Obergefell v. Hodges, supra* note 73, where the Court held that "[h]istory and tradition guide and discipline this inquiry but do not set its outer boundaries, x x x That method respects our history and learns from it without allowing the past alone to rule the present."

[156] Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra* note 93 at 235-237. In the case of *Rochin v. California*, 342 U.S. 165 (1952), the US Supreme Court held that the act of the police in arranging to have a suspect's stomach pumped to produce evidence of illegal drugs constituted a kind of conduct that "shocks the conscience" and therefore violated the Due Process Clause of the Constitution. This test was again seen appropriate to evaluate "abusive executive action," which in said case was a police car chase which resulted in the death of one of those being chased. The Court eventually found in favor of government as what was determinant of whether the challenged action "shocks the conscience" was not negligence or deliberate indifference but whether there was "an intent to harm suspects physically or worsen their legal plight." Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra* note 93 at 236.

[157] Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra* note 93 at 237-239. In *Shapiro v. Thompson*, 394 U.S. 618 (1969), the US Court considered the constitutional "right to travel interstate" which was alleged to have been infringed by a Connecticut statute which provided that residents cannot receive welfare benefits until they had lived in the state for at least one year. According to the Court, while unwritten in the Constitution, the right to travel is "fundamental to the concept of our Federal Union," which was, by and large, made up of several sovereign states coming together.

The New Union would not have been possible, and would have made no sense, unless citizens of that Union were free to travel from one end of it to another. Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra* note 93 at 237-239.

[158] Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra* note 93 at 240-241. In *Griswold v. Connecticut*, *supra* note 114 at 484, which dealt with the right of married couples to use contraceptives, the US Supreme Court, speaking through *J.* Douglas, "spoke of the 'penumbras formed by emanations' from the guarantees of specific kinds of privacy in the Bill of Rights and used these x x x as a basis for finding a more generalized, more encompassing right of

(6) provide necessary access to government processes;[159] and (7) are identified in previous Supreme Court precedents.[160]

There is no one mode of constitutional interpretation that has been recognized as appropriate under all circumstances. In fact, one would find critiques for every approach in scholarly commentaries on the subject.[161] Nevertheless, and despite the particular shortcomings of each individual approach, it is my view that, the Court should endeavor to be deliberate and open about its choice of approach in fundamental rights cases. This, to my mind, would help greatly not only in furthering the public's understanding of the Court's decisions in complex constitutional cases; it would reinforce the credibility of Our decisions, by

---

privacy." Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra* note 93 at 240.

[159] Farrell writes that the US Court has found implied constitutional rights to vote (See *Reynolds v. Sims*, 377 U.S. 533 [1964]) and to some level of access to court processes (See *Griffin v. Illinois*, 351 U.S. 12 [1956] and *Boddie v. Connecticut*, 401 U.S. 371 [1971]) on the ground that "legislation and adjudication in the courts are essential elements of a democracy and that a limitation on access to these two institutions is a threat to the institution of government itself." Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra* note 93 at 241-245.

[160] In *Planned Parenthood of Southeastern Pennsylvania v. Casey, supra* note 120, the Supreme Court used *stare decisis*, in particular its decision in the case of *Roe v. Wade, supra* note 118, to explain the nature of the fundamental right to privacy as it related to abortion. *Roe*, in turn, also enumerated several cases from which it understood to have recognized a broad and generalized right to privacy (which includes a woman's decision whether or not to terminate her pregnancy) that is part of the Fourteenth Amendment "liberty." (Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra* note 93 at 245-246.) This approach appears to have been used by this Court in *People v. Pomar, supra* note 127, and J. Jardeleza in his Concurring Opinion in *Capin-Cadiz v. Brent Hospital and Colleges, Inc., supra* note 145.

[161] For in depth discussions of the different methods and approaches, see Crump, "*How do the Courts Really Discover Unenumerated Fundamental Rights — Cataloguing the Methods of Judicial Alchemy*," *supra* note 58; and Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court," supra* note 93.

exacting upon the Court and its members the duty to clearly articulate with consistency the bases of its decisions in difficult constitutional cases.

B

With all due respect, Justice Leonen has not provided sufficient basis to justify his view of "fundamental right" status, whether expressly or impliedly sourced, to the asserted liberty interest of an intellectually-disabled person in procreation and parenthood. Firstly, Justice Leonen cites the Constitution's *express* guarantee to due process of law.[162] An examination of the due process clause, however, will immediately show that it does not *textually* grant upon an intellectually-disabled person a liberty interest in procreation and parenthood.

Justice Leonen then relies on the fundamental right to privacy, citing *Morfe v. Mutuc*[163] which, in turn, cited *Griswold v. Connecticut*,[164] holding that there are "zones of privacy," including martial privacy, which cannot be unconstitutionally violated.[165] For that matter, *Eisenstadt v. Baird*,[166] building on the foundations of *Griswold*, would provide even stronger precedent. In the context of the right of unmarried persons to access contraceptives, the US Supreme Court held: "[i]f the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."[167] Despite *Griswold* and *Eisenstadt*, however, the US Supreme Court has yet to recognize a fundamental right to procreation or

---

[162] CONSTITUTION, Art. III, Sec. 1.

[163] *Supra* note 132.

[164] *Supra* note 114.

[165] *Id.* at 444-445.

[166] *Supra* note 116.

[167] *Id.* at 453.

parenthood on the part of the intellectually-disabled.[168] In fact, the various American State Supreme Courts are split on the issue, *depending in part on whether the State legislatures have statutes governing sterilization.*[169]

The reason is understandable. Recognizing a fundamental right in a single person to bear or beget a child, and becoming a parent, is a far cry from recognizing *in an intellectually-disabled person* a fundamental right to make the same decision on procreation or parenthood. The underlying issues that have bedeviled the courts and the state legislatures in the US include

---

[168] Irvine, "*Balancing the Right of the Mentally Retarded to Obtain a Therapeutic Sterilization Against the Potential for Abuse,*" 12 Law & Psychology Review 95 (1988), p. 96. In the case of *In Re Grady*, 85 N.J. 235, 426 A.2d 467 (1981), it was held that "[a] right to sterilization has yet to receive constitutional protection from the United States Supreme Court."

[169] Fourteen states have statutes authorizing sterilization of persons with mental impairments who are deemed incapable of consent. For the most part, these statutes provide procedural and substantive safeguards designed to protect the class from arbitrary enforcement. (Cepko, "*Involuntary Sterilization of Mentally Disabled Women*" 8 Berkeley Women's L.J. 122 [1993]). In states where no specific statues authorize sterilization, courts faced with a petition for sterilization have had varied responses. A majority of the courts will not accept jurisdiction absent legislative authority, but a minority accepts jurisdiction even without said authority and lay downs guidelines to be followed to determine if sterilization is warranted. (Irvine, "*Balancing the Right of the Mentally Retarded to Obtain a Therapeutic Sterilization Against the Potential for Abuse,*" 12 Law & Psychology Review 95 [1988], p. 96.) Typical of the majority view is that the inherent equity power of the courts did not include the ability to order a sterilization without statutory authority. (*Hudson v. Hudson*, 373 So. 2d 310 [1979], as cited by Irvine, "*Balancing the Right of the Mentally Retarded to Obtain a Therapeutic Sterilization Against the Potential for Abuse*," 12 Law & Psychology Review 95 [1988], p. 107.) The minority view, on the other hand, while conceding that a right to sterilization has yet to receive express constitutional protection from the US Supreme Court, and most states have found that they lack the power to grant a petition for sterilization absent legislative authorization, relies on the inherent *parens patriae* power of the courts and maintains that it still holds the final determination whether consent to sterilization should be given on behalf of an incompetent individual. *In Re Grady*, 85 N.J. 235, 426 A.2d 467 (1981).

whether an intellectually-disabled person can make that decision and whether the parent or guardian can substitute the disabled child or ward in making that decision. As a commentator has so aptly stated, the ruling in *Eisenstadt* begs the question: "[b]ut what happens when that individual lacks the capacity to comprehend the possession of a reproductive function and right, and is not capable of making any decision regarding that right?"[170] It presents, as the Supreme Court of New Jersey puts it, a "disturbing paradox: how we can preserve the personal freedom of one incapable of exercising it by allowing others to make a profoundly personal decision on her behalf?"[171]

Justice Leonen also cites the Convention on the Rights of Persons with Disabilities (Convention), which guarantees persons with disabilities a right to non-discrimination, *i.e.*, full and effective participation in society on an equal basis with others.[172] There is, however, no law, rule, nor judicial holding which provides that the Convention can operate to "create" a "fundamental" right in the absence of the enactment by a State party of an implementing law precisely creating such substantive right. Secondly, the Convention itself is carefully worded that it does not *textually* grant persons with disabilities a right to be treated with absolute equality. Rather, its language is carefully parsed to state that equality is "on an equal basis with others." By so qualifying, it is my view that the Convention realizes that the State must not only consider the particular type of disability affected, but also provide for remedies that relate to the specific type of interest to be promoted and their effect of the exercise of the right on "others." In Our case, the State, through the Congress and in explicit recognition of its obligations under the Convention, enacted RA 11036, or the "Mental Health Act." As discussed, RA 11036 does not treat persons with mental

---

[170] Irvine, "*Balancing the Right of the Mentally Retarded to Obtain a Therapeutic Sterilization Against the Potential for Abuse*," 12 Law & Psychology Review 95 (1988).

[171] *In Re Grady*, 85 N.J. 235, 426 A.2d 467 (1981).

[172] *J.* Leonen Separate Opinion, p. 19.

health conditions (which includes the intellectually-disabled) on the same footing as persons without such conditions, in terms of the role that their informed consent bears on their access to treatment (such as vasectomy). The law sought to balance the peculiar interests of the disabled with the interests of the other members of society (which includes their parents) through a very robust and exacting procedure to ensure the exercise of informed consent.

All told, there is no clear showing as to *how* Justice Leonen has arrived at (much less, justified) his conclusion that the unenumerated liberty interest of an intellectually disabled person to procreation or parenthood warrants accordance of the "fundamental" status. The record is absolutely bereft of evidence to prove the proposition. Thus, and without prejudice to a future and proper case where the modalities/approaches/methods for its analysis and interpretation are clearly and sufficiently set forth and first presented to a trier of fact with supporting evidence, I simply cannot support his view at this time.

V

Finally, I must note the peculiar process by which the asserted "fundamental" right is sought to be established by Justice Leonen in this case. Jurisprudence would show that assertion of fundamental rights, whether on due process or equal protection grounds, are usually made at the heels of a *positive* act on the part of the State, an exercise of State powers resulting to unwarranted intrusions into the personal life of individuals. Such exercises of governmental powers are typically manifested in the form of laws,[173] ordinances,[174] and executive acts[175] or issuances[176] which are alleged to, either facially or in its operation,

---

[173] See *Kabataan Party-List v. Commission on Elections*, *supra* note 88.

[174] See *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City, supra* note 31.

[175] See *Ebralinag v. Superintendent of Schools of Cebu, supra* note 76.

[176] See *Ang Ladlad LGBT Party v. Commission on Elections*, G.R. No. 190582, April 8, 2010, 618 SCRA 32.

actively discriminate and deprive individuals of certain fundamental rights.

Here, while there is an assertion of an infringement of "fundamental" liberties, there is no claim of any law, ordinance, or executive issuance of the State which has caused the infringement alleged. In fact, the specific act" in issue, that is, the vasectomy conducted on Larry, was carried out by medical practitioners, upon guardian Pedro's request/consent, all of whom are private individuals. Clearly, there is no State action as to call for the guarantee of the protection of "fundamental" liberties. As so clearly held by this Court in *People v. Marti*:[177]

> That the Bill of Rights embodied in the Constitution is not meant to be invoked against acts of private individuals finds support in the deliberations of the Constitutional Commission. True, the liberties guaranteed by the fundamental law of the land must always be subject to protection. But protection against whom? Commissioner Bernas in his sponsorship speech in the Bill of Rights answers the query which he himself posed, as follows:
>
> > First, the general reflections. The protection of fundamental liberties in the essence of constitutional democracy. Protection against whom? Protection against the state. **The Bill of Rights governs the relationship between the individual and the state. Its concern is not the relation between individuals, between a private individual and other individuals**. What the Bill of Rights does is to declare some forbidden zones in the private sphere inaccessible to any power holder.[178] (Emphasis supplied.)

The Bill of Rights, which Justice Leonen cites among his bases for his proposition, affords protection against possible *State* oppression against its citizens, not against an unjust or repressive conduct by *a private party* towards another, as explained by Justice Dante Tinga in his Separate Opinion in *Agabon v. National Labor Relations Commission*.[179]

---

[177] G.R. No. 81561, January 18, 1991, 193 SCRA 57.

[178] *Id.* at 67.

[179] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

Justice Leonen also seems to take the view that existing laws, as they are written, do not suitably protect the reproductive interests of the intellectually-disabled, hence, the proposed interpretation. The Court, however, has no power to dictate unto the Congress the object or subject of bills that the latter should enact into law. The judicial power to review the constitutionality of laws does not include the power to prescribe what laws to enact.[180] In any case, the alleged "gap" in the law with respect to decision-making by parents and legal guardians on matters of reproductive rights of the intellectually-disabled can be interpreted to mean that Congress did not intend to criminalize, but only regulate, said act. To reiterate, it is not the province of the Judiciary to speculate what the Legislature should have done:

> Even on the assumption that there is in fact a legislative gap caused by such an omission, neither could the Court presume otherwise and supply the details thereof, because a legislative lacuna cannot be filled by judicial fiat. Indeed, courts may not, in the guise of the interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers. An omission at the time of the enactment, whether careless or calculated, cannot be judicially supplied however after later wisdom may recommend the inclusion. Courts are not authorized to insert into the law what they think should be in it or to supply what they think the legislature would have supplied if its attention has been called to the omission.[181]

I am afraid that Justice Leonen's proposition, however well-intentioned, is fraught with still unseen implications, and I am reminded of the following observation of Easterbrook:

> I am nervous when a case is so easy. x x x If "everyone" endorses a particular aspect of liberty, it is easy for the Court to say in the aberrant case (the one where the legislature has not acted) that the

---

[180] *Montesclaros v. Commission on Elections*, G.R. No. 152295, July 9, 2002, 384 SCRA 269, 281.

[181] *Romualdez v. Marcelo*, G.R. Nos. 165510-33, July 28, 2006, 497 SCRA 89, 102-103, citing *Canet v. Decena*, G.R. No. 155344, January 20, 2004, 420 SCRA 388.

judges are the true guardians of the "spirit" of the people and may produce what an "enlightened" legislature would have done. x x x

x x x [E]asy cases, popular and obviously right cases, may produce dangerous doctrines because they establish the *principle* that the Constitution allows the judges to do whatever the legislature ought to have done. x x x

The easy cases allow judges to establish doctrines that collapse the judicial and legislative processes. x x x[182]

With these, I would reserve judgment on the issue of whether an intellectually-disabled person has a "fundamental" right to procreate until after Congress passes, if it so decides, a law on the subject. Barring congressional action, a proper petition may still conceivably raise the issue in relation to the implementation of the Mental Health Act, whose provisions I have cited may be tested in a constitutional challenge.[183]

Accordingly, I vote to **DISMISS** the petition.

## SEPARATE OPINION

**CAGUIOA, *J.*:**

I concur with the *Resolution*.

The supervening death of petitioner Pilar Verzosa (Verzosa), coupled with the absence of any action on the part of the Office of the Solicitor General (OSG) to pursue an appeal, rids the *Petition* of any justiciable controversy over which the Court may exercise its power of review. Verily, the resolution of the substantive issues submitted herein would not serve any practical purpose. The *Petition* should thus be dismissed for being moot and academic.

---

[182] *Easterbrook, "Implicit and Explicit Rights of Association*," 10 Harvard Journal of Law and Public Policy 91 (1987), pp. 94-95.

[183] See *J.* Panganiban Separate Opinion in *Ople v. Torres*, G.R. No. 127685, July 23, 1998, 293 SCRA 141, 174.

Nevertheless, I submit this Opinion in response to Associate Justice Marvic M.V.F. Leonen's position that the vasectomy performed on Laureano "Larry" Aguirre (Larry) constitutes a form of cruelty which, in turn, qualifies as an act of child abuse punished under Section 10(a) of Republic Act No. (RA) 7610.

Based on my assessment of the applicable law and attendant circumstances, I take a contrary position.

The facts are not in dispute.

On June 19, 1980, the Regional Trial Court (RTC) of Balanga, Bataan appointed spouses Pedro and Lourdes Aguirre (Spouses) as co-guardians of Larry, then a two-year-old baby under the care and custody of the Heart of Mary Villa (HMV) foster home.[1] Verzosa was the Nursery Supervisor of HMV at the time.[2]

Pedro and Lourdes assumed custody over Larry, and raised him as their own, together with their four daughters, among whom were Gloria S. Aguirre (Gloria) and respondent Michelina S. Aguirre-Olondriz (Michelina).[3]

Larry exhibited signs of slow mental development throughout his childhood. Hence, he was made to undergo several neuropsychological examinations, and was later diagnosed to be suffering from Mild Mental Deficiency.[4]

Sometime in November 2001, Pedro instructed Michelina to bring Larry to Dr. Juvido Agatep (Dr. Agatep), a urologist, for the purpose of subjecting Larry to a vasectomy. Recognizing that Larry may not be able to intelligently consent to the procedure, Dr. Agatep urged that Larry be examined by a psychiatrist for proper clearance.[5] Thus, Larry was examined

---

[1] *Rollo*, p. 12.

[2] *Id*.

[3] *Id*.

[4] *Id*.

[5] *Id*. at 13.

by Dr. Marissa B. Pascual (Dr. Pascual) who confirmed Dr. Agatep's initial impressions.[6]

Thereafter, Dr. Agatep performed a bilateral vasectomy on 24-year-old Larry on January 31, 2002 upon Pedro's instruction.[7]

The procedure prompted Gloria and Verzosa to file two separate complaint-affidavits before the Office of the City Prosecutor of Quezon City (OCP) charging Pedro, Michelina, Dr. Pascual and Dr. Agatep (collectively, respondents) of the following offenses:

(i) Falsification under Article 172 of the Revised Penal Code (RPC);

(ii) Mutilation under Article 262 of the RPC; and

(iii) Child Abuse under Sections 3 and 10 of RA 7610.[8]

The OCP dismissed all three charges against respondents for lack of probable cause through its Resolutions dated January 8, 2003 and August 26, 2003 (collectively, 2003 OCP Resolutions).[9]

However, the OCP later revived the third charge through a subsequent Resolution dated May 13, 2005 which found probable cause to charge respondents with violation of Sections 3 and 10 of RA 7610.[10]

On the basis of the allegations set forth in the Information, the RTC of Quezon City initially found probable cause to hold respondents for trial and thus issued the corresponding warrants for their arrest.[11] Hence, respondents posted their respective

---

[6] *Id*.

[7] *Id*.

[8] *Id*. at 25.

[9] *Id*.

[10] *Id*. at 26.

[11] *Id*. at 27.

bail bonds and filed several motions[12] essentially praying for the dismissal of the case.

On November 8, 2005, Judge Ma. Lourdes A. Giron (Judge Giron), Presiding Judge of the RTC of Quezon City, issued an Order[13] dismissing the case for lack of probable cause. Judge Giron stressed that she was only made aware of the previous dismissal of the charges against respondents after she was furnished copies of the 2003 OCP Resolutions, as such copies were not appended to the Information. In this connection, Judge Giron held that the undue revival of the dismissed charges against respondents constitutes a violation of their right to due process, warranting the dismissal of the criminal case.[14] Judge Giron further held that in any case, Verzosa lacks standing to charge respondents with violation of RA 7610.[15] Verzosa filed a Motion for Reconsideration, which was subsequently denied.[16]

The Court of Appeals (CA) affirmed Judge Giron's orders on appeal through its Decision[17] dated May 16, 2008 and

---

[12] *Id*. at 48. The motions filed by the respondents for the RTC's resolution, as enumerated in the Order dated November 8, 2005, were: (i) *Motion to Dismiss* filed by Atty. Jose A. Bernas (counsel for Michelina and Pedro); (ii) *Urgent Motion to Quash Information and Warrant of Arrest* filed by Alampay Gatchalian Mawis and Alampay (counsel for Dr. Pascual); (iii) *Motion for Re-Determination of Probable Cause* filed by Atty. Jose A. Bernas; (iv) *Consolidated Motions to Deny Entry of Appearance of [Verzosa's] Counsel and to Strike From Records her Comment/Opposition* filed by Atty. Jose A. Bernas; (v) *Reiterative Motion to Disqualify Private Prosecutor* filed by Atty. Veronica Jude E. Abarquez (counsel for Dr. Pascual); and (vi) *Motion for Trial Prosecutor to Stipulate Whether She Intends to Prosecute Accused under RA 7610 Despite Having Been Informed that this Matter was Previously Ruled upon by the DOJ and Currently under Review by the Court of Appeals* filed by Atty. Jose A. Bernas.

[13] *Id*. at 48-55.

[14] *Id*. at 49-50.

[15] *Id*. at 55.

[16] *Id*. at 27.

[17] *Id*. at 24-39. Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Isaias P. Dicdican and Ramon R. Garcia concurring.

subsequent Resolution[18] dated September 17, 2008, which in turn, are assailed in this *Petition*.

The *Petition* alleges, among others, that a vasectomy performed on an adult male suffering from Mild Mental Deficiency qualifies as an act of child abuse under Section 10(a) of RA 7610.

Justice Leonen finds that the vasectomy performed on Larry violates "his fundamental right to life and liberty."[19] Proceeding therefrom, Justice Leonen holds that the "unconsented vasectomy of [Larry] is clearly a case of cruelty, not so much for the manner it was done, but because of the circumstance surrounding its commission and the resulting limitations to the way Larry will be able to live for the rest of life."[20] Further, Justice Leonen concludes that such "unconsented" vasectomy constitutes an act of child abuse, punishable under Section 10(a) of RA 7610, which provides:

> SEC. 10. *Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development*. –
>
> (a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of [Presidential Decree] No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period.

As stated at the outset, I disagree.

In holding that the bilateral vasectomy performed on Larry cannot be considered a form of cruelty, the CA correctly held that the test to be applied is whether the accused *deliberately* and *sadistically* augmented the victim's suffering by causing another wrong not necessary for its commission or inhumanely

---

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

[19] Separate Opinion, p. 12.

[20] *Id*. at 18.

increased the victim's suffering or outrage.[21] Inasmuch as the best interests of a child must, at all times, be upheld, such commitment must be situated and read in light of the applicable law.

The United Nations Convention on the Rights of the Child (UNCRC), which the Philippines became a signatory to on January 26,1990 and ratified on August 21,1990,[22] provides that States-parties shall ensure that:

> (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age[.][23]

In interpreting the specific provision on "*cruel, inhuman or degrading treatment or punishment*" of children, the UNCRC Committee on the Rights of the Child (Committee) in General Comment No. 8,[24] first and foremost defines "corporal" or "physical" punishment as "any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light."[25] The Committee further observes that most forms of cruel, inhuman, or degrading treatment of punishment of children involve hitting ("smacking," "slapping," "spanking") with the hand or with an implement — a whip, stick, belt, shoe, wooden spoon, etc., but it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap

---

[21] CA Decision, p. 10; *rollo* p. 33.

[22] United Nations Treaty Collection, available at <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-11.en.pdf>.

[23] Art. 37, Convention on the Rights of the Child, available at <https://treaties.un.org/doc/source/docs/A_RES_44_25-Eng.pdf>.

[24] General Comment No. 8, UNCRC Committee on the Rights of the Child, CRC/C/GC/8, 2 March 2007.

[25] *Id*., par. 11.

or forcing them to swallow hot spices).[26] Notably, a common element in all these circumstances is that in the act of inflicting "punishment" on the child, the punishment is invariably degrading.[27]

Further, as to other non-physical forms of punishment, cruel and degrading punishment contemplate acts that are "incompatible with the [UNCRC, specifically,] x x x punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child."[28]

Consistent with the foregoing principles, the Court, in *Bongalon v. People*,[29] unequivocally espoused that not every instance of laying of hands on a child qualifies as an act of child abuse under Section 10(a).[30]

To sustain a conviction under Section 10(a) of RA 7610, proof of the accused's **intent to debase, degrade or demean** the intrinsic worth and dignity of the child as a human being should be established beyond reasonable doubt.[31]

In this regard, the records show that while general allegations anent the purported degrading and demeaning effects of the vasectomy performed on Larry had been repeatedly made by Verzosa during the course of the proceedings, not a single shred of evidence was offered to show that respondents were impelled by any ill motive in facilitating the questioned procedure. To my mind, no specific intent to debase, degrade or demean Larry's intrinsic worth as a human being had been convincingly shown, thereby negating respondents' criminal liability under Section 10(a) of RA 7610.

---

[26] *Id.*

[27] See *id.*

[28] *Id.*

[29] 707 Phil. 11 (2013).

[30] *Id.* at 14.

[31] *Id.*

**Quite the contrary, assessed in light of their intent as Larry's parents, the act of respondents cannot, by any stretch of the imagination, be characterized as debasing, degrading or demeaning**. Indeed, my own appreciation of that intent is that it was borne out of care and love for Larry, and by extension, for any offspring Larry may bear, as indicated by the following circumstances:

Foremost, a professional evaluation of Larry's personal circumstances revealed that he "grew up with a very supportive adoptive family."[32] This is consistent with the declarations of Pedro and Michelina to the effect that the vasectomy procedure was done merely as a **preventive** measure against unwanted pregnancies in light of Larry's "emerging sexuality and inability to take care of himself[,] much less a child [of his own]."[33] More so, the Spouses' age at the time precluded their ability to fully monitor and take care of Larry as much as they used to.[34] Quite clearly, the intent behind the decision of Pedro and Michelina to have Larry undergo the operation is to be understood within the context of ensuring Larry's best interest.

Next, Larry was treated as one of the Spouses' own children; no expenses were spared by the Spouses when it came to Larry's welfare and educational needs. At the early age of 6, he was enrolled at the Colegio de San Agustin in Dasmariñas Village.[35] At age 11, Larry was subjected to a psychological evaluation after showing signs of delayed development.[36] Based on the recommendation of a medical professional, Larry was then transferred to St. John Marie Vianney, where he could receive

---

[32] Psychiatry Report dated January 21, 2002 of Dr. Marissa B. Pascual, see *Aguirre v. Secretary of the Dept. of Justice*, 571 Phil. 138, 145 (2008).

[33] Comment of respondents Pedro and Michelina, *rollo*, p. 143.

[34] See Psychiatry Report dated January 21, 2002 of Dr. Marissa B. Pascual, see *Aguirre v. Secretary of the Dept. of Justice*, *supra* note 32, at 145.

[35] *Id.*

[36] *Id.*

special education and training.[37] Larry was later enrolled in a vocational course at Don Bosco after completing his secondary education.[38]

In all these years, Larry could not prepare his own meals, do his errands, or even bathe himself without supervision from his parents or his older siblings.[39] Yet, despite this, Larry confessed to having been in a relationship at least once and that he had learned to drink and smoke.[40]

Taking the circumstances in their totality, it is crystal clear to me that Pedro and Michelina were driven by no other motive than that of love and compassion for Larry. If Larry were to reproduce, by deliberate choice or otherwise, the task of raising a child would be too difficult a task to undertake, given Larry's proven inability to take care of his own affairs. Inevitably, the responsibility to take care of the child would redound to the Spouses, who, as previously mentioned, are already encountering difficulty taking care of Larry alone. Thus, by no stretch of the imagination can it be said that there is any evidence of malevolent intent to debase or degrade Larry's intrinsic worth as a human being. **To declare otherwise, would be, to my mind, cruel and degrading to the adoptive parents who, by all indications, only sought the best for Larry.**

**ACCORDINGLY,** I vote to **DISMISS** the *Petition*, solely on the ground of mootness.

## SEPARATE OPINION

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

I concur with the Resolution of the Court *en banc* insofar as it denied the present petition for having been rendered moot

---

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.* at 145-146.

by the death of petitioner Sr. Pilar Versoza on September 9, 2012. I write this separate opinion to express my views on the proposed balancing of individual reproductive rights as against parental authority. Particularly implicated here is the individual's right to procreate as against the right and duty of parents to decide on behalf of their children who lack the capacity to consent to medical procedures which impinge on the right to procreate. As Larry's guardians and *de facto* parents, the spouses Aguirre's primary and natural right to bring up and care for Larry vests in them the right to decide what is best for the child they took in and raised as their own; and such decision is clothed with the presumption of good faith and legality until proven otherwise. Under our current legal regime, the right of parents or guardians to provide consent for medical procedures on behalf of intellectually disabled persons who are unable to provide such consent is part and parcel of their parental authority over their children or wards.

*Mootness of the petition*

It must be noted that the present petition stems from the Quezon City Regional Trial Court's (RTC) Order dated November 8, 2005 *dismissing* the case for violation of Republic Act (R.A.) No. 7610. Stated differently, an information has already been filed in court, arrest warrants have been issued, and bail bonds have been posted by the herein respondents. At that point in time, therefore, the People of the Philippines had become a party to the case, since the action had passed from the investigation phase to the trial phase with the filing of the information before the trial court.[1] However, it also bears emphasizing that *no appeal* from the aforesaid order was filed on behalf of the People of the Philippines. Sr. Versoza filed the appeal on her own without impleading or involving the People.

---

[1] On this point, the trial court indicated its recognition of the fact that the action had passed into the trial phase when held in its November 8, 2005 Order that: "As to the first issue of whether or not the case should be dismissed, the Court finds merit to grant the motion." Order dated November 8, 2005, as cited in Resolution, p. 7.

The crux of the present petition, therefore, is the propriety of Sr. Versoza's filing of an appeal from the dismissal of the *criminal case* for violation of R.A. No. 7610 without impleading the People of the Philippines. Stated differently, *does Sr. Versoza, acting alone and in her personal capacity, have standing to appeal the dismissal of the criminal case for violation of R.A. No. 7610*?

As discussed in the Resolution, Sr. Versoza's right to appeal the dismissal of the case is personal to her. It is distinct and separate from the People's right to appeal as the designated plaintiff in criminal prosecutions — a right it chose not to exercise in the case at bar. Therefore, upon Sr. Versoza's demise, the issue of whether or not she can appeal the dismissal in her personal capacity has been rendered moot and academic.

*Parental authority as a "primary and natural right"*

The 1987 Constitution "recognizes the Filipino family as the foundation of the nation."[2] As such it commits the State to the "strengthen[ing of] the family as a basic **autonomous** social institution."[3] To further this State policy, the Constitution vests upon parents the "natural and primary right"[4] to rear their children. This right is reiterated in the Child and Youth Welfare Code, which expressly provides that parents have, "in relation to all other persons or institutions dealing with the child's development, the primary right and obligation to provide for their upbringing."[5]

The primary and natural right of parents to rear their children is fleshed out in the Family Code, in the form of the juridical institution known as *parental authority*, or *patria potestas*, whereby parents rightfully assume control and protection of

---

[2] CONSTITUTION, Article XV, Section 1.

[3] CONSTITUTION, Article II, Section 12.

[4] *Id*.

[5] PRESIDENTIAL DECREE NO. 603, Article 43.

their unemancipated children to the extent required by the latter's needs.[6]

Parental authority has been defined as the mass of rights and obligations which parents have in relation to the person and property of their children. This authority lasts until the children's majority age or emancipation, and even after this under certain circumstances. Parental authority is granted for the purpose of the children's physical preservation and development, the cultivation of their intellect, and the education of their heart and senses.[7]

As originally conceived in Roman law, parental authority was vested primarily in the father and amounted to a "near absolute right to his children, whom he viewed as chattel, a right with which courts were powerless to interfere."[8] Such right included the "power of life and death" (*Jus vitae ac necis*) over children.[9] Over time, as recognition of children's rights expanded, *patria potestas* rights have been gradually reduced, first yielding some authority to the state as *parens patriae*; and later becoming subject to the *best interest of the child* standard. This modern conception of *patria potestas* animates the provisions of the Family Code. Nevertheless, the Family Code still reiterates the primary and natural right to parental child-rearing, *viz.*:

Article 209. Pursuant to the **natural right and duty** of parents over the person and property of their unemancipated children, parental authority and responsibility shall include the caring for and rearing them for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being.

---

[6] *Santos v. CA*, 312 Phil. 482 (1995).

[7] *Santos v. CA*, *supra* note 6; 1 Arturo M. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines* 603 (1990), citing 2 Manresa 8.

[8] *Whallon v. Lynn*, 230 F.3d 450 (2000), footnote 7.

[9] Alicia V. Sempio-Diy, *Handbook on the Family Code of the Philippines* 333 (1995).

The constitutional and statutory affirmation of the primacy of parental authority reiterates a self-evident fact: that parents are the primary caregivers and stewards of their children. Thus, courts have declared that, as a general rule, parental authority is superior to the power of the state over its minor citizens as *parens patriae.*[10] In *Sps. Imbong, et al. v. Hon. Ochoa, Jr., et al.,*[11] this Court struck down a provision of the Reproductive Health Law which dispensed with parental consent for access to modern methods of family planning if the minor is already a parent or has suffered a miscarriage for "disregarding] and disobey[ing] the constitutional mandate that the natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government." The Court cited 1986 Constitutional Commission member Fr. Joaquin Bernas:

> The 1987 provision has added the adjective "primary" to modify the right of parents. It imports the assertion that the right of parents is superior to that of the State. x x x The State cannot, without a compelling state interest, take over the role of parents in the care and custody of a minor child, whether or not the latter is already a parent or has had a miscarriage. Only a compelling state interest can justify a state substitution of their parental authority.[12]

---

[10] See *Troxel v. Granville*, 530 U.S. 57 (2000) and *Parham v. J.R.,* 442 U.S. 584 (1979). Parental prerogatives are entitled to considerable legal deference, subject only to the best interests of the child or important interests of the State. 67A C.J.S. 188-189, citing *State v. Koome*, 530 P.2d 260, 84 Wash.2d 901 (1975). See also *In re Roger S.*, 19 Cal.3d 921, 569 P.2d 1286, 141 Cal. Rptr. 298 (1977), holding that: "Parents x x x have powers greater than that of the state to curtail a child's exercise of the constitutional rights he may otherwise enjoy, for a parent's own constitutionally protected 'liberty' includes the right to 'bring up children', and to 'direct the upbringing and education of children.' As against the state, this parental duty and right is subject to limitation only 'if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens.'"

[11] 732 Phil. 1 (2014).

[12] *Id.* at 192-193.

This pronouncement was repeated in *Samahan ng mga Progresibong, Kabataan, et al. v. Quezon City, et al.,* involving the constitutionality of curfew ordinances passed by three Metro Manila local governments, thus:

> By history and tradition, "the parental role implies a substantial measure of authority over one's children." In *Ginsberg v. New York*, the Supreme Court of the United States (US) remarked that "constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society." As in our Constitution, the right and duty of parents to rear their children is not only described as "natural," but also as "primary." The qualifier "primary" connotes the parents' superior right over the State in the upbringing of their children, x x x As our Constitution itself provides, the State is mandated to support parents in the exercise of these rights and duties. State authority is therefore, not exclusive of, but rather, complementary to parental supervision.[13]

Justice Leonen, in his Separate Opinion, concurred with these propositions and went on to state that:

> The addition of the qualifier "primary" unequivocally attests to the constitutional intent to afford primacy and preeminence to parental responsibility. More plainly stated, the Constitution now recognizes the superiority of parental prerogative. It follows, then, that state interventions, which are tantamount to deviations from the preeminent and superior rights of parents, are permitted only in instances where the parents themselves have failed or have become incapable of performing their duties.
>
> x x x x x x x x x
>
> As it stands, the **doctrine of *parens patriae* is a mere substitute or supplement to parents' authority over their children. It operates only when parental authority is established to be absent or grossly deficient.** The wisdom underlying this doctrine considers the existence of harm *and* the subsequent inability of the person to protect himself or herself. This premise entails the incapacity of parents and/or legal guardians to protect a child.

---

[13] 815 Phil. 1067, 1099-1100 (2017). Citations omitted.

To hold otherwise is to afford an overarching and almost absolute power to the State; to allow the Government to arbitrarily exercise its *parens patriae* power might as well render the superior Constitutional right of parents inutile.

More refined applications of this doctrine reflect this position. In these instances where the State exercised its powers over minors on account of *parens patriae*, it was only because the children were prejudiced and it was without subverting the authority of the parents themselves when they have not acted in manifest offense against the rights of their children.[14]

*Parental authority vis-à-vis standing under Republic Act No. 7610*

The plenary and natural right of parental authority is vested primarily in the parent or guardian,[15] subject only to substitution *in case of default of the parent or guardian*[16] or to the creation of *special* parental authority under certain circumstances.[17] Parental authority is therefore vested first and foremost in the parent or guardian, and is only lost, transferred or supplemented in accordance with law.[18] Article 189(2) of the Family Code and Rule 96, Section 1 of the Rules of Court[19] provides:

Article 189. Adoption shall have the following effects:

x x x x x x x x x

(2) The **parental authority of the parents by nature over the adopted shall terminate and be vested in the adopters**, except that if the adopter

---

[14] *Id*. at 1170, 1172-1173, separate opinion of Justice Leonen. Emphasis supplied.

[15] FAMILY CODE, Art. 211; A.M. No. 03-02-05-SC (Rule on Guardianship of Minors), Sec. 1.

[16] FAMILY CODE, Art. 216, paragraph 1.

[17] FAMILY CODE, Arts. 217 and 218.

[18] FAMILY CODE, Art. 210.

[19] Article 225 of the Family Code provides for the applicability of the Rules of Court provisions on guardianship "when the child is under substitute parental authority, or the guardian is a stranger, or a parent has remarried x x x."

is the spouse of the parent by nature of the adopted, parental authority over the adopted shall be exercised jointly by both spouses; x x x

x x x x x x x x x

RULE 96

General Powers and Duties of Guardians

SECTION 1. To what guardianship shall extend. — A **guardian** appointed **shall have the care and custody of the person of his ward**, and the management of his estate, or the management of the estate only, as the case may be. The guardian of the estate of a nonresident shall have the management of all the estate of the ward within the Philippines, and no court other than that in which such guardian was appointed shall have jurisdiction over the guardianship.

x x x x x x x x x

The law is clear: adoption or guardianship transfers the full panoply of parental rights and duties to the adoptive parent or guardian, subject only to specific exceptions as provided for by law. Thus, once a licensed child-caring institution has transferred the custody of a child to a judicially constituted guardian, the right of the institution's representative to sue on behalf of the child ceases, except as provided for by law. In the case at bar, it has been established that the spouses Pedro and Lourdes Aguirre have been granted parental authority over Larry by virtue of the June 19, 1986 decision of the RTC of Balanga, Bataan. The judicial declaration of the spouses Aguirre's guardianship over Larry therefore had the effect of divesting Sr. Versoza and the Heart of Mary Villa of parental authority over Larry. Therefore, Sr. Versoza's standing to file a complaint for child abuse on Larry's behalf can only be based on the provision on standing under R.A. No. 7610[20] and not on the parental authority provisions of the Family Code.

I therefore take exception to the assertion in the Resolution that "the argument that all ties have been severed between Larry and the child-caring agency to which [Sr. Versoza]

---

[20] REPUBLIC ACT NO. 7610, Section 27.

belonged on account of the transfer of parental authority does not hold water[21]," for it confuses the parental right to represent a child with standing to file a complaint under R.A. No. 7610. R.A. No. 7610's provision on standing was created precisely to address circumstances where child abuse is committed under the guise of parental authority. This grant of standing to sue on behalf of abused children is purely statutory in nature and is distinct and separate from the parents' or guardians' right to represent their children.

*Scope and limitations of parental authority*

American courts, in interpreting the term "custody,"[22] have conceded that the "complex of rights" embraced thereby have "no precise contours."[23] It has been held that parents with custody and control of their children have "the right to make all reasonable decisions for control and proper functioning of the family as a harmonious social unit,"[24] including the right to "make decisions regarding care and control, education, health, and religion."[25]

---

[21] Resolution, p. 18.

[22] Custody, in American family law, has been defined as "the care, control, and maintenance of a child awarded by a court to a responsible adult." It "involves legal custody (decision-making authority) and physical custody (caregiving authority), and an award of custody usually grants both rights. In a divorce or separation proceeding between the parents, the court usually awards custody to one of them, unless both are found to be unfit, in which case the court may award custody to a third party, typically a relative. In a case involving parental dereliction, such as abuse or neglect, the court may award custody to the state for placing the child in foster care if no responsible relative or family friend is willing and able to care for the child." Black's Law Dictionary (9th ed.) 441. Under the foregoing definition, the concept is essentially analogous to parental authority in Philippine law.

[23] *Delgado v. Fawcett*, 515 P.2d 710 (1973).

[24] 67A C.J.S 188, citing *Commonwealth v. Brasher*, 270 N.E. 2d, 359 Mass. 550 (1971).

[25] *Id.*, citing *Burge v. City and County of San Francisco*, 262 P.2d 6, 41 C.2d 608 (1953) and *Trompeter v. Trompeter*, 545 P.2d 297, 218 Kan. 535 (1976).

Under contemporary law, parental authority remains a plenary authority whose scope is almost all-encompassing, subject only to the limitations expressly provided for by statute and by the best interests standard. Parents and guardians are vested with this plenary power in view of their legal responsibility to support, educate, direct, and protect their children or wards.[26] The expansive scope of this authority is illustrated by the provisions of the Family Code, *viz.*:

Article 209. Pursuant to the **natural right and duty** of parents over the person and property of their unemancipated children, parental authority and responsibility shall include the **caring for and rearing them for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being.**

x x x x x x x x x

Chapter 3. Effect of Parental Authority Upon the Persons of the Children

Article 220. The parents and those exercising parental authority shall have with the respect to their unemancipated children on wards the following rights and duties:

(1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to **provide for their upbringing in keeping with their means;**

(2) To give them love and affection, advice and counsel, companionship and understanding;

(3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;

(4) To furnish them with good and wholesome educational materials, **supervise their activities, recreation and association with others**, protect them from bad company, and **prevent them from acquiring habits detrimental to their health, studies and morals;**

(5) To **represent them in all matters affecting their interests;**

---

[26] I Tolentino, *supra* note 7. See also *Salvaña and Saliendra v. Judge Gaela*, 55 Phil. 680 (1931).

(6) To demand from them respect and obedience;

(7) To impose discipline on them as may be required under the circumstances; and

(8) **To perform such other duties as are imposed by law upon parents and guardians.**

x x x x x x x x x

(Emphases and underscoring supplied)

I submit that intellectually disabled persons, who are, for all intents and purposes, embraced under the definition of a child, are covered by the same concept of parental authority. Thus, under the aforecited provision, included in these "other duties as are imposed by law" is the duty and authority of parents or guardians to decide for their intellectually disabled children or wards on matters regarding the use of health services.

Section 10 of the Mental Health Law[27] lays down concrete guidelines regarding the consent of "persons with lived experience of any mental health condition including persons who require, or are undergoing psychiatric, neurologic or psychosocial care"[28] to medical treatment, *viz.*:

SECTION 10. Legal Representative. — A service user may designate a person of legal age to act as his or her legal representative through a notarized document executed for that purpose.

(a) Functions. A service user's legal representative shall:

(1) Provide the service user with support and help represent his or her interests; and receive medical information about the service user in accordance with this Act;

(2) Act as substitute decision maker when the service user has been assessed by a mental health professional to have temporary impairment of decision-making capacity;

(3) Assist the service user *vis-à-vis* the exercise of any right provided under this Act; and

---

[27] REPUBLIC ACT NO. 11036, 114 O.G. (No. 27) 4664.

[28] REPUBLIC ACT NO. 11036, Sec. 4(t).

(4) Be consulted with respect to any treatment or therapy received by the service user. The appointment of a legal representative may be revoked by the appointment of a new legal representative or by a notarized revocation.

(b) Declining an Appointment. A person thus appointed may decline to act as a service user's legal representative.

However, a person who declines to continue being a service user's legal representative must take reasonable steps to inform the service user, as well as the service user's attending mental health professional or worker, of such decision.

(c) Failure to Appoint. If the service user fails to appoint a legal representative, the following persons shall act as the service user's legal representative, in the order provided below:

(1) The spouse, if any, unless permanently separated from the service user by a decree issued by a court of competent jurisdiction, or unless such spouse has abandoned or been abandoned by the service user for any period which has not yet come to an end;

(2) Non-minor children;

**(3) Either parent by mutual consent, if the service user is a minor;**

(4) Chief, administrator, or medical director of a mental health care facility; or

(5) A person appointed by the court. (Emphasis and underscoring supplied.)

In so recognizing, I understand nonetheless that despite the primacy and plenary scope of parental authority, it remains subject to the power of the state as *parens patriae*,[29] but *only* where the exercise of parental authority is made in a manner that is harmful or abusive to the child. Nevertheless, as the natural and primary caregiver and custodian of their children, with the inherent right and duty "to develop their moral, mental and physical character and well-being" and "to represent them

---

[29] *State v. Koome*, 530 P.2d 260, 84 Wash.2d 901 (1975).

in all matters affecting their interests," parents are entitled to a presumption of good faith in the discharge of their *patria potestas* duties. However, the best interests of the child remain the paramount consideration, which the State, as *parens patriae* must promote; and to which, parental authority must yield in case of conflict. The sterilization of an intellectually disabled person, who is considered a child in the eyes of the law, presents one such instance, where the interests of the parents in ensuring the health and well-being of their child could conflict with the interests of the state in upholding the child's right to reproductive choice and corporal self-control. Thus, in the absence of allegations or proof that the parents acted in bad faith or against the best interests of their child, their right and duty to decide on their child's behalf must prevail.

*The right to consent to sterilization of an intellectually disabled person*

The sterilization of intellectually disabled individuals has been the subject of a long line of decisions in the United States and Canada,[30] almost all of which involved the parent or guardian of an intellectually disabled individual applying for judicial authorization to perform some medical procedure which will render said individual unable to procreate; and in most instances since 1978, the appellate courts have either denied such applications[31] or remanded them to the lower court for the reception of evidence.[32] In this regard, the Canadian Supreme Court has held that:

---

[30] See *Buck v. Bell*, 274 U.S. 200 (1927), which upheld the sterilization of a "mildly retarded woman"; *E (Mrs) v. Eve*, 2 S.C.R. 388 (1986) (Supreme Court of Canada), denying the application for judicial authorization to sterilize a 24-year old woman with acute expressive aphasia who was found to be mentally incapable of discharging the duties of a mother; and cases cited therein.

[31] *Conservatorship of Valerie N.*, 707 P. 2d 760 (1985); *In Matter of Guardianship of Eberhardy*, 307 N.W. 2d 881 (1981); *E (Mrs) v. Eve*, *supra*, grant of authorization to hysterectomy reversed on appeal.

[32] *In re Hayes*, 608 P. 2d 635(1980); *In the Matter of Moe*, 432 N.E. 2d 712 (1982).

The court undoubtedly has the right and duty to protect those who are unable to take care of themselves, and in doing so it has a wide discretion to do what it considers to be in their best interests. But this function must not, in my view, be transformed so as to create a duty obliging the court, at the behest of a third party, to make a choice between the two alleged constitutional rights—the right to procreate or not to procreate—simply because the individual is unable to make that choice. All the more so since, in the case of non-therapeutic sterilization as we saw, the choice is one the courts cannot safely exercise.[33]

It must be noted that the North American courts unanimously recognize reproductive rights, including the right to choose to (or *not* to) undergo sterilization, as a fundamental human right, held by *all* individuals regardless of intellectual or mental ability. The doctrinal divergence lies not in the exercise of this right by intellectually disabled individuals, who, by reason of such disability, are unable to do so. Rather, the issues primarily revolve around whether the State should defer to the parents' wishes or substitute its own judgment as *parens patriae* on the individual's behalf; not the capacity of the individual to decide for himself or herself. The difficulties faced by the courts in resolving such matters have been summarized thusly:

The case before us presents a situation that is difficult to characterize as either "compulsory" or "voluntary." "Compulsory" would refer to a sterilization that the state imposes despite objections by the person to be sterilized or one who represents his interests. Here, however, Lee Ann's parents and her guardian *ad litem* all agree that sterilization is in her best interests, and while the state may be acting in the constitutional sense, it would not be compelling sterilization. Lee Ann herself can comprehend neither the problem nor the proposed solution; without any such understanding it is difficult to say that sterilization would be against her will. Yet for this same reason, the label "voluntary" is equally inappropriate. Since Lee Ann is without the capacity for giving informed consent, any explanation of the proposed sterilization could only mislead her. Thus, what is proposed for Lee Ann is best described as neither "compulsory" nor "voluntary," but as lacking personal consent because of a legal disability.[34]

---

[33] *E (Mrs) v. Eve*, 2 S.C.R. 388, 420 (1986) (Supreme Court of Canada).

[34] *In the matter of Grady,* 426 A.2d 467, 85 N.J. 235, at 247 (1981).

As such, in the absence of comprehensive evidence regarding the individual's physical and mental capacities, sexual proclivity, and psycho-social capabilities to discharge the duties of a parent,[35] courts in the United States have refrained from making such a choice in place of the intellectually disabled person. Ultimately, the determination of the most proper course of action would be an evidentiary matter that requires the reception of evidence and presentation of proof. In making such a determination, courts have considered evidence regarding the following factors: the intellectually disabled person's capacity to consent to the procedure;[36] their capability to reproduce;[37] their religious beliefs;[38] their present and future inability to understand the concepts of reproduction or contraception, and the likely permanence of such inability;[39] their ability to care for a child, either alone, or with the assistance of a prospective spouse;[40] possible trauma or psychological damage that may be brought on by childbirth or parenthood;[41] likelihood of voluntary engagement in sexual activity or exposure to situations where sexual intercourse is imposed;[42] advisability of sterilization at

---

[35] See *Estate of CW*, 640 A. 2d 427 (1994), application for authorization to consent to tubal ligation of a 24-year old woman with Down syndrome and a mental age of 3-5 years old; and *In re Conservatorship of Angela* D., 83 Cal. Rptr. 2d 411 (1999), involving the sterilization of a 20-year-old severely developmentally disabled woman who suffers from epileptic seizures and diabetes.

[36] 53 Am. Jur. 2d. Mentally Impaired Persons §127, p. 576, citing *In re M*. 627 P.2d 607; *In re Romero*, 790 P.2d 819; *In the Matter of Moe*, *supra* note 32; *In the matter of Grady*, *supra*; *In re Hayes*, *supra* note 32.

[37] 53 Am. Jur. 2d. Mentally Impaired Persons §127, p. 577, citing *In re M*., *supra*; *In the matter of Grady*, *supra*; *In re Truesdell*, 63 NC. App. 258, 304 S.E.2d. 793, modified on other grounds 313 N.C. 421, 329 S.E.2d. 630.

[38] *Id*., citing *In the Matter of Moe*, *supra* note 32.

[39] *Id*., citing *In the matter of Grady*, *supra*.

[40] *Id*., citing *In the matter of Grady*, *id*.; *In re M*., *supra*.

[41] *Id*., citing *In the matter of Grady*, *id*.

[42] *Id*., citing *In the matter of Grady*, *id*; *In re Truesdell*, *supra*.

the time of the application rather than in the future;[43] evidence of scientific advances which may occur within the foreseeable future which will make possible either improvement of the individual's condition or alternative and less drastic sterilization procedures;[44] and a demonstration that the proponents of sterilization are seeking it in good faith, with the best interests of the individual in mind, rather than their own or the public's convenience.[45]

*The case at bar*

It is undisputed that Larry Aguirre is considered a child under the law, since his mental age is that of an 8-year old;[46] and he is incapable of making important life decisions on his own.[47] Likewise, the parties do not dispute that respondent Pedro Aguirre acquired parental authority over Larry's person by virtue of the June 19, 1986 decision of the RTC of Balanga, Bataan, which granted the spouses Pedro and Lourdes Aguirre joint guardianship over Larry's person and property.[48] The record likewise establishes that Larry has been in the care and custody of the Aguirre family since he was two years old.[49] It is therefore clear that the Aguirre spouses had parental authority over Larry. Consequently, they have the primary right and duty, under current laws, to decide what is best for Larry.

---

[43] *Id*., citing *In the matter of Grady*, *id*.

[44] *Id*., citing *In the matter of Grady*, *id.*; *In the Matter of Moe*, *supra* note 32.

[45] *Id*., citing *In the matter of Grady*, *supra* note 27; *In re M*., *supra*.

[46] Psychiatry Report dated 21 January 2002 signed by Dr. Marissa Pascual M.D., as cited in *Aguirre v. Secretary of the Dept. of Justice, et al*, 571 Phil. 138, 146 (2008). Consolidated Reply, pp. 3-5, *rollo*, pp. 202-204.

[47] Psychiatry Report dated 21 January 2002 signed by Dr. Marissa Pascual M.D., as cited in *Aguirre v. Secretary of the Dept. of Justice, et al*, *id.* at 147; Petition, p. 4, *id*. at 12.

[48] *Aguirre v. Secretary of the Dept. of Justice, et al.*, *id*. at 143.

[49] *Id*.

Turning now to the particular circumstances of Larry's situation, viewed in the light of the relevant factors mentioned in the preceding section, the undisputed findings made by Dr. Pascual in her Psychiatric Report, as cited in the case of *Aguirre v. Secretary of Justice*, must be accorded great weight. According to the report, Larry's mental development has been significantly delayed[50] because of mild to moderate mental deficiency.[51] Thus, his human figure is comparable to a seven or eight year old child.[52] He can perform most daily activities without assistance *but* still needs supervision to bathe.[53] He cannot prepare meals on his own and is not allowed to go out or run errands alone.[54] He has no friends and only has significant relationships with his adoptive family.[55] He has learned to smoke and drink but has no history of substance abuse.[56] As such, he is very much dependent on his family for his needs, adaptive functioning, direction, and in making major life decisions.[57] Finally, the report concluded that, at his capacity, Larry may never understand the nature, foreseeable risks, benefits, and consequences of the vasectomy sought by his parents for his protection.[58]

In contrast, there is no evidence on record to show that Larry understands the nature and consequences of his sexuality, his present and future inability to understand the concepts of reproduction or contraception; or of his ability to care for a child, either alone, or with the assistance of a prospective spouse.

---

[50] *Id.* at 145.

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] *Id.* at 146.

[57] *Id.* at 147.

[58] *Id.*

No evidence was likewise presented as to the possibility of trauma or psychological damage that may be brought on Larry by the fact of childbirth or parenthood; or of the likelihood of his voluntary engagement in sexual activity or exposure to situations where sexual intercourse is imposed; much more of the *ponencia*'s claim that Larry's mental age will grow to be 18 years of age or beyond at some point in the future, or its theory of "supported parenting."

Given the dearth of evidence to guide the courts in deciding on Larry's behalf, they must defer to the parties with the constitutional primary right to decide for Larry: his parents. The parental authority vested in the spouses Aguirre includes the right to decide upon and consent to a vasectomy, on Larry's behalf, as a precautionary measure to ensure that Larry is able to live his best life, free from the possible complications and repercussions which may arise if he bears a child under the attendant circumstances in the case at bar. Such decisions should be presumed to have been made in Larry's best interest, unless proven otherwise.

All told, a binding resolution of the novel issue raised by the *ponencia* must await another case where an authorized trier of fact will be able to receive evidence from all parties concerned, hopefully with the guidance of medical, sociological, and psychological experts, and guided by international precedents.

**IN VIEW OF THE FOREGOING,** I vote to **DISMISS** the petition solely on the ground of mootness.

**EN BANC**

[G.R. No. 217910. September 3, 2019]

**JESUS NICARDO M. FALCIS, III,** *petitioner, vs.* **CIVIL REGISTRAR GENERAL,** *respondent.*

**LGBTS CHRISTIAN CHURCH, INC., REVEREND CRESENCIO "CEEJAY" AGBAYANI, JR., MARLON FELIPE, and MARIA ARLYN "SUGAR" IBAÑEZ,** *petitioners-in-intervention.*

**ATTY. FERNANDO P. PERITO, ATTY. RONALDO T. REYES, ATTY. JEREMY I. GATDULA, ATTY. CRISTINA A. MONTES, and ATTY. RUFINO POLICARPIO III,** *intervenors-oppositors.*

**SYLLABUS**

**1. POLITICAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; FOUNDED ON THE PRINCIPLE OF SUPREMACY, JUDICIAL REVIEW IS THE COURT'S POWER TO DECIDE ON THE CONSTITUTIONALITY OF EXERCISES OF POWER BY THE OTHER BRANCHES OF GOVERNMENT AND TO ENFORCE CONSTITUTIONAL RIGHTS; REQUISITES.—** In a proper case, a good opportunity may arise for this Court to review the scope of Congress' power to statutorily define the scope in which constitutional provisions are effected. This is not that case. The Petition before this Court does not present an actual case over which we may properly exercise our power of judicial review. There must be narrowly-framed constitutional issues based on a justiciable controversy. x x x Founded on the principle of supremacy of law, judicial review is the courts' power to decide on the constitutionality of exercises of power by the other branches of government and to enforce constitutional rights. x x x Article VIII, Section 1 expands the territory of justiciable questions and narrows the off-limits area of political questions. x x x Fundamentally, for this Court to exercise the immense power that enables it to undo the actions of the other government branches, the following requisites must be satisfied: (1) there

must be an actual case or controversy involving legal rights that are capable of judicial determination; (2) the parties raising the issue must have standing or *locus standi* to raise the constitutional issue; (3) the constitutionality must be raised at the earliest possible opportunity, thus ripe for adjudication; and (4) the matter of constitutionality must be the very *lis mota* of the case, or that constitutionality must be essential to the disposition of the case.

**2. ID.; ID.; ID.; EXPANDED JURISDICTION OF THE COURT DOES NOT INCLUDE THE POWER TO ISSUE ADVISORY OPINIONS.—** This Court's constitutional mandate does not include the duty to answer all of life's questions. No question, no matter how interesting or compelling, can be answered by this Court if it cannot be shown that there is an "actual and an antagonistic assertion of rights by one party against the other in a controversy wherein judicial intervention is unavoidable." This Court does not issue advisory opinions. We do not act to satisfy academic questions or dabble in thought experiments. We do not decide hypothetical, feigned, or abstract disputes, or those collusively arranged by parties without real adverse interests. If this Court were to do otherwise and jump headlong into ruling on every matter brought before us, we may close off avenues for opportune, future litigation. We may forestall proper adjudication for when there are actual, concrete, adversarial positions, rather than mere conjectural posturing: Even the expanded jurisdiction of this Court under Article VIII, Section 1 does not provide license to provide advisory opinions. An advisory opinion is one where the factual setting is conjectural or hypothetical. In such cases, the conflict will not have sufficient concreteness or adversariness so as to constrain the discretion of this Court. After all, legal arguments from concretely lived facts are chosen narrowly by the parties. Those who bring theoretical cases will have no such limits. They can argue up to the level of absurdity. They will bind the future parties who may have more motives to choose specific legal arguments. *In other words, for there to be a real conflict between the parties, there must exist actual facts from which courts can properly determine whether there has been a breach of constitutional text.*

**3. ID.; ID.; ID.; THERE MUST BE AN ACTUAL CASE, A "CONTRAST OF LEGAL RIGHTS THAT CAN BE**

**INTERPRETED AND ENFORCED ON THE BASIS OF EXISTING LAW AND JURISPRUDENCE;" POWER TO FORMULATE PUBLIC POLICY IS THE PROVINCE OF THE LEGISLATIVE AND EXECUTIVE BRANCHES OF THE GOVERNMENT.—** It is not enough that laws or regulations have been passed or are in effect when their constitutionality is questioned. The judiciary interprets and applies the law. "It does not formulate public policy, which is the province of the legislative and executive branches of government." Thus, it does not—by the mere existence of a law or regulation—embark on an exercise that may render laws or regulations inefficacious. Lest the exercise of its power amount to a ruling on the wisdom of the policy imposed by Congress on the subject matter of the law, the judiciary does not arrogate unto itself the rule-making prerogative by a swift determination that a rule ought not exist. There must be an actual case, "a contrast of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence."

**4. ID.; ID.; ID.; ID.; EVEN WITHOUT THE EXISTENCE OF AN ACTUAL CASE OR CONTROVERSY, THE COURT MAY EXERCISE ITS POWER OF JUDICIAL REVIEW IN CASES INVOLVING NEWLY-ENACTED LAWS WHICH ARE SERIOUSLY ALLEGED TO HAVE INFRINGED THE CONSTITUTION; THE COURT IS ALSO MANDATED TO DETERMINE WHETHER OR NOT THERE HAS BEEN A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF ANY BRANCH OF THE GOVERNMENT.—** There are instances when this Court exercised the power of judicial review in cases involving newly-enacted laws. In *Pimentel, Jr. v. Aguirre*, this Court fixed the point at which a legal issue matures into an actual case or controversy—at the pre-occurrence of an "overt act": In the unanimous *en banc case Tañada v. Angara*, this Court held that when an act of the legislative department is seriously alleged to have infringed the Constitution, settling the controversy becomes the duty of this Court. *By the mere enactment of the questioned law or the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act. Indeed, even a singular violation of the Constitution and/or the law is enough to awaken judicial*

*duty.* x x x Thus, in *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, this Court stated: "[t]hat the law or act in question is not yet effective does not negate ripeness." Subsequently, this Court, in *Southern Hemisphere Engagement Network, Inc*., stated: The Court is not unaware that a reasonable certainty of the occurrence of a *perceived threat* to any constitutional interest suffices to provide a basis for mounting a constitutional challenge. This, however, is qualified by the requirement that there must be **sufficient facts** to enable the Court to intelligently adjudicate the issues. In *Spouses Imbong*, this Court found that there was an actual case or controversy, despite the Petition being a facial challenge: x x x In this jurisdiction, the application of doctrines originating from the U.S. has been generally maintained, albeit with some modifications. While this Court has withheld the application of facial challenges to strictly penal statutes, it has **expanded** its scope to cover statutes not only regulating **free speech**, but also those involving **religious freedom**, and **other fundamental rights**. The underlying reason for this modification is simple. For unlike its counterpart in the U.S., this Court, under its expanded jurisdiction, is mandated by the Fundamental Law not only to settle actual controversies involving rights which are legally demandable and enforceable, but also **to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government**. Verily, the framers of Our Constitution envisioned a proactive Judiciary, ever vigilant with its duty to maintain the supremacy of the Constitution.

**5. ID.; ID.; ID.; ID.; ID.; FACIAL CHALLENGE; AN EXAMINATION OF THE ENTIRE LAW, PINPOINTING ITS FLAWS AND DEFECTS, NOT ONLY ON THE BASIS OF ITS ACTUAL OPERATION TO THE PARTIES, BUT ALSO ON THE ASSUMPTION OR PREDICTION THAT ITS VERY EXISTENCE MAY CAUSE OTHERS NOT BEFORE THE COURT TO REFRAIN FROM CONSTITUTIONALLY PROTECTED SPEECH OR ACTIVITIES; DISTINGUISHED FROM "AS-APPLIED" CHALLENGES, WHICH CONSIDER ACTUAL FACTS AFFECTING REAL LITIGANTS; CASE AT BAR.—** Here, the Petition cannot be entertained as a facial challenge to Articles

1, 2, 46(4), and 55(6) of the Family Code. A facial challenge is "an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities." It is distinguished from "as-applied" challenges, which consider actual facts affecting real litigants. Facial challenges are only allowed as a narrow exception to the requirement that litigants must only present their own cases, their extant factual circumstances, to the courts. In *David v. Arroyo*: [F]acial invalidation of laws is considered as "manifestly strong medicine," to be used "sparingly and only as a last resort," and is "generally disfavored;" The reason for this is obvious. Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a law may be applied will not be heard to challenge a law on the ground that it may conceivably be applied unconstitutionally to others, *i.e.,* in other situations not before the Court.

6. **ID.; ID.; ID.; ID.; PARTIES MUST DEMONSTRATE ACTUAL CASES OR CONTROVERSIES WORTHY OF JUDICIAL RESOLUTION; PLEADINGS BEFORE THE COURT MUST SHOW A VIOLATION OF AN EXISTING LEGAL RIGHT OR A CONTROVERSY THAT IS RIPE FOR JUDICIAL DETERMINATION.—** It is the parties' duty to demonstrate actual cases or controversies worthy of judicial resolution. Pleadings before this Court must show a violation of an existing legal right or a controversy that is ripe for judicial determination. x x x Facts are the basis of an actual case or controversy. To reiterate, "there must be **sufficient facts** to enable the Court to intelligently adjudicate the issues."

7. **ID.; ID.; ID.; ID.; ID.; SCRUTINY ON THE EXISTENCE OF ACTUAL FACTS BECOMES MOST NECESSARY WHEN THE RIGHTS OF MARGINALIZED, MINORITY GROUPS HAVE BEEN THRUST INTO CONSTITUTIONAL SCRUTINY BY A PARTY PURPORTING TO REPRESENT AN ENTIRE SECTOR.—** The need to demonstrate an actual case or controversy is even more compelling in cases concerning minority groups. This Court is a court of law. We are equipped with legal expertise, but we are not the final authority in other disciplines. In fields such as politics, sociology, culture, and

economics, this Court is guided by the wisdom of recognized authorities, while being steered by our own astute perception of which notions can withstand reasoned and reasonable scrutiny. This enables us to filter unempirical and outmoded, even if sacrosanct, doctrines and biases. This Court exists by an act of the sovereign Filipino people who ratified the Constitution that created it. Its composition at any point is not the result of a popular election reposing its members with authority to decide on matters of policy. This Court cannot make a final pronouncement on the wisdom of policies. Judicial pronouncements based on wrong premises may unwittingly aggravate oppressive conditions. The scrutiny on the existence of actual facts becomes most necessary when the rights of marginalized, minority groups have been thrust into constitutional scrutiny by a party purporting to represent an entire sector.

**8. ID.; REPUBLIC ACT NO. 11166 (PHILIPPINE HIV AND AIDS POLICY ACT); STATES A POLICY OF NON-DISCRIMINATION.—** In contemporary times, as this Court has noted, there is no penalty in the Philippines for engaging in what may be called "homosexual conduct." Notably, Republic Act No. 11166, or the Philippine HIV and AIDS Policy Act, states a policy of non-discrimination in Section 2: x x x Policies and practices that discriminate on the basis of perceived or actual HIV status, sex, gender, sexual orientation, gender identity and expression, age, economic status, disability, and ethnicity hamper the enjoyment of basic human rights and freedoms guaranteed in the Constitution and are deemed inimical to national interest. However, discrimination remains. Hence, the call for equal rights and legislative protection continues. To address the continuing discrimination suffered by the LGBTQI+ community in the Philippines, a number of legislative measures have been filed in Congress.

**9. ID.; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; ACTUAL CASE OR CONTROVERSY; NOT ESTABLISHED IN CASE AT BAR.—** Here, petitioner has no actual facts that present a real conflict between the parties of this case. The Petition presents no actual case or controversy. Despite a goal of proving to this Court that there is a continuing and pervasive violation of fundamental rights of a marginalized minority group, the Petition is woefully bereft of sufficient actual facts to substantiate its arguments. A substantive portion of the

Petition merely parrots the separate concurring opinion of retired Chief Justice Puno in *Ang Ladlad LGBT Party*, concerning the concept of suspect classifications. Five (5) pages of the 29-page Petition are block quotes from retired Chief Justice Puno, punctuated by introductory paragraphs of, at most, two (2) sentences each. A separate opinion is the expression of a justice's individual view apart from the conclusion held by the majority of this Court. Even first year law students know that a separate opinion is without binding effect. This Court may adopt in a subsequent case the views in a separate opinion, but a party invoking it bears the burden of proving to this Court that the discussion there is the correct legal analysis that must govern. Petitioner made no such effort. He did not explain why this Court should adopt the separate opinion of retired Chief Justice Puno. It is not enough, as petitioner has done, to merely produce copious quotations from a separate opinion. Even more curious, petitioner would eventually betray a lack of confidence in those quotations by ultimately saying that he "disagrees with the former Chief Justice's conclusion." From his confused and disjointed reference to retired Chief Justice Puno, petitioner would arrive at the conclusion that Articles 1 and 2 of the Family Code must be examined through the lens of the strict scrutiny test. x x x All told, petitioner's 29-page initiatory pleading neither cites nor annexes any credible or reputable studies, statistics, affidavits, papers, or statements that would impress upon this Court the gravity of his purported cause. The Petition stays firmly in the realm of the speculative and conjectural, failing to represent the very real and well-documented issues that the LGBTQI+ community face in Philippine society.

**10. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; GRAVE ABUSE OF DISCRETION; WITHOUT AN EXERCISE OF DISCRETION, THERE COULD NOT HAVE BEEN ABUSE OF DISCRETION, LET ALONE ONE THAT COULD CONCEIVABLY BE CHARACTERIZED AS GRAVE; CASE AT BAR.—** Even petitioner's choice of respondent exposes the lack of an actual case or controversy. He claims that he impleaded the Civil Registrar General as respondent because "it is the instrumentality of the government that is tasked to enforce the law in relation with (*sic*) marriage[.]" Lest petitioner himself forget, what he asserts as ground for the allowance of his suit is the existence of grave abuse of discretion; specifically,

grave abuse of discretion *in the enactment of the Family Code*. x x x Respondent Civil Registrar General was not involved in the formulation or enactment of the Family Code. It did not participate in limiting the definition of marriage to only opposite-sex couples. That is the province and power of Congress alone. His choice of the Civil Registrar General as respondent is manifestly misguided. No factual antecedents existed prior to the filing of the Petition apart from the passage of the Family Code. Petitioner has never applied for a marriage license. He has never even visited the premises of respondent's office, or of anyone acting under its authority. Petitioner has never bothered to show that he himself acted in any way that asked respondent to exercise *any* kind of discretion. Indeed, no discretion was ever exercised by respondent. Without an exercise of discretion, there could not have been abuse of discretion, let alone one that could conceivably be characterized as "grave."

**11. POLITICAL LAW; LEGISLATIVE DEPARTMENT; LAW-MAKING POWER; TASK OF DEVISING AN ARRANGEMENT WHERE SAME-SEX RELATIONS WILL EARN STATE RECOGNITION IS BETTER LEFT TO CONGRESS.—** [T]he task of devising an arrangement where same-sex relations will earn state recognition is better left to Congress in order that it may thresh out the many issues that may arise: Marriage is a legal relationship, entered into through a legal framework, and enforceable according to legal rules. Law stands at its very core. *Due to this inherent "legalness" of marriage, the constitutional right to marry cannot be secured simply by removing legal barriers to something that exists outside of the law. Rather, the law itself must create the "thing" to which one has a right. As a result, the right to marry necessarily imposes an affirmative obligation on the state to establish this legal framework.*

**12. ID.; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; LEGAL STANDING; A PARTY'S PERSONAL AND SUBSTANTIAL INTEREST IN THE CASE SUCH THAT HE HAS SUSTAINED, OR WILL SUSTAIN, DIRECT INJURY AS A RESULT OF ITS ENFORCEMENT; PARTY MUST CLAIM SOME KIND OF INJURY-IN-FACT; EXCEPTIONS; ANTICIPATION OF HARM IS NOT EQUIVALENT TO DIRECT INJURY.—** Petitioner has no legal standing to file his Petition. Legal standing is a party's

"personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement." Interest in the case "means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest." Much like the requirement of an actual case or controversy, legal standing ensures that a party is seeking a concrete outcome or relief that may be granted by courts. x x x Even for exceptional suits filed by taxpayers, legislators, or concerned citizens, this Court has noted that the party must claim some kind of injury-in-fact. For concerned citizens, it is an allegation that the continuing enforcement of a law or any government act has denied the party some right or privilege to which they are entitled, or that the party will be subjected to some burden or penalty because of the law or act being complained of. For taxpayers, they must show "sufficient interest in preventing the illegal expenditure of money raised by taxation[.]" Legislators, meanwhile, must show that some government act infringes on the prerogatives of their office. Third-party suits must likewise be brought by litigants who have "sufficiently concrete interest" in the outcome of the dispute. Here, petitioner asserts that he, being an "open and self-identified homosexual[,]" has standing to question Articles 1, 2, 46(4), and 55(6) of the Family Code due to his "personal stake in the outcome of the case". x x x Petitioner's supposed "personal stake in the outcome of this case" is not the direct injury contemplated by jurisprudence as that which would endow him with standing. Mere assertions of a "law's normative impact"; "impairment" of his "ability to find and enter into long-term monogamous same-sex relationships"; as well as injury to his "plans to settle down and have a companion for life in his beloved country"; or influence over his "decision to stay or migrate to a more LGBT friendly country" cannot be recognized by this Court as sufficient interest. Petitioner's desire "to find and enter into long-term monogamous same-sex relationships" and "to settle down and have a companion for life in his beloved country" does not constitute legally demandable rights that require judicial enforcement. This Court will not witlessly indulge petitioner in blaming the Family Code for his admitted inability to find a partner. x x x Similarly, anticipation of harm is not equivalent to direct injury. Petitioner fails to show how the Family Code is the proximate cause of his alleged deprivations. His mere

allegation that this injury comes from "the law's normative impact" is insufficient to establish the connection between the Family Code and his alleged injury. If the mere passage of a law does not create an actual case or controversy, neither can it be a source of direct injury to establish legal standing. This Court is not duty bound to find facts on petitioner's behalf just so he can support his claims. x x x Petitioner has neither suffered any direct personal injury nor shown that he is in danger of suffering any injury from the present implementation of the Family Code. He has neither an actual case nor legal standing.

13. **REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; NOT AN INDEPENDENT ACTION BUT IS ANCILLARY AND SUPPLEMENTAL TO EXISTING LITIGATION; REQUISITES; CASE AT BAR.—** The Petition-in-Intervention was also authored by petitioner. He only filed it after the Office of the Solicitor General had filed a Comment (*Ad Cautelam*) pointing out the procedural flaws in his original Petition. Still, the Petition-in-Intervention suffers from the same procedural infirmities as the original Petition. Likewise, it cannot cure the plethora of the original Petition's defects. Thus, it must also be dismissed. Interventions are allowed under Rule 19, Section 1 of the 1997 Rules of Civil Procedure. x x x Intervention is not an independent action but is ancillary and supplemental to existing litigation. Intervention requires: (1) a movant's legal interest in the matter being litigated; (2) a showing that the intervention will not delay the proceedings; and (3) a claim by the intervenor that is incapable of being properly decided in a separate proceeding. Here, while petitioners-intervenors have legal interest in the issues, their claims are more adequately decided in a separate proceeding, seeking relief independently from the Petition. The Petition-in-Intervention suffers from confusion as to its real purpose. x x x Given these, this Court can only arrive at the conclusion that the Petition-in-Intervention was a veiled vehicle by which petitioner sought to cure the glaring procedural defects of his original Petition. It was not a *bona fide* plea for relief, but a sly, tardy stratagem. It was not a genuine effort by an independent party to have its cause litigated in the same proceeding, but more of an ill-conceived attempt to prop up a thin and underdeveloped Petition. Petitioner, as both party and counsel to petitioners-intervenors, miserably failed in his pretenses. A petition-in-intervention cannot create an actual case or controversy when the main petition has none.

**14. ID.; ID.; THIRD-PARTY STANDING; REQUISITES.—** Even if the Petition-in-Intervention is not a sham foisted by petitioner upon this Court, it still does not satisfy the requirements of justiciability. Petitioners-intervenors invoke "third-party standing" as their basis for filing suit. But the requisites of third-party standing are absent here. For a successful invocation of third-party standing, three (3) requisites must concur: Nonetheless, the general rules on standing admit of several exceptions such as the overbreadth doctrine, taxpayer suits, third party standing and, especially in the Philippines, the doctrine of transcendental importance. For this particular set of facts, the concept of third party standing as an exception and the overbreadth doctrine are appropriate. In *Powers v. Ohio*, the United States Supreme Court wrote that: "We have recognized the right of litigants to bring actions on behalf of third parties, provided three important criteria are satisfied: the litigant must have suffered an 'injury-in-fact', thus giving him or her a "sufficiently concrete interest" in the outcome of the issue in dispute; the litigant must have a close relation to the third party; and there must exist some hindrance to the third party's ability to protect his or her own interests."

**15. ID.; SPECIAL CIVIL ACTIONS; RULE 65 PETITIONS ARE NOT *PER SE* REMEDIES TO ADDRESS CONSTITUTIONAL ISSUES; PETITIONS FOR *CERTIORARI* ARE FILED TO ADDRESS JURISDICTIONAL EXCESSES OF OFFICERS OR BODIES EXERCISING JUDICIAL OR QUASI-JUDICIAL FUNCTIONS; PETITIONS FOR PROHIBITION ARE FILED TO ADDRESS JURISDICTIONAL EXCESSES OF OFFICERS OR BODIES EXERCISING JUDICIAL, QUASI-JUDICIAL, OR MINISTERIAL FUNCTIONS; PETITION FOR DECLARATORY RELIEF, PROPER REMEDY IN CASE AT BAR.—** Petitioner's choice of remedy further emphasizes his ignorance of basic legal procedure. Rule 65 petitions are not per se remedies to address constitutional issues. Petitions for *certiorari* are filed to address the jurisdictional excesses of officers or bodies exercising judicial or quasi-judicial functions. Petitions for prohibition are filed to address the jurisdictional excesses of officers or bodies exercising judicial, quasi-judicial, or *ministerial* functions. x x x Here, petitioner justifies his resort to Rule 65 on the basis of this Court's prior

pronouncements that *certiorari* and prohibition are the remedies for assailing the constitutionality of statutes. He cites, in particular, *Magallona* and *Araullo*. Petitioner even faults this Court, asserting that its failure to create a "specific remedial vehicle under its constitutional rule-making powers" made his resort to Rule 65 appropriate. Yet, petitioner's presentation of his case, which is lacking in an actual or imminent breach of his rights, makes it patently obvious that his proper remedy is not Rule 65, but rather, a petition for declaratory relief under Rule 63 of the 1997 Rules of Civil Procedure. x x x This Court has been categorical that, in certain instances, declaratory relief is proper should there be a question of the constitutionality of a statute, executive order or regulation, ordinance, or any other governmental regulation. The remedy of declaratory relief acknowledges that there are instances when questions of validity or constitutionality cannot be resolved in a factual vacuum devoid of substantial evidence on record for which trial courts are better equipped to gather and determine. Here, considering that there is an abysmal dearth of facts to sustain a finding of an actual case or controversy and the existence of a direct injury to petitioner, a petition for declaratory relief resolved after full-blown trial in a trial court would have been the more appropriate remedy. As discussed, contrary to the basic requirement under Rule 65, petitioner failed to show that respondent Civil Registrar General exercised any judicial, quasi-judicial, or ministerial function. From this, no grave abuse of discretion amounting to lack or excess of jurisdiction can be appreciated. Petitions for *certiorari* and prohibition require the proper allegation not only of a breach of a constitutional provision, but more important, of an actual case or controversy.

16. **ID.; COURTS; DOCTRINE OF HIERARCHY OF COURTS; CREATED TO ENSURE JUDICIAL EFFICIENCY AT ALL LEVELS OF COURTS; FACILITATES THE NEED TO ENABLE FACTUAL ISSUES TO BE FULLY VENTILATED IN PROCEEDINGS BEFORE COURTS THAT ARE BETTER EQUIPPED AT APPRECIATING EVIDENCE, AND ULTIMATELY BRINGING TO THE SUPREME COURT ONLY ISSUES OF PARAMOUNT AND PERVASIVE IMPORTANCE.—** The doctrine of hierarchy of courts ensures judicial efficiency at all levels of courts. It enables courts at each level to act in keeping with their peculiar

competencies. This is so, even as this Court has original and concurrent jurisdiction with the regional trial courts and the Court of Appeals over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*. x x x Time and again, this Court has held that the concurrent jurisdiction of the Court of Appeals and the regional trial courts with this Court does not give parties absolute discretion in immediately seeking recourse from the highest court of the land. In *Gios-Samar*, we emphasized that the power to issue extraordinary writs was extended to lower courts not only as a means of procedural expediency, but also to fulfill a constitutional imperative as regards: (1) the structure of our judicial system; and (2) the requirements of due process. x x x Enabling lower courts to grant extraordinary writs has contributed greatly to the practical concern of decongesting dockets. More important, it facilitates the need to enable factual issues to be fully ventilated in proceedings before courts that are better equipped at appreciating evidence, and ultimately bringing to this Court only issues of paramount and pervasive importance. As the final interpreter of the laws of the land, the cases brought before this Court should more appropriately be raising pure questions of law, with evidentiary matters having been authoritatively settled by lower courts. x x x Immediately elevating evidentiary matters to this Court deprives the parties of the chance to properly substantiate their respective claims and defenses. It is essential for courts to justly resolve controversies. Parties who proceed headlong to this Court deny themselves their own chance at effective and exhaustive litigation. Thus, this Court's dismissal of petitions that inextricably entail factual questions and violate the doctrine of hierarchy of courts does not merely arise out of a strict application of procedural technicalities. Rather, such dismissal is a necessary consequence of the greater interest of enabling effective litigation, in keeping with the right to due process. The parties' beseeching for relief inordinately inflates this Court's competence, but we find no consolation in flattery.

**17. ID.; ID.; ID.; ISSUES INVOLVING TRANSCENDENTAL IMPORTANCE AS AN EXCEPTION; IN CASES OF TRANSCENDENTAL IMPORTANCE, IMMINENT AND CLEAR THREATS TO CONSTITUTIONAL RIGHTS WARRANT A DIRECT RESORT TO THE SUPREME COURT; THERE MUST BE NO DISPUTED FACTS, AND**

**ISSUES RAISED SHOULD ONLY BE QUESTIONS OF LAW.—** The distinction between questions of fact and questions of law is settled. A question of fact exists when doubt arises as to the truth or falsity of the facts presented; a question of law exists when the issue arises as to what the law is, given a state of facts. That the issues involved are of transcendental importance is an oft-cited justification for failing to comply with the doctrine of hierarchy of courts and for bringing admittedly factual issues to this Court. *Diocese of Bacolod* recognized transcendental importance as an exception to the doctrine of hierarchy of courts. In cases of transcendental importance, imminent and clear threats to constitutional rights warrant a direct resort to this Court. This was clarified in *Gios-Samar*. There, this Court emphasized that transcendental importance—originally cited to relax rules on legal standing and not as an exception to the doctrine of hierarchy of courts—applies only to cases with purely legal issues. We explained that the decisive factor in whether this Court should permit the invocation of transcendental importance is not merely the presence of "special and important reasons[,]" but the nature of the question presented by the parties. This Court declared that there must be no disputed facts, and the issues raised should only be questions of law.

**18. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; PRIMORDIAL DUTY OF LAWYERS TO THEIR CLIENTS AND CAUSE IS TO ACT TO THE BEST OF THEIR KNOWLEDGE AND DISCRETION, AND WITH ALL GOOD FIDELITY; LAWYERS SHOULD BE MINDFUL THAT THEIR ACTS OR OMISSIONS BIND THEIR CLIENTS; CASE AT BAR.—** The primordial duty of lawyers to their clients and cause is to act to the best of their knowledge and discretion, and with all good fidelity. x x x Lawyers should be mindful that their acts or omissions bind their clients. They are bound to zealously defend their client's cause, diligently and competently, with care and devotion. x x x Here, petitioner wagered in litigation no less than the future of a marginalized and disadvantaged minority group. With palpable vainglory, he made himself the lead plaintiff and also represented himself, only seeking assistance from other counsel for oral arguments. By deciding to place this burden upon himself, petitioner should have acted with utmost care and thoughtfulness, drawing upon

the limits of his skill and knowledge, to represent the LGBTQI+ cause. However, at every stage of these proceedings, petitioner only exposed his utter lack of preparation, recklessness, and crudeness. Petitioner had already been previously sanctioned for his negligence and incompetence during the June 5, 2018 preliminary conference. There, this Court underscored his ignorance of basic court procedure. In its July 3, 2018 Resolution, this Court already reminded petitioner of the duty and responsibility that counsels have to the cause they purport to represent. x x x As a result, petitioner was found guilty of direct contempt of court and admonished. He was sternly warned that any further contemptuous acts shall be dealt with more severely.

**19. ID.; ID.; YOUTH AND PROFESSIONAL INEXPERIENCE DO NOT EXCUSE THE MANIFEST INABILITY OF SWORN COURT OFFICERS TO FOLLOW LAWFUL ORDERS; FAILURE TO REPRESENT ONE'S CAUSE WITH EVEN THE BAREST COMPETENCE AND DILIGENCE IS AN UNEQUIVOCAL ACT OF INDIRECT CONTEMPT.—** Undeterred by this Court's stern warning, petitioner, along with co-counsels, Attys. Angeles, Guangko, and Maranan of Molo Sia Dy Tuazon Ty and Coloma Law Office, failed to comply with this Court's June 26, 2018 Order to submit the required memorandum of both petitioner and petitioners-intervenors within 30 days, or until July 26, 2018. Because of this, the Memorandum was dispensed with. Petitioner and his co-counsels were all ordered to show cause why they should not be cited in indirect contempt. Their explanations are patently unsatisfactory. x x x Youth and professional inexperience do not excuse the manifest inability of sworn court officers to follow lawful orders. Like petitioner, Atty. Angeles, Atty. Guangko and Atty. Maranan are members of the Philippine Bar, charged with basic knowledge of the rules of pleading and practice before the courts, especially this Court. They are not uninformed laypersons whose ignorance can be excused by inexperience. x x x Diligence is even more important when the cause lawyers take upon themselves to defend involves assertions of fundamental rights. By voluntarily taking up this case, petitioner and his co-counsels gave their "unqualified commitment to advance and defend [it.]" The bare minimum of this commitment is to observe and comply with the deadlines set by a court. x x x By failing to represent his cause with even the barest competence and

diligence, petitioner betrayed the standards of legal practice. His failure to file the required memorandum on time is just the most recent manifestation of this betrayal. He disrespected not only his cause, but also this Court—an unequivocal act of indirect contempt. A person adjudged guilty of indirect contempt may be punished by a fine not exceeding ₱30,000.00 or imprisonment not exceeding six (6) months, or both. To serve as a reminder to the bench and bar, and in light of petitioner's being earlier adjudged guilty of contempt of court for a similar offense—for which he was specifically warned that any further contemptuous acts shall be dealt with more severely—this Court, while declining to mete out the penalty of imprisonment by way of clemency, imposes on petitioner the penalty of a fine.

**20. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; PARTIES WHO INTERVENE IN A PROCEEDING SHOULD BE PREPARED TO FULLY PARTICIPATE IN ALL ITS STAGES; AN INTERVENOR-OPPOSITOR'S FAILURE TO COMPLY WITH THE COURT'S ORDER CONSTITUTES INDIRECT CONTEMPT.—** Similarly, parties who come before this Court to intervene in a proceeding should be prepared to fully participate in all its stages, whenever this Court requires them to. Records show that after oral arguments, intervenor-oppositor Perito also never filed a memorandum pursuant to the June 26, 2018 Order. He has not made any manifestation or explanation for his noncompliance. His failure to comply with this Court's order likewise constitutes indirect contempt.

**JARDELEZA, *J., concurring opinion*:**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; ACTUAL CASE OR CONTROVERSY; PRESENT WHEN THE CASE IS APPROPRIATE OR RIPE FOR DETERMINATION, NOT CONJECTURAL OR ANTICIPATORY, LEST THE DECISION OF THE COURT WOULD AMOUNT TO AN ADVISORY OPINION; CASE AT BAR.—** There is an actual case or controversy when the case is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion. This means that there must be a conflict of legal rights or an assertion of opposite legal claims which

can be resolved on the basis of existing law and jurisprudence. An abstract dispute, in stark contrast, only seeks for an opinion that advises what the law would be on hypothetical state of facts. Furthermore, a case is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. Something must have been accomplished or performed by either branch of Government before a court may come into the picture, and a petitioner must allege the existence of an immediate or threatened injury to him/her as a result of the challenged action. On its face, it presents a hypothetical and contingent event, not ripe for adjudication, which is hinged on petitioner's **future plan** of settling down with a person of the same-sex. Petitioner alleged that "the prohibition against the right to marry the same-sex injures [his] plans to settle down and have a companion for life in his beloved country." **Yet as of the filing of the petition, petitioner has no partner.** He lamented that his "ability to find and enter into a long-term monogamous same-sex relationship is impaired because of the absence of a legal incentive for gay individuals to seek such relationship." Significantly, however, even if he has a partner, petitioner admitted in open court that it is not automatic that his partner might want to marry him. Thus, petitioner cannot, did not or even attempted to, file an application for marriage license before the civil registry of his residence. Consequently, the Civil Registrar General (CRG) or any other official in any of the branches of the government has nothing to act upon. They could not and have not performed an act which injured or would injure petitioner's asserted right. It is clear that petitioner's cause of action does not exist.

**2. ID.; ID.; ID.; ID.; *LOCUS STANDI*; DEFINED AS THE RIGHT OF APPEARANCE IN A COURT OF JUSTICE ON A GIVEN QUESTION; UNDER THE DIRECT INJURY TEST, THE PERSON WHO IMPUGNS THE VALIDITY OF A STATUTE MUST HAVE A PERSONAL AND SUBSTANTIAL INTEREST IN THE CASE SUCH THAT HE HAS SUSTAINED, OR WILL SUSTAIN, DIRECT INJURY AS A RESULT OF ITS ENFORCEMENT; EXCEPTIONS; CASE AT BAR.—** Petitioner has no legal standing to file the suit. Standing or *locus standi* is defined as the right of appearance in a court of justice on a given question. To determine whether a party has standing, the *direct injury* test is applied. Under this test, the person who impugns the

validity of a statute must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement. Despite this, however, there have been cases wherein the Court has allowed the following non-traditional suitors to bring a case before it despite lack of direct injury: 1. For **taxpayers**, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional; 2. For **voters**, there must be a showing of obvious interest in the validity of the election law in question; 3. For **concerned citizens**, there must be a showing that the issues raised are of transcendental importance which must be settled early; 4. For **legislators**, there must be a claim that the official action complained of infringes upon their prerogatives as legislators; 5. For **associations**, its members must be affected by the action; and 6. For **those bringing suit on behalf of third parties**, the litigant must have suffered an 'injury-in-fact,' thus giving him or her a "sufficiently concrete interest" in the outcome of the issue in dispute; the litigant must have a close relation to the third party; and there must exist some hindrance to the third party's ability to protect his or her own interests. In this case, petitioner is not in a long-term monogamous same-sex relationship. He has not attempted to marry nor was prevented by the State from doing so. This makes his lack of direct interest in the enforcement of the assailed provisions of the Family Code patent. Neither does petitioner qualify as a taxpayer as he has not alleged illegal disbursement of public funds or that a tax measure is involved in this case. He does not assail the validity of an election law, so he also does not have standing as a voter. Finally, he is not a legislator nor an association and therefore cannot claim standing as such.

3. **REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; MERELY ANCILLARY AND SUPPLEMENTAL TO AN EXISTING LITIGATION; REQUIREMENTS TO SUCCESSFULLY MAINTAIN THIRD-PARTY STANDING, NOT ESTABLISHED IN CASE AT BAR.—** The petition-in-intervention cannot cure the defects of the petition. An intervention is merely ancillary and supplemental to an existing litigation. It is not an independent action. It presupposes the pendency of a suit in a court of competent jurisdiction; in other words, jurisdiction over the same is governed by jurisdiction over the main action. Perforce, a court which has no jurisdiction over the principal action has no jurisdiction over a complaint-

in-intervention. As stated earlier, the petition before Us lacks the essential requisites for judicial review. This ousts the Court of jurisdiction to take cognizance of the same. More, jurisprudence instructs that a petition-in-intervention cannot create an actual controversy for the main petition. The cause of action must be made out by the allegations of the petition without the aid of any other pleading. In any event, the petition-in-intervention is, in itself, wanting and cannot lend any validity to the main petition. The LGBTS Church, while claiming to intervene on behalf of its members, failed to satisfy the following requirements to successfully maintain third-party standing: (1) the litigant must have suffered an 'injury-in-fact,' thus giving him/her a "sufficiently concrete interest" in the outcome of the case in dispute; (2) the litigant must have a close relation to the third party; and (3) there must be some hindrance to the third party's ability to protect his/her own interests. The first and third elements are missing. As will be discussed in detail later, the LGBTS Church failed to show how the challenged law injures it and its members. On the other hand, the filing of the petition-in-intervention by the two couples, who are members of the LGBTS Church, proved that they are sufficiently capable to acting to protect their own interest. Any invocation of third party-standing is thus misplaced.

**4. ID.; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; TRANSCENDENTAL IMPORTANCE DOCTRINE; DISPENSES ONLY WITH THE REQUIREMENT OF *LOCUS STANDI* AND DOES NOT OVERRIDE THE REQUIREMENTS OF ACTUAL CASE AND JUSTICIABLE CONTROVERSY, A CONDITION *SINE QUA NON* FOR THE EXERCISE OF JUDICIAL POWER.—** Neither can the transcendental importance doctrine save the petition and the petition-in-intervention. This doctrine dispenses only with the requirement of *locus standi*. It does not override the requirements of actual and justiciable controversy, a condition *sine qua non* for the exercise of judicial power. Very recently in *Gios-Samar, Inc. v. Department of Transportation and Communications*, the Court held that mere invocation of the transcendental importance doctrine cannot, absent a showing that the issue raised is one of law, excuse a violation of the rule on hierarchy of courts. Hence, when a question before the Court involves the determination of factual issues indispensable to the resolution

of a legal issue, the Court will refuse to resolve the factual question regardless of the invocation of the transcendental or paramount importance of the case.

**5. ID.; COURTS; DOCTRINE OF HIERARCHY OF COURTS; DIRECT RECOURSE TO THE SUPREME COURT IS ALLOWED ONLY TO RESOLVE QUESTIONS OF LAW; CASE AT BAR.—** [T]he petition and the petition-in-intervention raise issues which the Court cannot resolve in the absence of a factual foundation of record. Their decision to bring the case directly before the Court is unwarranted and constitutes ground for the outright dismissal of the petition. While the Court has original and concurrent jurisdiction with the Regional Trial Court (RTC) and the Court of Appeals (CA) over petitions seeking the issuance of writs of *certiorari* and prohibition, litigants do not have unfettered discretion to invoke the Court's original jurisdiction. The doctrine of hierarchy of courts dictates that direct recourse to this Court is allowed only to resolve questions of law.

**6. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; FUNDAMENTAL RIGHTS HAVE BEEN DEEMED TO INCLUDE ONLY THOSE BASIC LIBERTIES EXPLICITLY OR IMPLICITLY GUARANTEED BY THE BILL OF RIGHTS OF THE CONSTITUTION.—** The concept of fundamental rights, once described as "liberties that operate as trumps," was first extensively covered by the Court, through Chief Justice Puno, in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*. There, the Court, citing Gerald Gunther, traced its history and development in the context of American constitutional equal protection analysis. The recognition of an asserted liberty interest as "fundamental" has significant legal consequences. Traditionally, liberty interests are protected only against *arbitrary* government interference. If the government can show a *rational* basis for believing that its interference advances a legitimate legislative objective, a claim to a liberty interest may fail. Where, however, a liberty interest has been accorded an "elevated" status — that is, by characterizing it as a right (or a fundamental right), then the government is subject to a *higher* burden of proof to justify intrusions into these interests, namely, the requirements of strict scrutiny in equal protection cases and that of compelling state interest in due process cases. As the United States Supreme Court (US Supreme Court) has

warned, affixing the label "fundamental" to such liberty interests would place them outside the arena of public debate and legislative action. Resultantly, and as is also true in this jurisdiction, fundamental rights have been deemed to include only those basic liberties explicitly or implicitly guaranteed by the Bill of Rights of the Constitution.

**7. ID.; ID.; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; WHEN A STATE ACT IS ALLEGED TO HAVE IMPLICATED AN EXPLICIT FUNDAMENTAL RIGHT, *I.E.*, RIGHT TEXTUALLY FOUND IN THE BILL OF RIGHTS, THE COURT HAS BEEN WONT TO SUBJECT THE GOVERNMENT TO A HIGHER BURDEN TO JUSTIFY ITS CHALLENGED ACTION.—** There seems to me little disagreement as to the "fundamental" nature of an asserted liberty interest when the same can be read from the text of the Bill of Rights of the Constitution itself. Thus, when a state act is alleged to have implicated an **explicit** "fundamental right," *i.e.*, a right textually found in the Bill of Rights, the Court has been wont to subject the government to a *higher* burden to justify its challenged action: This the Court did in *Ebralinag v. The Division Superintendent of Schools of Cebu*, (on religious beliefs); *Legaspi v. Civil Service Commission*, (on the right of the people to information on matters of public concern); *Disini, Jr. v. Secretary of Justice*, (on the right to freedom of expression, right to privacy, and right against unreasonable searches and seizures); *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, (on the right to travel); *Chavez v. Gonzales*, (on the freedom of the press); *Newsounds Broadcasting Network, Inc. v. Dy*, (on the right to free speech and freedom of the press); and *Kabataan Party-List v. Commission on Elections*, (on the right to vote).

**8. ID.; ID.; ID.; ID.; METHODS USED BY THE COURT IN CATEGORIZING CERTAIN RIGHTS AS FUNDAMENTAL.—** Unlike the case of rights that can be located on the text of the Bill of Rights, the rules with respect to locating unenumerated "fundamental" rights, however, are not clear. According to Justice Harlan, speaking in the context of identifying the full scope of liberty protected under the Due Process Clause, the endeavor essentially entails an attempt at finding a balance between "respect for the liberty of the individual x x x and the demands of organized society." x x x *This* Court

has not laid down clear guidelines on this matter. Thus, reference to American scholarly commentary is again instructive. In his article *An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court*, Robert Farrell wrote that the US Supreme Court uses "a multiplicity of methods of identifying implied fundamental rights." After a survey of US Supreme Court cases, Farrell has classified the different methods used by the Court in categorizing certain rights as fundamental. These are either because the asserted rights: (1) are important; (2) are implicit in the concept of ordered liberty or implicitly guaranteed by the Constitution; (3) are deeply rooted in the Nation's history and tradition; (4) need protection from government action that shocks the conscience; (5) are necessarily implied from the structure of government or from the structure of the Constitution; (6) provide necessary access to government processes; and (7) are identified in previous Supreme Court precedents. There is no one mode of constitutional interpretation that has been recognized as appropriate under all circumstances. In fact, one would find critiques for every approach in scholarly commentaries on the subject. Nevertheless, and despite the particular shortcomings of each individual approach, it is my view that the Court should endeavor to be deliberate and open about its choice of approach in fundamental rights cases. This, to my mind, would help greatly not only in furthering the public's understanding of the Court's decisions in complex constitutional cases; it would reinforce the credibility of Our decisions, by exacting upon the Court and its members the duty to clearly and consistently articulate the bases of its decisions in difficult constitutional cases.

**PERALTA, *J., separate opinion*:**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; ACTUAL CASE OR CONTROVERSY; REFERS TO AN EXISTING CASE OR CONTROVERSY THAT IS APPROPRIATE OR RIPE FOR DETERMINATION, NOT CONJECTURAL OR ANTICIPATORY; A QUESTION IS RIPE FOR ADJUDICATION WHEN THE ACT BEING CHALLENGED HAS HAD A DIRECT ADVERSE EFFECT ON THE INDIVIDUAL CHALLENGING IT.—** [T]he role of the Court in constitutional adjudication is to determine the

rights of the people under the Constitution, an undertaking that demands, among others, the presence of an actual case or controversy ripe for judicial pronouncement, and that the case must be raised by one who has the personality or standing to do so. Here, the petitioner fails to satisfy both requisites. He is practically beseeching the Court to come up with an advisory opinion about the presence of constitutionally protected right to same-sex marriages — in effect seeking to "convert the Court into an Office of Ombudsman for the ventilation of generalized grievances." An actual case or controversy refers to an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory. The controversy needs to be definite and concrete, bearing upon the legal relations of parties who are pitted against each other due to their adverse legal interests. Further, "[a]n aspect of the 'case-or-controversy' requirement is the requisite of 'ripeness.' In the United States, courts are centrally concerned with whether a case involves uncertain contingent future events that may not occur as anticipated, or indeed may not occur at all. Another concern is the evaluation of the twofold aspect of ripeness: *first*, the fitness of the issues for judicial decision; and *second*, the hardship to the parties entailed by withholding court consideration. In our jurisdiction, the issue of ripeness is generally treated in terms of actual injury to the plaintiff. Hence, a question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it." It has been held that "as to the element of injury, such aspect is not something that just anybody with some grievance or pain may assert. It has to be **direct and substantial** to make it worth the court's time, as well as the effort of inquiry into the constitutionality of the acts of another department of government. If the asserted injury is more imagined than real, or is **merely superficial and insubstantial**, then the courts may end up being importuned to decide a matter that does not really justify such an excursion into constitutional adjudication.

**2. ID.; ID.; ID.; *LOCUS STANDI*; A PARTY MUST SHOW THAT HE HAS BEEN, OR IS ABOUT TO BE DENIED SOME PERSONAL RIGHT OR PRIVILEGE TO WHICH HE IS LAWFULLY ENTITLED, AND THAT HE HAS A REAL INTEREST IN THE SUIT; REAL INTEREST MEANS A PRESENT SUBSTANTIAL INTEREST, AS DISTINGUISHED FROM A MERE EXPECTANCY OR**

**FUTURE, CONTINGENT, SUBORDINATE, OR INCONSEQUENTIAL INTEREST.—** Intrinsically related to the presence of an actual case or controversy ripe for adjudication is the requirement that the issue be raised by the proper party, or the issue of *locus standi*. Even as this Court is the repository of the final word on what the law is, we should always be aware of the need for some restraint on the exercise of the power of judicial review. As then Associate Justice, later Chief Justice, Reynato S. Puno then intoned in one of his dissents: "Stated otherwise, courts are neither free to decide *all* kinds of cases dumped into their laps nor are they free to open their doors to *all* parties or entities claiming a grievance. The rationale for this constitutional requirement of *locus standi* is by no means trifle. It is intended 'to assure a vigorous adversary presentation of the case, and, perhaps more importantly to warrant the judiciary's overruling the determination of a coordinate, democratically elected organ of government.' It, thus, goes to the very essence of representative democracies." Otherwise stated, "[a] party must show that he has been, or is about to be denied some personal right or privilege to which he is lawfully entitled. A party must also show that he has a real interest in the suit. By 'real interest' is meant a present substantial interest, as distinguished from a mere expectancy or future, contingent, subordinate, or inconsequential interest."

3. **ID.; ID.; ID.; ID.; IN UNDERTAKING JUDICIAL REVIEW, THE COURT DECIDES IN ACCORDANCE WITH THE FUNDAMENTAL LAW ISSUES THAT HAVE PARTICULAR RELEVANCE AND APPLICATION TO ACTUAL FACTS AND CIRCUMSTANCES, NOT IMAGINED OR ANTICIPATED; CASE AT BAR.—** Prudential considerations should caution the Court from having to accept and decide each and every case presented to it just because the questions raised may be interesting, novel or challenging. There is a time for coffee table discussions of exotic ideas, but the Court does not sit to do such a discourse. In undertaking judicial review, it decides in accordance with the Fundamental Law issues that have particular relevance and application to actual facts and circumstances, not imagined or anticipated situations. Petitioner Falsis does not assert that he has been directly injured by the provisions of the *Family Code*. If ever he would be prevented from marrying, that is still in the uncertain future, a contingency that may never happen.

**4. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; ONLY ANCILLARY TO THE MAIN CASE AND IT SHOULD NEVER BE ALLOWED TO BE UTILIZED AS A MEANS TO CORRECT A FATAL OMISSION IN THE PRINCIPAL ACTION.—** ***[I]ntervention*** should never be allowed to be utilized as a means to correct a fatal omission in the principal action. Intervention is only ancillary to the main case and it should not be conveniently resorted to as a means to save the day for an intrinsically flawed petition.

**5. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; LAW-MAKING POWER; SAME-SEX MARRIAGE IS A POLICY MATTER BETTER LEFT TO THE DELIBERATIONS OF CONGRESS.—** In fine, the claim of alleged unconstitutionality of the Family Code provisions defining marriage as a union between a man and a woman has no leg to stand on. It is not for this Court to write into the law purported rights when they are not expressly or by clear implication deemed available under the Fundamental Law. Same-sex marriage is a policy matter better left to the deliberations of the elected officials of the country.

**APPEARANCES OF COUNSEL**

*Jesus Nicardo M. Falcis III* for petitioner.

*The Solicitor General* for public respondent.

*Alfredo B. Molo III, Aldrich Fitz U. Dy, Darwin P. Angeles, Keisha Trina M. Guangko,* and *Christopher Ryan R. Maranan* for petitioners and intervenors.

*Ronald T. Reyes, Jeremy I. Gatdula, Cristina A. Montes* and *Rufino Policarpio III* for intervenors-oppositors.

**D E C I S I O N**

**LEONEN, *J.*:**

Cultural hegemony often invites people to conform to its impositions on their identities. Yet, there are some who, despite pressures, courageously choose to be authentic to themselves. This case is about the assurance of genuine individual autonomy within our constitutional legal order. It is about the virtue of

tolerance and the humane goal of non-discrimination. It is about diversity that encourages meaningful—often passionate—deliberation. Thus, it is about nothing less than the quality of our freedom.

This Court does not have a monopoly in assuring this freedom. With the most difficult political, moral, and cultural questions, the Constitution requires that we share with the political departments of government, especially with Congress, the quest for solutions which balance interests while maintaining fealty to fundamental freedoms.

Adjudication enables arguments between parties with respect to the existence and interpretation of fundamental freedoms. On the other hand, legislation ideally allows public democratic deliberation on the various ways to assure these fundamental rights. The process of legislation exposes the experiences of those who have been oppressed, ensuring that they are understood by those who stand with the majority. Often, public reason needs to be first shaped through the crucible of campaigns and advocacies within our political forums before it is sharpened for judicial fiat.

Judicial wisdom is, in large part, the art of discerning when courts choose not to exercise their perceived competencies.

In this case, this Court unanimously chooses the path of caution.

Those with sexual orientations other than the heteronormative, gender identities that are transgender or fluid, or gender expressions that are not the usual manifestations of the dominant and expected cultural binaries—the lesbian, gay, bisexual, transgender, queer, intersex, and other gender and sexual minorities (LGBTQI+) community—have suffered enough marginalization and discrimination within our society. We choose to be careful not to add to these burdens through the swift hand of judicial review.

Marriage, as conceived in our current laws, may hew to the dominant heteronormative model, but asserting by judicial fiat that it should—with all its privileges and burdens—apply to

same-sex couples as well will require a precision in adjudication, which the circumstances in this case do not present. To do so assumes a blind unproven judicial faith that the shape of marriage in our current laws will be benign for same-sex couples. Progressive passion asserted recklessly may unintentionally impose more burdens rather than less.

The pleadings assert a broad right of same-sex couples to official legal recognition of their intimate choices. They certainly deserve legal recognition in some way. However, whether such recognition should come by way of the exact same bundle of rights granted to heterosexual couples in our present laws is a proposition that should invite more public discussion in the halls of Congress.

Given the factual context of this case, this Court declines, for now, to grant the broad relief prayed for in the Petition.

Furthermore, the exercise of this Court's power of judicial review is among the most elementary matters imparted to aspiring lawyers. One who brandishes himself a lawyer is rightly presumed to be well-acquainted with the bare rudiments of court procedure and decorum. To forget these rules and practices—or worse, to purport to know them, but really, only to exploit them by way of propaganda—and then, to jump headlong into the taxing endeavor of constitutional litigation is a contemptuous betrayal of the high standards of the legal profession.

Lawyers, especially those engaged in public interest litigation, should always be mindful that their acts and omissions before the courts do not only affect themselves. By thrusting themselves into the limelight to take up the cudgels on behalf of a minority class, public interest lawyers represent the hopes and aspirations of a greater mass of people, not always with the consent of all the members of that class. Their errors and mistakes, their negligence and lethargy have a ripple effect even on persons who have no opportunity to consent to the stratagems and tactics employed by ill-prepared and sophomoric counsels.

On May 18, 2015, Jesus Nicardo M. Falcis III (Falcis) filed *pro se* before this Court a Petition for *Certiorari* and Prohibition under Rule 65 of the 1997 Rules of Civil

Procedure.[1] His Petition sought to "declare Articles 1 and 2 of the Family Code as unconstitutional and, as a consequence, nullify Articles 46(4)[2] and 55(6)[3] of the Family Code."[4]

---

[1] *Rollo*, pp. 3-33.

[2] FAMILY CODE, Art. 46 states:

ARTICLE 46. Any of the following circumstances shall constitute fraud referred to in Number 3 of the preceding Article:

(1) Non-disclosure of a previous conviction by final judgment of the other party of a crime involving moral turpitude;
(2) Concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband;
(3) Concealment of a sexually transmissible disease, regardless of its nature, existing at the time of the marriage; or
(4) Concealment of drug addiction, habitual alcoholism or homosexuality or lesbianism existing at the time of the marriage.

No other misrepresentation or deceit as to character, health, rank, fortune or chastity shall constitute such fraud as will give grounds for action for the annulment of marriage.

[3] FAMILY CODE, Art. 55 states:

ARTICLE 55. A petition for legal separation may be filed on any of the following grounds:

(1) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;
(2) Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;
(3) Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;
(4) Final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;
(5) Drug addiction or habitual alcoholism of the respondent;
(6) Lesbianism or homosexuality of the respondent;
(7) Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;
(8) Sexual infidelity or perversion;
(9) Attempt by the respondent against the life of the petitioner; or
(10) Abandonment of petitioner by respondent without justifiable cause for more than one year.

For purposes of this Article, the term "child" shall include a child by nature or by adoption.

[4] *Rollo*, p. 31.

Falcis claims that a resort to Rule 65 was appropriate, citing[5] *Magallona v. Executive Secretary*,[6] *Araullo v. Executive Secretary*,[7] and the separate opinion[8] of now-retired Associate Justice Arturo D. Brion (Associate Justice Brion) in *Araullo*. Again citing Associate Justice Brion's separate opinion, he claims that this Court should follow a "'fresh' approach to this Court's judicial power"[9] and find that his Petition pertains to a constitutional case attended by grave abuse of discretion.[10] He also asserts that the mere passage of the Family Code, with its Articles 1 and 2, was a *prima facie* case of grave abuse of discretion,[11] and that the issues he raised were of such transcendental importance[12] as to warrant the setting aside of procedural niceties.

Falcis further argues that his Petition complied with the requisites of judicial review: (1) actual case or controversy; (2) standing; (3) was raised at the earliest opportunity; and (4) that the constitutional question is the very *lis mota* of the case.[13] As to standing, he claims that his standing consisted in his personal stake in the outcome of the case, as he "is an open and self-identified homosexual"[14] who alleges that the Family

---

[5] *Id.* at 6-7.

[6] 671 Phil. 243 (2011) [Per *J.* Carpio, *En Banc*].

[7] 752 Phil. 716 (2014) [Per *J.* Bersamin, *En Banc*].

[8] *Id.* at 797-841.

[9] *Rollo*, p. 7.

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

[11] *Id.* at 9.

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

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

[14] *Id.* at 12. Although petitioner refers to himself as a "homosexual" and repeatedly uses the terms "homosexual," "heterosexual," and "sexuality," this Court will not use these terms as "the term 'homosexuality' has been associated in the past with deviance, mental illness, and criminal behavior, and these negative stereotypes may be perpetuated by biased language." (American Psychological Association, "Avoiding Heterosexual Bias in

Code has a "normative impact"[15] on the status of same-sex relationships in the country. He was also allegedly injured by the supposed "prohibition against the right to marry the same-sex[,]"[16] which prevents his plans to settle down in the Philippines.[17]

Falcis justifies the direct recourse to this Court by citing, in addition to the alleged transcendental importance of the issues he raised, the supposed lack of need for trial concerning any factual issues. He also insists that the constitutionality of Articles 1 and 2 of the Family Code were the very *lis mota* of his case.[18]

According to Falcis, a facial challenge on Articles 1 and 2 is permitted as these two (2) provisions regulate fundamental rights such as "the right to due process and equal protection, right to decisional and marital privacy, and the right to found a family in accordance with religious convictions."[19]

Falcis further claims that strict scrutiny should be the test used in appraising the constitutionality of Articles 1 and 2 of the Family Code, and that the compelling state interest involved is the protection of marriage pursuant to Article XV, Section 2 of the Constitution, not the protection of heterosexual relationships.[20] He argues that like opposite-sex couples, same-sex couples are equally capable of founding their own families and fulfilling essential marital obligations.[21] He claims that

---

Language," American Psychologist September 1991, Volume 46, Issue No. 9, 973-974.) Any use shall only be in the context of a faithful reference to the parties' pleadings and/or averments, legal provisions, and works by other authors.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.* at 13.

[19] *Id.* at 14.

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

[21] *Id.* at 18.

contrary to *Chi Ming Tsoi v. Court of Appeals*,[22] procreation is not an essential marital obligation. Because there is allegedly no necessity to limit marriage as only between a man and a woman, Articles 1 and 2 of the Family Code are supposedly unconstitutional for depriving Falcis of his right to liberty without substantive due process of law.[23]

To support his allegation that strict scrutiny is the appropriate test, Falcis extensively referenced and quoted—devoting more than five (5) pages of his 29-page Petition—the separate concurring opinion of retired Chief Justice Reynato Puno (retired Chief Justice Puno) in *Ang Ladlad Party-list v. Commission on Elections*.[24] However, he claims that retired Chief Justice Puno incorrectly concluded that the appropriate test is intermediate or heightened review.[25] Nonetheless, he argues that even under the rational basis test, there is a violation of the equal protection clause since there is no substantial distinction between same-sex and opposite-sex couples.[26]

Finally, Falcis claims that Articles 1 and 2 of the Family Code deny the existence of "individuals belonging to religious denominations that believe in same-sex marriage"[27] and that they have a "right to found a family in accordance with their religious convictions."[28] He claims that the religious weddings conducted by these denominations have been denied civil recognition "unlike the religious convictions of Catholics and Muslims."[29]

---

[22] 334 Phil. 294 (1997) [Per *J*. Torres, Jr., Second Division].

[23] *Rollo*, pp. 19-20.

[24] *Id.* at 21-27 citing *Ang Ladlad Party-list v. Commission on Elections*, 632 Phil. 32 (2010) [Per *J*. Del Castillo, *En Banc*].

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

[26] *Id.* at 28.

[27] *Id.* at 29.

[28] *Id.*

[29] *Id.* at 30.

On June 30, 2015, this Court ordered the Civil Registrar General to comment on the Petition.[30]

On June 22, 2015, Fernando P. Perito (Perito) filed *pro se* an Answer-in-Intervention[31] to the Petition. He claims that the Petition failed to comply with several requirements of Rule 65, including: (1) the annexing of a certified true copy of the judgment, order, or resolution subject of the case; (2) there being no act of any tribunal, board, or officer exercising judicial or quasi-judicial functions; and (3) that the Petition had to be filed within 60 days from notice of the assailed judgment, order, or resolution.[32] Perito also claims that Falcis did not present any statistics or evidence showing discrimination against the LGBTQI+ community[33] and that Falcis did not show any specific injury, such as the denial of a marriage license or refusal of a solemnizing officer to officiate a same-sex marriage.[34]

Perito further points out that Falcis is estopped from questioning the validity of the Family Code, it having been effective since 1987.[35] He also extensively cites the Christian Bible as authority for defending Articles 1 and 2's limitation of marriage as between a man and a woman.[36]

This Answer-in-Intervention was treated by this Court as a motion to intervene with answer-in-intervention, which was granted in this Court's July 28, 2015 Resolution.[37] This Court, in the same Resolution, further required Falcis to reply to the Answer-in-Intervention.

---

[30] *Id.* at 34-35.

[31] *Id.* at 36-52.

[32] *Id.* at 39.

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

[34] *Id.* at 43.

[35] *Id.* at 44.

[36] *Id.* at 45-51.

[37] *Id.* at 53-55.

Falcis filed his Reply[38] to the Answer-in-Intervention on September 21, 2015. He reiterates his claims concerning his compliance with procedural requirements. His Reply was noted in this Court's October 6, 2015 Resolution.[39]

The Civil Registrar General, through the Office of the Solicitor General, filed its Comment (*Ad Cautelam*)[40] on March 29, 2016. It prays that this Court deny due course to or dismiss the Petition. It notes that the Petition was not in the nature of a class suit, but was instead personal only to Falcis.[41] Because of this, it claims that Falcis failed to show injury-in-fact and an actual case or controversy, but was rather seeking an advisory opinion that this Court cannot issue.[42]

The Civil Registrar General also faults Falcis for not impleading Congress, as his Petition actually challenged the current legislative policy on same-sex marriage, and not any act committed by the Civil Registrar-General.[43] Finally, it claims that Falcis has not proven that the issues in this case are of such transcendental importance, there being no law or facts contained in his Petition to determine any principles concerning the constitutionality of same-sex marriage in the Philippines.[44]

On April 7, 2016, LGBTS Christian Church, Inc. (LGBTS Church), Reverend Crescencio "Ceejay" Agbayani, Jr. (Reverend Agbayani), Marlon Felipe (Felipe), and Maria Arlyn "Sugar" Ibañez (Ibañez)—collectively, petitioners-intervenors—whose counsel was Falcis himself, filed a Motion for Leave to Intervene and Admit Attached Petition-in-Intervention.[45] They ask this

---

[38] *Id.* at 66-74.

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

[40] *Id.* at 111-130.

[41] *Id.* at 115.

[42] *Id.* at 115-116.

[43] *Id.* at 116.

[44] *Id.* at 123-124.

[45] *Id.* at 132-134.

Court to allow them to intervene in the proceedings, claiming that: (1) they offer further procedural and substantive arguments; (2) their rights will not be protected in a separate proceeding; and (3) they have an interest in the outcome of this case. They adopt by reference the arguments raised by Falcis in his Petition.[46]

Subsequently, they filed their Petition-in-Intervention,[47] which is a Petition for *Certiorari* under Rule 65 of the Rules of Court, seeking the same reliefs as those in Falcis' Petition, namely: (1) the declaration of unconstitutionality of Articles 1 and 2 of the Family Code; and (2) the invalidation of Articles 46(4) and 55(6) of the Family Code.[48]

Similar to Falcis, petitioners-intervenors claim that a petition for *certiorari* under Rule 65 is an appropriate remedy.[49] They aver that the requisites of judicial review are present. First, they have an actual case or controversy since petitioners-intervenors Reverend Agbayani, Felipe, and Ibanez were supposedly denied a marriage license on August 3, 2015.[50] Second, they have legal standing. LGBTS Church claims third-party standing, even as it also claims that its own right to religious freedom was directly, not just indirectly violated. Petitioners-intervenors Reverend Agbayani, Felipe, and Ibañez claim standing on the basis of their supposed attempts to secure marriage licenses. This was despite LGBTS Church claiming that it has third-party standing because its own members, which included petitioners-intervernors Reverend Agbayani, Felipe, and Ibañez, were "unlikely"[51] to file suit.[52]

---

[46] *Id.* at 132-133.

[47] *Id.* at 135-155.

[48] *Id.* at 136.

[49] *Id.* at 138.

[50] *Id.* at 139.

[51] *Id.* at 140.

[52] *Id.* at 139-140.

Petitioners-intervenors restate Falcis' claims that the issues were raised at the earliest opportunity, that the constitutionality of Articles 1 and 2 of the Family Code is the *lis mota* of the case, and that a direct recourse to this Court was proper.[53]

Petitioners-intervenors use arguments from Christian theology to prove that there should be no civil restriction against same-sex marriage.[54] They also claim that the lack of civil recognition for their religious ceremonies, as contrasted with the recognition granted to "Filipino Catholics and Filipino Muslims[,]"[55] violate the equal protection clause.[56]

This Court noted the Motion to Intervene and Petition-in-Intervention in its June 7, 2016 Resolution.[57]

On August 10, 2016, Falcis filed a Motion to Set the Case for Oral Arguments.[58] He also filed a Reply[59] to the Comment (*Ad Cautelam*), again reiterating his procedural arguments.

In compliance with this Court's December 6, 2016 Resolution,[60] the Office of the Solicitor General manifested[61] that it was maintaining the arguments stated in its Comment (*Ad Cautelam*), but reserved its right to comment on the Petition-in-Intervention. Its Manifestation was noted in this Court's February 7, 2017 Resolution.[62]

On March 28, 2017, this Court granted the Motion for Leave to Intervene and Admit Petition-in-Intervention and required

---

[53] *Id.* at 140-143.

[54] *Id.* at 144-150.

[55] *Id.* at 151.

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

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

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

[59] *Id.* at 162-177.

[60] *Id.* at 182-183.

[61] *Id.* at 185-190.

[62] *Id.* at 191-192.

the Civil Registrar General and Perito to comment on the Petition-in-Intervention.[63]

The Civil Registrar General filed its Comment (*Ad Cautelam*) on the Petition-in-Intervention,[64] which this Court noted in its August 8, 2017 Resolution.[65] The Civil Registrar General claims that the issues raised in the Petition are political questions, saying that marriage's legal definition is a policy issue for Congress to determine,[66] and that any amendment to the definition in Articles 1 and 2 of the Family Code should be addressed to Congress.[67]

In a March 6, 2018 Resolution,[68] this Court set the case for oral arguments, with a scheduled preliminary conference on June 5, 2018.[69] Perito manifested that he would not be able to attend the preliminary conference.[70]

During the preliminary conference, Falcis, who appeared on his own behalf and on behalf of petitioners-intervenors, was ordered to show cause why he should not be cited in direct contempt:

> Considering that petitioner Jesus Nicardo M. Falcis III was attired with a casual jacket, cropped jeans and loafers without socks, Associate Justice Marvic M.V.F. Leonen directed him to show cause by June 6, 2018, why he should not be cited in direct contempt for his failure to observe the required decorum during the preliminary conference which is a formal session of the Court. Petitioner was likewise advised to request a briefing from his former professors, or the law firm he is going to retain, on the proper protocols to be observed inside the

---

[63] *Id.* at 193-194.

[64] *Id.* at 210-233.

[65] *Id.* at 234.

[66] *Id.* at 214-220.

[67] *Id.* at 222-225.

[68] *Id.* at 235.

[69] *Id.* at 238.

[70] *Id.* at 255-256.

Court, to facilitate an orderly and smooth proceeding during the oral argument.[71]

On June 6, 2018, Falcis filed his Compliance[72] with the show-cause order. In a July 3, 2018 Resolution,[73] this Court found Falcis guilty of direct contempt of court:

> Atty. Falcis acted in a contumacious manner during the June 5, 2018 preliminary conference.
>
> Atty. Falcis is not an uninformed layperson. He has been a member of the Philippine Bar for a number of years. As an officer of the court, he is duty bound to maintain towards this Court a respectful attitude essential to the proper administration of justice. He is charged with knowledge of the proper manner by which lawyers are to conduct themselves during judicial proceedings. His Lawyer's Oath and the Code of Professional Responsibility exhort him to maintain the requisite decency and to afford dignity to this Court.
>
> Lawyers must serve their clients with competence and diligence. Under Rule 18.02 of the Code of Professional Responsibility, "[a] lawyer shall not handle any legal matter without adequate preparation." Atty. Falcis' appearance and behavior during the preliminary conference reveal the inadequacy of his preparation. Considering that the Advisory for Oral Arguments was served on the parties three (3) months prior to the preliminary conference, it was inexcusably careless for any of them to appear before this Court so barely prepared.
>
> The preliminary conference was not mere make-work. Rather, it was essential to the orderly conduct of proceedings and, ultimately, to the judicious disposition of this case. Appearance in it by counsels and parties should not be taken lightly.
>
> Atty. Falcis jeopardized the cause of his clients. Without even uttering a word, he recklessly courted disfavor with this Court. His bearing and demeanor were a disservice to his clients and to the human rights advocacy he purports to represent.[74] (Citation omitted)

---

[71] *Id.* at 258.

[72] *Id.* at 273-275.

[73] *Id.* at 601-605.

[74] *Id.* at 603-604.

Falcis was admonished to properly conduct himself in court and to be more circumspect of the duties attendant to his being a lawyer. He was sternly warned that any further contemptuous acts shall be dealt with more severely.[75]

On June 8, 2018, Ronaldo T. Reyes, Jeremy I. Gatdula, Cristina A. Montes, and Rufino Policarpio III (intervenors-oppositors) filed a Motion for Leave to Intervene and to Admit the Opposition-in-Intervention.[76] They claim that they have a legal interest in this case since the grant of the Petition would run counter to their religious beliefs.[77]

In their Opposition-in-Intervention,[78] they claim that this Court has no jurisdiction to act upon the Petition, none of the requisites of justiciability having been met. They further assert that they have standing to intervene in these proceedings as the proposed definition of marriage in the Petition is contrary to their religious beliefs and religious freedom as guaranteed in Article III, Sections 4 and 5 of the Constitution. They claim to be concerned taxpayers who seek to uphold the Constitution.[79]

Intervenors-oppositors argue that granting the Petition would be tantamount to judicial legislation, thus violating the doctrine of separation of powers. They claim that the definition of marriage in the Family Code was a valid exercise of legislative prerogative which this Court must uphold.[80] Further, there is no grave abuse of discretion on the part of the Civil Registrar General, as there was no violation of the equal protection clause or of Falcis' right to liberty. They claim that there are substantial differences between opposite-sex and same-sex unions that account for state recognition only of the former, and that such limitation is for the common

---

[75] *Id.* at 604.

[76] *Id.* at 276-280.

[77] *Id.* at 277.

[78] *Id.* at 281-289.

[79] *Id.* at 283.

[80] *Id.* at 284.

good.[81] For them, children's welfare is a compelling state interest justifying intrusion into certain liberties, including the non-recognition of same-sex marriage. They assert that there was no violation of the right to privacy since Falcis and petitioners-intervenors "are not prohibited from publicly identifying as homosexuals or from entering into same-sex relationships[.]"[82]

On June 13, 2018, Atty. Aldrich Fitz U. Dy (Atty. Dy), Atty. Keisha Trina M. Guangko (Atty. Guangko), Atty. Darwin P. Angeles (Atty. Angeles), and Atty. Alfredo B. Molo III (Atty. Molo) entered their appearance as co-counsels for Falcis and petitioners-intervenors.[83]

The Civil Registrar General filed its Supplemental Comment with Leave of Court[84] on June 14, 2018. Addressing the substantive issues of the Petition, it claims that since the Constitution only contemplates opposite-sex marriage in Article XV, Section 2 and other related provisions, Articles 1 and 2 of the Family Code are constitutional.[85]

Oral arguments were conducted on June 19, 2018[86] and June 26, 2018.[87] On June 26, 2018, this Court ordered the parties to submit their respective memoranda within 30 days.[88]

On July 25, 2018, both the Civil Registrar General[89] and intervenors-oppositors[90] filed their respective Memoranda, which were noted in this Court's July 31, 2018 Resolution.[91]

---

[81] *Id.* at 284-285.

[82] *Id.* at 286.

[83] *Id.* at 290-293.

[84] *Id.* at 294-341.

[85] *Id.* at 303-336.

[86] *Id.* at 596-600.

[87] *Id.* at 600-A-600-C.

[88] *Id.* at 600-C.

[89] *Id.* at 606-671-A.

[90] *Id.* at 672-703.

[91] *Id.* at 703-A-703-B.

On July 26, 2018, rather than file their memoranda, Falcis and petitioners-intervenors, through counsels Atty. Angeles, Atty. Guangko, and Atty. Christoper Ryan R. Maranan (Atty. Maranan) of Molo Sia Dy Tuazon Ty and Coloma Law Offices, filed a Motion for Extension of Time to File Memorandum.[92] Without this Court's prior favorable action on their Motion for Extension, they filed their Memorandum[93] on August 3, 2018.

In its August 7, 2018 Resolution,[94] this Court denied the Motion for Extension and dispensed with Falcis' and petitioners-intervenors' Memorandum. The Resolution read, in part:

> [W]ith the exception of Intervenor-Oppositor Atty. Fernando P. Perito, the other parties in this case have fully complied with this Court's Order within the imposed deadline. These show that even considering the complexity of issues to be resolved in this case, the parties are capable of submitting and filing their respective Memoranda.[95]

In the same Resolution, Falcis, Atty. Angeles, Atty. Guangko, and Atty. Maranan were all required[96] to show cause why they should not be cited in indirect contempt for failing to comply with this Court's June 26 2018 Order.[97]

On August 9, 2018, Atty. Angeles, Atty. Guangko, and Atty. Maranan filed their Manifestation with Motion for Leave to Admit Memorandum.[98] They, along with Falcis, filed their Manifestation and Compliance with the August 7, 2018 Resolution on August 13, 2018.[99]

---

[92] *Id.* at 704-710.

[93] *Id.* at 715-843.

[94] *Id.* at 711-714.

[95] *Id.* at 712.

[96] *Id.* at 713.

[97] *Id.* at 600-A-600-C.

[98] *Id.* at 924-928.

[99] *Id.* at 1348-1353.

For this Court's resolution is the issue of whether or not the Petition and/or the Petition-in-Intervention are properly the subject of the exercise of our power of judicial review. Subsumed under this are the following procedural issues:

First, whether or not the mere passage of the Family Code creates an actual case or controversy reviewable by this Court;

Second, whether or not the self-identification of petitioner Jesus Nicardo M. Falcis III as a member of the LGBTQI+ community gives him standing to challenge the Family Code;

Third, whether or not the Petition-in-Intervention cures the procedural defects of the Petition; and

Fourth, whether or not the application of the doctrine of transcendental importance is warranted.

Should the Petition and/or Petition-in-Intervention show themselves to be appropriate subjects of judicial review, this Court may proceed to address the following substantive issues:

First, whether or not the right to marry and the right to choose whom to marry are cognates of the right to life and liberty;

Second, whether or not the limitation of civil marriage to opposite-sex couples is a valid exercise of police power;

Third, whether or not limiting civil marriages to opposite-sex couples violates the equal protection clause;

Fourth, whether or not denying same-sex couples the right to marry amounts to a denial of their right to life and/or liberty without due process of law;

Fifth, whether or not sex-based conceptions of marriage violate religious freedom;

Sixth, whether or not a determination that Articles 1 and 2 of the Family Code are unconstitutional must necessarily carry with it the conclusion that Articles 46(4) and 55(6) of the Family Code, on homosexuality and lesbianism as grounds for annulment and legal separation, are also unconstitutional; and

Finally, whether or not the parties are entitled to the reliefs prayed for.

## I

From its plain text, the Constitution does not define or restrict marriage on the basis of sex,[100] gender,[101] sexual orientation,[102]

---

[100] *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 AMERICAN PSYCHOLOGIST 832, 862 (2015), available at < https://www.apa.org/practice/guidelines/transgender.pdf> (last visited on September 2, 2019), provides:

> [S]ex is typically assigned at birth (or before during ultrasound) based on the appearance of external genitalia. When the external genitalia are ambiguous, other indicators (*e.g.*, internal genitalia, chromosomal and hormonal sex) are considered to assign a sex, with the aim of assigning a sex that is most likely to be congruent with the child's gender identity. For most people, gender identity is congruent with sex assigned at birth ([known as] "cisgender"); for [transgender and gender non-conforming] individuals, gender identity differs in varying degrees from sex assigned at birth.

[101] Republic Act No. 11313 (2019), Sec. 3(d) defines gender, as follows:

> SECTION 3. *Definition of Terms*. — As used in this Act:
>
> . . . . . .
>
> (d) *Gender* refers to a set of socially ascribed characteristics, norms, roles, attitudes, values and expectations identifying the social behavior of men and women, and the relations between them[.]

Gender has also been defined in *Guidelines for Psychological Practice with Lesbian, Gay, and Bisexual Clients*, 67 AMERICAN PSYCHOLOGIST 10, 11 (2012), available at <https://www.apa.org/pubs/journals/features/amp-a0024659.pdf> (last visited on September 2, 2019), as follows:

> Gender refers to the attitudes, feelings, and behaviors that a given culture associates with a person's biological sex. Behavior that is compatible with cultural expectations is referred to as gender normative; behaviors that are viewed as incompatible with these expectations constitute gender nonconformity.

[102] *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 AMERICAN PSYCHOLOGIST 832, 862 (2015), available at <https://www.apa.org/practice/guidelines/transgender.pdf> (last visited on September 2, 2019), provides:

> Sexual orientation: a component of identity that includes a person's sexual and emotional attraction to another person and the behavior and/or social

or gender identity or expression.[103]

---

affiliation that may result from this attraction. A person may be attracted to men, women, both, neither, or to people who are genderqueer, androgynous, or have other gender identities. Individuals may identify as lesbian, gay, heterosexual, bisexual, queer, pansexual, or asexual, among others.

[103] Republic Act No. 11313 (2019), Sec. 3(f) defines gender identity and/or expression, as follows:

> SECTION 3. *Definition of Terms*. — As used in this Act:
>
> . . . . . .
>
> (f) G*ender identity and/or expression* refers to the personal sense of identity as characterized, among others, by manner of clothing, inclinations, and behavior in relation to masculine or feminine conventions. A person may have a male or female identity with physiological characteristics of the opposite sex, in which case this person is considered transgender[.]

Gender identity has also been defined in *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 AMERICAN PSYCHOLOGIST 832, 862 (2015), available at <https://www.apa.org/practice/guidelines/transgender.pdf> (last visited on September 2, 2019), as follows:

> Gender identity: a person's deeply felt, inherent sense of being a boy, a man, or male; a girl, a woman, or female; or an alternative gender (*e.g.*, genderqueer, gender nonconforming, gender neutral) that may or may not correspond to a person's sex assigned at birth or to a person's primary or secondary sex characteristics. Because gender identity is internal, a person's gender identity is not necessarily visible to others. "Affirmed gender identity" refers to a person's gender identity after coming out as [transgender and gender non-conforming] or undergoing a social and/or medical transition process.

*Sexual Orientation, Gender Identity and Expression, and Sex Characteristics at the Universal Periodic Review*, ARC INTERNATIONAL, THE INTERNATIONAL BAR ASSOCIATION AND THE INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION 14 (2016), available at <https://ilga.org/downloads/SOGIESC_at_UPR_report.pdf> (last visited on September 2, 2019), provides:

> Gender expression: External manifestations of gender, expressed through one's name, pronouns, clothing, haircut, behavior, voice, or body characteristics. Society identifies these cues as masculine and feminine, although what is considered masculine and feminine changes over time and varies by culture. Typically, transgender people seek to make their gender expression align with their gender identity, rather than the sex they were assigned at birth.

Article XV of the 1987 Constitution concerns the family and operates in conjunction with Article II, Section 12.[104] Article XV, Section 1 pertains to the family in general, identifying it "as the foundation of the nation[,]" and articulates the State's overarching commitment to "strengthen its solidarity and actively promote its total development."[105] Article XV, Section 2 concerns marriage, in particular, and articulates a broad commitment to protecting its inviolability as a social institution. It states:

SECTION 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

Lacking a manifestly restrictive textual definition of marriage, the Constitution is capable of accommodating a contemporaneous understanding of sexual orientation, gender identity and expression, and sex characteristics (SOGIESC). The plain text and meaning of our constitutional provisions do not prohibit SOGIESC. These constitutional provisions in particular, and the Constitution in general, should be read through the lens of "a holistic approach in legal interpretation"[106]:

The more appropriate and more effective approach is, thus, holistic rather than parochial: to consider context and the interplay of the historical, the contemporary, and even the envisioned. Judicial interpretation entails the convergence of social realities and social ideals. The latter are meant to be effected by the legal apparatus,

---

[104] CONST., Art. II, Sec. 12 provides:

SECTION 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

[105] CONST., Art. XV, Sec. 1 provides:

SECTION 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

[106] *David v. Senate Electoral Tribunal*, 795 Phil. 529, 573 (2016) [Per *J*. Leonen, *En Banc*].

chief of which is the bedrock of the prevailing legal order: the Constitution. Indeed, the word in the vernacular that describes the Constitution — saligan — demonstrates this imperative of constitutional primacy.[107]

As a social institution, the family is shaped by economic forces and other social structural forces, such as ideologies and politics.[108] For instance, the discovery of agriculture has transformed the concept of family and marriage by elevating the ownership of property as a central consideration:

*[T]he right to own land and pass it on to heirs meant that women's childbearing abilities and male domination became more important. Rather than kinship, marriage became the center of family life and was increasingly based on a formal contractual relationship between men, women, and their kinship groups.* The property and gender implications of marriage are evident in the exchange of gifts between spouses and families and clearly defined rules about the rights and responsibilities of each marital partner. During the Middle Ages, economic factors influenced marital choices more than affection, even among the poor, and women's sexuality was treated as a form of property (Coltrane and Adams 2008:54). Wealth and power inequalities meant that marriages among the elite and/or governing classes were based largely on creating political alliances and producing male children (Coontz 2005). *Ensuring paternity became important in the transfer of property to legitimate heirs, and the rights and sexuality of women were circumscribed.* Ideologies of male domination prevailed, and women, especially those who were married to powerful men, were typically treated like chattel and given very few rights.[109] (Emphasis supplied)

Consequently, this has placed great significance on procreation as a purpose or end of the family.

---

[107] *Social Weather Stations, Inc. v. Commission on Elections*, 757 Phil. 483, 521 (2015) [Per *J.* Leonen, *En Banc*]. See also *J. Leonen*, dissenting in *Chavez v. Judicial and Bar Council*, 709 Phil. 478 (2013) [Per *J.* Mendoza, *En Banc*].

[108] SHIRLEY A. HILL, FAMILIES: A SOCIAL CLASS PERSPECTIVE 2 (2011), available at <https://us.sagepub.com/ sites/default/files/upm-binaries/41374_1.pdf> (last visited September 2, 2019).

[109] *Id.* at 7.

Then, in the 18th century, women and children were seen as capable of operating factory machinery and, thus, entered the factory labor system to meet the surge in the demand for workers.[110] This "potential for economic independence altered families by making children less reliant on families for their survival and women freer from male domination."[111]

Eventually, the economic transition that came with the spread of industrialization resulted in massive social, geographical, and familial changes:

> Industrialization shifted populations from rural to urban areas in search of work; for example, in 1830 most Americans still lived in rural areas and were employed in farming, but by 1930, most lived in towns and cities and were engaged in non-farming occupations. Urbanization, immigration, and adjustment to the industrial labor market took a toll on the stability of families. Industrial production undermined the family-based economy, food production technologies reduced the need for farmers, and essentials once produced by families were now produced in massive quantities in factories. New professional institutions emerged (*e.g.*, public schools, hospitals) and assumed responsibility for many of the functions once fulfilled by families, ultimately making people less dependent on the family and leading some social scientists to predict its demise.[112]

This reorganization of work in the industrial economy "disrupted the gender order of many families by pulling women into the paid labor force and spawning new visions of gender equality."[113] As a consequence, marriage based on free choice, romantic love, and companionship developed.[114]

---

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

[111] *Id.* at 19.

[112] *Id.*

[113] *Id.* at 21.

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

Eventually, the modern family was seen primarily as:

> . . . a nuclear, marriage-based entity in which men provided economically for their families and women performed housework and took care of children. . . . Socially defined notions of masculinity and femininity reflected these gendered family roles; for example, men were characterized as being naturally aggressive and rational—traits valuable in the competitive area of work—and women as being essentially submissive, domestic, and nurturing.[115]

The evolution of the social concept of family reveals that heteronormativity in marriage is not a static anthropological fact. The perceived complementarity of the sexes is problematized by the changing roles undertaken by men and women, especially under the present economic conditions.

To continue to ground the family as a social institution on the concept of the complementarity of the sexes is to perpetuate the discrimination faced by couples, whether opposite-sex or same-sex, who do not fit into that mold. It renders invisible the lived realities of families headed by single parents, families formed by sterile couples, families formed by couples who preferred not to have children, among many other family organizations. Furthermore, it reinforces certain gender stereotypes within the family.

## II

In a proper case, a good opportunity may arise for this Court to review the scope of Congress' power to statutorily define the scope in which constitutional provisions are effected. This is not that case. The Petition before this Court does not present an actual case over which we may properly exercise our power of judicial review.

There must be narrowly-framed constitutional issues based on a justiciable controversy:

> Contemporaneous construction and aids that are external to the text may be resorted to when the text is capable of multiple, viable

---

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

meanings. It is only then that one can go beyond the strict boundaries of the document. Nevertheless, even when meaning has already been ascertained from a reading of the plain text, contemporaneous construction may serve to verify or validate the meaning yielded by such reading.

Limited resort to contemporaneous construction is justified by the realization that the business of understanding the Constitution is not exclusive to this Court. The basic democratic foundation of our constitutional order necessarily means that all organs of government, and even the People, read the fundamental law and are guided by it. When competing viable interpretations arise, a justiciable controversy may ensue requiring judicial intervention in order to arrive with finality at which interpretation shall be sustained. To remain true to its democratic moorings, however, judicial involvement must remain guided by a framework or deference and constitutional avoidance. This same principle underlies the basic doctrine that courts are to refrain from issuing advisory opinions. Specifically as regards this Court, only constitutional issues that are narrowly framed, sufficient to resolve an actual case, may be entertained.[116] (Citations omitted)

Founded on the principle of supremacy of law, judicial review is the courts' power to decide on the constitutionality of exercises of power by the other branches of government and to enforce constitutional rights.[117]

Judicial review is inherent in this Court's judicial power. Article VIII, Section 1 of the 1987 Constitution states:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

---

[116] *David v. Senate Electoral Tribunal,* 795 Phil. 529, 574-575 (2016) [Per *J*. Leonen, *En Banc*].

[117] *Gayacao v. Executive Secretary*, 121 Phil. 729, 732-733 (1965) [Per *J*. Reyes, J.B.L., *En Banc*]. See also *Angara v. Electoral Commission*, 63 Phil. 139 (1936) [Per *J*. Laurel, *En Banc*].

Article VIII, Section 1 expands the territory of justiciable questions and narrows the off-limits area of political questions. In *Estrada v. Desierto*:[118]

To be sure, courts here and abroad, have tried to lift the shroud on political question but its exact latitude still splits the best of legal minds. Developed by the courts in the 20th century, the political question doctrine which rests on the principle of separation of powers and on prudential considerations, continue to be refined in the mills of constitutional law. In the United States, the most authoritative guidelines to determine whether a question is political were spelled out by Mr. Justice Brennan in the 1962 case of *Baker v. Carr*, *viz*:

> ". . . Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department or a lack of judicially discoverable and manageable standards for resolving it, or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on question. Unless one of these formulations is inextricable from the case at bar, there should be no dismissal for non justiciability on the ground of a political question's presence. The doctrine of which we treat is one of political questions', not of political cases'."

In the Philippine setting, this Court has been continuously confronted with cases calling for a firmer delineation of the inner and outer perimeters of a political question. Our leading case is *Tañada v. Cuenco*, where this Court, through former Chief Justice Roberto Concepcion, held that political questions refer "to those questions which, under the Constitution, are to be *decided by the people* in their sovereign capacity, or in regard to which *full discretionary authority* has been delegated to the legislative or executive branch of the government. It is concerned with issues dependent upon the *wisdom*, not *legality* of a particular measure." To a great degree, the 1987 Constitution

---

[118] 406 Phil. 1 (2001) [Per *J*. Puno, *En Banc*].

has narrowed the reach of the political question doctrine when it expanded the power of judicial review of this court not only to settle actual controversies involving rights which are legally demandable and enforceable *but also to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government.* Heretofore, the judiciary has focused on the "thou shalt not's" of the Constitution directed against the exercise of its jurisdiction. With the new provision, however, courts are given a greater prerogative to determine what it can do to prevent grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. *Clearly, the new provision did not just grant the Court power of doing nothing*. In sync and symmetry with this intent are other provisions of the 1987 Constitution trimming the so called political thicket. Prominent of these provisions is section 18 of Article VII which empowers this Court in limpid language to ". . . review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ (of *habeas corpus*) or the extension thereof. . . ."[119] (Emphasis in the original, citations omitted)

Nonetheless, the expansion of this Court's judicial power is by no means an abandonment of the need to satisfy the basic requisites of justiciability.[120] In *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*:[121]

As a rule, "the constitutionality of a statute will be passed on only if, and to the extent that, it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned." A controversy is said to be justiciable if: first, there is an actual case or controversy involving legal rights that are capable of judicial determination; second, the parties raising the issue must have standing or *locus standi* to raise the constitutional issue; third, the constitutionality must be raised at the earliest

---

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

[120] *Ocampo v. Enriquez*, 798 Phil. 227, 288 (2016) [Per *J*. Peralta, *En Banc*] citing Belgica v. Hon. Executive Secretary Ochoa, Jr., 721 Phil. 416 (2013) [Per *J*. Perlas-Bernabe, *En Banc*].

[121] G.R. No. 202275, July 17, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64411> [Per *J*. Leonen, *En Banc*].

opportunity; and fourth, resolving the constitutionality must be essential to the disposition of the case.[122]

Fundamentally, for this Court to exercise the immense power that enables it to undo the actions of the other government branches, the following requisites must be satisfied: (1) there must be an actual case or controversy involving legal rights that are capable of judicial determination; (2) the parties raising the issue must have standing or *locus standi* to raise the constitutional issue; (3) the constitutionality must be raised at the earliest possible opportunity, thus ripe for adjudication; and (4) the matter of constitutionality must be the very *lis mota* of the case, or that constitutionality must be essential to the disposition of the case.[123]

## III

This Court's constitutional mandate does not include the duty to answer all of life's questions.[124] No question, no matter how interesting or compelling, can be answered by this Court if it cannot be shown that there is an "actual and an antagonistic assertion of rights by one party against the other in a controversy wherein judicial intervention is unavoidable."[125]

This Court does not issue advisory opinions.[126] We do not act to satisfy academic questions or dabble in thought experiments. We do not decide hypothetical, feigned, or abstract

---

[122] *Id.*

[123] *Macasiano v. National Housing Authority*, 296 Phil. 56, 63-64 (1993) [Per *C.J.* Davide, Jr., *En Banc*]. *See also J.* Leonen, Concurring and Dissenting Opinion in *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28 (2014) [Per *J.* Abad, *En Banc*].

[124] *See J.* Leonen, Dissenting Opinion in *Imbong v. Ochoa*, 732 Phil. 1 (2014) [Per *J.* Mendoza, *En Banc*].

[125] *Bacolod-Murcia Planters' Association, Inc. v. Bacolod-Murcia Milling Company, Inc.*, 140 Phil. 457, 459 (1969) [Per *J.* Fernando, First Division].

[126] *Serrano v. Amores*, 159 Phil. 69, 71 (1975) [Per *J.* Fernando, Second Division].

disputes, or those collusively arranged by parties without real adverse interests.[127] If this Court were to do otherwise and jump headlong into ruling on every matter brought before us, we may close off avenues for opportune, future litigation. We may forestall proper adjudication for when there are actual, concrete, adversarial positions, rather than mere conjectural posturing:

> Even the expanded jurisdiction of this Court under Article VIII, Section 1 does not provide license to provide advisory opinions. An advisory opinion is one where the factual setting is conjectural or hypothetical. In such cases, the conflict will not have sufficient concreteness or adversariness so as to constrain the discretion of this Court. After all, legal arguments from concretely lived facts are chosen narrowly by the parties. Those who bring theoretical cases will have no such limits. They can argue up to the level of absurdity. They will bind the future parties who may have more motives to choose specific legal arguments. *In other words, for there to be a real conflict between the parties, there must exist actual facts from which courts can properly determine whether there has been a breach of constitutional text*.[128] (Emphasis in the original, citation omitted)

As this Court makes "final and binding construction[s] of law[,]"[129] our opinions cannot be mere counsel for unreal conflicts conjured by enterprising minds. Judicial decisions, as part of the legal system,[130] bind actual persons, places, and things. Rulings based on hypothetical situations weaken the immense power of judicial review.[131]

---

[127] *Spouses Arevalo v. Planters Development Bank*, 686 Phil. 236, 248 (2012) [Per *J*. Sereno, Second Division].

[128] *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64411> [Per *J*. Leonen, *En Banc*].

[129] *J*. Leonen, Concurring Opinion in *Belgica v. Ochoa*, 721 Phil. 416, 661 (2013) [Per *J*. Perlas-Bernabe, *En Banc*].

[130] CIVIL CODE, Art. 8 which states:

> ARTICLE 8. Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.

[131] *J*. Leonen, Concurring Opinion in *Belgica v. Ochoa*, 721 Phil. 416, 661-662 (2013) [Per *J*. Perlas-Bernabe, *En Banc*].

## IV

It is not enough that laws or regulations have been passed or are in effect when their constitutionality is questioned. The judiciary interprets and applies the law. "It does not formulate public policy, which is the province of the legislative and executive branches of government."[132] Thus, it does not—by the mere existence of a law or regulation—embark on an exercise that may render laws or regulations inefficacious.

Lest the exercise of its power amount to a ruling on the wisdom of the policy imposed by Congress on the subject matter of the law, the judiciary does not arrogate unto itself the rule-making prerogative by a swift determination that a rule ought not exist. There must be an actual case, "a contrast of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence."[133]

## IV (A)

In *Philippine Press Institute, Inc. v. Commission on Elections*,[134] the petitioner did not assert a specific act committed against it by the Commission on Elections in enforcing or implementing the questioned law. This Court found that there was no actual case or controversy.

In *Garcia v. Executive Secretary*,[135] the core issue that the petitioner prayed for this Court to resolve was deemed to be delving into the policy or wisdom underlying the law. This Court noted that the full discretionary authority to formulate policy was vested in Congress.

---

[132] *Pagpalain Haulers, Inc. v. Trajano*, 369 Phil. 617, 627 (1999) [Per J. Romero, Third Division].

[133] *Philippine Constitution Association v. Philippine Government*, 801 Phil. 472, 486 (2016) [Per J. Carpio, *En Banc*].

[134] 314 Phil. 131 (1995) [Per J. Feliciano, *En Banc*].

[135] 602 Phil. 64 (2009) [Per J. Brion, *En Banc*].

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,[136] the possibility of abuse in the execution of law was deemed insufficient to trigger judicial review. This Court emphasized that there must first be an actual act of abuse.

In *Republic of the Philippines v. Roque*,[137] no actual case or controversy existed as the respondents could not point to an instance when the assailed law was said to have been implemented against them.

In *Corales v. Republic*,[138] the petition to assail an executive issuance was found to be premature and "based entirely on surmises, conjectures[,] and speculations."

In our 2018 ruling in *Provincial Bus Operators Association of the Philippines*,[139] an alleged diminution of the petitioners' income, wholly based on speculation, did not warrant the exercise of judicial review.

**IV (B)**

There are instances when this Court exercised the power of judicial review in cases involving newly-enacted laws.

In *Pimentel, Jr. v. Aguirre*,[140] this Court fixed the point at which a legal issue matures into an actual case or controversy—at the pre-occurrence of an "overt act":[141]

In the unanimous *en banc case Tañada v. Angara*, this Court held that when an act of the legislative department is seriously alleged to have infringed the Constitution, settling the controversy becomes the duty of this Court. *By the mere enactment of the questioned law or*

---

[136] 646 Phil. 452 (2010) [Per *J.* Carpio Morales, *En Banc*].

[137] 718 Phil. 294 (2013) [Per *J.* Perlas-Bernabe, *En Banc*].

[138] 716 Phil. 432 (2013) [Per *J.* Perez, *En Banc*].

[139] G.R. No. 202275, July 17, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64411> [Per *J.* Leonen, *En Banc*].

[140] 391 Phil. 84 (2000) [Per *J.* Panganiban, *En Banc*].

[141] *Id.* at 107.

*the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act. Indeed, even a singular violation of the Constitution and/or the law is enough to awaken judicial duty.* Said the Court:

> "In seeking to nullify an act of the Philippine Senate on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. *Where 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 duty (to adjudicate) remains to assure that the supremacy of the Constitution is upheld.' *Once a 'controversy as to the application or interpretation of a constitutional provision is raised before this Court . . ., it becomes a legal issue which the Court is bound by constitutional mandate to decide.*'
>
> . . . . . .
>
> "As this Court has repeatedly and firmly emphasized in many cases, it will not shirk, digress from or abandon its sacred duty and authority to uphold the Constitution in matters that involve grave abuse of discretion brought before it in appropriate cases, committed by any officer, agency, instrumentality or department of the government."

In the same vein, the Court also held in *Tatad v. Secretary of the Department of Energy*:

> ". . . Judicial power includes not only the duty of the courts to settle actual controversies involving rights which are legally demandable and enforceable, but also the duty to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. The courts, as guardians of the Constitution, have the inherent authority to determine whether a statute enacted by the legislature transcends the limit imposed by the fundamental law. Where the statute violates the Constitution, it is not only the right but the duty of the judiciary to declare such act unconstitutional and void."

*By the same token, when an act of the President, who in our constitutional scheme is a coequal of Congress, is seriously alleged to have infringed the Constitution and the laws, as in the present*

*case, settling the dispute becomes the duty and the responsibility of the courts.*[142] (Emphasis supplied, citations omitted)

Thus, in *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*,[143] this Court stated: "[t]hat the law or act in question is not yet effective does not negate ripeness."[144]

Subsequently, this Court, in *Southern Hemisphere Engagement Network, Inc.*,[145] stated:

> The Court is not unaware that a reasonable certainty of the occurrence of a *perceived threat* to any constitutional interest suffices to provide a basis for mounting a constitutional challenge. This, however, is qualified by the requirement that there must be **sufficient facts** to enable the Court to intelligently adjudicate the issues.[146] (Emphasis in the original)

This Court's liberality in scrutinizing a petition for an actual case or controversy was more recently illustrated in *Belgica* and *Spouses Imbong v. Ochoa*.[147] In *Belgica*, this Court found that there was an actual case or controversy:

> The requirement of contrariety of legal rights is clearly satisfied by the antagonistic positions of the parties on the constitutionality of the "Pork Barrel System." Also, the questions in these consolidated cases are ripe for adjudication since the challenged funds and the provisions allowing for their utilization — such as the 2013 GAA for the PDAF, PD 910 for the Malampaya Funds and PD 1869, as amended by PD 1993, for the Presidential Social Fund — are currently

---

[142] *Id.* at 107-108.

[143] 589 Phil. 387 (2008) [Per *J.* Carpio Morales, *En Banc*].

[144] *Id.* at 484.

[145] 646 Phil. 452 (2010) [Per *J.* Carpio Morales, *En Banc*].

[146] *Id.* at 481 citing *De Castro v. Judicial and Bar Council*, 629 Phil. 629 (2010) [Per *J.* Bersamin, *En Banc*]; *Buckley v. Valeo*, 424 U.S. 1, 113-118 (1976); and *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 138-148 (1974).

[147] 732 Phil. 1 (2014) [Per *J.* Mendoza, *En Banc*].

existing and operational; hence, there exists an immediate or threatened injury to petitioners as a result of the unconstitutional use of these public funds.[148]

*Belgica* was followed by *Araullo v. Aquino III*,[149] where this Court stated:

An actual and justiciable controversy exists in these consolidated cases. The incompatibility of the perspectives of the parties on the constitutionality of the DAP and its relevant issuances satisfy the requirement for a conflict between legal rights. The issues being raised herein meet the requisite ripeness considering that the challenged executive acts were already being implemented by the DBM, and there are averments by the petitioners that such implementation was repugnant to the letter and spirit of the Constitution. Moreover, the implementation of the DAP entailed the allocation and expenditure of huge sums of public funds. The fact that public funds have been allocated, disbursed or utilized by reason or on account of such challenged executive acts gave rise, therefore, to an actual controversy that is ripe for adjudication by the Court.[150]

In *Spouses Imbong*, this Court found that there was an actual case or controversy, despite the Petition being a facial challenge:

The OSG also assails the propriety of the facial challenge lodged by the subject petitions, contending that the RH Law cannot be challenged "on its face" as it is not a speech regulating measure.

The Court is not persuaded.

In United States (*US*) constitutional law, a **facial challenge**, also known as a First Amendment Challenge, is one that is launched to assail the validity of statutes concerning not only **protected speech**, but also all other rights in the First Amendment. These include **religious freedom, freedom of the press**, and the **right of the people to peaceably assemble**, and to **petition the Government for a redress of grievances**. After all, the fundamental right to religious freedom,

---

[148] *Belgica v. Ochoa*, 721 Phil. 416, 520 (2013) [Per *J.* Perlas-Bernabe, *En Banc*].

[149] 737 Phil. 457 (2015) [Per *J.* Bersamin, *En Banc*].

[150] *Id.* at 533.

freedom of the press and peaceful assembly are but component rights of the right to one's freedom of expression, as they are modes which one's thoughts are externalized.

In this jurisdiction, the application of doctrines originating from the U.S. has been generally maintained, albeit with some modifications. While this Court has withheld the application of facial challenges to strictly penal statutes, it has **expanded** its scope to cover statutes not only regulating **free speech**, but also those involving **religious freedom**, and **other fundamental rights**. The underlying reason for this modification is simple. For unlike its counterpart in the U.S., this Court, under its expanded jurisdiction, is mandated by the Fundamental Law not only to settle actual controversies involving rights which are legally demandable and enforceable, but also **to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government**. Verily, the framers of Our Constitution envisioned a proactive Judiciary, ever vigilant with its duty to maintain the supremacy of the Constitution.

Consequently, considering that the foregoing petitions have seriously alleged that the constitutional human rights to life, speech and religion and other fundamental rights mentioned above have been violated by the assailed legislation, the Court has authority to take cognizance of these kindred petitions and to determine if the RH Law can indeed pass constitutional scrutiny. To dismiss these petitions on the simple expedient that there exist no actual case or controversy, would diminish this Court as a reactive branch of government, acting only when the Fundamental Law has been transgressed, to the detriment of the Filipino people.[151] (Emphasis in the original, citations omitted)

**IV (C)**

Here, the Petition cannot be entertained as a facial challenge to Articles 1, 2, 46(4), and 55(6) of the Family Code.

A facial challenge is "an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before

---

[151] 732 Phil. 1, 125-126 (2014) [Per *J*. Mendoza, *En Banc*].

the court to refrain from constitutionally protected speech or activities."[152] It is distinguished from "as-applied" challenges, which consider actual facts affecting real litigants.[153]

Facial challenges are only allowed as a narrow exception to the requirement that litigants must only present their own cases, their extant factual circumstances, to the courts. In *David v. Arroyo*:[154]

> [F]acial invalidation of laws is considered as "manifestly strong medicine," to be used "sparingly and only as a last resort," and is "generally disfavored;" The reason for this is obvious. Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a law may be applied will not be heard to challenge a law on the ground that it may conceivably be applied unconstitutionally to others, *i.e.,* in other situations not before the Court. A writer and scholar in Constitutional Law explains further:
>
> > The most distinctive feature of the overbreadth technique is that it marks an exception to some of the usual rules of constitutional litigation. Ordinarily, a particular litigant claims that a statute is unconstitutional as applied to him or her; if the litigant prevails, the courts carve away the unconstitutional aspects of the law by invalidating its improper applications on a case to case basis. Moreover, challengers to a law are not permitted to raise the rights of third parties and can only assert their own interests. In overbreadth analysis, those rules give way; challenges are permitted to raise the rights of third parties; and the court invalidates the entire statute "on its face," not merely "as applied for" so that the overbroad law becomes unenforceable until a properly authorized court construes it more narrowly. The factor that motivates courts to depart from the normal adjudicatory rules is the concern with the "chilling;" deterrent effect of the overbroad statute on third parties not courageous enough to bring suit. The Court assumes that an overbroad law's "very existence may cause others not before the court to refrain from

---

[152] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 489 (2010) [Per *J.* Carpio Morales, *En Banc*].

[153] *Id.*

[154] 522 Phil. 705 (2006) [Per *J.* Sandoval-Gutierrez, *En Banc*].

> constitutionally protected speech or expression." An overbreadth ruling is designed to remove that deterrent effect on the speech of those third parties.[155]

However, in *Disini, Jr. v. Secretary of Justice*,[156] this Court distinguished those facial challenges that could be properly considered as presenting an actual case or controversy:

> When a penal statute encroaches upon the freedom of speech, a facial challenge grounded on the void-for-vagueness doctrine is acceptable. The inapplicability of the doctrine must be carefully delineated. As Justice Antonio T. Carpio explained in his dissent in *Romualdez v. Commission on Elections*, "we must view these statements of the Court on the inapplicability of the overbreadth and vagueness doctrines to penal statutes as appropriate only insofar as these doctrines are used to mount 'facial' challenges to penal statutes not involving free speech."
>
> In an "as applied" challenge, the petitioner who claims a violation of his constitutional right can raise any constitutional ground — absence of due process, lack of fair notice, lack of ascertainable standards, overbreadth, or vagueness. Here, one can challenge the constitutionality of a statute only if he asserts a violation of his own rights. It prohibits one from assailing the constitutionality of the statute based solely on the violation of the rights of third persons not before the court. This rule is also known as the prohibition against third-party standing.
>
> But this rule admits of exceptions. A petitioner may for instance mount a "facial" challenge to the constitutionality of a statute even if he claims no violation of his own rights under the assailed statute where it involves free speech on grounds of overbreadth or vagueness of the statute. The rationale for this exception is to counter the "chilling effect" on protected speech that comes from statutes violating free speech. A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply restrain himself from speaking in order to avoid being charged of a crime. The overbroad or vague law thus chills him into silence.[157] (Citations omitted)

---

[155] *Id.* at 776-777.

[156] 727 Phil. 28 (2014) [Per *J.* Abad, *En Banc*].

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

To be entertained by this Court, a facial challenge requires a showing of curtailment of the right to freedom of expression, because its basis is that an overly broad statute may chill otherwise constitutional speech.[158]

The imperative of justiciability was reiterated in *Philippine Constitution Association v. Philippine Government*:[159]

> In *Province of North Cotabato v. GRP* (MOA-AD case), . . . the Court explained the limits of the power of judicial review and the prerequisites for the judicial determination of a case.
>
> In [that] case, the Court rejected the argument of the Solicitor General that there was no justiciable controversy that was ripe for adjudication. . . . The Court ruled that "[w]hen an act of a branch of government 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." Moreover, in the MOA-AD case, the Executive was about to sign the initialed MOA-AD with the MILF in Kuala Lumpur, Malaysia in the presence of representatives of foreign states. Only the prompt issuance by this Court of a temporary restraining order stopped the signing, averting the implications that such signing would have caused.
>
> In the present case, however, the Court agrees with the Solicitor General that there is no actual case or controversy requiring a full-blown resolution of the principal issue presented by petitioners.
>
> Unlike the unconstitutional MOA-AD, the CAB, including the FAB, mandates the enactment of the Bangsamoro Basic Law in order for such peace agreements to be implemented. In the MOA-AD case, there was nothing in the MOA-AD which required the passage of any statute to implement the provisions of the MOA-AD, which in essence would have resulted in dramatically dismembering the Philippines by placing the provinces and areas covered by the MOA-AD under the control and jurisdiction of a Bangsamoro Juridical Entity.
>
> . . . . . .

---

[158] *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1104 (2017) [Per *J.* Perlas-Bernabe, *En Banc*].

[159] 801 Phil. 472 (2016) [Per *J.* Carpio, *En Banc*].

Further, under the MOA-AD, the Executive branch assumed the mandatory obligation to amend the Constitution to conform to the MOA-AD. The Executive branch guaranteed to the MILF that the Constitution would be drastically overhauled to conform to the MOA-AD. ... the Executive branch usurped the sole discretionary power of Congress to propose amendments to the Constitution as well as the exclusive power of the sovereign people to approve or disapprove such proposed amendments. . . . such *ultra vires* commitment by the Executive branch constituted grave abuse of discretion amounting to lack or excess of jurisdiction.

. . . . . .

Even if there were today an existing bill on the Bangsamoro Basic Law, it would still not be subject to judicial review. The Court held in *Montesclaros v. COMELEC* that it has no power to declare a proposed bill constitutional or unconstitutional because that would be in the nature of rendering an advisory opinion on a proposed act of Congress. The power of judicial review cannot be exercised in *vacuo*. As the Court in *Montesclaros* noted, invoking Section 1, Article VIII of the Constitution, there can be no justiciable controversy involving the constitutionality of a proposed bill. The power of judicial review comes into play only after the passage of a bill, and not before. Unless enacted into law, any proposed Bangsamoro Basic Law pending in Congress is not subject to judicial review.[160] (Citations omitted)

Ultimately, petitions before this Court that challenge an executive or legislative enactment must be based on actual facts, sufficiently for a proper joinder of issues to be resolved.[161] If litigants wish to assail a statute or regulation on its face, the burden is on them to prove that the narrowly-drawn exception for an extraordinary judicial review of such statute or regulation applies.

---

[160] *Id.* at 486-491.

[161] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 481 (2010) [Per J. Carpio Morales, *En Banc*] citing *De Castro v. Judicial and Bar Council*, 629 Phil. 629 (2010) [Per J. Bersamin, *En Banc*]; *Buckley v. Valeo*, 424 U.S. 1, 113-118 (1976); and *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 138-148 (1974).

When faced with speculations—situations that have not yet fully ripened into clear breaches of legally demandable rights or obligations—this Court shall refrain from passing upon the case. Any inquiries that may be made may be roving, unlimited, and unchecked.[162] In contrast to political branches of government, courts must deal with specificities:

> It is not for this court to rehearse and re-enact political debates on what the text of the law should be. In political forums, particularly the legislature, the creation of the text of the law is based on a general discussion of factual circumstances, broadly construed in order to allow for general application by the executive branch. Thus, the creation of the law is not limited by particular and specific facts that affect the rights of certain individuals, *per se*.
>
> Courts, on the other hand, rule on adversarial positions based on existing facts established on a specific case-to-case basis, where parties affected by the legal provision seek the courts' understanding of the law.
>
> The complementary nature of the political and judicial branches of government is essential in order to ensure that the rights of the general public are upheld at all times. In order to preserve this balance, branches of government must afford due respect and deference for the duties and functions constitutionally delegated to the other. Courts cannot rush to invalidate a law or rule. Prudence dictates that we are careful not to veto political acts unless we can craft doctrine narrowly tailored to the circumstances of the case.[163]

## V

Jurisprudence on justiciability in constitutional adjudication has been unequivocal on the requirement of actual cases and controversies. In *Angara v. Electoral Commission*:[164]

---

[162] *See J.* Leonen, Concurring and Dissenting Opinion in *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28 (2014) [Per *J.* Abad, *En Banc*].

[163] *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 337 (2015) [Per *J.* Leonen, *En Banc*].

[164] 63 Phil. 139 (1936) [Per *J.* Laurel, *En Banc*].

The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution. *Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very lis mota presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions of wisdom, justice or expediency of legislation*. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.[165] (Emphasis supplied)

Even now, under the regime of the textually broadened power of judicial review articulated in Article VIII, Section 1 of the 1987 Constitution, the requirement of an actual case or controversy is not dispensed with.[166] In *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*:[167]

Basic in the exercise of judicial power — whether under the traditional or in the expanded setting — is the presence of an actual

---

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

[166] *Knights of Rizal v. DMCI Homes, Inc*., 809 Phil. 453, 529 (2017) [Per *J*. Carpio, *En Banc*].

[167] 802 Phil. 116 (2016) [Per *J*. Brion, *En Banc*].

case or controversy. For a dispute to be justiciable, a legally demandable and enforceable right must exist as basis, and must be shown to have been violated.

. . . . . .

The Court's expanded jurisdiction — ***itself an exercise of judicial power*** — does not do away with the actual case or controversy requirement in presenting a constitutional issue, but effectively simplifies this requirement by merely requiring a prima facie showing of grave abuse of discretion in the assailed governmental act.[168] (Emphasis supplied, citation omitted)

**V (A)**

It is the parties' duty to demonstrate actual cases or controversies worthy of judicial resolution.

Pleadings before this Court must show a violation of an existing legal right or a controversy that is ripe for judicial determination. In a concurring opinion in *Belgica*:[169]

Basic in litigation raising constitutional issues is the requirement that there must be an actual case or controversy. This Court cannot render an advisory opinion. We assume that the Constitution binds all other constitutional departments, instrumentalities, and organs. We are aware that in the exercise of their various powers, they do interpret the text of the Constitution in the light of contemporary needs that they should address. A policy that reduces this Court to an adviser for official acts by the other departments that have not yet been done would unnecessarily tax our resources. It is inconsistent with our role as final arbiter and adjudicator and weakens the entire system of the Rule of Law. Our power of judicial review is a duty to make a final and binding construction of law. This power should generally be reserved when the departments have exhausted any and all acts that would remedy any perceived violation of right. The rationale that defines the extent of our doctrines laying down exceptions to our rules on justiciability are clear: Not only should the pleadings show a convincing violation of a right, but the impact should be shown

---

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

[169] 721 Phil. 416 (2013) [Per *J.* Perlas-Bernabe, *En Banc*].

to be so grave, imminent, and irreparable that any delayed exercise of judicial review or deference would undermine fundamental principles that should be enjoyed by the party complaining or the constituents that they legitimately represent.[170]

Facts are the basis of an actual case or controversy. To reiterate, "there must be **sufficient facts** to enable the Court to intelligently adjudicate the issues."[171] Thus, as illustrated in *Southern Hemisphere Engagement Network, Inc.*:

**Petitioners' obscure allegations of sporadic "surveillance" and supposedly being tagged as "communist fronts" in no way approximate a credible threat of prosecution.** From these allegations, the Court is being lured to render an advisory opinion, which is not its function.

Without any justiciable controversy, the petitions have become pleas for declaratory relief, over which the Court has no original jurisdiction. Then again, declaratory actions characterized by "double contingency," where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are **merely theorized**, lie beyond judicial review for lack of ripeness.

The possibility of abuse in the implementation of RA 9372 does not avail to take the present petitions out of the realm of the surreal and merely imagined. Such possibility is not peculiar to RA 9372 since the exercise of any power granted by law may be abused. Allegations of abuse must be anchored on real events before courts may step in to settle **actual controversies involving rights which are legally demandable and enforceable**.[172] (Emphasis in the original, citations omitted)

**V (B)**

Parties coming to court must show that the assailed act had a direct adverse effect on them. In *Lozano v. Nograles*:[173]

---

[170] *Id.* at 661.

[171] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 481 (2010) [Per *J.* Carpio Morales, *En Banc*].

[172] 646 Phil. 452, 482-483 (2010) [Per *J.* Carpio Morales, *En Banc*].

[173] 607 Phil. 334 (2009) [Per *C.J.* Puno, *En Banc*].

An aspect of the "case-or-controversy" requirement is the requisite of **"ripeness"**. In the United States, courts are centrally concerned with whether a case involves uncertain contingent future events that may not occur as anticipated, or indeed may not occur at all. Another approach is the evaluation of the **twofold** aspect of ripeness: first, the fitness of the issues for judicial decision; and second, the hardship to the parties entailed by withholding court consideration. In our jurisdiction, the issue of ripeness is generally treated in terms of *actual injury* to the plaintiff. Hence, a question is ripe for adjudication when the act being challenged has had a *direct adverse effect* on the individual challenging it. An alternative road to review similarly taken would be to determine whether an action has already been accomplished or performed by a branch of government before the courts may step in.[174] (Emphasis supplied, citations omitted)

## VI

The need to demonstrate an actual case or controversy is even more compelling in cases concerning minority groups. This Court is a court of law. We are equipped with legal expertise, but we are not the final authority in other disciplines. In fields such as politics, sociology, culture, and economics, this Court is guided by the wisdom of recognized authorities, while being steered by our own astute perception of which notions can withstand reasoned and reasonable scrutiny. This enables us to filter unempirical and outmoded, even if sacrosanct, doctrines and biases.

This Court exists by an act of the sovereign Filipino people who ratified the Constitution that created it. Its composition at any point is not the result of a popular election reposing its members with authority to decide on matters of policy. This Court cannot make a final pronouncement on the wisdom of policies. Judicial pronouncements based on wrong premises may unwittingly aggravate oppressive conditions.

The scrutiny on the existence of actual facts becomes most necessary when the rights of marginalized, minority groups

---

[174] *Id.* at 341.

have been thrust into constitutional scrutiny by a party purporting to represent an entire sector.

**VI (A)**

In *Ang Ladlad LGBT Party v. Commission on Elections*,[175] this Court acknowledged that the LGBTQI+ community has historically "borne the brunt of societal disapproval":

> We are not blind to the fact that, through the years, homosexual conduct, and perhaps homosexuals themselves, have borne the brunt of societal disapproval. It is not difficult to imagine the reasons behind this censure — religious beliefs, convictions about the preservation of marriage, family, and procreation, even dislike or distrust of homosexuals themselves and their perceived lifestyle. Nonetheless, we recall that the Philippines has not seen fit to criminalize homosexual conduct. Evidently, therefore, these "generally accepted public morals" have not been convincingly transplanted into the realm of law.[176] (Citation omitted)

A common position taken by those who socially disapprove of the LGBTQI+ community is that this community violates the complementarity of the sexes. Relying on natural law, the concept asserts that the sexual differences between a man and a woman are constitutive of one's identity, out of which the family is created.[177]

Consequently, this views the sexual orientation, gender identity, and gender expression of members of the LGBTQI+ community as unnatural, purely ideological, or socially constructed. These identities are criticized for being "often founded on nothing more than a confused concept of freedom in the realm of feelings and wants, or momentary desires provoked by emotional impulses and the will of the individual,

---

[175] 632 Phil. 32 (2010) [Per *J.* Del Castillo, *En Banc*].

[176] *Id.* at 75.

[177] CONGREGATION FOR CATHOLIC EDUCATION, "MALE AND FEMALE HE CREATED THEM": TOWARDS A PATH OF DIALOGUE ON THE QUESTION OF GENDER THEORY IN EDUCATION 14-15 (2019).

as opposed to anything based on the truths of existence."[178] Lacking "an essential and indispensable finality"[179]—that is, procreative possibility— "homosexual acts are intrinsically disordered and can in no case be approved of."[180]

However, contrary to this view, same-sex conduct is a natural phenomenon:

> Homosexuality has been observed in most vertebrate groups, and also among insects, spiders, crustaceans, octopi and parasitic worms. The phenomenon has been reported in close to 1000* animal species, and is well documented for half that number, but the real extent is probably much higher.
>
> The frequency of homosexuality varies from species to species. In some species, homosexuality has never been reported, while in others the entire species is bisexual. In zoos around 1 in 5 pairs of king penguins are of the same sex. The record is held by orange fronted parakeets, where roughly half of all pairs in captivity are of the same sex.[181]

At the moment, there is no consensus among scientists about the exact reasons as to how an individual develops a particular sexual orientation.[182] It has been suggested in scientific studies that sexual orientation is polygenetic and sociocultural:

> Although we emphasize the polygenicity of the genetic effects on same-sex sexual behavior, we identified five SNPs whose association

---

[178] *Id.* at 11.

[179] Sacred Congregation for the Doctrine of the Faith, *Persona Humana: Declaration on Certain Questions Concerning Sexual Ethics* (1975), available at <http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19751229_persona-humana_en.html> (last visited on September 2, 2019).

[180] *Id.*

[181] University of Oslo Natural History Museum, *Homosexuality in the Animal Kingdom* (2009) <https://www.nhm.uio.no/besok-oss/utstillinger/skiftende/tidligere/againstnature/gayanimals.html> (last visited on September 2, 2019).

[182] American Psychological Association, S*exual Orientation & Homosexuality,* <https://www.apa.org/topics/lgbt/orientation> (last visited on September 2, 2019).

with same-sex sexual behavior reached genome-wide significance. Three of these replicated in other independent samples whose measures related to identity and attraction rather than behavior. These SNPs may serve to generate new lines of enquiry. In particular, the finding that one of the replicated SNPs (rs28371400-15q21.3) is linked to male pattern balding and is nearby a gene (TCF12) relevant to sexual differentiation strengthens the idea that sex-hormone regulation may be involved in the development of same-sex sexual behavior. Also, that another replicated SNP (rs34730029-11q12.1) is strongly linked to several genes involved in olfaction raises intriguing questions. Although the underlying mechanism at this locus is unclear, a link between olfaction and reproductive function has previously been established. Individuals with Kallmann syndrome exhibit both delayed or absent pubertal development and an impaired sense of smell because of the close developmental origin of fetal gonadotropin-releasing hormone and olfactory neurons.

Our study focused on the genetic basis of same-sex sexual behavior, but several of our results point to the importance of sociocultural context as well. We observed changes in prevalence of reported same-sex sexual behavior across time, raising questions about how genetic and sociocultural influences on sexual behavior might interact. We also observed partly different genetic influences on same-sex sexual behavior in females and males; this could reflect sex differences in hormonal influences on sexual behavior (for example, importance of testosterone versus estrogen) but could also relate to different sociocultural contexts of female and male same-sex behavior and different demographics of gay, lesbian, and bisexual groups. With these points in mind, we acknowledge the limitation that we only studied participants of European ancestry and from a few Western countries; research involving larger and more diverse samples will afford greater insight into how these findings fare across different sociocultural contexts.

Our findings provide insights into the biological underpinnings of same-sex sexual behavior but also underscore the importance of resisting simplistic conclusions—because the behavioral phenotypes are complex, because our genetic insights are rudimentary, and because there is a long history of misusing genetic results for social purposes.[183] (Citations omitted)

---

[183] Andrea Ganna, *et al.*, *Large-scale GWAS reveals insights into the genetic architecture of same-sex sexual behavior*, 365 SCIENCE 1, 6-7

Sexual orientation has also been correlated with physiological features in the brain. In 1991, neuroscientist Simon LeVay (LeVay) conducted research on "the anterior hypothalamus, which contains four cell groups called the interstitial nuclei of the anterior hypothalamus (INAH)."[184] LeVay's "research found that a particular group of neurons called INAH3 was significantly larger in heterosexual men than in homosexual men."[185] Other researchers that same year also proposed that the anterior commissure, a bundle of nerves that connects a small region of the right and left sides of the brain, "is bigger in homosexual men than in heterosexual men."[186] These studies propose that there are anatomical differences between men of different sexual orientations.

To insulate the human species from the natural phenomenon of same-sex conduct is to reinforce an inordinately anthropocentric view of nature. Giving primacy to "human reason and sentience[,]"[187] anthropocentrism is "the belief that there is a clear and morally relevant dividing line between humankind and the rest of nature, that humankind is the only principal source of value or meaning in the world."[188]

---

(2019). Available at <https://science.sciencemag.org/content/365/6456/eaat7693> (last visited on September 2, 2019).

[184] Nuffield Council on Bioethics, *Review of the evidence: sexual orientation, in* GENETICS AND HUMAN BEHAVIOUR: THE ETHICAL CONTEXT 104 (2014).

[185] *Id.*

[186] *Id.*

[187] Martin Coward, *Against Anthropocentrism: The Destruction of the Built Environment as a Distinct Form of Political Violence*, 32 REVIEW OF INTERNATIONAL STUDIES 419, 420 (2006).

[188] Ronald E. Purser, Changkil Park, and Alfonso Montuori, *Limits to Anthropocentrism: Toward an Ecocentric Organization Paradigm?*, 20 THE ACADEMY OF MANAGEMENT REVIEW 1053, 1054 (1995).

This "human-nature dualism contains a problematic inconsistency and contradiction,"[189] for it rejects the truth that human beings are part of nature.[190] Further, human superiority is conceived from the lens of human cognitive abilities[191] and imposes a socially constructed moral hierarchy between human beings and nature.[192]

Human-nature dualism lays the foundation "for a cultural context that legitimized domination. . . . [which] is at the root of other modern 'imaginary oppositions' such as the split between reason-emotion, mind-body, and masculine-feminine."[193] This dichotomy propels numerous forms of gender oppression in that anything attached to reason and culture is associated with masculinity, while anything attached to emotion, body, and nature is associated with femininity.[194] This anthropocentric view can only manifest itself "in a violent and self-destructive manner, fatal both to human and non-human life[.]"[195]

---

[189] *Id.* at 1057.

[190] *Id.* at 1057-1058.

[191] Thomas White, *Humans and Dolphins: An Exploration of Anthropocentrism in Applied Environmental Ethics*, 3 REVIEW OF INTERNATIONAL STUDIES 85, 87 (2013).

[192] Amy Fitzgerald & David Pellow, *Ecological Defense for Animal Liberation: A Holistic Understanding of the World*, in COUNTERPOINTS, VOL. 448, DEFINING CRITICAL ANIMAL STUDIES: AN INTERSECTIONAL SOCIAL JUSTICE APPROACH FOR LIBERATION 29 (2014).

[193] Ronald E. Purser, Changkil Park & Alfonso Montuori, *Limits to Anthropocentrism: Toward an Ecocentric Organization Paradigm?*, 20 THE ACADEMY OF MANAGEMENT REVIEW 1053, 1057 (1995).

[194] Amy Fitzgerald & David Pellow, *Ecological Defense for Animal Liberation: A Holistic Understanding of the World*, in COUNTERPOINTS, VOL. 448, DEFINING CRITICAL ANIMAL STUDIES: AN INTERSECTIONAL SOCIAL JUSTICE APPROACH FOR LIBERATION 29 (2014).

[195] Adam Weitzenfeld and Melanie Joy, An Overview of Anthropocentrism, Humanism, and Speciesism in Critical Animal Theory, in COUNTERPOINTS, VOL. 448, DEFINING CRITICAL ANIMAL STUDIES: AN INTERSECTIONAL SOCIAL JUSTICE APPROACH FOR LIBERATION 6 (2014).

**VI (B)**

In the realm of the social sciences, a great number of 20th-century psychoanalysts unfortunately viewed homosexuality as something pathological.[196] This influenced the field of American psychiatry in the mid-20th century that when the American Psychological Association published the first edition of the Diagnostic and Statistical Manual in 1952, "it listed all the conditions psychiatrists then considered to be a mental disorder. DSM-I classified 'homosexuality' as a 'sociopathic personality disturbance.'"[197]

It was not until the research of biologist Alfred Kinsey and other scientists challenged the orthodoxy that homosexuality was delisted as a mental disorder in the next iteration of the Diagnostic and Statistical Manual:

> The Kinsey reports, surveying thousands of people who were not psychiatric patients, found homosexuality to be more common in the general population than was generally believed, although his now-famous '10%' statistic is today believed to be closer to 1%-4%. This finding was sharply at odds with psychiatric claims of the time that homosexuality was extremely rare in the general population. Ford and Beach's study of diverse cultures and of animal behaviors, confirmed Kinsey's view that homosexuality was more common than psychiatry maintained and that it was found regularly in nature. In the late 1950s, Evelyn Hooker, a psychologist, published a study in which she compared psychological test results of 30 gay men with 30 heterosexual controls, none of whom were psychiatric patients. Her study found no more signs of psychological disturbances in the gay male group, a finding that refuted psychiatric beliefs of her time that all gay men had severe psychological disturbances.[198]

However, the official removal of homosexuality from the Diagnostic and Statistical Manual as a mental disorder was

---

[196] Jack Drescher, *Out of DSM: Depathologizing Homosexuality*, BEHAVIORAL SCIENCES 568 (2015).

[197] *Id.*

[198] *Id.* at 569-570.

not the last word on the subject. Homosexuality was still considered a "disorder," and it was not until several years later that all traces of what was mistakenly thought to be a "disease" would be completely removed from the manual:

> In any event, the events of 1973 did not immediately end psychiatry's pathologizing of some presentations of homosexuality. For in 'homosexuality's' place, the DSM-II contained a new diagnosis: Sexual Orientation Disturbance (SOD). SOD regarded homosexuality as an illness if an individual with same-sex attractions found them distressing and wanted to change. The new diagnosis legitimized the practice of sexual conversion therapies (and presumably justified insurance reimbursement for those interventions as well), even if homosexuality *per se* was no longer considered an illness. The new diagnosis also allowed for the unlikely possibility that a person unhappy about a heterosexual orientation could seek treatment to become gay.
>
> SOD was later replaced in DSM-III by a new category called 'Ego Dystonic Homosexuality' (EDH). However, it was obvious to psychiatrists more than a decade later that the inclusion first of SOD, and later EDH, was the result of earlier political compromises and that neither diagnosis met the definition of a disorder in the new nosology. Otherwise, all kinds of identity disturbances could be considered psychiatric disorders. 'Should people of color unhappy about their race be considered mentally ill?' critics asked. What about short people unhappy about their height? Why not ego-dystonic masturbation? As a result, ego-dystonic homosexuality was removed from the next revision, DSM-III-R, in 1987. In so doing, the APA implicitly accepted a normal variant view of homosexuality in a way that had not been possible fourteen years earlier.[199] (Citations omitted)

Homosexuality was officially removed from the Diagnostic and Statistical Manual in 1986.[200] According to the American Psychological Association:

> [L]esbian, gay and bisexual orientations are not disorders. Research has found no inherent association between any of these sexual

---

[199] *Id.* at 571.

[200] Gregory M. Herek, *Facts About Homosexuality and Mental Health*, <https://psychology.ucdavis.edu/rainbow/html/facts_mental_health.html > (last visited on September 2, 2019).

orientations and psychopathology. *Both heterosexual behavior and homosexual behavior are normal aspects of human sexuality*. Both have been documented in many different cultures and historical eras. Despite the persistence of stereotypes that portray lesbian, gay and bisexual people as disturbed, several decades of research and clinical experience have led all mainstream medical and mental health organizations in this country to conclude that these orientations represent normal forms of human experience. Lesbian, gay and bisexual relationships are normal forms of human bonding. Therefore, these mainstream organizations long ago abandoned classifications of homosexuality as a mental disorder.[201] (Emphasis supplied)

The American Psychological Association's revision marked the "beginning of the end of organized medicine's official participation in the social stigmatization of homosexuality"[202] as similar movements also followed. In 1990, the World Health Organization removed homosexuality per se from the International Classification of Diseases.

Social forces have likewise shaped the use of penal laws to further discrimination and persecution of the LGBTQI+ community:

To a large extent, the religious and medical discourses became the bases for legal or state-prescribed discourses in early Western societies. As a result, the argument that homosexuality is both a sin and a sickness is strengthened. An illustration of this would be the laws against same-sex relations in colonies of the British Empire during the 19th century. The inclusion of Section 377, which refers to carnal intercourse between same-sex individuals, as an offense "against the order of nature" and "unnatural" is a clear indication that homosexuality is viewed as both a sin and a sickness (Carey, 2011; Kannabiran & Singh, 2009). Although the said legislation did not explicitly mention male-to-male or female-to-female sexual relations as a crime, they are considered to be "against the order of nature" and punishable by

---

[201] American Psychological Association, *Sexual Orientation & Homosexuality*, <https://www.apa.org/topics/lgbt/orientation> (last visited on September 2, 2019).

[202] Jack Drescher, *Out of DSM: Depathologizing Homosexuality*, BEHAVIORAL SCIENCES 568 (2015).

law (Indian Penal Code, 1860). Among the countries that adopted this law were Australia, Bangladesh, Bhutan, Brunei, Fiji, Hong Kong, India, Kiribati, Malaysia, Maldives, Marshall Islands, Myanmar (Burma), Nauru, New Zealand, Pakistan, Papua New Guinea, Singapore, Solomon Islands, Sri Lanka, Tonga, Tuvalu, and Western Samoa in the Asia Pacific region; and Botswana, Gambia, Ghana, Kenya, Tanzania, Uganda, Zambia, and Zimbabwe in the African region (Human Rights Watch, 2008). Germany, one of the most powerful countries during the Second World War, likewise had its own version of the sodomy law stated in Paragraph 175 of the German Criminal Code (Awareness Harmony Acceptance Advocates [AHAA], 2014).

LGBT discrimination has a long history and serves as a remnant of the colonial era when the most powerful nations used laws as mechanisms of control over morality and standards of behavior (Human Rights Watch, 2008; United Nations Human Rights Commission [UNHRC], n.d.). The criminalization of homosexuality led to the LGBT people's repression, which persisted even beyond the end of the Second World War when the international community pushed for the recognition and respect for human rights.

. . . . . .

As of 2015, 113 United Nations member states have legally recognized same-sex relations (ILGA, 2015). Also, key international documents and human rights instruments were achieved, among them the Yogyakarta Principles in 2006, the UNHRC Resolution on Human Rights, Sexual Orientation and Gender Identity (SOGI) in 2011, and the UNHRC Core State Obligations on LGBT Human Rights in 2012.[203]

A 2012 coalition report[204] submitted by OutRight Action International,[205] together with 40 Philippine LGBTQI+ and

---

[203] Ma. Theresa Casal De Vela, *The Emergence of LGBT Human Rights and the Use of Discourse Analysis in Understanding LGBT State Inclusion*, LX PHIL. J, PUB, AD. 72, 75-79 (2016).

[204] International Gay and Lesbian Human Rights Commission, *Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and Homosexuality in the Philippines*, October 2012. Available at <https://www2.ohchr.org/english/bodies/hrc/docs/ngos/iglhrc_philippines_hrc106.pdf> (last visited on September 2, 2019).

[205] Formerly known as the International Gay and Lesbian Human Rights Commission.

human rights groups[206] and 13 activists,[207] to the 106th Session of the United Nations Human Rights Committee[208] showed that from 1996 to 2012, 163 LGBTQI+ persons have been murdered due to their gender identity, gender expression, or sexual orientation.[209] The report documented discriminatory acts against LGBTQI+ groups and persons both by State and non-State actors.

---

[206] The groups are: Babaylanes, Inc.; Amnesty International Philippines – LGBT Group (AIPh-LGBT); Bacolod and Negros Gender Identity Society (BANGIS); Bisdak Pride – Cebu; Cagayan De Oro Plus (CDO Plus); Changing Lane Women's Group; Coalition for the Liberation of the Reassigned Sex (COLORS); Elite Men's Circle (EMC); EnGendeRights, Inc.; Filipino Freethinkers (FF); Fourlez Women's Group; GAYAC (Gay Achievers Club); KABARO-PUP; LADLAD Cagayan De Oro; LADLAD Caraga, Inc.; LADLAD Europa; LADLAD LGBT Party; LADLAD Region II; Lesbian Activism Project Inc. (LeAP!), Inc.; Lesbian Pilipinas; Link Davao; Metropolitan Community Church – Metro Baguio City (MCCMB); Miss Maanyag Gay Organization of Butuan; OUT Exclusives Women's Group; OUT Philippines LGBT Group; Outrage LGBT Magazine; Philippine Fellowship of Metropolitan Community Churches (MCC); Philippine Forum on Sports, Culture, Sexuality and Human Rights (TEAM PILIPINAS); Pink Watch (formerly Philippine LGBT Hate Crime Watch (PLHCW); Pinoy Deaf Rainbow – Philippines; ProGay Philippines; Queer Pagan Network (PQN); Rainbow Rights Project (R-Rights), Inc.; Redbridge Books Publishing Co. (LGBTQI+ Publishing House); Society of Transsexual Women Advocates of the Philippines (STRAP); The Order of St. Aelred Friendship Society (OSAe); TLF Share Collective, Inc.; TMC Globe Division League; Tumbalata, Inc.; and UP Babaylan.

[207] The individuals are Aleksi Gumela, Alvin Cloyd Dakis, Arnel Rostom Deiparine, Bemz Benedito, Carlos Celdran, Ian Carandang, Mae Emmanuel, Marion Cabrera, Mina Tenorio, Neil Garcia, Raymond Alikpala, Ryan Sylverio, and Santy Layno.

[208] Formed pursuant to Part IV of the International Convention on Civil and Political Rights, the Human Rights Committee is a group of experts tasked with monitoring the compliance of State parties to the Convention. The Philippines is a State party to the International Convention on Civil and Political Rights. See also *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28 (2014) [Per *J*. Abad, *En Banc*].

[209] International Gay and Lesbian Human Rights Commission, *Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and Homosexuality in the Philippines*, October 2012, <https://www2.ohchr.org/english/bodies/hrc/docs/ngos/iglhrc_philippines_hrc106.pdf> 6 (last visited on September 2, 2019).

In 2016, EnGendeRights, Inc. and OutRight Action International, as with 34 Philippine groups and individuals,[210] submitted a report[211] to the Committee on the Elimination of Discrimination against Women.[212] This report documented the lack of national anti-discrimination, gender recognition, and hate crime legislation, as well as cases of discrimination by police,[213] health workers,[214] educators,[215] employers,[216] and the judiciary[217] against LGBTQI+ persons.

---

[210] The groups and individuals are: Society of Transsexual Women of the Philippines (STRAP); ASEAN SOGIE Caucus (ASC); Association of Transgender People in the Philippines (ATP); Bahaghari Advocacy Group; Benilde Hive' Bohol LGBTs, Families, Friends, and Allies; Catholic Diocese of One-Spirit Philippines; Coalition for the Liberation of the Reassigned Sex (COLORS); Cordillera Rainbow Connection; DowneLink Philippines Community; Filipino Free Thinkers; Galang Philippines; ILGA World Trans* Secretariat; Initiative and Movement for Gender Liberation against Discrimination (IM GLAD); Ipride Manila; Kapederasyon LGBT Organization; LADLAD Caraga; LGBT Bus; LGBT Pinoyed; Metropolitan Community Church – Metro Baguio; Metropolitan Community Church – Quezon City; Metropolitan Community Church of Marikina; Old Balara Pride Council; Pinoy FTM; Pinoy LGBT Channel, Philippine Online Chronicles Promoting Rights and Equality for Society's Marginalized (PRISM) Rainbow Rights Project, Inc.; SHINE Mindanao; The Lovelife Project for Health and Environment, Inc.; TransMan Pilipinas; Trippers Philippines, Inc.; Universal LGBT Club; Alvin Cloyd Dakis; and Marlon Lacsamana.

[211] "RE: PHILIPPINE LBT COALITION REPORT for 64th SESSION of CEDAW"; EnGendeRights, Inc. and OutRight Action International; June 9, 2016, available at <https://www.outrightinternational.org/sites/default/files/INT_CEDAW_NGO_PHL_24215_E.pdf> (last visited on September 2, 2019).

[212] The Philippines is a State party to the Convention on the Elimination of all Forms of Discrimination Against Women.

[213] *RE: PHILIPPINE LBT COALITION REPORT for 64th SESSION of CEDAW*, EnGendeRights, Inc. and OutRight Action International; June 9, 2016, at 7-8. Available at < https://www.outrightinternational.org/sites/default/files/INT_CEDAW_NGO_PHL_24215_E.pdf> (last visited on September 2, 2019).

[214] *Id.* at 8.

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

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

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

A more recent report submitted in 2017[218] by civil society organizations[219] to the Universal Periodic Review of the United Nations Human Rights Council continued to document human rights violations against LGBTQI+ persons, including an existing legal framework inadequate to address systemic problems of discrimination and exclusion.

This is not to say that there is a universal experience for the LGBTQI+ community. To do so would be to "provide homogenized and distorted views"[220] of the community, "advancing the interest of more privileged individuals."[221] As first noted by American professor Kimberlé Williams Crenshaw:

> This focus on the most privileged group members marginalizes those who are multiply-burdened and obscures claims that cannot be understood as resulting from discrete sources of discrimination. I suggest further that this focus on otherwise-privileged group members creates a distorted analysis of racism and sexism because the operative conceptions of race and sex become grounded in experiences that actually represent only a subset of a much more complex phenomenon.[222]

---

[218] *Universal Periodic Review*, Joint submission of civil society organizations on the situation of Lesbian, Bisexual, Transgender, Intersex and Queer (LGBTQI) persons in the Philippines (2017). Available at <https://aseansogiecaucus.org/images/resources/upr-reports/Philippines/Philippines-UPR-JointReport-3rdCycle.pdf> (last visited on September 2, 2019).

[219] *Id.* at 24. Submitted by ASEAN Sexual Orientation, Gender Identity and Expression Caucus; Association of Transgender People of the Philippines; Babaylanes, Inc.; GALANG Philippines; LGBTS Christian Church, Inc.; Metropolitan Community Church of Marikina City; Metro Manila Pride; MUJER-LGBT Organization; PDRC/Deaf Resources Philippines; SHINE SOCCSKARGEN, Inc.; Side B Philippines; The Philippine LGBT Chamber of Commerce; and TLF Share.

[220] Doug Meyer, *An Intersectional Analysis of Lesbian, Gay, Bisexual and Transgender People's Evaluations of Anti-Queer Violence*, 26 GENDER AND SOCIETY 849, 850 (2012).

[221] *Id.*

[222] Kimberlé Williams Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 UNIVERSITY OF CHICAGO LEGAL FORUM 140 (1989).

Axes of privilege and empowerment, on one hand, and oppression and marginalization, on the other, provide a spectrum that reflects the diversity of lived experiences of LGBTQI+ persons and groups. This is not confined to the spheres of SOGIESC: class and economic status, ethnicity, religion, age, disability, and other identities[223] all play roles in the intersections of LGBTQI+ persons.

Therefore, any entity that attempts to speak for and on behalf of a diverse community must be able to adequately thread the needle in representation of them, assisting this Court's understanding with sufficient facts that would enable it to empower, and not further exclude, an already marginalized community.

**VI (C)**

There is a perception within the LGBTQI+ community that the Philippines is considered among the most gay-friendly countries in the world.[224]

Accounts on the pre-colonial Philippine society report that different SOGIESC expressions were recognized and accepted in the islands.

For instance, the *Vocabulario de la Lengua Tagala*, published in 1860, and the *Vocabulario de la Lengua Bicol*, in 1865, both make reference to the word *asog*, which refers to men who dress in women's clothes and keep relations with fellow men.[225] These persons exercised significant roles in the

---

[223] Doug Meyer, *An Intersectional Analysis of Lesbian, Gay, Bisexual and Transgender People's Evaluations of Anti-Queer Violence*, 26 GENDER AND SOCIETY 849, 852 (2012).

[224] Philip C. Tubeza, *PH ranks among most gay-friendly in the world*, The Philippine Daily Inquirer, <http://globalnation.inquirer.net/76977/ph-ranks-among-most-gay-friendly-in-the-world> (last accessed September 2, 2019).

[225] Jay Jomar F. Quintos, *A Glimpse Into the Asog Experience: A Historical Study on the Homosexual Experience in the Philippines*, 9(2) PLARIDEL: A PHILIPPINE JOURNAL OF COMMUNICATION, MEDIA, AND

pre-colonial Philippine society and were even revered as authorities:

> [F]rom the earliest encounters between the Spanish and the natives, gender-crossing was already very much a reality in a number of communities across the entire archipelago. Local men dressed up as—and acting like—women were called, among others, *bayoguin, bayok, agi-ngin, asog, bido*, and *binabae*. The Spanish thought them remarkable not only because they effectively transitioned from male to female, but also because as spiritual intermediaries or *babaylan*, they were revered figures of authority in their respective communities. It's important to remember that their taking on the customary clothes of women—as well as their engagement in feminine work—was of a piece with a bigger and more basic transformation, one that redefined their gender almost completely as female. ***More than mere cross-dressers, these "men" were gender-crossers, for they didn't merely assume the form and behavior of women. Their culture precisely granted them social and symbolic recognition as binabae ("womanlike")***.[226] (Emphasis supplied)

It has been noted that it was difficult to recognize the *asogs, bayoguins*, and *binabayis* as men because they carried extraordinary clothing, appearance, and actions similar to women.[227] This has been considered a manifestation of freedom as they had "liberty over their choice of wear, behavior, beliefs and way of living."[228]

Aside from this fluidity in gender expression, it has also been observed that "the local concept of matrimony was not

---

SOCIETY, available at <http://www.plarideljournal.org/article/a-glimpse-into-the-asog-experience-a-historical-study-on-the-homosexual-experience-in-the-philippines/> 155, 156-157 (2012).

[226] J. Neil C. Garcia, *Nativism or Universalism: Situating LGBT Discourse in the Philippines*, 20 KRITIKA KULTURA 48, 52-53 (2013).

[227] Jay Jomar F. Quintos, *A Glimpse Into the Asog Experience: A Historical Study on the Homosexual Experience in the Philippines*, 9(2) PLARIDEL: A PHILIPPINE JOURNAL OF COMMUNICATION, MEDIA, AND SOCIETY, available at <http://www.plarideljournal.org/article/a-glimpse-into-the-asog-experience-a-historical-study-on-the-homosexual-experience-in-the-philippines/> (last visited on September 2, 2019) 155, 159 (2012).

[228] *Id.*

imprisoned into male-and-female only."[229] According to various *cronicas y relaciones*, the *bayoguin, bayok, agi-ngin, asog, bido*, and *binabae*, among others, "were "married" to men, who became their *maridos* ("husbands"), with whom they indulged in regular sexual congress."[230]

It was only during the arrival of the Spanish colonizers in the Philippine islands that these activities previously engaged in by the *asog, bayoguin*, and *binabayi* became suppressed:

> The right of men to wed their fellow men was suppressed, and the tradition of the *asog* wearing long skirts and feminine clothes vanished. More than these, men were banned from having sexual relations with fellow men for this ran contrary to the dominant religion anointed by the Spanish. The church had a corresponding punishment for the natives who violated this rule. All sinners had to go through the sanctity of confession, for confession was the spring that cleansed man's sins (Rafael, 1988).[231]

In contemporary times, as this Court has noted, there is no penalty in the Philippines for engaging in what may be called "homosexual conduct."[232] Notably, Republic Act No. 11166, or the Philippine HIV and AIDS Policy Act, states a policy of non-discrimination in Section 2:

> SECTION 2. *Declaration of Policies*. — . . .
>
> . . . . . .

---

[229] *Id.*

[230] J. Neil C. Garcia, *Nativism or Universalism: Situating LGBT Discourse in the Philippines*, 20 KRITIKA KULTURA 48, 53 (2013).

[231] Jay Jomar F. Quintos, *A Glimpse Into the Asog Experience: A Historical Study on the Homosexual Experience in the Philippines*, 9(2) PLARIDEL: A PHILIPPINE JOURNAL OF COMMUNICATION, MEDIA, AND SOCIETY 155, 161 (2012), available at <http://www.plarideljournal.org/article/a-glimpse-into-the-asog-experience-a-historical-study-on-the-homosexual-experience-in-the-philippines/> (last visited on September 2, 2019).

[232] *Ang Ladlad LGBT Party v. Commission on Elections*, 632 Phil. 32, 75 (2010) [Per *J.* Del Castillo, *En Banc*].

Policies and practices that discriminate on the basis of perceived or actual HIV status, sex, gender, sexual orientation, gender identity and expression, age, economic status, disability, and ethnicity hamper the enjoyment of basic human rights and freedoms guaranteed in the Constitution and are deemed inimical to national interest.

However, discrimination remains. Hence, the call for equal rights and legislative protection continues.

To address the continuing discrimination suffered by the LGBTQI+ community in the Philippines, a number of legislative measures have been filed in Congress.

For instance, the following bills were filed in the 17th Congress: (1) House Bill No. 267, or the Anti-SOGIE (Sexual Orientation and Gender Identity or Expression) Discrimination Bill,[233] which was eventually consolidated, along with other bills, into House Bill No. 4982[234]; (2) House Bill No. 79, which focused on the same subject as House Bill No. 267;[235] (3) House Bill No. 2952, which aims to establish LGBT help and protection desks in all Philippine National Police stations nationwide;[236] House Bill No. 5584, which aims to define domestic violence against individuals, including members of the LGBTQI+ community other than women and children;[237] and Senate Bill No. 1271, otherwise known as the Anti-Discrimination Bill.[238]

As of the 18th Congress, steps are being taken to pass the Sexual Orientation, Gender Identity, and Gender Expression (SOGIE) Equality Bill, with at least 10 congressional bills[239]

---

[233] H. No. 267, 17th Cong., 1st Sess. (2017).

[234] H. No. 4982, 17th Cong., 1st Sess. (2017).

[235] H. No. 267, 17th Cong., 1st Sess. (2017).

[236] H. No. 2952, 17th Cong., 1st Sess. (2016).

[237] H. No. 5584, 17th Cong., 1st Sess. (2017).

[238] S. No. 1271, 17th Cong., 1st Sess. (2016).

[239] H. Nos. 95, 134, 160, 258, 640, 1041, 1359, 2167, 2211, and 2870, 1st Sess. (2019).

and four Senate bills[240] against discrimination based on sexual orientation and gender identity pending.

While comprehensive anti-discrimination measures that address the specific conditions faced by the LGBTQI+ community have yet to be enacted, Congress has made headway in instituting protective measures. Republic Act No. 11313, or the Safe Spaces Act, specifically addresses "transphobic, homophobic, and sexist slurs" and penalizes gender-based street and public spaces sexual harassment:

> SECTION 3. Definition of Terms. — As used in this Act:
>
> (a) Catcalling refers to unwanted remarks directed towards a person, commonly done in the form of wolf-whistling and misogynistic, transphobic, homophobic, and sexist slurs;
>
> . . . . . .
>
> SECTION 4. *Gender-based Streets and Public Spaces Sexual Harassment*. — The crimes of gender-based streets and public spaces sexual harassment are committed through any unwanted and uninvited sexual actions or remarks against any person regardless of the motive for committing such action or remarks.
>
> Gender-based streets and public spaces sexual harassment includes catcalling, wolf-whistling, unwanted invitations, misogynistic, transphobic, homophobic and sexist slurs, persistent uninvited comments or gestures on a person's appearance, relentless requests for personal details, statement of sexual comments and suggestions, public masturbation or flashing of private parts, groping, or any advances, whether verbal or physical, that is unwanted and has threatened one's sense of personal space and physical safety, and committed in public spaces such as alleys, roads, sidewalks and parks. Acts constitutive of gender-based streets and public spaces sexual harassment are those performed in buildings, schools, churches, restaurants, malls, public washrooms, bars, internet shops, public markets, transportation terminals or public utility vehicles.

In the absence of a comprehensive national law, local government units have passed ordinances recognizing and

---

[240] S. Nos. 159, 315, 412, and 689, 1st Sess. (2019).

upholding SOGIESC. In Quezon City, City Ordinance No. 2357, or the Quezon City Gender-Fair Ordinance, was passed.[241] In Davao City, Ordinance No. 0417-12 was passed, penalizing acts that discriminate sexual and gender orientation.[242] In 2018, the Davao City Government announced that it would establish an "all-gender" comfort room to accommodate members of the LGBTQI+ community.[243] Its purpose, Vice Mayor Bernard Al-ag stated, is "to reduce discrimination in the preferred gender of the people."[244]

Meanwhile, the San Juan City Government passed Ordinance No. 55, which provides for anti-discrimination of members of the LGBT community.[245] The Mandaluyong City Government passed Ordinance No. 698 in 2018 to "uphold the rights of all Filipinos especially those discriminated by reason of gender identity and sexual orientation."[246] In 2019, during the Metro Manila Pride March and Festival, the Marikina City Government

---

[241] Rio N. Araja, *Herbert orders QC City Hall LGBT Workers to Band Together*, MANILA STANDARD, September 7, 2017. Available at <http://manilastandard.net/sunday-lgu-section-pdf/ncr/246337/herbert-orders-qc-city-hall-lgbt-workers-to-band-together.html> (last visited on September 2, 2019).

[242] Available at <http://ordinances.davaocity.gov.ph/pdfViewer.aspx> (last visited on September 2, 2019).

[243] F. Pearl A. Gajunera, *Davao to Put Up "All-Gender" CR at City Council Site – Al-ag*, MANILA STANDARD, April 18, 2018, available at <http://manilastandard.net/lgu/mindanao/263538/davao-to-put- up-all-gender-cr-at-city-council-site-al-ag.html> (last visited on September 2, 2019).

[244] *Id.*

[245] OutrageMag.com Staff, *City of San Juan passes LGBT anti-discrimination ordinance*, OUTRAGE, October 2, 2017. Available at <http://outragemag.com/city-of-san-juan-passes-lgbt-anti-discrimination-ordinance/> (last visited on September 2, 2019).

[246] Mikee dela Cruz, *Mandaluyong City passes LGBT anti-discrimination ordinance*, OUTRAGE, May 28, 2018. Available at <http://outragemag.com/mandaluyong-city-passes-lgbt-anti-discrimination-ordinance/> (last visited on September 2, 2019).

announced the enactment of City Ordinance No. 065, its anti-discrimination ordinance.[247]

Moreover, the Philippine Commission on Women has listed other local government units that adopted anti-discrimination ordinances to prohibit discrimination based on sexual orientation and gender identity:

> Angeles City in Pampanga, Antipolo City, Bacolod City in Negros Occidental, Batangas City in Batangas, Candon City in Ilocos Sur, Cebu City, Dagupan City in Pangasinan, . . . Mandaue City, Puerto Princesa, . . . Vigan City in Ilocos Sur, Municipality of San Julian in Eastern Samar, Province of Agusan del Norte, Province of Batangas [,] and Province of Cavite.[248]

The history of erasure, discrimination, and marginalization of the LGBTQI+ community impels this Court to make careful pronouncements—lest it cheapen the resistance, or worse, thrust the whole struggle for equality back to the long shadow of oppression and exclusion. The basic requirement of actual case or controversy allows this Court to make grounded declarations with clear and practical consequences.

## VII

Here, petitioner has no actual facts that present a real conflict between the parties of this case. The Petition presents no actual case or controversy.

Despite a goal of proving to this Court that there is a continuing and pervasive violation of fundamental rights of a marginalized

---

[247] Katrina Hallare, *Marikina mayor signs anti-discrimination ordinance*, INQUIRER.NET, June 29, 2019. Available at <https://newsinfo.inquirer.net/1135560/marikina-mayor-signs-anti-discrimination-Ordinance> (last visited on September 2, 2019).

[248] Philippine Commission on Women, *Policy Brief No. II, Enacting an Anti-Discrimination Based on Sexual Orientation and Gender Identity Law*, available at <http://www.pcw.gov.ph/wpla/enacting-anti-discrimination-based-sexual-orientation-and-gender-identity-law> (last visited on September 2, 2019).

minority group, the Petition is woefully bereft of sufficient actual facts to substantiate its arguments.

A substantive portion of the Petition merely parrots the separate concurring opinion of retired Chief Justice Puno in *Ang Ladlad LGBT Party*, concerning the concept of suspect classifications. Five (5) pages of the 29-page Petition are block quotes from retired Chief Justice Puno, punctuated by introductory paragraphs of, at most, two (2) sentences each.

A separate opinion is the expression of a justice's individual view apart from the conclusion held by the majority of this Court.[249] Even first year law students know that a separate opinion is without binding effect.[250] This Court may adopt in a subsequent case the views in a separate opinion, but a party invoking it bears the burden of proving to this Court that the discussion there is the correct legal analysis that must govern.

Petitioner made no such effort. He did not explain why this Court should adopt the separate opinion of retired Chief Justice Puno. It is not enough, as petitioner has done, to merely produce copious quotations from a separate opinion. Even more curious, petitioner would eventually betray a lack of confidence in those quotations by ultimately saying that he "disagrees with the former Chief Justice's conclusion."[251] From his confused and disjointed reference to retired Chief Justice Puno, petitioner would arrive at the conclusion that Articles 1 and 2 of the Family Code must be examined through the lens of the strict scrutiny test.

In his separate concurring opinion in *Ang Ladlad LGBT Party*, retired Chief Justice Puno referred to submissions made by petitioner Ang Ladlad Party-List before respondent Commission

---

[249] See *Garcia v. Perez*, 188 Phil. 43 (1980) [Per *J*. De Castro, First Division]; *Coca-Cola Bottlers Philippines, Inc. Sales Force Union v. Coca-Cola Bottlers Phil. Inc*., 502 Phil. 748 (2005) [Per *J*. Chico-Nazario, Second Division].

[250] See *Roque v. Commission on Elections*, 626 Phil. 75 (2010) [Per *J*. Velasco, Jr., *En Banc*].

[251] *Rollo*, p. 26.

on Elections on the "history of purposeful unequal treatment"[252] suffered by the LGBTQI+ community. This Court, however, cannot recognize Ang Ladlad Party-List's allegations, since they were made by a different party, in a different case, on a different set of facts, for a different subject matter, concerning a different law, to a different governmental body. These are not "actual facts" sufficient to engender a justiciable controversy here. They cannot be summarily imported and given any weight in this case, to determine whether there is a clash of rights between adversarial parties.

All told, petitioner's 29-page initiatory pleading neither cites nor annexes any credible or reputable studies, statistics, affidavits, papers, or statements that would impress upon this Court the gravity of his purported cause. The Petition stays firmly in the realm of the speculative and conjectural, failing to represent the very real and well-documented issues that the LGBTQI+ community face in Philippine society.

Even petitioner's choice of respondent exposes the lack of an actual case or controversy.

He claims that he impleaded the Civil Registrar General as respondent because "it is the instrumentality of the government that is tasked to enforce the law in relation with (*sic*) marriage[.]"[253]

Lest petitioner himself forget, what he asserts as ground for the allowance of his suit is the existence of grave abuse of discretion;[254] specifically, grave abuse of discretion *in the enactment of the Family Code*:

20. Petitioner submits that a *prima facie* case of grave abuse of discretion exists in the passage of Articles 1 and 2 of the Family

---

[252] *Ang Ladlad LGBT Party v. Commission on Election*, 632 Phil. 32, 111 (2010) [Per *J.* Del Castillo, *En Banc*].

[253] TSN dated June 19, 2018, p. 90.

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

Code. Limiting the definition of marriage as between man and woman is, on its face, a grave abuse of discretion[.][255]

Respondent Civil Registrar General was not involved in the formulation or enactment of the Family Code. It did not participate in limiting the definition of marriage to only opposite-sex couples. That is the province and power of Congress alone.

His choice of the Civil Registrar General as respondent is manifestly misguided. No factual antecedents existed prior to the filing of the Petition apart from the passage of the Family Code. Petitioner has never applied for a marriage license. He has never even visited the premises of respondent's office, or of anyone acting under its authority. Petitioner has never bothered to show that he himself acted in any way that asked respondent to exercise *any* kind of discretion. Indeed, no discretion was ever exercised by respondent. Without an exercise of discretion, there could not have been abuse of discretion, let alone one that could conceivably be characterized as "grave."

This rudimentary, but glaring, flaw was pointed out by Chief Justice Lucas P. Bersamin during the oral arguments:

ATTY. FALCIS:
Yes, Your Honor. We believe that it is proper to implead the Civil Registrar-General because when it comes to Rule 65 Petitions, Your Honors, in the way that petitions, petitioners invoked it, it's in the expanded . . . (interrupted)

JUSTICE BERSAMIN:
Yeah. I understand. Now, the expanded jurisdiction under the Second Paragraph of Section 1 of Article VIII, refers to abuse of discretion.

ATTY. FALCIS:
Yes, Your Honors.

JUSTICE BERSAMIN:
The Civil Registrar has no discretion. Meaning, it has only a ministerial duty to issue you a license or to deny you that license.

---

[255] *Id.* at 9.

So, could you not ever resulted (*sic*) to *mandamus* in the Regional Trial Court of where you have a refusal? You should have done that.

ATTY. FALCIS:

Your Honor, with this Court's indulgence, we are of the submission that in other laws that were questioned, other, the constitutionality of other laws that were questioned . . . (interrupted)

JUSTICE BERSAMIN:

No, you cannot make your case similar to those other laws because those other laws were against other branches of government. They were seeking genuine judicial review. *Here, you are asking us to perform a very ordinary task of correcting somebody's mistake which was not even a mistake because there was no instance where you asked that official to function as such.*[256] (Emphasis supplied)

Petitioner himself admitted that he has not suffered from respondent's enforcement of the law he is assailing:

JUSTICE BERNABE:

Have you actually tried applying for a marriage license?

ATTY. FALCIS

No, Your Honors, because I would concede that I do not have a partner and that even if I do have a partner, it is not automatic that my partner might want to marry me and so, Your Honors, I did not apply or I could not apply for a marriage license.[257]

Petitioner note[258] that grave abuse of discretion may be shown by *prima facie* evidence. This does not help his case. What it indicates is his own acknowledgement that proof cannot be dispensed with, and that he cannot win his case based on pure allegations of actual or imminent injury caused by respondent.[259] The burden is on petitioner to point to any grave abuse of

---

[256] TSN, June 19, 2018, pp. 90-91.

[257] *Id.* at 67-68.

[258] *Rollo*, p. 8.

[259] *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc*., 802 Phil. 116, 140-141 (2016) [Per *J*. Brion, *En Banc*].

discretion on the part of respondent to avail of this Court's extraordinary *certiorari* power of review.[260]

By petitioner's own standards, his Petition lacks an essential requisite that would trigger this Court's review.

**VIII**

Aware of the need to empower and uphold the dignity of the LGBTQI+ community, this Court is mindful that swift, sweeping, and indiscriminate pronouncements, lacking actual facts, may do more harm than good to a historically marginalized community.

A proper ventilation of issues requires an appreciation of marriage past its symbolic value and towards a holistic view of its practical, cross-cutting, and even permanent consequences. This entails an overlapping process of articulation, deliberation, and consensus, which members of the LGBTQI+ community must undertake within their circles and through the political branches of the government, towards crafting a policy that truly embraces the particularities of same-sex intimacies.

**VIII (A)**

Despite seeking access to the benefits of marriage, petitioner miserably fails to articulate what those benefits are, in both his filed pleadings and his submissions during oral arguments.

More than being the "foundation of the family[,]"[261] the state of marriage grants numerous specific rights and privileges that affect most, if not all, aspects of marital and family relationships.

**VIII (A)(1)**

Included in the bundle of rights granted by the Family Code to married spouses is the right of support, shown in the obligation

---

[260] *Knights of Rizal v. DMCI Homes, Inc.*, 809 Phil. 453, 529 (2017) [Per *J.* Carpio, *En Banc*].

[261] CONST, Art. XV, Sec. 2.

of each spouse to "render mutual help and support"[262] and to provide support to the family.[263] For instance, spouses are mandated to contribute to the expenses for the management of the household.[264] Likewise, spouses are jointly responsible for the "sustenance, dwelling, clothing, medical attendance, education[,] and transportation"[265] of the family.[266] The entitlement to this right continues even during proceedings for legal separation, annulment of marriage, or declaration of nullity of marriage.[267]

---

[262] FAMILY CODE, Art. 68 provides:

ARTICLE 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

[263] FAMILY CODE, Art. 70 provides:

ARTICLE 70. The spouses are jointly responsible for the support of the family. The expenses for such support and other conjugal obligations shall be paid from the community property and, in the absence thereof, from the income or fruits of their separate properties. In case of insufficiency or absence of said income or fruits, such obligations shall be satisfied from their separate properties.

[264] FAMILY CODE, Art. 71 provides:

ARTICLE 71. The management of the household shall be the right and duty of both spouses. The expenses for such management shall be paid in accordance with the provisions of Article 70.

[265] FAMILY CODE, Art. 194 provides:

ARTICLE 194. Support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.

[266] FAMILY CODE, Art. 70.

[267] FAMILY CODE, Art. 198 provides:

ARTICLE 198. During the proceedings for legal separation or for annulment of marriage, and for declaration of nullity of marriage, the spouses and their children shall be supported from the properties of the absolute community or the conjugal partnership. After final judgment granting the petition, the obligation of mutual support between the spouses ceases. However, in case of legal separation, the court may order that the guilty spouse shall give support to the innocent one, specifying the terms of such order.

As these obligations are enforceable, they concomitantly grant either spouse relief when the other spouse reneges on his or her duty or commits acts that "tend to bring danger, dishonor or injury to the other or to the family[.]"[268] Either spouse may likewise object to the profession, occupation, business or activity of the other spouse on "valid, serious, and moral grounds."[269]

Although the Family Code does not grant the right to compel spouses to cohabit with each other,[270] it maintains that spouses are duty bound to "live together"[271] and to "fix the family domicile."[272] This is consistent with the policy of promoting solidarity within the family.[273]

Furthermore, the Family Code allows spouses to constitute a family home,[274] which shall be exempt from execution, forced

---

[268] FAMILY CODE, Art. 72 provides:

ARTICLE 72. When one of the spouses neglects his/her duties to the conjugal union or commits acts which tend to bring danger, dishonor or injury to the other or to the family, the aggrieved party may apply to the court for relief.

[269] FAMILY CODE, Art. 73 provides:

ARTICLE 73. Either spouse may exercise any legitimate profession, occupation, business or activity without the consent of the other. The latter may object only on valid, serious, and moral grounds.

[270] See *Arroyo v. Vasques de Arroyo*, 42 Phil. 60 (1921) [Per *J*. Street, *En Banc*].

[271] FAMILY CODE, Art. 68.

[272] FAMILY CODE, Art. 69 provides:

ARTICLE 69. The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide.

The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family.

[273] FAMILY CODE, Art. 69.

[274] FAMILY CODE, Art. 152 provides:

ARTICLE 152. The family home, constituted jointly by the husband and the wife or by an unmarried head of a family, is the dwelling house where they and their family reside, and the land on which it is situated.

sale, or attachment.[275] The family home may not be sold, donated, assigned, or otherwise encumbered by either spouse without the other's written consent.[276] Though an unmarried head of a family may constitute a family home,[277] only those persons enumerated in Article 154 of the Family Code may be considered beneficiaries.[278]

The Civil Code also offers an expansive coverage on the rights and privileges of spouses should either of them die. The law grants surviving legitimate spouses the right and duty to make funeral arrangements for the deceased spouse.[279]

---

[275] FAMILY CODE, Art. 155 provides:

ARTICLE 155. The family home shall be exempt from execution, forced sale or attachment except:

(1) For nonpayment of taxes;
(2) For debts incurred prior to the constitution of the family home;
(3) For debts secured by mortgages on the premises before or after such constitution; and
(4) For debts due to laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building.

[276] FAMILY CODE, Art. 158 provides:

ARTICLE 158. The family home may be sold, alienated, donated, assigned or encumbered by the owner or owners thereof with the written consent of the person constituting the same, the latter's spouse, and a majority of the beneficiaries of legal age. In case of conflict, the court shall decide.

[277] FAMILY CODE, Art. 152.

[278] FAMILY CODE, Art. 154 provides:

ARTICLE 154. The beneficiaries of a family home are:
(1) The husband and wife, or an unmarried person who is the head of a family; and
(2) Their parents, ascendants, descendants, brothers and sisters, whether the relationship be legitimate or illegitimate, who are living in the family home and who depend upon the head of the family for legal support.

[279] CIVIL CODE, Art. 305 provides:

ARTICLE 305. The duty and the right to make arrangements for the funeral of a relative shall be in accordance with the order established for support, under article 294 [now Article 199 of the Family Code]. In case

Accordingly, "no human remains shall be retained, interred, disposed of[,] or exhumed"[280] without proper consent from the legitimate spouse, who shall have a better right than the other persons enumerated in Article 199 of the Family Code.

In relation to this, Section 4 of Republic Act No. 7170 permits the surviving spouse to donate all or any part of the body of the deceased legitimate spouse, as long as there is no actual notice of contrary intentions by the deceased, or of opposition by a member of his or her immediate family.[281]

The Civil Code also covers the successional rights granted to spouses. This includes the division and partition of the deceased spouse's estate among the surviving spouse and other surviving descendants, ascendants, and collateral relatives.

A surviving spouse succeeds concurrently with the deceased spouse's legitimate and illegitimate descendants and

---

of descendants of the same degree, or of brothers and sisters, the oldest shall be preferred. In case of ascendants, the paternal shall have a better right.

[280] CIVIL CODE, Art. 308 provides:

ARTICLE 308. No human remains shall be retained, interred, disposed of or exhumed without the consent of the persons mentioned in Articles 294 [now Article 199 of the Family Code] and 305.

[281] Republic Act No. 7170 (1992), Sec. 4 provides:

SECTION 4. Person Who May Execute a Donation. –

(a) Any of the following, person, in the order of property stated hereunder, in the absence of actual notice of contrary intentions by the decedent or actual notice of opposition by a member of the immediate family of the decedent, may donate all or any part of the decedent's body for any purpose specified in Section 6 hereof:
(1) Spouse;
(2) Son or daughter of legal age;
(3) Either parent;
(4) Brother or sister of legal age; or
(5) Guardian over the person of the decedent at the time of his death.
(b) The persons authorized by sub-section (a) of this Section may make the donation after or immediately before death.

ascendants.[282] As compulsory heirs, they are entitled to receive a specific and definite portion of the deceased's estate.[283]

In cases where the deceased spouse left a will, the surviving spouse is entitled to one-half of the testator's entire estate.[284] If the spouse survives with legitimate or illegitimate children or descendants and/or acknowledged natural children, he or she receives a share equivalent to the share of a legitimate child.[285]

If either spouse dies without any will and the surviving spouse is the sole heir of the deceased, the spouse is entitled to the entire estate "without prejudice to the rights of brothers and sisters, nephews[,] and nieces"[286] of the deceased. If the spouse

---

[282] CIVIL CODE, Art. 887(3) provides:

ARTICLE 887. The following are compulsory heirs:

(3) The widow or widower[.]

[283] CIVIL CODE, Art. 886 provides:

ARTICLE 886. Legitime is that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs.

[284] CIVIL CODE, Art. 900 provides:

ARTICLE 900. If the only survivor is the widow or widower, she or he shall be entitled to one-half of the hereditary estate of the deceased spouse, and the testator may freely dispose of the other half.

[285] CIVIL CODE, Art. 897 provides:

ARTICLE 897. When the widow or widower survives with legitimate children or descendants, and acknowledged natural children, or natural children by legal fiction, such surviving spouse shall be entitled to a portion equal to the legitime of each of the legitimate children which must be taken from that part of the estate which the testator can freely dispose of; CIVIL CODE, Art. 898. If the widow or widower survives with legitimate children or descendants, and with illegitimate children other than acknowledged natural, or natural children by legal fiction, the share of the surviving spouse shall be the same as that provided in the preceding article.

[286] CIVIL CODE, Art. 995 provides:

ARTICLE 995. In the absence of legitimate descendants and ascendants, and illegitimate children and their descendants, whether legitimate or illegitimate, the surviving spouse shall inherit the entire estate, without

survives with the legitimate or illegitimate children or descendants of the deceased then the spouse is entitled to receive the same amount of share that a legitimate child is entitled to receive.[287]

The Civil Code also covers situations where the spouses were married in *articulo mortis*, and one (1) of them died three (3) months after such marriage. In these cases, the surviving spouse is entitled to one-third of the deceased's estate. However, where the spouses were living together as husband and wife five (5) years before a spouse dies, the surviving spouse is entitled to half of the estate.[288]

Aside from the rights and privileges between married spouses, the Civil Code also provides for the relationships between the spouses, as parents, and their children. Consistent with the constitutional provision on the "right and duty of parents in rearing the youth,"[289] the Family Code states that spouses shall

---

prejudice to the rights of brothers and sisters, nephews and nieces, should there be any, under Article 1001.

[287] CIVIL CODE, Art. 999 provides:

ARTICLE 999. When the widow or widower survives with legitimate children or their descendants and illegitimate children or their descendants, whether legitimate or illegitimate, such widow or widower shall be entitled to the same share as that of a legitimate child.

[288] CIVIL CODE, Art. 900 provides:

ARTICLE 900. If the marriage between the surviving spouse and the testator was solemnized in articulo mortis, and the testator died within three months from the time of the marriage, the legitime of the surviving spouse as the sole heir shall be one-third of the hereditary estate, except when they have been living as husband and wife for more than five years. In the latter case, the legitime of the surviving spouse shall be that specified in the preceding paragraph.

[289] CONST., Art. II, Sec. 2 provides:

SECTION 2. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

exercise joint parental authority,[290] legal guardianship,[291] and custody over common children.

Parental authority encompasses a bundle of rights for unemancipated children. This includes the right to represent the common children in matters affecting their interests and to impose discipline on them as may be necessary, among others.[292]

---

[290] FAMILY CODE, Art. 211 provides:

ARTICLE 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.

[291] FAMILY CODE, Art. 225 provides:

ARTICLE 225. The father and the mother shall jointly exercise legal guardianship over the property of their unemancipated common child without the necessity of a court appointment. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.

[292] FAMILY CODE, Art. 220 provides:

ARTICLE 220. The parents and those exercising parental authority shall have with respect to their unemancipated children or wards the following rights and duties:

(1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;
(2) To give them love and affection, advice and counsel, companionship and understanding;
(3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;
(4) To enhance, protect, preserve and maintain their physical and mental health at all times;
(5) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;
(6) To represent them in all matters affecting their interests; To demand from them respect and obedience;
(7) To impose discipline on them as may be required under the circumstances; and
(8) To perform such other duties as are imposed by law upon parents and guardians.

The Family Code likewise provides that spouses shall exercise legal guardianship over the property of the minor child by operation of law.[293] This entitles the spouses to a right over the fruits of the child's property, which shall be used primarily for child support and secondarily for the family's collective needs.[294]

Meanwhile, Republic Act No. 8552 covers the rights and privileges attached to adoption. One (1) of the significant rights granted by this law is the legitimate spouses' right to jointly adopt a child. Spouses who jointly adopt shall exercise joint parental authority and custody over the adoptee.[295]

The adoptees shall, for all intents and purposes, be considered as legitimate children of the adoptive parents.[296] As legitimate

---

[293] FAMILY CODE, Art. 225.

[294] FAMILY CODE, Art. 226 (2) provides:

ARTICLE 226. The right of the parents over the fruits and income of the child's property shall be limited primarily to the child's support and secondarily to the collective daily needs of the family.

[295] Republic Act. No. 8552 (1998), Sec. 7(c) provides:

SECTION 7. *Who May Adopt*. — The following may adopt:

. . . . . . . . . .

(c) . . . . . . . . . .

Husband and wife shall jointly adopt, except in the following cases:

(i) if one spouse seeks to adopt the legitimate son/daughter of the other; or

(ii) if one spouse seeks to adopt his/her own illegitimate son/daughter: Provided, However, that the other spouse has signified his/her consent thereto; or

(iii) if the spouses are legally separated from each other.

In case husband and wife jointly adopt, or one spouse adopts the illegitimate son/daughter of the other, joint parental authority shall be exercised by the spouses.

[296] Republic Act. No. 8552 (1998), Sec. 17 provides:

SECTION 17. *Legitimacy*. — The adoptee shall be considered the legitimate son/daughter of the adopter(s) for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate sons/daughters born to them without discrimination of any kind. To this end, the

children, they may bear the surname of their adoptive parents.[297] They are likewise granted the right to receive support, the legitime, and other successional rights from both of the adoptive parents.

Moreover, inter-country adoption permits Filipino citizens permanently residing abroad to jointly file for adoption with their spouse. Though Section 9 of Republic Act No. 8043 restricts adopters to persons who are "at least twenty-seven (27) years of age and at least sixteen (16) years older than the child to be adopted, at the time of application[,]" the same provision allows an exception in favor of an adopter who is the legitimate spouse of the adoptee's natural parent.[298]

---

adoptee is entitled to love, guidance, and support in keeping with the means of the family.

[297] CIVIL CODE, Art. 365, An adopted child shall bear the surname of the adopter.

[298] Republic Act. No. 8043 (1995), Sec. 9 provides:

SECTION 9. *Who May Adopt*. — An alien or a Filipino citizen permanently residing abroad may file an application for inter-country adoption of a Filipino child if he/she:

(a) is at least twenty-seven (27) years of age and at least sixteen (16) years older than the child to be adopted, at the time of application unless the adopter is the parent by nature of the child to be adopted or the spouse of such parent;
(b) if married, his/her spouse must jointly file for the adoption;
(c) has the capacity to act and assume all rights and responsibilities of parental authority under his national laws, and has undergone the appropriate counseling from an accredited counselor in his/her country;
(d) has not been convicted of a crime involving moral turpitude;
(e) is eligible to adopt under his/her national law;
(f) is in a position to provide the proper care and support and to give the necessary moral values and example to all his children, including the child to be adopted;
(g) agrees to uphold the basic rights of the child as embodied under Philippine laws, the U.N. Convention on the Rights of the Child, and to abide by the rules and regulations issued to implement the provisions of this Act;
(h) comes from a country with whom the Philippines has diplomatic relations and whose government maintains a similarly authorized

**VIII (A)(2)**

Marriage has consequences in criminal law as well.

For instance, anyone who, after having suddenly come upon his or her legitimate spouse in the act of committing sex with another, kills any or both is only liable to suffer *destierro*. Should the offending spouse inflict physical injuries upon his or her spouse or the other person, he or she shall be exempt from criminal liability.[299]

Marital relations also influence the imposable penalty for crimes. Any person's criminal act in defense of his or her spouse is a justifying circumstance,[300] while immediate vindication of

---

and accredited agency and that adoption is allowed under his/her national laws; and

(i) possesses all the qualifications and none of the disqualifications provided herein and in other applicable Philippine laws.

[299] REV. PEN. CODE, Art. 247 provides:

ARTICLE 247. *Death or physical injuries inflicted under exceptional circumstances*.— Any legally married person who having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of *destierro*.

If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment.

These rules shall be applicable, under the same circumstances, to parents with respect to their daughters under eighteen years of age, and their seducer, while the daughters are living with their parents.

Any person who shall promote or facilitate the prostitution of his wife or daughter, or shall otherwise have consented to the infidelity of the other spouse shall not be entitled to the benefits of this article.

[300] REV. PEN. CODE, Art. 11(2) provides:

ARTICLE 11. *Justifying Circumstances*.— The following do not incur any criminal liability:

. . . . . . . . . . .

2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or his relatives by affinity in the same degrees and those consanguinity

a grave offense to one's spouse is a mitigating circumstance.[301] That the victim is the spouse of the offender is considered an alternative circumstance, which may be considered as aggravating or mitigating depending on "the nature and effects of the crime and the other conditions attending its commission."[302] Commission of the crime in full view of the spouse of the victim-spouse is also an aggravating circumstance in the crime of rape.[303] The Anti-Trafficking in Persons Act of 2003, as amended, also qualifies trafficking if the offender is

---

within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the revocation was given by the person attacked, that the one making defense had no part therein.

[301] REV. PEN. CODE, Art. 13(5) provides:

ARTICLE 13. *Mitigating Circumstances*.— The following are mitigating circumstances:

. . . . . .

5. That the act was committed in the immediate vindication of a grave offense to the one committing the felony (*delito*), his spouse, ascendants, or relatives by affinity within the same degrees.

[302] REV. PEN. CODE, Art. 15 provides:

ARTICLE 15. *Their concept.*— Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication, and the degree of instruction and education of the offender.

The alternative circumstance of relationship shall be taken into consideration when the offended party is the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degrees of the offender.

The intoxication of the offender shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony; but when the intoxication is habitual or intentional, it shall be considered as an aggravating circumstance.

[303] REV. PEN. CODE, Art. 266-B as amended by Republic Act No. 8353 (1997), provides:

ARTICLE 266-B. *Penalties*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

a spouse of the trafficked person.[304] Further, a spouse who is an accessory to a crime is generally exempt from criminal liability.[305]

In the crimes of seduction, abduction, acts of lasciviousness, and rape, the marriage between the offending and the offended party extinguishes the criminal action and remits the penalty already imposed upon the offender.[306] In marital rape, "the

---

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be *reclusion perpetua* to death.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

. . . . . .

3. When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity[.]

[304] Republic Act No. 9208 (2003), Sec. 6(d), as amended by Rep. Act No. 10364 (2012), Sec. 9 provides:

SECTION 6. *Qualified Trafficking in Persons*. — Violations of Section 4 of this Act shall be considered as qualified trafficking:

(d) When the offender is a spouse, an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee.

[305] REV. PEN. CODE, Art. 20 provides:

ARTICLE 20. *Accessories who are exempt from criminal liability*.— The penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or relatives by affinity within the same degrees, with the single exception of accessories falling within the provision of paragraph 1 of the next preceding article.

[306] REV. PEN. CODE, Art. 344 provides:

ARTICLE 344. *Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness.* — The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse.

subsequent forgiveness" of the offended wife extinguishes the criminal action or penalty against the offending husband.[307] Likewise, adultery and concubinage cannot be prosecuted when the offended spouse has pardoned the offenders or has consented to the offense.[308]

---

The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders.

The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above named persons, as the case may be.

In cases of seduction, abduction, acts of lasciviousness and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the co-principals, accomplices and accessories after the fact of the above-mentioned crimes.

[307] REV. PEN. CODE, Art. 266-C as amended by Republic Act No. 8353 (1997), provides:

ARTICLE 266-C. *Effect of pardon*. — The subsequent valid marriage between the offender and the offended party shall extinguish the criminal action or the penalty imposed.

In case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty; *Provided*, That the crime shall not be extinguished or the penalty shall not be abated if the marriage be void *ab initio*.

[308] RULES OF COURT, Rule 110, Sec. 5 provides:

SECTION 5. *Who must prosecute criminal actions*. — All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. In case of heavy work schedule of the public prosecutor in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecution to prosecute the case subject to the approval of the Court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to the end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn.

The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse. The offended party cannot institute criminal prosecution without including the guilty parties, if both are alive, nor, in any case, if the offended party has consented to the offense or pardoned the offenders.

Bigamy is committed by a person who has been previously married and who contracts a subsequent marriage before the first marriage has been legally dissolved or before the absent spouse has been declared presumptively dead by a court judgement.[309] Penalizing the act of contracting a subsequent marriage where one is still legally married to another person safeguards the institution of marriage, protecting the rights and status of the legitimate spouse.

**VIII (A)(3)**

The State's interest in marriage and married persons extends to taxation.

---

The offenses of seduction, abduction and acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents or guardian, nor in any case, if the offender has been expressly pardoned by any of them. If the offended party dies or becomes incapacitated before she can file the complaint, and she has no known parents, grandparents, or guardian, the State shall initiate the criminal action in her behalf.

The offended party, even if a minor, has the right to initiate the prosecution of the offenses of seduction, abduction and acts of lasciviousness independently of her parents, grandparents, or guardian, unless she is incompetent or incapable of doing so. Where the offended party, who is a minor, fails to file the complaint, her parents, grandparents, or guardian may file the same. The right to file the action granted to parents, grandparents, or guardian shall be exclusive of all other persons and shall be exercised successively in the order herein provided, except as stated in the preceding paragraph.

No criminal action for defamation which consists in the imputation of any of the offenses mentioned above shall be brought except at the instance of and upon complaint filed by the offended party.

The prosecution of complaints for violation of special laws shall be governed by their provisions thereof.

[309] REV. PEN. CODE, Art. 349 provides:

ARTICLE 349. *Bigamy*. — The penalty of *prision mayor* shall be imposed upon any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgement rendered in the proper proceedings.

Under the National Internal Revenue Code, as amended by Republic Act No. 10963, the income taxes of married individuals are generally computed separately based on their respective total taxable income.[310] However, for any income that "cannot be definitely attributed to or identified as income exclusively earned or realized by either of the spouses,"[311] Section 24 of the National Internal Revenue Code, as amended, provides that the amount shall be equally divided between the spouses for the computation of their respective taxable incomes.

Further, in the computation of an individual's taxable income, the National Internal Revenue Code, as amended, excludes from the computation of the gross income any amount received by an heir of an official or employee from the employer "as a consequence of separation of such official or employee from the service of the employer because of death sickness or other physical disability or for any cause beyond the control of the said official or employee."[312] Likewise, benefits received by a

---

[310] TAX CODE, Sec. 24 (A)(2)(a), as amended by Republic Act No. 10963 (2017), provides in part:

For married individuals, the husband and wife, subject to the provision of Section 51(D) hereof, shall compute separately their individual income tax based on their respective total taxable income: Provided, That if any income cannot be definitely attributed to or identified as income exclusively earned or realized by either of the spouses, the same shall be divided equally between the spouses for the purpose of determining their respective taxable income.

[311] TAX CODE, as amended by Republic Act No. 10963 (2017), Sec. 24 (A)(2)(a).

[312] TAX CODE, as amended by Republic Act No. 10963 (2017), Sec. 32 (B)(6)(b) provides:

SEC. 32. *Gross Income*. — . . .

. . . . . .

(B) Exclusions from Gross Income. — The following items shall not be included in gross income and shall be exempt from taxation under this Title:

. . . . . .

(6) Retirement Benefits, Pensions, Gratuities, etc. —

. . . . . .

spouse from the Social Security System, in accordance with Republic Act No. 8282, as well as benefits received from the Government Service Insurance System, in accordance with Republic Act No. 8291, are excluded from the computation of an individual's gross income.[313]

On the filing of income tax returns, the National Internal Revenue Code, as amended, provides that married individuals, regardless of citizenship or residence, "who do not derive income purely from compensation," shall file an income tax return that includes the income of both spouses, except "where it is impracticable for the spouses to file one return," in which case each spouse may file separate income tax returns.[314]

---

(b) Any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death sickness or other physical disability or for any cause beyond the control of the said official or employee.

[313] TAX CODE, as amended by Republic Act No. 10963 (2017), Sec. 32 (B)(6)(e)(f) provides:

SEC. 32. *Gross Income*. —

. . . . . .

(B) Exclusions from Gross Income. — The following items shall not be included in gross income and shall be exempt from taxation under this Title:

. . . . . .

(6) Retirement Benefits, Pensions, Gratuities, etc.-

. . . . . .

(e) Benefits received from or enjoyed under the Social Security System in accordance with the provisions of Republic Act No. 8282.

(f) Benefits received from the GSIS under Republic Act No. 8291, including retirement gratuity received by government officials and employees.

[314] TAX CODE, as amended by Republic Act No. 10963 (2017), Sec. 51(D) provides:

SECTION 51. *Individual Return*. —

. . . . . .

(D) Husband and Wife. Married individuals, whether citizens, resident or nonresident aliens, who do not derive income purely from compensation, shall file a return for the taxable year to include the income of both spouses, but where it is impracticable for the spouses to file one return, each spouse

As for estate tax, the National Internal Revenue Code, as amended, provides that "the capital of the surviving spouse of a decedent"[315] is not deemed part of the gross estate. Consequently, "the net share of the surviving spouse in the conjugal partnership property" is "deducted from the net estate of the decedent."[316]

Likewise, when the decedent is a Filipino citizen or a resident of the Philippines, the National Internal Revenue Code, as amended, allows a deduction of the "current fair market value of the decedent's family home"[317] up to ₱10 million from the amount of the gross estate. Further, "any amount received by

---

may file a separate return of income but the returns so filed shall be consolidated by the Bureau for purposes of verification for the taxable year.

[315] TAX CODE, as amended by Republic Act No. 10963 (2017), Sec. 85 (H) provides:

SECTION 85. *Gross Estate.* — The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated: Provided, however, that in the case of a nonresident decedent who at the time of his death was not a citizen of the Philippines, only that part of the entire gross estate which is situated in the Philippines shall be included in his taxable estate.

. . . . . .

(H) Capital of the Surviving Spouse. — The capital of the surviving spouse of a decedent shall not, for the purpose of this Chapter, be deemed a part of his/her gross estate.

[316] TAX CODE, Sec. 86 (C), as amended by Republic Act No. 10963 (2017), provides:

SECTION 86. *Computation of Net Estate*. — For the purpose of the tax imposed in this Chapter, the value of the net estate shall be determined:

. . . . . .

(C) Share in the Conjugal Property. — The net share of the surviving spouse in the conjugal partnership property as diminished by the obligations properly chargeable to such property shall, for the purpose of this Section, be deducted from the net estate of the decedent.

[317] TAX CODE, as amended by Rep. Act No. 10963 (2017), Sec. 86 (A)(7) provides:

(7) The Family Home. — An amount equivalent to the current fair market value of the decedent's family home: Provided, however, That if the said

the heirs from the decedent's employee as a consequence of the death of the decedent-employee in accordance with Republic Act No. 4917"[318] is also deducted from the amount of the gross estate.

**VIII (A)(4)**

Even the Labor Code and other labor laws are influenced by the institution of marriage.

The narrow definition of "dependents" under the Labor Code includes "the legitimate spouse living with the employee."[319] As a consequence, the legitimate spouse is entitled to compensation from the state insurance fund in case of the disability or death of the employee.[320]

Further, under the Social Security Act of 1997[321] and the Government Service Insurance System Act of

---

current fair market value exceeds Ten million pesos (₱10,000,000), the excess shall be subject to estate tax.

[318] TAX CODE, as amended by Rep. Act No. 10963 (2017), Sec. 86 (A)(8).

[319] LABOR CODE, Art. 173(i) provides:

ARTICLE 173. *Definition of Terms*. — As used in this Title, unless the context indicates otherwise:

. . . . . . . . . .

(i) "Dependents" means the legitimate, legitimated, legally adopted or acknowledged natural child who is unmarried, not gainfully employed, and not over twenty-one years of age or over twenty-one years of age provided he is incapable of self-support due to a physical or mental defect which is congenital or acquired during minority; the legitimate spouse living with the employee; and the parents of said employee wholly dependent upon him for regular support.

[320] LABOR CODE, Art. 178 provides:

ARTICLE 178. *Limitation of Liability*. — The State Insurance Fund shall be liable for compensation to the employee or his dependents, except when the disability or death was occasioned by the employee's intoxication, willful intention to injure or kill himself or another, notorious negligence, or otherwise provided under this Title.

[321] Republic Act No. 1161 (1954), as amended by Republic Act No. 8282 (1997), Sec. 8(e)(1) provides:

1997,[322] the legal spouse of the member is included in the list of his or her dependents.

Similarly, the Overseas Workers Welfare Administration Act includes the legal spouse in the list of dependents of overseas Filipino workers.[323] Thus, certain benefits

---

SECTION 8. *Terms Defined.* — For the purposes of this Act, the following terms shall, unless the context indicates otherwise, have the following meanings:

. . . . . .

(e) Dependents — The dependents shall be the following:

(1) The legal spouse entitled by law to receive support from the member;

(2) The legitimate, legitimated or legally adopted, and illegitimate child who is unmarried, not gainfully employed and has not reached twenty-one years (21) of age, or if over twenty-one (21) years of age, he is congenitally or while still a minor has been permanently incapacitated and incapable of self-support, physically or mentally; and

(3) The parent who is receiving regular support from the member.

[322] Presidential Decree No. 1146 (1977) as amended by Republic Act No. 8291 (1997), Sec. 2(f) provides:

SECTION 2. *Definition of Terms*. — Unless the context otherwise indicates, the following terms shall mean:

. . . . . .

(f) Dependents — Dependents shall be the following: (a) the legitimate spouse dependent for support upon the member or pensioner; (b) the legitimate, legitimated, legally adopted child, including the illegitimate child, who is unmarried, not gainfully employed, not over the age of majority, or is over the age of majority but incapacitated and incapable of self-support due to a mental or physical defect acquired prior to age of majority; and (c) the parents dependent upon the member for support[.]

[323] Republic Act No. 10801 (2016), Sec. 7(c) provides:

SECTION 7. *Definition of Terms.* — As used in this Act:

. . . . . .

(c) Dependent refers to any of the following:

(1) The legal spouse

(2) The legitimate, illegitimate, legitimated, and legally adopted child, who is unmarried, not gainfully employed, and not over the age of majority, or is over the age of majority but incapacitated and incapable of self-support due to a mental or physical defect; and

(3) The parents who rely primarily upon the member-OFWs for support[.]

afforded to overseas Filipino workers are extended to the legal spouse.[324]

---

[324] Republic Act No. 10801 (2016), Sec. 35(e) provides:

SECTION 35. *Benefits and Services to OFWs* —

. . . . . .

(e) Social Benefits. — A member-OFW shall be covered with the following social benefits:

(1) Death and Disability Benefits:

(i) Death Benefits. — A member shall be covered with life insurance for the duration of his/her employment contract. The coverage shall include one hundred thousand pesos (₱100,000.00) for natural death and two hundred thousand pesos (₱200,000.00) for accidental death;

(ii) Disability and Dismemberment Benefits. — Disability and dismemberment benefits shall be included in a member's life insurance policy, as provided for in the impediment schedule contained in the OWWA Manual of Systems and Procedures. The coverage is within the range of two thousand pesos (₱2,000.00) to fifty thousand pesos (₱50,000.00);

(iii) Total Disability Benefit. — In case of total permanent disability, a member shall be entitled to one hundred thousand pesos (₱100,000.00); and

(iv) Burial Benefit. — A burial benefit of twenty thousand pesos (₱20,000.00) shall be provided in case of the member's death.

Based on actuarial studies, the Board may increase the amount of the abovementioned benefits.

(2) Health Care Benefits. — Within two (2) years from the effectivity of this Act, the OWWA shall develop and implement health care programs for the benefit of member-OFWs and their families, taking into consideration the health care needs of women as provided for in Republic Act No. 9710, or the Magna Carta of Women, and other relevant laws.

(3) Education and Training Benefits. — A member, or the member's designated beneficiary, may avail any of the following scholarship programs, subject to a selection process and accreditation of participating institutions:

(i) Skills-for-Employment Scholarship Program. — For technical or vocational training scholarship;

(ii) Education for Development Scholarship Program. — For baccalaureate programs; and

(iii) Seafarers' Upgrading Program. — To ensure the competitive advantage of Filipino seafarers in meeting competency standards, as required by the International Maritime Organization (IMO), International Labor

The Labor Code confines an employee's "primary beneficiaries" to his or her dependent spouse, until he or she remarries, and his or her dependent children.[325] Primary beneficiaries are entitled to receive full death benefits under the Labor Code.[326]

---

Organization (ILO) conventions, treaties and agreements, sea-based members shall be entitled to one upgrading program for every three (3) membership contributions.

The annual scholarship lists of all these programs shall be submitted to the Board.

[325] LABOR CODE, Art. 173(j) provides:

ARTICLE 173. *Definition of Terms*. — As used in this Title, unless the context indicates otherwise:

. . . . . .

(j) "Beneficiaries" means the dependent spouse until he/she remarries and dependent children, who are the primary beneficiaries. In their absence, the dependent parents and subject to the restrictions imposed on dependent children, the illegitimate children and legitimate descendants, who are the secondary beneficiaries: Provided, That the dependent acknowledged natural child shall be considered as a primary beneficiary when there are no other dependent children who are qualified and eligible for monthly income benefit.

[326] LABOR CODE, Art. 194 provides:

ARTICLE 194. *Death*. — (a) Under such regulations as the Commission may approve, the System shall pay to the primary beneficiaries upon the death of the covered employee under this Title, an amount equivalent to his monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning with the youngest and without substitution, except as provided for in paragraph (j) of Article 167 149 hereof: Provided, however, That the monthly income benefit shall be guaranteed for five years: Provided, further, That if he has no primary beneficiary, the System shall pay to his secondary beneficiaries the monthly income benefit but not to exceed sixty months: Provided, finally, That the minimum death benefit shall not be less than fifteen thousand pesos.

(b) Under such regulations as the Commission may approve, the System shall pay to the primary beneficiaries upon the death of a covered employee who is under permanent total disability under this Title, eighty percent of the monthly income benefit and his dependents to the dependents' pension: Provided, That the marriage must have been validly subsisting at the time of disability: Provided, further, That if he has no primary beneficiary, the System shall pay to his secondary beneficiaries the monthly pension excluding the dependents' pension, of the remaining balance of the five-year guaranteed

In addition, under the Social Security Act of 1997[327] and the Government Service Insurance System Act of 1997,[328] the dependent spouse is included in the list of primary beneficiaries of the employee, until he or she remarries.

The Social Security Act of 1997 entitles the "primary beneficiaries as of the date of retirement" to receive the retirement benefits of the retired member upon his or her death.[329] They are also entitled to receive death benefits "[u]pon the death of

---

period: Provided, finally, That the minimum death benefit shall not be less than fifteen thousand pesos.

(c) The monthly income benefit provided herein shall be the new amount of the monthly income benefit for the surviving beneficiaries upon the approval of this decree.

(d) Funeral benefit. — A funeral benefit of Three Thousand Pesos (₱3,000.00) shall be paid upon the death of a covered employee or permanently totally disabled pensioner.

[327] Republic Act No. 1161 (1954), as amended by Republic Act No. 8282 (1997), Sec. 8(k) provides:

SECTION 8. *Terms Defined.* — For the purposes of this Act, the following terms shall, unless the context indicates otherwise, have the following meanings:

. . . . . .

(k) Beneficiaries — The dependent spouse until he/she remarries, the dependent legitimate, legitimated or legally adopted, and illegitimate children, who shall be the primary beneficiaries of the member: Provided, That the dependent illegitimate children shall be entitled to fifty percent (50%) of the share of the legitimate, legitimated or legally adopted children: Provided, further, That in the absence of the dependent legitimate, legitimated or legally adopted children of the member, his/her dependent illegitimate children shall be entitled to one hundred percent (100%) of the benefits. In their absence, the dependent parents who shall be the secondary beneficiaries of the member. In the absence of all of the foregoing, any other person designated by the member as his/her secondary beneficiary.

[328] Presidential Decree No. 1146 (1977) as amended by Republic Act No. 8291 (1997), Sec. 2(g) provides:

SECTION 2. *Primary beneficiaries* — The legal dependent spouse until he/she remarries and the dependent children[.]

[329] Republic Act No. 1161 (1954) as amended by Republic Act No. 8282 (1997), Sec. 12-B(d) provides:

a member who has paid at least thirty-six (36) monthly contributions prior to the semester of death."[330] The primary beneficiaries as of the disability are also entitled to receive the monthly pension of a permanent total disability pensioner upon the pensioner's death.[331]

On the other hand, the Government Service Insurance System Act of 1997 entitles the dependent spouse, as a primary

---

SECTION 12-B. *Retirement Benefits*. —

. . . . . .

(d) Upon the death of the retired member, his primary beneficiaries as of the date of his retirement shall be entitled to receive the monthly pension: Provided, That if he has no primary beneficiaries and he dies within sixty (60) months from the start of his monthly pension, his secondary beneficiaries shall be entitled to a lump sum benefit equivalent to the total monthly pensions corresponding to the balance of the five-year guaranteed period, excluding the dependents' pension.

[330] Republic Act No. 1161 (1954), as amended by Republic Act No. 8282 (1997), Sec. 13 provides:

SECTION 13. *Death Benefits*. — Upon the death of a member who has paid at least thirty-six (36) monthly contributions prior to the semester of death, his primary beneficiaries shall be entitled to the monthly pension: Provided, That if he has no primary beneficiaries, his secondary beneficiaries shall be entitled to a lump sum benefit equivalent to thirty-six (36) times the monthly pension. If he has not paid the required thirty-six (36) monthly contributions, his primary or secondary beneficiaries shall be entitled to a lump sum benefit equivalent to the monthly pension times the number of monthly contributions paid to the SSS or twelve (12) times the monthly pension, whichever is higher.

[331] Republic Act No. 1161 (1954) as amended by Republic Act No. 8282 (1997), Sec. 13-A(c) provides:

SECTION 13-A. *Permanent Disability Benefits.*—

. . . .

(c) Upon the death of the permanent total disability pensioner, his primary beneficiaries as of the date of disability shall be entitled to receive the monthly pension: Provided, That if he has no primary beneficiaries and he dies within sixty (60) months from the start of his monthly pension, his secondary beneficiaries shall be entitled to a lump sum benefit equivalent to the total monthly pensions corresponding to the balance of the five-year guaranteed period excluding the dependents' pension.

beneficiary, to survivorship pension upon the death of a member.[332] This entitlement is likewise afforded to qualified

---

[332] Republic Act No. 1146 (1954) as amended by Republic Act No. 8291 (1997), Sec. 21 provides:

SECTION 21. *Death of a Member.* — (a) Upon the death of a member, the primary beneficiaries shall be entitled to:

(1) survivorship pension: Provided, That the deceased:

(i) was in the service at the time of his death; or

(ii) if separated from the service, has at least three (3) years of service at the time of his death and has paid thirty-six (36) monthly contributions within the five-year period immediately preceding his death; or has paid a total of at least one hundred eighty (180) monthly contributions prior to his death; or

(2) the survivorship pension plus a cash payment equivalent to one hundred percent (100%) of his average monthly compensation for every year of service: Provided, That the deceased was in the service at the time of his death with at least three (3) years of service; or

(3) a cash payment equivalent to one hundred percent (100%) of his average monthly compensation for each year of service he paid contributions, but not less than Twelve thousand pesos (₱12,000.00): Provided, That the deceased has rendered at least three (3) years of service prior to his death but does not qualify for the benefits under the item (1) or (2) of this paragraph.

(b) The survivorship pension shall be paid as follows:

(1) when the dependent spouse is the only survivor, he/she shall receive the basic survivorship pension for life or until he/she remarries;

(2) when only dependent children are the survivors, they shall be entitled to the basic survivorship pension for as long as they are qualified, plus the dependent children's pension equivalent to ten percent (10%) of the basic monthly pension for every dependent child not exceeding five (5), counted from the youngest and without substitution;

(3) when the survivors are the dependent spouse and the dependent children, the dependent spouse shall receive the basic survivorship pension for life or until he/she remarries, and the dependent children shall receive the dependent children's pension mentioned in the immediately preceding paragraph (2) hereof.

(c) In the absence of primary beneficiaries, the secondary beneficiaries shall be entitled to:

(1) the cash payment equivalent to one hundred percent (100%) of his average monthly compensation for each year of service he paid

beneficiaries "[u]pon the death of an old-age pensioner or a member receiving the monthly income benefit for permanent disability."[333] Further, funeral benefits are provided under the Government Service Insurance System Act of 1997.[334]

Moreover, under the 2010 Philippine Overseas Employment Administration Standard Employment Contract,[335] a seafarer's

---

contributions, but not less than Twelve thousand pesos (₱12,000): Provided, That the member is in the service at the time of his death and has at least three (3) years of service; or

(2) in the absence of secondary beneficiaries, the benefits under this paragraph shall be paid to his legal heirs.

(d) For purposes of the survivorship benefits, legitimate children shall include legally adopted and legitimate children.

[333] Presidential Decree No. 1146 (1977) as amended by Republic Act No. 8291 (1997), Sec. 22 provides:

SECTION 22. *Death of a Pensioner.* — Upon the death of an old-age pensioner or a member receiving the monthly income benefit for permanent disability, the qualified beneficiaries shall be entitled to the survivorship pension defined in Section 20 of this Act, subject to the provisions of paragraph (b) of Section 21 hereof. When the pensioner dies within the period covered by the lump sum, the survivorship pension shall be paid only after the expiration of the said period.

[334] Presidential Decree No. 1146 (1977) as amended by Republic Act No. 8291 (1997), Sec. 23 provides:

SECTION 23. *Funeral Benefit.* — The amount of funeral benefit shall be determined and specified by the GSIS in the rules and regulations but shall not be less than Twelve thousand pesos (₱12,000.00): Provided, That it shall be increased to at least Eighteen thousand pesos (₱18,000.00) after five (5) years and shall be paid upon the death of:

(a) an active member as defined under Section 2(e) of this Act; or
(b) a member who has been separated from the service, but who may be entitled to future benefit pursuant to Section 4 of this Act; or
(c) a pensioner, as defined in Section 2(o) of this Act; or
(d) a retiree who at the time of his retirement was of pensionable age under this Act but who opted to retire under Republic Act No. 1616.

[335] POEA Memorandum Circular No. 010-10 (2010), or Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, defines the "beneficiaries" as "the person(s) to whom the death compensation and other benefits due under the employment contract are payable in accordance with rules of succession under the Civil Code of the Philippines, as amended."

beneficiaries are entitled to a list of compensation and benefits in the event of the seafarer's work-related death.[336]

---

[336] POEA Memorandum Circular No. 010-10 (2010), Sec. 20 (B) provides:

SECTION 20. *Compensation and Benefits*. —

. . . . . .

B. Compensation and Benefits for Death

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

2. Where death is caused by warlike activity while sailing within a declared war zone or war risk area, the compensation payable shall be doubled. The employer shall undertake appropriate war zone insurance coverage for this purpose.

3. It is understood and agreed that the benefits mentioned above shall be separate and distinct from, and will be in addition to whatever benefits which the seafarer is entitled to under Philippine laws from the Social Security System, Overseas Workers Welfare Administration, Employee's Compensation Commission, Philippine Health Insurance Corporation and Home Development Mutual Fund (Pag-IBIG Fund).

4. The other liabilities of the employer when the seafarer dies as a result of work-related injury or illness during the term of employment are as follows:

a. The employer shall pay the deceased's beneficiary all outstanding obligations due the seafarer under this Contract.

b. The employer shall transport the remains and personal effects of the seafarer to the Philippines at employer's expense except if the death occurred in a port where local government laws or regulations do not permit the transport of such remains. In case death occurs at sea, the disposition of the remains shall be handled or dealt with in accordance with the master's best judgment. In all cases, the employer/master shall communicate with the manning agency to advise for disposition of seafarer's remains.

c. The employer shall pay the beneficiaries of the seafarer the Philippine currency equivalent to the amount of One Thousand US dollars (US$1,000) for burial expenses at the exchange rate prevailing during the time of payment.

Meanwhile, under Republic Act No. 7192, or the Women in Development and Nation Building Act, "[m]arried persons who devote full time to managing the household and family affairs" shall be entitled to voluntary coverage under Pag-IBIG, the Government Service Insurance System, and Social Security System, which is equivalent to half of "the salary and compensation of the working spouse."[337] These contributions "shall be deducted from the salary of the working spouse."[338]

**VIII (A)(5)**

Aside from influencing provisions in substantive law, the status of marriage is also recognized in the Rules of Court.

For instance, spouses may not be compelled to testify for or against each other during their marriage.[339] Likewise, during or even after their marriage, spouses, by reason of privileged communication, "cannot be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage[.]"[340]

---

[337] Republic Act No. 7192 (1992), Sec. 8 provides:

SECTION 8. *Voluntary Pag-IBIG, GSIS and SSS Coverage*. — Married persons who devote full time to managing the household and family affairs shall, upon the working spouse's consent, be entitled to voluntary Pag-IBIG (Pagtutulungan — Ikaw, Bangko, Industriya at Gobyerno), Government Service Insurance System (GSIS) or Social Security System (SSS) coverage to the extent of one-half (1/2) of the salary and compensation of the working spouse. The contributions due thereon shall be deducted from the salary of the working spouse.

The GSIS or the SSS, as the case may be, shall issue rules and regulations necessary to effectively implement the provisions of this section.

[338] Republic Act No. 7192 (1992), Sec. 8.

[339] RULES OF COURT, Rule 130, Sec. 22 provides:

SECTION 22. *Disqualification by reason of marriage*. — During their marriage, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except in a civil case against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants.

[340] RULES OF COURT, Rule 130, Sec. 24 provides:

Moreover, the law accords to family courts exclusive jurisdiction over petitions for guardianship, custody of children, adoption of children, and support, as well as complaints for annulment, declaration of nullity of marriage, and property relations.[341]

A disputable presumption under our Rules on Evidence is that a man and a woman who deport themselves as spouses have entered into marriage.[342] It is also presumed that a property that is acquired by a man and a woman, who have the capacity to marry and live exclusively with each other as spouses without

---

SECTION 24. *Disqualification by reason of privileged communication*. — The following persons cannot testify as to matters learned in confidence in the following cases:

(a) The husband or the wife, during or after the marriage, cannot be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants.

[341] Republic Act No. 8369 (1997), Sec. 5 provides:

SECTION 5. *Jurisdiction of Family Courts*. — The Family Courts shall have exclusive original jurisdiction to hear and decide the following cases:

b) Petitions for guardianship, custody of children, *habeas corpus* in relation to the latter;
c) Petitions for adoption of children and the revocation thereof;
d) Complaints for annulment of marriage, declaration of nullity of marriage and those relating to marital status and property relations of husband and wife or those living together under different status and agreements, and petitions for dissolution of conjugal partnership of gains;
e) Petitions for support and/or acknowledgment;
f) Summary judicial proceedings brought under the provisions of Executive Order No. 209, otherwise known as the "Family Code of the Philippines."

[342] RULES OF COURT, Rule 131, Sec. 3(aa) provides:

SECTION 3. *Disputable presumptions*. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

(aa) That a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage[.]

. . . . . . . . . . .

being actually married, was obtained by their joint efforts, work, or industry.[343] If such man and woman have acquired property through their actual joint contribution, their contributions shall also be presumed as equal.[344]

**VIII (A)(6)**

Marriage likewise affects the application of other special laws. Several statutes grant a range of rights in favor of legitimate spouses. Among these is the National Health Insurance Act of 2013, which gives a legitimate spouse, as a "legal dependent," the right to receive health care benefits.[345] This right includes

---

[343] RULES OF COURT, Rule 131, Sec. 3(bb) provides:

SECTION 3. *Disputable presumptions*. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

. . . . . .

(bb) That property acquired by a man and a woman who are capacitated to marry each other and who live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, has been obtained by their joint efforts, work or industry[.]

[344] RULES OF COURT, Rule 131, Sec. 3(cc) provides:

SECTION 3. *Disputable presumptions*. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

. . . . . .

(cc) That in cases of cohabitation by a man and a woman who are not capacitated to marry each other and who have acquired property through their actual joint contribution of money, property, or industry, such contributions and their corresponding shares including joint deposits of money and evidences of credit are equal[.]

[345] Republic Act No. 7875 (1995), Sec. 4(f) provides:

SECTION 4. . . .

. . . . . .

(f) *Dependent* — The legal dependents of a member are: 1) the legitimate spouse who is not a member; 2) the unmarried and unemployed legitimate, legitimated, illegitimate, acknowledged children as appearing in the birth certificate; legally adopted or stepchildren below twenty-one (21) years of age; 3) children who are twenty-one (21) years old or above but suffering from congenital disability, either physical or mental, or any disability acquired

inpatient hospital care and payment for the services of healthcare professionals, and diagnostic and other medical services, among others.[346]

---

that renders them totally dependent on the member for support; 4) the parents who are sixty (60) years old or above whose monthly income is below an amount to be determined by the Corporation in accordance with the guiding principles set forth in Article I of this Act.

[346] Republic Act No. 7875 (1995), Sec. 10 provides:

SECTION 10. *Benefit Package* — Subject to the limitations specified in this Act and as may be determined by the Corporation, the following categories of personal health services granted to the member or his dependents as medically necessary or appropriate shall include:

(a) Inpatient hospital care:
(1) room and board;
(2) services of health care professionals;
(3) diagnostic, laboratory, and other medical examination services;
(4) use of surgical or medical equipment and facilities;
(5) prescription drugs and biologicals; subject to the limitations stated in Section 37 of this Act;
(6) inpatient education packages;
(b) Outpatient care:
(1) services of health care professionals;
(2) diagnostic, laboratory, and other medical examination services;
(3) personal preventive services; and
(4) prescription drugs and biologicals, subject to the limitations described in Section 37 of this Act;
(c) Emergency and transfer services; and
(d) Such other health care services that the Corporation shall determine to be appropriate and cost-effective: Provided, That the Program, during its initial phase of implementation, which shall not be more than five (5) years, shall provide a basic minimum package of benefits which shall be defined according to the following guidelines:
(1) the cost of providing said package is such that the available national and local government subsidies for premium payments of indigents are sufficient to extend coverage to the widest possible population
(2) the initial set of services shall not be less than half of those provided under the current Medicare Program I in terms of overall average cost of claims paid per beneficiary household per year
(3) the services included are prioritized, first, according to its cost-effectiveness and, second, according to its potential of providing maximum relief from the financial burden on the beneficiary: Provided, That in addition to the basic minimum package, the Program shall provide supplemental health benefit coverage to

Furthermore, the Insurance Code, as amended by Republic Act No. 10607, acknowledges that every person has an insurable interest in the life of his or her legitimate spouse.[347] This allows a married person to enter into an insurance policy upon the life of his or her spouse as owner and/or beneficiary.

As to survivorship benefits, legitimate spouses of retired chairpersons and commissioners of constitutional commissions—the Commission on Audit, Civil Service Commission, Commission on Elections—as well as of the Ombudsman are entitled under Republic Act No. 10084 to receive all the retirement benefits that the deceased retiree was receiving at the time of his or her demise.[348] Likewise, surviving legitimate

---

beneficiaries of contributory funds, taking into consideration the availability of funds for the purpose from said contributory funds: Provided, further, That the Program shall progressively expand the basic minimum benefit package as the proportion of the population covered reaches targeted milestones so that the same benefits are extended to all members of the Program within five (5) years after the implementation of this Act. Such expansion will provide for the gradual incorporation of supplementary health benefits previously extended only to some beneficiaries into the basic minimum package extended to all beneficiaries: and Provided, finally, That in the phased implementation of this Act, there should be no reduction or interruption in the benefits currently enjoyed by present members of Medicare[.]

[347] Republic Act No. 10607 (2013), Sec. 10 provides:

SECTION 10. Every person has an insurable interest in the life and health:

(a) Of himself, of his spouse and of his children;
(b) Of any person on whom he depends wholly or in part for education or support, or in whom he has a pecuniary interest;
(c) Of any person under a legal obligation to him for the payment of money, or respecting property or services, of which death or illness might delay or prevent the performance; and
(d) Of any person upon whose life any estate or interest vested in him depends.

[348] Republic Act No. 10084 (2009), Sec. 1 provides:

SECTION 1. In case of the death of a retired Chairman or Commissioner of the Commission on Audit, the Commission on Elections, the Civil Service Commission and the Ombudsman, the surviving legitimate spouse of said

spouses of deceased members of the judiciary, who were retired or eligible to retire at the time of death, are entitled to all the retirement benefits of the deceased judge or justice under Republic Act No. 910, as amended.[349] In both cases, the surviving legitimate spouse shall continue to receive such benefits until he or she remarries.

Similarly, the surviving legitimate spouses of police or military personnel, including firefighters, who died in the performance of duty or by reason of their position, shall be given special financial assistance under Republic Act. No. 6963. They are also entitled to receive whatever compensation, pension, or any form of grant, to which the deceased person or his or her family was entitled.[350]

---

deceased retiree shall be entitled to receive on a monthly basis all the retirement benefits that the said deceased retiree was receiving at the time of his/her demise under the provisions of applicable retirement laws then in force. The said surviving legitimate spouse shall continue to receive such retirement benefits during his/her lifetime or until he/she remarries: Provided, That if the surviving legitimate spouse is receiving benefits under existing retirement laws, he/she shall only be entitled to the difference between the amount provided for in this Act and the benefits he/she is receiving.

[349] Republic Act No. 910 (1954) as amended by Republic Act. No. 9946 (2009), Sec 3(2) provides:

SECTION 3. . . .

. . . . . .

Upon the death of a Justice or Judge of any court m the Judiciary, if such Justice or Judge has retired, or was eligible to retire optionally at the time of death, the surviving legitimate spouse shall be entitled to receive all the retirement benefits that the deceased Justice or Judge would have received had the Justice or Judge not died. The surviving spouse shall continue to receive such retirement benefits until the surviving spouse's death or remarriage.

[350] Republic Act No. 6963 (1990), Sec. 1 provides:

SECTION 1. The family [surviving legal spouse and his legitimate children or parents, or brothers and sisters, or aunts and uncles] or beneficiary of any police or military personnel, including any fireman assisting in a police or military action, who is killed or becomes permanently incapacitated while in the performance of his duty or by reason of his office or position, provided he has not committed any crime or human rights violations by final judgment

In addition, Republic Act No. 9049 entitles surviving legitimate spouses of deceased awardees of medals of valor to a lifetime monthly gratuity pay of ₱20,000.00, which shall accrue in equal shares and with the right of accretion, until he or she remarries and the common children reach the age of majority. This is separate from the pension, to which the surviving legitimate spouse is also entitled.[351]

Under Republic Act No. 10699, the "primary beneficiaries" of a deceased national athlete or coach, which include the surviving legitimate spouse, shall be entitled to a lump sum amount of ₱30,000.00 for funeral expenses.[352]

---

on such occasion, shall be entitled to the special financial assistance provided for in this Act in addition to whatever compensation, donation, insurance, gift, pension, grant, or any form of benefit which said deceased or permanently incapacitated person or his family may receive or be entitled to.

[351] Republic Act No. 9049 (2001), Sec. 2 provides:

SECTION 2. A Medal of Valor awardee will henceforth be entitled to a lifetime monthly gratuity of Twenty thousand pesos (₱20,000.00). This gratuity is separate and distinct from any salary or pension which the awardee is currently receiving or will receive from the government of the Philippines: *Provided*, That in the event of death of the awardee, the same shall accrue in equal shares and with the right of accretion to the surviving spouse until she remarries and to the children, legitimate, or adopted or illegitimate, until they reach the age of eighteen (18) or until they marry, whichever comes earlier: *Provided, further,* That such gratuity shall not be included in the computation, of gross income and shall be exempt from taxation under Title III, Chapter VI of Republic Act No. 8424, otherwise known as then "Tax Reform Act of 1997."

[352] Republic Act No. 10699 (2015), Sec. 7 provides:

SECTION 7. *Death Benefits*. — Upon the death of any national athlete and coach, the primary beneficiaries shall be entitled to a lump sum benefit of thirty thousand pesos (₱30,000.00) to cover for the funeral services: Provided, That if the athlete and coach has no primary beneficiaries, the secondary beneficiaries shall be entitled to said benefits.

For purposes of this Act, primary beneficiaries shall refer to the legitimate spouse, legitimate or illegitimate children. Secondary beneficiaries shall refer to the parents and, in their absence, to the brothers or sisters of such athlete and coach.

Republic Act No. 6173 entitles spouses who are both public officials and employees the right to jointly file their statement of assets, liabilities, and net worth and disclosure of business interests and financial connections.[353]

Meanwhile, legitimate spouses of persons arrested, detained, or under custodial investigation for lawful reasons are granted visitation rights under Republic Act No. 7438.[354]

Republic Act No. 9505, or the Personal Equity and Retirement Act, prescribes the aggregate maximum contribution of ₱100,000.00 per contributor. The same law includes a provision in favor of married contributors, such that each spouse may make a maximum contribution of ₱100,000.00 or its equivalent in any convertible foreign currency per year.[355]

---

[353] Republic Act No. 6713 (1989), Sec. 8 provides in part:

Husband and wife who are both public officials or employees may file the required statements jointly or separately.

[354] Republic Act No. 7438 (1992), Sec. 2(f) provides:

SECTION 2. *Rights of Persons Arrested, Detained or Under Custodial Investigation; Duties of Public Officers.—*

. . . . . .

(f) Any person arrested or detained or under custodial investigation shall be allowed visits by or conferences with any member of his immediate family, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, or by any national non-governmental organization duly accredited by the Commission on Human Rights of by any international non-governmental organization duly accredited by the Office of the President. The person's "immediate family" shall include his/her spouse, fiance or fiancee, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, and guardian or ward.

[355] Republic Act No. 9505 (2008), Sec. 5 provides:

SECTION 5. *Maximum Annual PERA Contributions*. — A Contributor may make an aggregate maximum contribution of One hundred thousand pesos (₱100,000.00) ors its equivalent in any convertible foreign currency at the prevailing rate at the time of the actual contribution, to his/her PERA per year: *Provided*, That if the Contributor is married, each of the spouses shall be entitled to make a maximum contribution of One hundred thousand pesos (₱100,000.00) or its equivalent PERA: *Provided, further*, That if the Contributor is an overseas Filipino, he shall be allowed to make maximum contributions double the allowable maximum amount.

Republic Act No. 8239, otherwise known as the Philippine Passport Act, also grants diplomatic passports to legitimate spouses of "persons imbued with diplomatic status or are on diplomatic mission[.]" They include the president, vice president, members of Congress and the judiciary, cabinet secretaries, and ambassadors, among others.[356] Moreover, an official passport shall be issued in favor of the legitimate spouses of all government officials who are "on official trip abroad but who are not on a diplomatic mission or delegates to international

---

[356] Republic Act No. 8239 (1996), Sec. 7(a) provides:

SECTION 7. *Types of Passport*.— The Secretary or the authorized representative or consular officer may issue the following types of passports:

. . . . . .

(a) Diplomatic passport for persons imbued with diplomatic status or are on diplomatic mission such as:

1. The President and former Presidents of the Republic of the Philippines;
2. The Vice-President and former Vice-Presidents of the Republic of the Philippines;
3. The Senate President and the Speaker of the House of Representatives;
4. The Chief Justice of the Supreme Court;
5. The Cabinet Secretaries, and the Undersecretaries and Assistant Secretaries of the Department of Foreign Affairs;
6. Ambassadors, Foreign Service Officers of all ranks in the career diplomatic service; Attaches, and members of their families;
7. Members of the Congress when on official mission abroad or as delegates to international conferences;
8. The Governor of the Bangko Sentral ng Pilipinas and delegates to international or regional conferences when on official mission or accorded full powers by the President;
9. Spouses and unmarried minor-children of the above-mentioned officials when accompanying or following to join them in an official mission abroad.

The President of the Philippines and the Secretary of the Department of Foreign Affairs may grant diplomatic passports to officials and persons other than those enumerated herein who are on official mission abroad.

or regional conferences or have not been accorded diplomatic status" when accompanying them.[357]

More recently, in Republic Act No. 11035, legitimate spouses of science, technology, or innovation experts engaged in a long-term program have been granted certain privileges, such as roundtrip airfares from a foreign country to the Philippines and other special relocation benefits.[358]

---

[357] Republic Act No. 8239 (1996), Sec. 7(b) provides:

SECTION 7. . . .

. . . . . .

(b) Official Passport to be issued to all government officials and employees on official trip abroad but who are not on a diplomatic mission or delegates to international or regional conferences or have not been accorded diplomatic status such as:

1. Undersecretaries and Assistant Secretaries of the Cabinet other than the Department of Foreign Affairs, the Associate Justices and other members of the Judiciary, members of the Congress and all other government officials and employees traveling on official business and official time;
2. Staff officers and employees of the Department of Foreign Affairs assigned to diplomatic and consular posts and officers and representatives of other government departments and agencies assigned abroad;
3. Persons in the domestic service and household members of officials assigned to diplomatic or consular posts;
4. Spouses and unmarried minor children of the officials mentioned above when accompanying or following to join them.

[358] Republic Act No. 11035 (2018), Sec. 7 provides:

SECTION 7. *Term-Specific Benefits, Incentives, and Privileges*. — Balik Scientist shall be eligible for the benefits, incentives, and privileges under the following terms of engagement:

. . . . . .

(c) Long-Term Program:

(1) One (1) round-trip airfare originating from a foreign country to the Philippines, exempt from Philippine Travel Tax, for the awardees, their spouses, and minor dependents;

(2) Special Relocation Benefits:

**VIII (B)**

Yet, orienting same-sex relationships towards a state-sanctioned marriage cannot be attuned solely to its benefits and advantages. This approach usually ignores the burdens associated with marriage. As a legally-binding relationship that unites two (2) individuals, marriage becomes an "enabling constraint"[359] that imposes certain duties on married couples and even limitations on their actions.

The law imposes certain limitations on the property relations between spouses. For instance, the Family Code prescribes that in the absence of any settlement between the spouses, their properties shall be governed by the regime of absolute community of property.[360]

Under this regime, each spouse is considered a co-owner of all the properties they brought into the marriage, as well as those properties they will acquire after marriage, regardless of their actual contribution.[361]

---

(i) Special nonimmigrant visa, for awardees, their spouses, and minor children: *Provided*, That the validity of the visa shall cover the duration of the awarded long-term engagement;

(ii) Exemption from the requirement to secure an alien employment permit from the Department of Labor and Employment (DOLE) for Balik Scientists and their Spouses[.]

[359] William M. Hohengarten, *Same-Sex Marriage and the Right of Privacy*, 103 YALE L.J. 1495, 1498-1499 (1994).

[360] FAMILY CODE, Art. 75 provides in part:

ARTICLE 75. . . . In the absence of a marriage settlement, or when the regime agreed upon is void, the system of absolute community of property as established in this Code shall govern.

[361] FAMILY CODE, Art. 91 provides:

ARTICLE 91. Unless otherwise provided in this Chapter or in the marriage settlements, the community property shall consist of all the property owned by the spouses at the time of the celebration of the marriage or acquired thereafter.

The spouses may also choose a system of conjugal partnership of gains as their property regime. Under this, "the husband and wife place in a common fund the proceeds, products, fruits and income from their separate properties and those acquired by either or both spouses through their efforts or by chance[.]"[362] Here, each spouse retains power and control over his or her exclusive properties, such that he or she may mortgage, encumber, alienate, or dispose of them during the marriage even without the consent of the other spouse.[363] However, each spouse bears the burden of proving that those properties acquired during the marriage form part of their exclusive property, as the law creates a presumption that property is conjugal even if the properties were made, contracted or registered in the name of only one spouse.[364]

The spouses may also decide on a separation of property during the marriage, subject to a judicial order.[365] Should the spouses choose this property regime, they may, in their individual capacity, dispose of their own properties even without the consent of the other.[366] However, despite the separation, the law mandates

---

[362] FAMILY CODE, Art. 106.

[363] FAMILY CODE, Art. 111 provides:

ARTICLE 111. A spouse of age may mortgage, encumber, alienate or otherwise dispose of his/her exclusive property, without the consent of the other spouse, and appear alone in court to litigate with regard to the same.

[364] FAMILY CODE, Art. 116 provides:

ARTICLE 116. All property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal unless the contrary is proved.

[365] FAMILY CODE, Art. 103 provides:

ARTICLE 103. In the absence of an express declaration in the marriage settlements, the separation of property between spouses during the marriage shall not take place except by judicial order. Such judicial separation of property may either be voluntary or for sufficient cause.

[366] FAMILY CODE, Art. 145 provides:

ARTICLE 145. Each spouse shall own, dispose of, possess, administer and enjoy his/her own separate estate, without need of the consent of the

that the income of the spouses shall account for the family expenses.[367]

Donations made by reason of marriage are also governed by the Family Code.[368] While the provisions on ordinary donations under the Civil Code may apply, there are specific rules which restrict the kind of donations that can be made during marriage and even between the spouses. For instance, the Family Code provides that, should the married spouses choose a property regime other than the absolute community of property, the husband and the wife cannot donate more than one-fifth of their present property to each other.[369] If the spouses select the absolute community of property regime, they are proscribed from donating any part of the community property without the consent of the other spouse.[370]

Corollary to the right granted to spouses, as parents, over the person and property of their children is the responsibility to discipline them as may be required under the circumstances. Thus, under the law, spouses exercise joint parental authority

---

other. To each spouse shall belong all earnings from his/her profession, business or industry and all fruits, natural, industrial or civil, due or received during the marriage from his/her separate property.

[367] FAMILY CODE, Art. 146 provides:

ARTICLE 146. Both spouses shall bear the family expenses in proportion to their income, or, in case of insufficiency or default thereof, to the current market value of their separate properties. The liabilities of the spouses to creditors for family expenses shall, however, be solidary.

[368] FAMILY CODE, Arts. 82, 83, 84, 85, 86, and 87.

[369] FAMILY CODE, Art. 84 provides:

ARTICLE 84. If the future spouses agree upon a regime other than the absolute community of property, they cannot donate to each other in their marriage settlements more than one-fifth of their present property. Any excess shall be considered void.

[370] FAMILY CODE, Art. 98 provides:

ARTICLE 98. Neither spouse may donate any community property without the consent of the other. However, either spouse may, without the consent of the other, make moderate donations from the community property for charity or on occasions of family rejoicing or family distress.

directly and primarily. They are solidarily liable for the damage caused by the acts or omissions of their minor children who are living in their company and under their parental authority.[371] The courts may admonish those who exercise parental authority over delinquent children.[372]

While married persons may jointly adopt or be adopted, the law provides that either spouse may not adopt or be adopted without the written consent of the other spouse.[373] Thus, should a spouse seek to adopt his or her own illegitimate child, the other spouse must still consent.[374]

Some crimes include marital relations among their elements. For instance, parricide covers the killing of one's legitimate spouse and is penalized by *reclusion perpetua* to death.[375]

---

[371] FAMILY CODE, Art. 220 provides:

ARTICLE 220. Parents and other persons exercising parental authority shall be civilly liable for the injuries and damages caused by the acts or omissions of their unemancipated children living in their company and under their parental authority subject to the appropriate defenses provided by law; *Libi v. Intermediate Appellate Court*, 288 Phil. 797 (1992) [Per *J*. Regalado, *En Banc*].

[372] CIVIL CODE, Art. 362 provides:

ARTICLE 362. Whenever a child is found delinquent by any court, the father, mother, or guardian may in a proper case be judicially admonished.

[373] Republic Act. No. 8552 (1998), Sec. 9 provides:

SECTION 9. *Whose Consent is Necessary to the Adoption.* — After being properly counseled and informed of his/her right to give or withhold his/her approval of the adoption, the written consent of the following to the adoption is hereby required:

. . . . . .

(e) The spouse, if any, of the person adopting or to be adopted.

[374] Republic Act. No. 8552 (1998), Sec. 7(c)(ii).

[375] REV. PEN. CODE, Art. 246 provides:

ARTICLE 246. *Parricide.* — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

In the crimes of theft, swindling, or malicious mischief, no criminal liability is incurred if the spouse is the offender.[376]

Further, Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, prohibits the spouse of any public official from "requesting or receiving any present, gift, material or pecuniary advantage from any other person having some business, transaction, application, request, or contract with the government, in which such public official has to intervene."[377] Spouses of the president, vice president, senate president, and speaker of the House of Representatives are also forbidden to intervene in any business, transaction, contract, or application with the government.[378] Moreover, in

---

[376] REV. PEN. CODE, Art. 332 provides:

ARTICLE 332. *Persons exempt from criminal liability*. — No criminal, but only civil liability shall result from the commission of the crime of theft, swindling, or malicious mischief committed or caused mutually by the following persons:

1. Spouses, ascendants and descendants, or relatives by affinity in the same line;
2. The widowed spouse with respect to the property which belonged to the deceased spouse before the same shall have passed into the possession of another; and
3. Brothers and sisters and brothers-in-law and sisters-in-law, if living together.

The exemption established by this article shall not be applicable to strangers participating in the commission of the crime.

[377] Republic Act. No. 3019 (1960), Sec. 4 provides:

SECTION 4. *Prohibition on private individuals.* — (a) It shall be unlawful for any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift, material or pecuniary advantage from any other person having some business, transaction, application, request, or contract with the government, in which such public official has to intervene. Family relation shall include the spouse or relatives by consanguinity or affinity in the third civil degree. The word "close personal relation" shall include close personal friendship, social and fraternal connections, and professional employment all giving rise to intimacy which assure free access to such public officer.

[378] Republic Act. No. 3019 (1960), Sec. 5 provides:

determining the unexplained wealth of a public official, the spouses' properties, bank deposits, and manifestly excessive expenditures are also considered.[379]

In civil actions, spouses are generally joint parties in a case irrespective of who incurred the obligation.[380] In criminal actions,

---

SECTION 5. *Prohibition on certain relatives*. — It shall be unlawful for the spouse or for any relative, by consanguinity or affinity, within the third civil degree, of the President of the Philippines, the Vice-President of the Philippines, the President of the Senate, or the Speaker of the House of Representatives, to intervene, directly or indirectly, in any business, transaction, contract or application with the Government: *Provided*, That this section shall not apply to any person who, prior to the assumption of office of any of the above officials to whom he is related, has been already dealing with the Government along the same line of business, nor to any transaction, contract or application already existing or pending at the time of such assumption of public office, nor to any application filed by him the approval of which is not discretionary on the part on the official or officials concerned but depends upon compliance with requisites provided by law, or rules or regulations issued pursuant to law, nor to any act lawfully performed in an official capacity or in the exercise of a profession.

[379] Republic Act. No. 3019 (1960), Sec. 8, as amended by Batas Pambansa Blg. 195 (1982), provides:

SECTION 8. *Prima facie evidence of and dismissal due to unexplained wealth*. — If in accordance with the provisions of Republic Act Numbered One thousand three hundred seventy-nine, a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be a ground for dismissal or removal. Properties in the name of the spouse and dependents of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits in the name of or manifestly excessive expenditures incurred by the public official, his spouse or any of their dependents including but not limited to activities in any club or association or any ostentatious display of wealth including frequent travel abroad of a non-official character by any public official when such activities entail expenses evidently out of proportion to legitimate income, shall likewise be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary. The circumstances hereinabove mentioned shall constitute valid ground for the administrative suspension of the public official concerned for an indefinite period until the investigation wealth is completed.

[380] RULES OF COURT, Rule 3, Sec. 4 provides:

the court may also cite in contempt the spouse of a drug dependent who refuses to cooperate in the treatment and rehabilitation of the drug dependent.[381]

Thus, the claim for a state-sanctioned marriage for same-sex couples should come with the concomitant willingness to embrace these burdens, as well as to submit to the State certain freedoms currently enjoyed outside the institution of marriage:

*Critical awareness of the state's role as now-fundamental partner in the recognition and protection of a form of sexual rights should push us to regard these "victories" as necessarily ethically compromised.*

The moral atrophy that has kept us from recognizing the tragedy of these strategies and outcomes is where more critical, and indeed discomfiting, work needs to be done by theorists and activists alike. This means rethinking the horizon of success. *"Victory" in the sense of gaining the state as a partner, rather than an adversary, in the struggle to recognize and defend LGBT rights ought to set off a trip wire that ignites a new set of strategies and politics. This must necessarily include a deliberate effort to counteract, if not sabotage, the pull of the state to enlist rights-based movements into its larger governance projects*, accompanied by an affirmative resistance to conceptions of citizenship that figure nationality by and through the creation of a constitutive other who resides in the state's and human rights' outside.[382] (Emphasis supplied)

---

SECTION 4. *Spouses as parties.* — Husband and wife shall sue or be sued jointly, except as provided by law.

[381] Republic Act No. 9165 (2002), Sec. 73 provides:

SECTION 73. *Liability of a Parent, Spouse or Guardian Who Refuses to Cooperate with the Board or Any Concerned Agency.* — Any parent, spouse or guardian who, without valid reason, refuses to cooperate with the Board or any concerned agency in the treatment and rehabilitation of a drug dependent who is a minor, or in any manner, prevents or delays the after-care, follow-up or other programs for the welfare of the accused drug dependent, whether under voluntary submission program, or compulsory submission program, may be cited for contempt by the court.

[382] Katherine Franke, *Dating the State: The Moral Hazards of Winning Gay Rights*, 44 COLUM. HUM. RTS. L. REV. 1, 42 (2012).

Yet, petitioner has miserably failed to show proof that he has obtained even the slightest measure of consent from the members of the community that he purports to represent, and that LGBTQI+ persons are unqualifiedly willing to conform to the State's present construct of marriage.

**VIII (C)**

Limiting itself to four (4) specific provisions in the Family Code, the Petition prays that this Court "declare Articles 1 and 2 of the Family Code as unconstitutional and, as a consequence, nullify Articles 46(4) and 55(6) of the Family Code."[383] However, should this Court rule as the Petition asks, there will be far-reaching consequences that extend beyond the plain text of the specified provisions.

Articles 1 and 2 of the Family Code provide a definition and spell out basic requisites, respectively. Without passing upon the validity of the definition under Article 1, this Court nonetheless observes that this definition serves as the foundation of many other gendered provisions of the Family Code and other laws.

A significant number of provisions under current marriage arrangements pertain to benefits to or burdens on a specific sex (and are therefore dependent on what is assigned at birth based on the appearance of external genitalia). As our current laws are confined to a heteronormative standard, they do not recognize the existence and specificities of other forms of intimacy.

For instance, an incident of marriage granted by the law to spouses, specifically to wives, is the option to adopt their husbands' surname under the Civil Code.[384] The law also provides that should a marriage be annulled and the wife is an innocent

---

[383] *Rollo*, p. 31.

[384] CIVIL CODE, Art. 370 provides:

ARTICLE 370. A married woman may use:

(1) Her maiden first name and surname and add her husband's surname, or

party, she may continue to employ her husband's surname unless the court decrees otherwise, or when she or the former husband remarries.[385] If the husband dies, the wife may still use his surname as though he were alive.[386]

In case of artificial insemination of the wife with the sperm of the husband or of a donor, the Family Code specifies that, to establish paternity and filiation, the husband must consent to the procedure in a written instrument prior to the child's birth.[387]

The Family Code also contains provisions that favor the husband over the wife on certain matters, including property relations between spouses. For one, the administration over the community property belongs to the spouses jointly, but in case of disagreement, the husband's decision prevails.[388]

---

(2) Her maiden first name and her husband's surname, or

(3) Her husband's full name, but prefixing a word indicating that she is his wife such as "Mrs."

[385] CIVIL CODE, Art. 371 provides:

ARTICLE 371. In case of annulment of marriage, and the wife is the guilty party, she shall resume her maiden name and surname. If she is the innocent spouse, she may resume her maiden name and surname. However, she may choose to continue employing her former husband's surname, unless:

(1) The court decrees otherwise, or

(2) She or the former husband is married again to another person.

[386] CIVIL CODE, Art. 373 provides:

ARTICLE 373. A widow may use the deceased husband's surname as though he were still living, in accordance with Article 370.

[387] FAMILY CODE, Art. 164(2) provides:

ARTICLE 164. . . .

. . . . . .

Children conceived as a result of artificial insemination of the wife with the sperm of the husband or that of a donor or both are likewise legitimate children of the husband and his wife, provided, that both of them authorized or ratified such insemination in a written instrument executed and signed by them before the birth of the child. The instrument shall be recorded in the civil registry together with the birth certificate of the child.

[388] FAMILY CODE, Art. 96 provides:

Similarly, the administration over conjugal partnership properties is lodged in both spouses jointly, but in case of disagreement, the husband's decision prevails, without prejudice to the wife's right to file a petition before the courts.[389] And, in case of a disagreement between the spouses on the exercise of parental authority over their minor children, the father's decision shall also prevail.[390]

Our penal laws likewise contain sex-specific provisions. For instance, adultery is committed by a wife who had sex with a man who is not her husband.[391] In contrast, concubinage is committed when a husband keeps a mistress in the conjugal

---

ARTICLE 96. The administration and enjoyment of the community property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

[389] FAMILY CODE, Art. 124(2) provides:

ARTICLE 124. The administration and enjoyment of the conjugal partnership shall belong to both spouses jointly.

In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

[390] FAMILY CODE, Art. 211(1) provides:

ARTICLE 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.

[391] REV. PEN. CODE, Art. 333 provides:

ARTICLE 333. *Who are guilty of adultery*. — Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her knowing her to be married, even if the marriage be subsequently be declared void.

Adultery shall be punished by *prision correccional* in its medium and maximum periods.

If the person guilty of adultery committed this offense while being abandoned without justification by the offended spouse, the penalty next lower in degree than that provided in the next preceding paragraph shall be imposed.

dwelling, has sex under scandalous circumstances, or cohabits in another place with a woman who is not his wife.[392] While a woman who commits adultery shall be punished with imprisonment, a man who commits adultery shall only suffer the penalty of *destierro*. Further, a husband who engages in sex with a woman who is not his wife does not incur criminal liability if the sexual activity was not performed under "scandalous circumstances."[393]

In labor law, Republic Act No. 8187, otherwise known as the Paternity Leave Act of 1996, provides that "every married male employee in the private and public sectors shall be entitled to a paternity leave[394] of seven (7) days with full pay for the first four (4) deliveries of the legitimate spouse with whom he is cohabiting."[395]

---

[392] REV. PEN. CODE, Art. 334 provides:

ARTICLE 334. *Concubinage*. — Any husband who shall keep a mistress in the conjugal dwelling, or shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place, shall be punished by *prision correccional* in its minimum and medium periods.

The concubine shall suffer the penalty of *destierro*.

[393] REV. PEN. CODE, Art. 334.

[394] Republic Act No. 8187 (1996), Sec. 3 provides:

SECTION 3. *Definition of Term*. — For purposes of this Act, Paternity Leave refers to the benefits granted to a married male employee allowing him not to report for work for seven (7) days but continues to earn the compensation therefor, on the condition that his spouse has delivered a child or suffered a miscarriage for purposes of enabling him to effectively lend support to his wife in her period of recovery and/or in the nursing of the newly-born child.

[395] Republic Act No. 8187 (1996), Sec. 2 provides:

SECTION 2. Notwithstanding any law, rules and regulations to the contrary, every married male employee in the private and public sectors shall be entitled to a paternity leave of seven (7) days with full pay for the first four (4) deliveries of the legitimate spouse with whom he is cohabiting. The male employee applying for paternity leave shall notify his employer of the pregnancy of his legitimate spouse and the expected date of such delivery.

For purposes of this Act, delivery shall include childbirth or any miscarriage.

**VIII (D)**

The litany of provisions that we have just recounted are not even the entirety of laws relating to marriage. Petitioner would have this Court impliedly amend all such laws, through a mere declaration of unconstitutionality of only two (2) articles in a single statute. This Court cannot do what petitioner wants without arrogating legislative power unto itself and violating the principle of separation of powers.

Petitioner failed to account for any of these provisions. He failed to consider whether his own plea for relief necessarily encompassed these and other related provisions. Thus, he failed in his burden of demonstrating to this Court the precise extent of the relief he seeks. He merely stated that we may somehow grant him relief under his generic, catch-all prayer for "other just and equitable reliefs." During the oral arguments:

JUSTICE LEONEN:
So what is your prayer?

ATTY. FALCIS:
The prayer of the petitions, Your Honor, initially says that to declare Articles 1 and 2 of the Family Code as null and void. However, we also prayed for other just and equitable reliefs which we are of the position that in relation with (*sic*) *Republic vs. Manalo* that there is an alternative option for this Court in the exercise of its expanded power of judicial review to, in the light that the provisions is (*sic*) found . . . (interrupted)

JUSTICE LEONEN:
Wait a minute. You are saying or claiming that the proper reading of *Republic vs. Manalo* under the *ponen[c]ia* of Justice Peralta is that there is an alternative consequence to a finding that a provision is unconstitutional. Normally, if a provision is unconstitutional, it is void *ab initio*. And you are now saying that the Court has created new jurisprudence in *Republic vs. Manalo* that when we find a provision to be unconstitutional that it can be valid?

ATTY. FALCIS:
No, Your Honor. What petitioners are saying that our interpretations of this Court's guide in *Republic vs. Manalo* is that . . . (interrupted)

JUSTICE LEONEN:

So in essence you are asking the Court to find or to found new jurisprudence in relation to situation (*sic*) like yours?

ATTY. FALCIS:

No, Your Honors, we are only asking for a statutory interpretation that was applied in *Republic vs. Manalo* that two interpretations that would lead to finding (*sic*) of unconstitutionality the Court adopted a liberal interpretation, did not declare Article 26 paragraph 2 as unconstitutional. But because the Constitution is deemed written into the Family Code as well (*sic*) interpreted it in light of the equal protection clause.[396]

Petitioner miserably failed to discharge even the most elementary burden to demonstrate that the relief he prays for is within this Court's power to grant. It is curious, almost negligent, for him as petitioner and counsel not to present to this Court any other provision of law that will be affected as a consequence of his Petition.

**VIII (E)**

There is a myriad of laws, rules, and regulations that affect, or are affected by marriage.

*Yet, none was ever mentioned in the Petition or the Petition-in-Intervention.*

Whether by negligence or sheer ineptitude, petitioner failed to present to this Court even more than a handful of laws that provide for the benefits and burdens which he claims are being denied from same-sex couples. He confined himself to a superficial explanation of the symbolic value of marriage as a social institution.

This Court must exercise great caution in this task of making a spectrum of identities and relationships legible in our marriage laws, paying attention to "who and what is actualized when the LGBT subject is given a voice."[397] We must be wary of

---

[396] TSN, June 19, 2018, p. 26.

[397] Katherine Franke, *Dating the State: The Moral Hazards of Winning Gay Rights,* 44 COLUM.HUM.RTS.L. REV. 1, 38 (2012).

oversimplifying the complexity of LGBTQI+ identities and relationships, and even render more vulnerable "a range of identities and policies that have refused to conform to state-endorsed normative homo- or heterosexuality."[398]

Thus, an immediate announcement that the current marriage laws apply in equal and uncalibrated measure to same-sex relationships may operate to unduly shackle those relationships and cause untold confusions on others. With the sheer inadequacies of the Petition, this Court cannot arrogate unto itself the task of weighing and adjusting each of these many circumstances.

**VIII (F)**

Consequently, the task of devising an arrangement where same-sex relations will earn state recognition is better left to Congress in order that it may thresh out the many issues that may arise:

> Marriage is a legal relationship, entered into through a legal framework, and enforceable according to legal rules. Law stands at its very core. *Due to this inherent "legalness" of marriage, the constitutional right to marry cannot be secured simply by removing legal barriers to something that exists outside of the law. Rather, the law itself must create the "thing" to which one has a right. As a result, the right to marry necessarily imposes an affirmative obligation on the state to establish this legal framework.*[399] (Emphasis supplied)

During oral arguments, Members of this Court pointed to civil unions that promote more egalitarian partnerships:

> JUSTICE LEONEN:
>
> What I'm asking you, Atty. Falcis, is other people, heterosexual couples that go into marriage more second class than what you can create.

---

[398] *Id.* at 41-42.

[399] William M. Hohengarten, *Same-Sex Marriage and the Right of Privacy,* 103 YALE L.J. 1495, 1496 (1994).

ATTY. FALCIS:
No, Your Honors, . . .

JUSTICE LEONEN:
Because, well, it's a pre-packaged set of law. In fact, if you trace that law it comes from the Spanish Civil Code. Okay, the *Partidas* and then the *Nueva Recopilacion* and coming from the *fuer sus fuegos* before, correct?

ATTY. FALCIS:
Yes, Your Honor.

JUSTICE LEONEN:
And in sealed patriarchy, in fact there are still some vestiges of that patriarchy in that particular Civil Code and there are a lot of limitations, it is not culturally created. It's not indigenous within our system. Can you imagine same-sex couples now can make their own civil union, correct?

ATTY. FALCIS:
Yes, Your Honor.

JUSTICE LEONEN:
The idea of some legal scholars which is to challenge even the constitutionality of marriage as a burden into their freedoms is now available to same sex couples?

ATTY. FALCIS:
Yes, Your Honor, but that is not by choice, Your Honors. Same-sex couples do not have the choice out of marriage because we're not even allowed to opt thing (*sic*)...

JUSTICE LEONEN:
So isn't it accurate to say that you are arguing to get into a situation which is more limited?

ATTY. FALCIS:
Your Honors, there are some situations that would be limited under marriage. But there are other situations that are . . .

JUSTICE LEONEN:
But you see, Atty. Falcis, that was not clear in your pleadings? And perhaps you can make that clear when you file your memoranda? *What exactly in marriage, that status of marriage? So that status of marriage creates a bundle of rights and obligations. But the rights and obligations can also be fixed by contractual relations, is that*

*not correct? And because it can be fixed by contractual relations, you can actually create a little bit more perfect civil union.* In fact, you can even say in your contract that we will stay together for ten years, after ten years, it's renewable, correct? That cannot be done by heterosexual couples wanting to marry. But if that is your belief then it can be established in that kind of an arrangement, correct? You may say not conjugal partnership or absolute community, you will specify the details of the co-ownership or the common ownership that you have of the properties that you have. You will say everything that I make is mine, everything that you make because you're richer therefore will be shared by us. That's more [egalitarian], correct? That's not in the Civil Code, right?

ATTY. FALCIS:
Yes, Your Honor.[400] (Emphasis supplied)

In truth, the question before this Court is a matter of what marriage seeks to acknowledge. Not all intimate relationships are the same and, therefore, fit into the rights and duties afforded by our laws to marital relationships.[401]

For this Court to instantly sanction same-sex marriage inevitably confines a class of persons to the rather restrictive nature of our current marriage laws. The most injurious thing we can do at this point is to constrain the relationships of those persons who did not even take part or join in this Petition to what our laws may forbiddingly define as the norm. Ironically, to do so would engender the opposite of loving freely, which petitioner himself consistently raised:

> The worst thing we do in a human relationship is to regard the commitment of the other formulaic. That is, that it is shaped alone by legal duty or what those who are dominant in government regard as romantic. *In truth, each commitment is unique, borne of its own personal history, ennobled by the sacrifices it has gone through, and defined by the intimacy which only the autonomy of the parties creates.*

---

[400] TSN, June 19, 2019, pp. 41-42.

[401] *J.* Leonen, Concurring Opinion in *Republic v. Manalo*, G.R. No. 221029, April 24, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64093> [Per *J.* Peralta, *En Banc*].

In other words, words that describe when we love or are loved will always be different for each couple. It is that which we should understand: *intimacies that form the core of our beings should be as free as possible, bound not by social expectations but by the care and love each person can bring*.[402] (Emphasis supplied)

Allowing same-sex marriage based on this Petition alone can delay other more inclusive and egalitarian arrangements that the State can acknowledge. Many identities comprise the LGBTQI+ community. Prematurely adjudicating issues in a judicial forum despite a bare absence of facts is presumptuous. It may unwittingly diminish the LGBTQI+ community's capacity to create a strong movement that ensures lasting recognition, as well as public understanding, of SOGIESC.

## IX

Petitioner has no legal standing to file his Petition.

Legal standing is a party's "personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement."[403] Interest in the case "means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest."[404]

Much like the requirement of an actual case or controversy, legal standing ensures that a party is seeking a concrete outcome or relief that may be granted by courts:

Legal standing or *locus standi* is the "right of appearance in a court of justice on a given question." To possess legal standing, parties must show "a personal and substantial interest in the case such that [they have] sustained or will sustain direct injury as a result of the governmental act that is being challenged." The requirement of direct

---

[402] *Id.*

[403] *People v. Vera*, 95 Phil, 56, 89 (1937) [Per *J*. Laurel, *En Banc*].

[404] *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 633 (2000) [Per *J*. Kapunan, *En Banc*].

injury guarantees that the party who brings suit has such personal stake in the outcome of the controversy and, in effect, assures "that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."

The requirements of legal standing and the recently discussed actual case and controversy are both "built on the principle of separation of powers, sparing as it does unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government." In addition, economic reasons justify the rule. Thus:

> A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in character. Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.

Standing in private suits requires that actions be prosecuted or defended in the name of the real party-in-interest, interest being "material interest or an interest in issue to be affected by the decree or judgment of the case[,] [not just] mere curiosity about the question involved." Whether a suit is public or private, the parties must have "a present substantial interest," not a "mere expectancy or a future, contingent, subordinate, or consequential interest." Those who bring the suit must possess their own right to the relief sought.[405] (Citations omitted)

Even for exceptional suits filed by taxpayers, legislators, or concerned citizens, this Court has noted that the party must claim some kind of injury-in-fact. For concerned citizens, it is an allegation that the continuing enforcement of a law or any government act has denied the party some right or privilege to

---

[405] *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64411> [Per *J.* Leonen, *En Banc*].

which they are entitled, or that the party will be subjected to some burden or penalty because of the law or act being complained of.[406] For taxpayers, they must show "sufficient interest in preventing the illegal expenditure of money raised by taxation[.]"[407] Legislators, meanwhile, must show that some government act infringes on the prerogatives of their office.[408] Third-party suits must likewise be brought by litigants who have "sufficiently concrete interest"[409] in the outcome of the dispute.

Here, petitioner asserts that he, being an "open and self-identified homosexual[,]"[410] has standing to question Articles 1, 2, 46(4), and 55(6) of the Family Code due to his "personal stake in the outcome of the case":[411]

> 30. Petitioner has a personal stake in the outcome of this case. Petitioner is an open and self-identified homosexual. Petitioner has sustained direct injury as a result of the prohibition against same-sex marriages. Petitioner has grown up in a society where same-sex relationships are frowned upon because of the law's normative impact. Petitioner's ability to find and enter into long-term monogamous same-sex relationships is impaired because of the absence of a legal incentive for gay individuals to seek such relationship.[412]

Petitioner's supposed "personal stake in the outcome of this case" is not the direct injury contemplated by jurisprudence as that which would endow him with standing. Mere assertions of a "law's normative impact"; "impairment" of his "ability to find and enter into long-term monogamous same-sex

---

[406] *Francisco, Jr. v. House of Representatives*, 460 Phil. 830 (2003) [Per *J*. Carpio Morales, *En Banc*].

[407] *Id.* at 896.

[408] *Id.*

[409] *White Light Corporation v. City of Manila*, 596 Phil. 444, 456 (2009) [Per *J*. Tinga, *En Banc*].

[410] *Rollo*, p. 12.

[411] *Id.*

[412] *Id.*

relationships"; as well as injury to his "plans to settle down and have a companion for life in his beloved country";[413] or influence over his "decision to stay or migrate to a more LGBT friendly country"[414] cannot be recognized by this Court as sufficient interest. Petitioner's desire "to find and enter into long-term monogamous same-sex relationships"[415] and "to settle down and have a companion for life in his beloved country"[416] does not constitute legally demandable rights that require judicial enforcement. This Court will not witlessly indulge petitioner in blaming the Family Code for his admitted inability to find a partner.

During the oral arguments, petitioner asserted that the very passage of the Family Code itself was the direct injury that he sustained:

JUSTICE BERNABE:

Now, what direct and actual injury have you sustained as a result of the Family Code provisions assailed in your Petition?

ATTY. FALCIS:

Your Honors, we are of multiple submissions. The first would be that as an individual I possess the right to marry because the right to marry is not given to couples alone; it is individual, Your Honors. Second, Your Honors, we are guided by this Court's pronouncements in the case of *Pimentel v. Aguirre* that the mere enactment of a law suffices to give a person either an actual case or standing. Because, Your Honors, we are invoking the expanded power of judicial review where in the most recent cases especially the one penned by Justice Brion, *Association of Medical Workers v. GSS*, this Court said that under the expanded power of judicial review, the mere enactment of a law, because Article VIII, Your Honors, Section 1 says that "Any instrumentality, the grave abuse of discretion of any instrumentality may be questioned before the Supreme Court, Your Honor." *And, therefore, the direct injury that I suffer, Your Honor, was the passage*

---

[413] *Id.*

[414] *Id.*

[415] *Id.*

[416] *Id.*

*of a law that contradicts the Constitution in grave abuse of discretion because of the disregard of other fundamental provisions such as the equal protection clause, the valuing of human dignity, the right to liberty and the right to found a family, Your Honors*.[417] (Emphasis supplied)

Petitioner presents no proof at all of the immediate, inextricable danger that the Family Code poses to him. His assertions of injury cannot, without sufficient proof, be directly linked to the imputed cause, the existence of the Family Code. His fixation on how the Family Code is the definitive cause of his inability to find a partner is plainly *non sequitur*.

Similarly, anticipation of harm is not equivalent to direct injury. Petitioner fails to show how the Family Code is the proximate cause of his alleged deprivations. His mere allegation that this injury comes from "the law's normative impact"[418] is insufficient to establish the connection between the Family Code and his alleged injury.

If the mere passage of a law does not create an actual case or controversy, neither can it be a source of direct injury to establish legal standing. This Court is not duty bound to find facts[419] on petitioner's behalf just so he can support his claims.

It does not escape this Court's notice that the Family Code was enacted in 1987. This Petition was filed only in 2015. Petitioner, as a member of the Philippine Bar, has been aware of the Family Code and its allegedly repugnant provisions, since at least his freshman year in law school. It is then extraordinary for him to claim, first, that he has been continually injured by the existence of the Family Code; and second, that he raised the unconstitutionality of Articles 1 and 2 of the Family Code at the earliest possible opportunity.[420]

---

[417] TSN, June 19, 2018, pp. 66-67.

[418] *Rollo*, p. 12.

[419] *Knights of Rizal v. DMCI Homes, Inc*., 809 Phil. 453 (2017) [Per *J.* Carpio, *En Banc*].

[420] *Rollo*, pp. 3-33.

Petitioner has neither suffered any direct personal injury nor shown that he is in danger of suffering any injury from the present implementation of the Family Code. He has neither an actual case nor legal standing.

**X**

The Petition-in-Intervention was also authored by petitioner. He only filed it after the Office of the Solicitor General had filed a Comment (*Ad Cautelam*) pointing out the procedural flaws in his original Petition. Still, the Petition-in-Intervention suffers from the same procedural infirmities as the original Petition. Likewise, it cannot cure the plethora of the original Petition's defects. Thus, it must also be dismissed.

Interventions are allowed under Rule 19, Section 1 of the 1997 Rules of Civil Procedure:

> SECTION 1. *Who may intervene.* — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or 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 may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

Intervention is not an independent action but is ancillary and supplemental to existing litigation.[421]

**X (A)**

Intervention requires: (1) a movant's legal interest in the matter being litigated; (2) a showing that the intervention will not delay the proceedings; and (3) a claim by the intervenor that is incapable of being properly decided in a separate proceeding.[422] Here, while petitioners-intervenors have legal

---

[421] *Garcia v. David*, 67 Phil. 279 (1939) [Per *J*. Laurel, *En Banc*].

[422] *Office of the Ombudsman v. Sison*, 626 Phil. 498 (2010) [Per *J*. Velasco, Jr., Third Division].

interest in the issues, their claims are more adequately decided in a separate proceeding, seeking relief independently from the Petition.

The Petition-in-Intervention suffers from confusion as to its real purpose. A discerning reading of it reveals that the ultimate remedy to what petitioners-intervenors have averred is a directive that marriage licenses be issued to them. Yet, it does not actually ask for this: its prayer does not seek this, and it does not identify itself as a petition for *mandamus* (or an action for mandatory injunction). Rather, it couches itself as a petition of the same nature and seeking the same relief as the original Petition. It takes pains to make itself appear inextricable from the original Petition, at the expense of specifying what would make it viable.

It does not escape this Court's notice that the Petition and Petition-in-Intervention were prepared by the same counsel, Falcis, the petitioner himself. The Petition-in-Intervention impleaded the same single respondent, the Civil Registrar General, as the original Petition. It also merely "adopt[ed] by reference as their own all the arguments raised by Petitioner in his original Petition[.]"[423] Notably, a parenthetical argument made by petitioner that barely occupied two (2) pages[424] of his Petition became the Petition-in-Intervention's entire subject: the right to found a family according to one's religious convictions.

Even though petitioners-intervenors Reverend Agbayani and Felipe, and Ibañez and her partner, all claim that they have "wish[ed] to be married legally and have applied for a marriage license but were denied[,]"[425] they only echoed the original Petition's prayer, merely seeking that Articles 1, 2, 46(4), and 55(6) of the Family Code be declared unconstitutional. Despite impleading respondent Civil Registrar General and asserting that they have a fundamental right to marry their partners,

---

[423] *Rollo*, p. 132.

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

[425] *Id.* at 136.

petitioners-intervenors never saw it proper—whether as the principal or a supplemental relief—to seek a writ of *mandamus* compelling respondent Civil Registrar General to issue marriage licenses to them.

**X (B)**

Given these, this Court can only arrive at the conclusion that the Petition-in-Intervention was a veiled vehicle by which petitioner sought to cure the glaring procedural defects of his original Petition. It was not a bona fide plea for relief, but a sly, tardy stratagem. It was not a genuine effort by an independent party to have its cause litigated in the same proceeding, but more of an ill-conceived attempt to prop up a thin and underdeveloped Petition.

Petitioner, as both party and counsel to petitioners-intervenors, miserably failed in his pretenses. A petition-in-intervention cannot create an actual case or controversy when the main petition has none. In *De Borja v. Pinalakas na Ugnayan ng Maliliit na Mangingisda ng Luzon, Mindanao at Visayas*:[426]

> We stress that neither the OSG's filing of its Comment nor the petition-in-intervention of PUMALU-MV, PKSK, and TDCI endowed De Borja's petition with an actual case or controversy. The Comment, for one, did not contest the allegations in De Borja's petition. Its main role was to supply De Borja's petition with the factual antecedents detailing how the alleged controversy reached the court. It also enlightened the RTC as to the two views, the mainland principle versus the archipelagic principle, on the definition of municipal waters. *Even if the Comment did oppose the petition, there would still be no justiciable controversy for lack of allegation that any person has ever contested or threatened to contest De Borja's claim of fishing rights.*
>
> The petition-in-intervention, on the other hand, also did not dispute or oppose any of the allegations in De Borja's petition. While it did espouse the application of the archipelagic principle in contrast to the mainland principle advocated by the OSG, it must be recalled that De Borja did not advocate for any of these principles at that

---

[426] 809 Phil. 65 (2017) [Per *J.* Jardeleza, Third Division].

time. He only adopted the OSG's position in his Memorandum before the RTC. *Thus, the petition-in-intervention did not create an actual controversy in this case as the cause of action for declaratory relief must be made out by the allegations of the petition without the aid of any other pleading.*[427] (Emphasis supplied, citations omitted)

This Court cannot, and should not, sanction underhanded attempts by parties and counsels to unscrupulously abuse the rules on intervention so that they may cure the glaring defects and missteps in their legal strategies.

**X (C)**

Even if the Petition-in-Intervention is not a sham foisted by petitioner upon this Court, it still does not satisfy the requirements of justiciability.

Petitioners-intervenors invoke "third-party standing" as their basis for filing suit. But the requisites of third-party standing are absent here.

For a successful invocation of third-party standing, three (3) requisites must concur:

> Nonetheless, the general rules on standing admit of several exceptions such as the overbreadth doctrine, taxpayer suits, third party standing and, especially in the Philippines, the doctrine of transcendental importance.
>
> For this particular set of facts, the concept of third party standing as an exception and the overbreadth doctrine are appropriate. In *Powers v. Ohio*, the United States Supreme Court wrote that: "We have recognized the right of litigants to bring actions on behalf of third parties, provided three important criteria are satisfied: the litigant must have suffered an 'injury-in-fact', thus giving him or her a "sufficiently concrete interest" in the outcome of the issue in dispute; the litigant must have a close relation to the third party; and there must exist some hindrance to the third party's ability to protect his or her own interests."[428] (Citations omitted)

---

[427] *Id.* at 84.

[428] *White Light Corporation v. City of Manila*, 596 Phil. 444, 456 (2009) [Per *J.* Chico-Nazario, *En Banc*].

Regarding injury-in-fact, petitioner-intervenor LGBTS Christian Church claims that its ability to recruit, evangelize, and proselytize is impaired by the lack of state recognition of the same-sex marriage ceremonies it conducts[429] as part of its religion. But there is no legally demandable right for a sect or denomination's religious ceremonies to be given State imprimatur. Likewise, and in a manner similar to petitioner, the Family Code has not been shown to be the proximate cause of petitioners-intervenors' alleged injury.

As to the requirement of some hindrance to a third party's ability to protect its own interests, petitioners-intervenors claim that "the relative silence in constitutional litigation of such special interest groups in our nation such as the American Civil Liberties Union in the United States may also be construed as a hindrance[.]"[430] This is a direct quotation from *White Light Corporation v. City of Manila*[431] but was made without any explanation or discussion. In *White Light Corporation*, there was an actual, demonstrable dearth of special interest groups involving patrons of White Light Corporation's businesses. Here, petitioners-intervenors rely on nothing more than a bare allegation. They presented no proof that there is "relative silence in constitutional litigation" from groups concerned with LGBTQI+ causes that entitles them to raise arguments on behalf of third parties.

## XI

Petitioner's choice of remedy further emphasizes his ignorance of basic legal procedure.

Rule 65 petitions are not per se remedies to address constitutional issues. Petitions for *certiorari* are filed to address the jurisdictional excesses of officers or bodies exercising judicial or quasi-judicial functions. Petitions for prohibition

---

[429] *Rollo*, p. 140.

[430] *Id.*

[431] 596 Phil. 444, 456 (2009) [Per *J.* Tinga, *En Banc*].

are filed to address the jurisdictional excesses of officers or bodies exercising judicial, quasi-judicial, or *ministerial* functions.[432] Rule 65, Sections 1 and 2 state:

SECTION 1. *Petition for Certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the paragraph of Section 3, Rule 46.

SECTION 2. *Petition for Prohibition*. — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn

---

[432] See *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452 (2010) [Per *J.* Carpio Morales, *En Banc*]; *Galicto v. Aquino*, 683 Phil. 141 (2012) [Per *J.* Brion, *En Banc*]; *Philippine Migrant Rights Watch, Inc. v. Overseas Workers Welfare Administration*, 748 Phil. 348 (2014) [Per *J.* Peralta, Third Division]; and *Cawad v. Abad*, 765 Phil. 705 (2015) [Per *J.* Peralta, *En Banc*].

certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

Here, petitioner justifies his resort to Rule 65 on the basis of this Court's prior pronouncements that *certiorari* and prohibition are the remedies for assailing the constitutionality of statutes.[433] He cites, in particular, *Magallona* and *Araullo*. Petitioner even faults this Court, asserting that its failure to create a "specific remedial vehicle under its constitutional rule-making powers"[434] made his resort to Rule 65 appropriate.

Yet, petitioner's presentation of his case, which is lacking in an actual or imminent breach of his rights, makes it patently obvious that his proper remedy is not Rule 65, but rather, a petition for declaratory relief under Rule 63 of the 1997 Rules of Civil Procedure:

> SECTION 1. *Who May File Petition*. — Any person interested under a deed, will, contract or other written instrument, or *whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation* may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court *to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder*.
>
> An action for the reformation of an instrument, to quiet title to real property or remove clouds therefrom, or to consolidate ownership under Article 1607 of the Civil Code, may be brought under this Rule. (Emphasis supplied)

This Court has been categorical[435] that, in certain instances, declaratory relief is proper should there be a question of the constitutionality of a statute, executive order or regulation, ordinance, or any other governmental regulation. The remedy

---

[433] *Rollo*, pp. 6-7.

[434] *Id.* at 7.

[435] See *Liga ng mga Barangay National v. City Mayor of Manila*, 465 Phil. 529 (2004) [Per *C.J.* Davide, Jr., *En Banc*]; *Galicto v. Aquino*, 683 Phil. 141 (2012) [Per *J.* Brion, *En Banc*]; and *Concepcion v. Commission on Elections*, 609 Phil. 201 (2009) [Per *J.* Brion, *En Banc*].

of declaratory relief acknowledges that there are instances when questions of validity or constitutionality cannot be resolved in a factual vacuum devoid of substantial evidence on record[436] for which trial courts are better equipped to gather and determine.

Here, considering that there is an abysmal dearth of facts to sustain a finding of an actual case or controversy and the existence of a direct injury to petitioner, a petition for declaratory relief resolved after full-blown trial in a trial court would have been the more appropriate remedy.

As discussed, contrary to the basic requirement under Rule 65, petitioner failed to show that respondent Civil Registrar General exercised any judicial, quasi-judicial, or ministerial function. From this, no grave abuse of discretion amounting to lack or excess of jurisdiction can be appreciated. Petitions for *certiorari* and prohibition require the proper allegation not only of a breach of a constitutional provision, but more important, of an actual case or controversy.[437]

Not even the weightiest constitutional issues justify a blatant disregard of procedural rules that attempts to bypass or set aside judicious remedial measures put in place by this Court, under the guise that such remedies would take more than a modicum of effort and time on the part of a petitioner.[438] The requisites of justiciability should not be so lightly set aside.

## XII

An equally compelling and independently sufficient basis for dismissing this Petition is petitioner's violation of the doctrine of hierarchy of courts.

---

[436] *Blue Bar Coconut Philippines v. Tantuico*, 246 Phil. 714 (1988) [Per J. Gutierrez, *En Banc*].

[437] *In The Matter of: Save the Supreme Court Judicial Independence and Fiscal Autonomy Movement*, 751 Phil. 30 (2015) [Per J. Leonen, *En Banc*]. *See also* J. Leonen, Concurring and Dissenting Opinion in *Cawad v. Abad*, 764 Phil. 705 (2015) [Per J. Peralta, *En Banc*].

[438] *Concepcion v. Commission on Elections*, 609 Phil. 201 (2009) [Per J. Brion, *En Banc*].

**XII (A)**

The doctrine of hierarchy of courts ensures judicial efficiency at all levels of courts. It enables courts at each level to act in keeping with their peculiar competencies. This is so, even as this Court has original and concurrent jurisdiction with the regional trial courts and the Court of Appeals over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*. In *Diocese of Bacolod v. Commission on Elections*:[439]

> The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.
>
> The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.

---

[439] 751 Phil. 301 (2015) [Per *J.* Leonen, *En Banc*].

This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.[440] (Citations omitted)

Very recently, in *Gios-Samar, Inc. v. Department of Transportation and Communications*,[441] this Court traced the jurisdictional history of the extraordinary writs of *certiorari*, *mandamus*, prohibition, *quo warranto*, and *habeas corpus*. We noted that while the 1973 Constitution[442] conferred on this Court original jurisdiction to issue these extraordinary writs, the same power was later extended to the Court of Appeals[443] and the regional trial courts[444] through Batas Pambansa Blg. 129, otherwise known as the Judiciary Reorganization Act of 1980.

---

[440] *Id.* at 329-330.

[441] G.R. No. 217158, March 12, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per *J.* Jardeleza, *En Banc*].

[442] 1973 CONST., Art. X, Sec. 5(1) provides: The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.

[443] Batas Pambansa Blg. 129, Sec. 9(1) provides:

SECTION 9. *Jurisdiction*. — The Court of Appeals exercise:

(1) Original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari, habeas corpus*, and *quo warranto*, and auxiliary writs or processes[.]

[444] Batas Pambansa Blg. 129, Sec. 21(1) provides:

SECTION 21. *Original Jurisdiction in other cases.*— Regional Trial Court shall exercise original jurisdiction:

(1) In the issuance of writs of *certiorari*, prohibition, *mandamus, quo warranto, habeas corpus*, and injunction which may be enforced in any part of their respective regions[.]"

This concurrence of jurisdiction persists under the 1987 Constitution[445] and the 1997 Rules of Civil Procedure.[446]

Time and again, this Court has held that the concurrent jurisdiction of the Court of Appeals and the regional trial courts with this Court does not give parties absolute discretion in immediately seeking recourse from the highest court of the land.[447] In *Gios-Samar*, we emphasized that the power to issue extraordinary writs was extended to lower courts not only as a means of procedural expediency, but also to fulfill a constitutional imperative as regards: (1) the structure of our judicial system; and (2) the requirements of due process.[448]

Considering the structure of our judicial system, this Court explained in *Gios-Samar*:

> In *Alonso v. Cebu Country Club, Inc.* (Alonso), this Court had occasion to articulate the role of the CA in the judicial hierarchy, *viz.*:
>
> > The hierarchy of courts is not to be lightly regarded by litigants. The CA stands between the RTC and the Court, and its establishment has been precisely to take over much of the work that used to be done by the Court. Historically, the CA has been of the greatest help to the Court in synthesizing the facts, issues, and rulings in an orderly and intelligible manner and in identifying errors that ordinarily might escape detection. The

---

[445] CONST., Art. V, Sec. 5(1) provides:

SECTION 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari,* prohibition, *mandamus, quo warranto*, and *habeas corpus.*"

[446] RULES OF COURT, Rule 65, Secs. 1, 2, and 3.

[447] *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per *J.* Jardeleza, *En Banc*]; and *Southern Luzon Drug Corporation v. Department of Social Welfare and Development*, 809 Phil. 315 (2017) [Per *J.* Reyes, *En Banc*].

[448] *Id.*

> Court has thus been freed to better discharge its constitutional duties and perform its most important work, which, in the words of Dean Vicente G. Sinco, "is less concerned with the decision of cases that begin and end with the transient rights and obligations of particular individuals but is more intertwined with the direction of national policies, momentous economic and social problems, the delimitation of governmental authority and its impact upon fundamental rights." . . .
>
> Accordingly, when litigants seek relief directly from the Court, they bypass the judicial structure and open themselves to the risk of presenting incomplete or disputed facts. This consequently hampers the resolution of controversies before the Court. Without the necessary facts, the Court cannot authoritatively determine the rights and obligations of the parties. The case would then become another addition to the Court's already congested dockets.[449] (Citations omitted)

Enabling lower courts to grant extraordinary writs has contributed greatly to the practical concern of decongesting dockets. More important, it facilitates the need to enable factual issues to be fully ventilated in proceedings before courts that are better equipped at appreciating evidence, and ultimately bringing to this Court only issues of paramount and pervasive importance. As the final interpreter of the laws of the land, the cases brought before this Court should more appropriately be raising pure questions of law, with evidentiary matters having been authoritatively settled by lower courts.

If this Court were to burden itself with settling every factual nuance of every petition filed before it, the entire judicial machinery would bog down. Cases more deserving of this Court's sublime consideration would be waylaid. In *Gios-Samar*, this Court further explained:

> The doctrine of hierarchy of courts operates to: (1) prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction; (2) prevent further over-crowding of the Court's docket; and (3) prevent the inevitable and resultant delay, intended or otherwise, in the adjudication of cases

---

[449] *Id.*

which often have to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as the court better equipped to resolve factual questions.[450] (Citations omitted)

Likewise, this Court discussed how the doctrine of hierarchy of courts serves the constitutional right of litigants to due process:

> While the term "due process of law" evades exact and concrete definition, this Court, in one of its earliest decisions, referred to it as a law which hears before it condemns which proceeds upon inquiry and renders judgment only after trial. It means that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society. Under the present Rules of Court, which governs our judicial proceedings, warring factual allegations of parties are settled through presentation of evidence. Evidence is the means of ascertaining, in a judicial proceeding, the truth respecting a matter of fact. As earlier demonstrated, the Court cannot accept evidence in the first instance. By directly filing a case before the Court, litigants necessarily deprive themselves of the op[p]ortunity to completely pursue or defend their causes of actions. Their right to due process is effectively undermined by their own doing.[451] (Citations omitted)

Immediately elevating evidentiary matters to this Court deprives the parties of the chance to properly substantiate their respective claims and defenses. It is essential for courts to justly resolve controversies. Parties who proceed headlong to this Court deny themselves their own chance at effective and exhaustive litigation.

Thus, this Court's dismissal of petitions that inextricably entail factual questions and violate the doctrine of hierarchy of courts does not merely arise out of a strict application of procedural technicalities. Rather, such dismissal is a necessary consequence of the greater interest of enabling effective litigation, in keeping with the right to due process. The parties' beseeching for relief inordinately inflates this Court's

---

[450] *Id.*

[451] *Id.*

competence, but we find no consolation in flattery. In the end, it is never for this Court to arrogate unto itself a task that we are ill-equipped to perform:

> In fine, while this Court has original and concurrent jurisdiction with the RTC and the CA in the issuance of writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus* (extraordinary writs), direct recourse to this Court is proper only to seek resolution of questions of law. Save for the single specific instance provided by the Constitution under Section 18, Article VII, cases the resolution of which depends on the determination of questions of fact cannot be brought directly before the Court because we are not a trier of facts. We are not equipped, either by structure or rule, to receive and evaluate evidence in the first instance; these are the primary functions of the lower courts or regulatory agencies. This is the *raison d'être* behind the doctrine of hierarchy of courts. It operates as a constitutional filtering mechanism designed to enable this Court to focus on the more fundamental tasks assigned to it by the Constitution. It is a bright-line rule which cannot be brushed aside by an invocation of the transcendental importance or constitutional dimension of the issue or cause raised.[452] (Citations omitted)

**XII (B)**

The distinction between questions of fact and questions of law is settled. A question of fact exists when doubt arises as to the truth or falsity of the facts presented; a question of law exists when the issue arises as to what the law is, given a state of facts.[453]

That the issues involved are of transcendental importance is an oft-cited justification for failing to comply with the doctrine of hierarchy of courts and for bringing admittedly factual issues to this Court.

*Diocese of Bacolod* recognized transcendental importance as an exception to the doctrine of hierarchy of courts. In cases of transcendental importance, imminent and clear threats to

---

[452] *Id.*

[453] *Benito v. People*, 753 Phil. 616 (2015) [Per *J*. Leonen, Second Division].

constitutional rights warrant a direct resort to this Court.[454] This was clarified in *Gios-Samar*. There, this Court emphasized that transcendental importance—originally cited to relax rules on legal standing and not as an exception to the doctrine of hierarchy of courts—applies only to cases with purely legal issues.[455] We explained that the decisive factor in whether this Court should permit the invocation of transcendental importance is not merely the presence of "special and important reasons[,]"[456] but the nature of the question presented by the parties. This Court declared that there must be no disputed facts, and the issues raised should only be questions of law:[457]

> [W]hen 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.[458]

Still, it does not follow that this Court should proceed to exercise its power of judicial review just because a case is attended with purely legal issues. Jurisdiction ought to be distinguished from justiciability. Jurisdiction pertains to competence "to hear, try[,] and decide a case."[459] On the other hand,

---

[454] *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301 (2015) [Per *J*. Leonen, *En Banc*].

[455] *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per *J*. Jardeleza, *En Banc*].

[456] *Id.*

[457] *Id.*

[458] *Id.*

[459] *Land Bank of the Philippines v. Dalauta,* 815 Phil. 740, 768 (2017) [Per *J*. Mendoza, *En Banc*].

[d]etermining whether the case, or any of the issues raised, is justiciable is an exercise of the power granted to a court with jurisdiction over a case that involves constitutional adjudication. Thus, even if this Court has jurisdiction, the canons of constitutional adjudication in our jurisdiction allow us to disregard the questions raised at our discretion.[460]

Appraising justiciability is typified by constitutional avoidance.[461] This remains a matter of enabling this Court to act in keeping with its capabilities. Matters of policy are properly left to government organs that are better equipped at framing them. Justiciability demands that issues and judicial pronouncements be properly framed in relation to established facts:

*Angara v. Electoral Commission* imbues these rules with its libertarian character. Principally, Angara emphasized the liberal deference to another constitutional department or organ given the majoritarian and representative character of the political deliberations in their forums. It is not merely a judicial stance dictated by courtesy, but is rooted on the very nature of this Court. Unless congealed in constitutional or statutory text and imperatively called for by the actual and non-controversial facts of the case, this Court does not express policy. This Court should channel democratic deliberation where it should take place.

. . . . . .

Judicial restraint is also founded on a policy of conscious and deliberate caution. This Court should refrain from speculating on the facts of a case and should allow parties to shape their case instead. Likewise, this Court should avoid projecting hypothetical situations where none of the parties can fully argue simply because they have not established the facts or are not interested in the issues raised by the hypothetical situations. In a way, courts are mandated to adopt an attitude of judicial skepticism. What we think may be happening

---

[460] *J.* Leonen, Concurring Opinion in *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per *J.* Jardeleza, *En Banc*].

[461] *Id.*

may not at all be the case. Therefore, this Court should always await the proper case to be properly pleaded and proved.[462]

Thus, concerning the extent to which transcendental importance carves exceptions to the requirements of justiciability, "[t]he elements supported by the facts of an actual case, and the imperatives of our role as the Supreme Court within a specific cultural or historic context, must be made clear":[463]

> They should be properly pleaded by the petitioner so that whether there is any transcendental importance to a case is made an issue. That a case has transcendental importance, as applied, may have been too ambiguous and subjective that it undermines the structural relationship that this Court has with the sovereign people and other departments under the Constitution. Our rules on jurisdiction and our interpretation of what is justiciable, refined with relevant cases, may be enough.[464]

Otherwise, this Court would cede unfettered prerogative on parties. It would enable the parties to impose their own determination of what issues are of paramount, national significance, warranting immediate attention by the highest court of the land.

**XII (C)**

In an attempt to divert this Court's attention from the glaring fundamental missteps of his Petition, petitioner—almost predictably—invokes transcendental importance.[465] This invocation fails to satisfy this Court of the need to resolve the Petition on the merits. It fails to alleviate glaring deficiencies, whether as to having violated the doctrine of hierarchy of courts, or the lack of legal standing.

Even if this Court were to go out of its way in relaxing rules and proceed to resolve the substantive issues, it would ultimately

---

[462] *Id.*

[463] *Id.*

[464] *Id.*

[465] *Rollo*, pp. 10-11.

be unable to do so, as petitioner himself failed to present even an iota of evidence substantiating his case.

Associate Justice Francis H. Jardeleza (Associate Justice Jardeleza)'s interpellation during oral arguments highlighted this. Citing as an example the experience of then attorney and later Justice Thurgood Marshall when he attacked the "separate but equal" approach to schools in the segregation era of the United States, Associate Justice Jardeleza emphasized the need for a contextualization of petitioners' arguments using factual and evidentiary bases:

JUSTICE JARDELEZA
. . . Now, did Thurgood Marshall go direct to the US Supreme Court?

ATTY. FALCIS:
No, Your Honor.

JUSTICE JARDELEZA:
That is the point of Justice Bersamin. And my point, you should read, . . . how the NAACP, . . . plotted/planned that case and *they had a lot of evidence, as in testimonial evidence, on the psychological effect of separate but allegedly equal schools. So, do you get my point about why you should be better off trying this case before the RTC?*

ATTY. FALCIS:
Yes, Your Honor.

JUSTICE JARDELEZA:
. . . And I'll give you another good example, that is why I asked questions from Reverend Agbayani. Even if the church remains as a party with standing, do you know why I asked that series of questions of (*sic*) him?

ATTY. FALCIS:
Because, Your Honor, what he was saying were factual issues, Your Honor.

JUSTICE JARDELEZA:
Yes. And what does *Escritor* tell you?

ATTY. FALCIS:
In terms of religious freedom, Your Honor?

JUSTICE JARDELEZA:

Yes. What does *Escritor* with respect to hierarchy of courts tell you?

ATTY. FALCIS:

*Estrada v. Escritor* remanded back the case, Your Honor, to the lower courts for . . .

JUSTICE JARDELEZA:

*Escritor* tells you that you should reread it carefully. The religious claim is based on religious conviction, right?

ATTY. FALCIS:

Yes, Your Honor.

JUSTICE JARDELEZA:

Just like a fundamental right, religious conviction. *Bago ka dumating sa* conviction the first word is religious. That's why I was asking is there a religion? Is there a religion, to start with? Now, what is the difference between a religion and a sect? What, how many people need/comprise a religion? Can you have a religion of one? That is described in *Escritor*, that's one, is there a religion? No. 2, *Escritor* says, is the claim/burden being put by the government something that impinges on a practice or belief of the church that is a central tenet or a central doctrine. *You have to prove that in the RTC, that was I was (sic) asking, that's why I was asking what is the tenet of MCC? What is the different tenet? And you have to prove that and the question for example a while ago, you were asked by Justice Leonen, "What is the history of marriage in the Philippines?" You have your view, right? The government has a different view about the history and if I just listen to you, you will give me your views and if I just listen to the SOLGEN, he will give me his views. What I'm saying is the Court needs a factual record where experts testify subject to cross examination. Yun po ang ibig sabihin ng* hierarchy of courts. . . .[466] (Emphasis supplied)

At another juncture during the oral arguments, when interpellating Gatdula:

JUSTICE JARDELEZA:

. . . Mr. Falcis, for example, adverted to *Brown v. Board of Education.* And it should interest you and it is a fascinating history

---

[466] TSN, June 19, 2018, pp. 109-110.

on how a group of people spearheaded by the NAACP effected social change "separate but equal is not constitutional". . . . And remember, the question there was separate but equal schools for black children and white children, "Was it causing psychological harm to the black children?" Of course, the whites were saying "no" because it's equal, they have equal facilities. The famous psychologist that they presented there is named Kenneth Clark, who had his famous doll test, manika. He was able to prove that to the satisfaction of the trial court that indeed black children sometimes even think that, you know, when you present them with dolls, that they are white. That is the type of evidence I think that we need in this case. Now, very quickly and I will segue to Obergefell, again, five cases four different states. They presented the Chairman of the Department of History of Yale. We heard a lot, the government is talking of tradition and history. But again, for example, SolGen is citing Blair and Robertson, that, of course, qualifies as a Learned Treaties, right? But again, for the proposition that the history of this country is in favor of same sex, I would love first to hear, as an expert, probably the Chairman of History of Ateneo and UP. As in Obergefell, they also had the Department of Psychology, Head of Washington and Lee University. *So, my plea to both of you, especially to the petitioner, at this point in time, I am not willing to ask you in your memo to discuss the merits because unless the petitioner convinces me that we have a proper exception to the hierarchy of court rules then I think, for the first time, this Court should consider that, when we say there is a violation of the hierarchy of rules, we stop, we don't go to merits. And that's why I'm, I cannot go, for the life of me, to the merits if you have this question of fact in my mind. "Who, which couples can better raise a child?" Again I say, "That is a question of fact". I am not a trier of fact, and my humble opinion is try it first*.[467] (Emphasis supplied)

The lack of material allegations and substantiation in petitioner's pleadings is glaring. He had nothing but this to say:

25. Lastly, Petitioner submits that the instant petition raises an issue of transcendental importance to the nation because of the millions of LGBT Filipinos all over the country who are deprived from marrying

---

[467] TSN, June 26, 2018, pp. 101-102.

the one they want or the one they love. They are discouraged and stigmatized from pursuing same-sex relationships to begin with. Those who pursue same-sex relationships despite the stigma are deprived of the bundle of rights that flow from a legal recognition of a couple's relationship — visitation and custody rights, property and successional rights, and other privileges accorded to opposite-sex relationships.[468]

Petitioner's cursory invocation of transcendental importance—miserably bereft of proof—cannot possibly impress this Court. It only reveals petitioner's cavalier foolhardiness. Transcendental importance is not a life buoy designed to save unprepared petitioners from their own mistakes and missteps. Its mere invocation is not license to do away with this Court's own rules of procedure.[469] In *Lozano v. Nograles*:[470]

> **Moreover, while the Court has taken an increasingly liberal approach to the rule of locus standi, evolving from the stringent requirements of "personal injury" to the broader "transcendental importance" doctrine, such liberality is not to be abused. It is not an open invitation for the ignorant and the ignoble to file petitions that prove nothing but their cerebral deficit.**
>
> In the final scheme, judicial review is effective largely because it is not available simply at the behest of a partisan faction, but is exercised only to remedy a particular, concrete injury. When warranted by the presence of indispensable minimums for judicial review, this Court shall not shun the duty to resolve the constitutional challenge that may confront it. (Emphasis in the original)

Lacking even the indispensable minimum required by this Court, the Petition here cannot be resuscitated by an unthinking parroting of extraordinary doctrines.

---

[468] *Rollo*, p. 11, Petition.

[469] In The Matter of: Save the Supreme Court Judicial Independence and Fiscal Autonomy Movement, UDK-15143, January 21, 2015 [Per *J.* Leonen, *En Banc*].

[470] 607 Phil. 334 (2009) [Per *C.J.* Puno, *En Banc*].

## XIII

The primordial duty of lawyers to their clients and cause is to act to the best of their knowledge and discretion, and with all good fidelity.[471] Canon 17 of the Code of Professional Responsibility states:

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.

Competence and diligence should be a lawyer's watchwords:

CANON 18 — A lawyer shall serve his client with competence and diligence.

Rule 18.01 A lawyer shall not undertake a legal service which he knows or should know that he is not qualified to render. However, he may render such service if, with the consent of his client, he can obtain as collaborating counsel a lawyer who is competent on the matter.

Rule 18.02 A lawyer shall not handle any legal matter without adequate preparation.

Rule 18.03 A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Rule 18.04 A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

## XIII (A)

Lawyers should be mindful that their acts or omissions bind their clients.[472] They are bound to zealously defend their client's cause, diligently and competently, with care and devotion:

Once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence

---

[471] Lawyer's Oath.

[472] *Ramos v. Atty. Jacoba*, 418 Phil. 346 (2001) [Per *J*. Mendoza, Second Division].

and diligence, and champion the latter's cause with wholehearted fidelity, care, and devotion. Elsewise stated, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied. This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense. If much is demanded from an attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar, and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.[473] (Citations omitted)

**XIII (B)**

Here, petitioner wagered in litigation no less than the future of a marginalized and disadvantaged minority group. With palpable vainglory, he made himself the lead plaintiff and also represented himself, only seeking assistance from other counsel for oral arguments.[474] By deciding to place this burden upon himself, petitioner should have acted with utmost care and thoughtfulness, drawing upon the limits of his skill and knowledge, to represent the LGBTQI+ cause.

However, at every stage of these proceedings, petitioner only exposed his utter lack of preparation, recklessness, and crudeness.

Petitioner had already been previously sanctioned for his negligence and incompetence during the June 5, 2018 preliminary conference. There, this Court underscored his ignorance of basic court procedure. In its July 3, 2018 Resolution,[475] this Court

---

[473] *Santiago v. Fojas*, 318 Phil. 79, 86-87 (1995) [Per *J.* Davide, Jr., First Division].

[474] *Rollo*, pp. 290-293.

[475] *Id.* at 601-605.

already reminded petitioner of the duty and responsibility that counsels have to the cause they purport to represent:

> Lawyers must serve their clients with competence and diligence. Under Rule 18.02 of the Code of Professional Responsibility, "[a] lawyer shall not handle any legal matter without adequate preparation." Atty. Falcis' appearance and behavior during the preliminary conference reveal the inadequacy of his preparation. Considering that the Advisory for Oral Arguments was served on the parties three (3) months prior to the preliminary conference, it was inexcusably careless for any of them to appear before this Court so barely prepared.
>
> The preliminary conference was not mere make-work. Rather, it was essential to the orderly conduct of proceedings and, ultimately, to the judicious disposition of this case. Appearance in it by counsels and parties should not be taken lightly.
>
> Atty. Falcis jeopardized the cause of his clients. Without even uttering a word, he recklessly courted disfavor with this Court. His bearing and demeanor were a disservice to his clients and to the human rights advocacy he purports to represent.[476]

As a result, petitioner was found guilty of direct contempt of court and admonished. He was sternly warned that any further contemptuous acts shall be dealt with more severely.

**XIII (C)**

Undeterred by this Court's stern warning, petitioner, along with co-counsels, Attys. Angeles, Guangko, and Maranan of Molo Sia Dy Tuazon Ty and Coloma Law Office, failed to comply with this Court's June 26, 2018 Order to submit the required memorandum of both petitioner and petitioners-intervenors within 30 days, or until July 26, 2018.[477] Because of this, the Memorandum was dispensed with. Petitioner and his co-counsels were all ordered to show cause why they should not be cited in indirect contempt.[478]

---

[476] *Id.* at 603-604.

[477] *Id.* at 711.

[478] *Id.* at 713.

Their explanations[479] are patently unsatisfactory. They fault the impulsivity of youth, other supposedly equally urgent professional work, reliance on Court pronouncements in other cases, and work disruptions caused by floods and typhoons.[480] These were the same bases raised in their prior Motion for Extension, which this Court found to be utterly lacking in merit and denied. These reasons failed to impress then, and they fail to impress now. As we observed then, the complexity of issues and other professional work did not delay the filing of memoranda by other parties.[481] There is no compelling reason to treat petitioner and his co-counsels differently. After all, it was petitioner who set all of these events in motion; the other parties merely responded to what he sought.

Petitioner and his co-counsel's reference to the "impulsivity of youth"[482] utterly fails to impress. If at all, this Court sees this as a deodorized admission of unreadiness and impotence.

In any case, as this Court has already stated in its July 3, 2018 Resolution:

> Atty. Falcis is not an uninformed layperson. He has been a member of the Philippine Bar for a number of years. As an officer of the court, he is duty bound to maintain towards this Court a respectful attitude essential to the proper administration of justice. He is charged with knowledge of the proper manner by which lawyers are to conduct themselves during judicial proceedings. His Lawyer's Oath and the Code of Professional Responsibility exhort him to maintain the requisite decency and to afford dignity to this Court.[483]

Youth and professional inexperience do not excuse the manifest inability of sworn court officers to follow lawful orders.

---

[479] *Id.* at 1348-1353, Manifestation and Compliance.

[480] *Id.* at 1349.

[481] *Id.* at 712.

[482] *Id.* at 1349.

[483] *Id.* at 603.

Like petitioner, Atty. Angeles, Atty. Guangko and Atty. Maranan are members of the Philippine Bar, charged with basic knowledge of the rules of pleading and practice before the courts, especially this Court. They are not uninformed laypersons whose ignorance can be excused by inexperience. It bears noting that Atty. Angeles, Atty. Guangko, and Atty. Maranan are part of the law firm Molo Sia Dy Tuazon Ty and Coloma Law Offices and are, thus, presumably guided by more experienced litigators who should have been able to competently advise them on what is expected of those who appear before this Court.

**XIV**

Diligence is even more important when the cause lawyers take upon themselves to defend involves assertions of fundamental rights. By voluntarily taking up this case, petitioner and his co-counsels gave their "unqualified commitment to advance and defend [it.]"[484] The bare minimum of this commitment is to observe and comply with the deadlines set by a court.

Lawyers who wish to practice public interest litigation should be ever mindful that their acts and omissions before the courts do not only affect themselves. In truth, by thrusting themselves into the limelight to take up the cudgels on behalf of a minority class, they represent the hopes and aspirations of a greater mass of people, not always with the consent of all its members. Their errors and mistakes have a ripple effect even on persons who did not agree with or had no opportunity to consent to the stratagems and tactics they employed.

One who touts himself an advocate for the marginalized must know better than to hijack the cause of those whom he himself proclaims to be oppressed. Public interest lawyering demands more than the cursory invocation of legal doctrines, as though they were magical incantations swiftly disengaging obstacles at their mere utterance. Public interest advocacy is not about

---

[484] *Samonte v. Atty. Jumamil*, 813 Phil. 795, 803 (2017) [Per *J.* Perlas-Bernabe, First Division].

fabricating prestige. It is about the discomfort of taking the cudgels for the weak and the dangers of standing against the powerful. The test of how lawyers truly become worthy of esteem and approval is in how they are capable of buckling down in silence, anonymity, and utter modesty—doing the spartan work of research and study, of writing and self-correction. It is by their grit in these unassuming tasks, not by hollow, swift appeals to fame, that they are seasoned and, in due time, become luminaries, the standard by which all others are measured.

Petitioner courted disaster for the cause he chose to represent. He must have known what was at stake. Yet, he came to this Court scandalously unprepared, equipped with nothing more than empty braggadocio. For a shot at fame, he toyed with the hopes and tribulations of a marginalized class.

By failing to represent his cause with even the barest competence and diligence, petitioner betrayed the standards of legal practice. His failure to file the required memorandum on time is just the most recent manifestation of this betrayal. He disrespected not only his cause, but also this Court—an unequivocal act of indirect contempt.

A person adjudged guilty of indirect contempt may be punished by a fine not exceeding ₱30,000.00 or imprisonment not exceeding six (6) months, or both.[485] To serve as a reminder to the bench and bar, and in light of petitioner's being earlier adjudged guilty of contempt of court for a similar offense—for which he was specifically warned that any further contemptuous acts shall be dealt with more severely—this Court, while declining to mete out the penalty of imprisonment by way of clemency, imposes on petitioner the penalty of a fine.

Similarly, parties who come before this Court to intervene in a proceeding should be prepared to fully participate in all its stages, whenever this Court requires them to. Records show that after oral arguments, intervenor-oppositor Perito also never filed a memorandum pursuant to the June 26, 2018 Order. He

---

[485] RULES OF COURT, Rule 71, Sec. 7.

has not made any manifestation or explanation for his noncompliance. His failure to comply with this Court's order likewise constitutes indirect contempt.

What we do in the name of public interest should be the result of a collective decision that comes from well-thought-out strategies of the movement in whose name we bring a case before this Court. Otherwise, premature petitions filed by those who seek to see their names in our jurisprudential records may only do more harm than good. Good intentions are no substitute for deliberate, conscious, and responsible action. Litigation for the public interest of those who have been marginalized and oppressed deserves much more than the way that it has been handled in this case.

**A Final Note**

Our freedom to choose the way we structure our intimate relationships with our chosen significant other in a large sense defines us as human beings. Even opposite-sex couples continually adjust the day-to-day terms of their partnership as their relationships mature. It is in the sanctuary of their spaces that we authentically evolve, become better human beings, and thus contribute meaningfully within our society. After all, the companionship and understanding that we inevitably discover with the person we choose to spend the rest of our lives with provide the foundation for an ethic of care that enriches a democracy.

This Court sympathizes with the petitioner with his obvious longing to find a partner. We understand the desire of same-sex couples to seek, not moral judgment based on discrimination from any of our laws, but rather, a balanced recognition of their true, authentic, and responsive choices.

Yet, the time for a definitive judicial fiat may not yet be here. This is not the case that presents the clearest actual factual backdrop to make the precise reasoned judgment our Constitution requires. Perhaps, even before that actual case arrives, our democratically-elected representatives in Congress will have seen the wisdom of acting with dispatch to address the suffering

of many of those who choose to love distinctively, uniquely, but no less genuinely and passionately.

**WHEREFORE,** the Petition for *Certiorari* and Prohibition and the Petition-in-Intervention are **DISMISSED**.

This Court finds petitioner Atty. Jesus Nicardo M. Falcis III, his co-counsels Atty. Darwin P. Angeles, Atty. Keisha Trina M. Guangko, Atty. Christopher Ryan R. Maranan, as well as intervenor-oppositor Atty. Fernando P. Perito, all **GUILTY** of **INDIRECT CONTEMPT OF COURT**.

Atty. Falcis is sentenced to pay a fine of Five Thousand Pesos (₱5,000.00) within thirty (30) days from notice. Atty. Angeles, Atty. Guangko, Atty. Maranan, and Atty. Perito are **REPRIMANDED** and **ADMONISHED** to be more circumspect of their duties as counsel. They are **STERNLY WARNED** that any further contemptuous acts shall be dealt with more severely.

Let copies of this Decision be included in the personal records of Atty. Falcis, Atty. Angeles, Atty. Guangko, Atty. Maranan, and Atty. Perito, and entered in their files in the Office of the Bar Confidant.

**SO ORDERED.**

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

*Peralta* and *Jardeleza JJ*., see concurring opinions.

*Caguioa, J.*, joins the concurring opinion of *J. Jardeleza.*

## CONCURRING OPINION

**JARDELEZA, *J.*:**

> Justice Scalia: "I'm curious... when did it become unconstitutional to exclude homosexual couples from marriage? Seventeen ninety-one? Eighteen sixty-eight, when the Fourteen Amendment was adopted? x x x"

> Ted: "When – may I answer this in the form of a rhetorical question? When did it become unconstitutional to prohibit interracial marriages? When did it become unconstitutional to assign children to separate schools?" x x x ***Courts decide there are constitutional rights when they have before them a case that presents the issue, and when they know — and society knows — enough about the issue to make informed decisions***.[1]

I vote to DISMISS the petition, not the idea of marriage equality.

Petitioner Jesus Nicardo M. Falcis III (petitioner) is not the proper party to assert a liberty interest in same-sex marriage. He did not suffer any injury as a result of the enforcement of Articles 1 and 2 of Executive Order (EO) No. 209, otherwise known as "The Family Code of the Philippines" (Family Code). The subsequent intervention by Reverend Crescendo "Ceejay" Agbayani, Jr. (Rev. Ceejay), Marlon Felipe (Marlon) of LGBTS Christian Church (LGBTS Church), and Maria Arlyn "Sugar" Ibañez (Sugar),[2] (collectively, the two couples), did not cure this defect in the petition.

I also find dismissal to be proper because direct recourse to the Court in this case is unwarranted. Petitioner asserts that he raises legal questions, principally that Articles 1 and 2 of the Family Code violate his fundamental right to enter into a same-sex marriage. This, however, cannot be farther from the truth. The issues he raises implicate underlying questions of fact which, in turn, condition the constitutionality of the legal provisions

---

[1] Exchange between United States Supreme Court Justice Antonin Scalia and lawyer Theodore Olson, during the Oral Arguments for *Hollingsworth et al. v. Perry et al.*, 570 U.S. 693 (2013), as cited in David Boies and Theodore Olson, Redeeming the Dream, Proposition 8 and the Struggle for Marriage Equality, (2014), p. 254.

[2] Sugar is in a romantic and sexual relationship with Joanne Reena "JR" Gregorio. JR, however, did not join Sugar in filing the petition-in-intervention. See *Rollo*, p. 137.

he questions.[3] In his exuberant rush to bring this case directly to the Court as both lead party and counsel, petitioner chose to skip building a factual foundation of record upon which the Court can make an informed judgment. The underlying questions of fact that underpin his legal argument include whether: (a) couples of the same-sex can satisfy the essential requirements of marriage equally as heterosexual couples; (b) procreation is an essential requirement of marriage; (c) couples of the same-sex can raise children equally as well as heterosexual couples; (d) Filipino tradition accepts same-sex marriage; and (e) the LGBTS Church is a religion whose members, including the two couples, hold a sincere belief in same-sex marriage as a central tenet of their faith.

I

A

The petition presents no actual case or controversy.

There is an actual case or controversy when the case is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion.[4] This means that there must be a conflict of legal rights or an assertion of opposite legal claims which can be resolved on the basis of existing law and jurisprudence. An abstract dispute, in stark contrast, only seeks for an opinion that advises what the law would be on hypothetical state of facts.[5] Furthermore, a case is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. Something must have been accomplished or performed by either branch of Government

---

[3] *Ermita-Malate Hotel and Motel Operators Association, Inc. et al. v. The Honorable City Mayor of Manila*, G.R. No. L-24693, October 23, 1967, 21 SCRA 449, 451-452, citing *O'Gorman & Young v. Harford Fire Insurance, Co*., 283 U.S. 251 (1931).

[4] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council,* G.R. No. 178552 October 5, 2010, 632 SCRA 146, 176.

[5] *Guingona v. Court of Appeals*, G.R. No. 125532, July 10, 1998, 292 SCRA 402, 413-414.

before a court may come into the picture, and a petitioner must allege the existence of an immediate or threatened injury to him/her as a result of the challenged action.[6]

On its face, it presents a hypothetical and contingent event, not ripe for adjudication, which is hinged on petitioner's **future plan** of settling down with a person of the same-sex.

Petitioner alleged that "the prohibition against the right to marry the same-sex injures [his] plans to settle down and have a companion for life in his beloved country."[7] **Yet as of the filing of the petition, petitioner has no partner.** He lamented that his "ability to find and enter into a long-term monogamous same-sex relationship is impaired because of the absence of a legal incentive for gay individuals to seek such relationship."[8] Significantly, however, even if he has a partner, petitioner admitted in open court that it is not automatic that his partner might want to marry him.[9] Thus, petitioner cannot, did not or even attempted to, file an application for marriage license before the civil registry of his residence.

Consequently, the Civil Registrar General (CRG) or any other official in any of the branches of the government has nothing to act upon. They could not and have not performed an act which injured or would injure petitioner's asserted right. It is clear that petitioner's cause of action does not exist.

B

Petitioner has no legal standing to file the suit.

Standing or *locus standi* is defined as the right of appearance in a court of justice on a given question.[10] To determine whether

---

[6] *Province of North Cotabato v. Government*, G.R. No. 183591, October 14, 2008, 586 SCRA 402, 451.

[7] *Rollo*, p. 12.

[8] *Id.* at 12.

[9] TSN of the Oral Arguments dated June 19, 2018, pp. 67-68.

[10] *David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006, 489 SCRA 160, 216.

a party has standing, the *direct injury test* is applied.[11] Under this test, the person who impugns the validity of a statute must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement.[12]

Despite this, however, there have been cases wherein the Court has allowed the following non-traditional suitors to bring a case before it despite lack of direct injury:

1. For **taxpayers**, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
2. For **voters**, there must be a showing of obvious interest in the validity of the election law in question;
3. For **concerned citizens**, there must be a showing that the issues raised are of transcendental importance which must be settled early;
4. For **legislators**, there must be a claim that the official action complained of infringes upon their prerogatives as legislators;[13]
5. For **associations**, its members must be affected by the action;[14] and
6. For **those bringing suit on behalf of third parties**, the litigant must have suffered an 'injury-in-fact,' thus giving him or her a "sufficiently concrete interest" in the outcome of the issue in dispute; the litigant must have a close relation to the third party; and there must

---

[11] *Id.* at 217.

[12] *People v. Vera*, 65 Phil. 56, 89 (1937).

[13] *David v. Macapagal-Arroyo*, *supra* note 10 at 220-221.

[14] *Executive Secretary v. Court of Appeals,* G.R. No. 131719, May 25, 2004, 429 SCRA 81, 96. See also *Godinez v. Court of Appeals*, G.R. No. 154330, February 15, 2007, 516 SCRA 24 and *Purok Bagong Silang Association, Inc. v. Yuipco*, G.R. No. 135092, May 4, 2006, 489 SCRA 382.

> exist some hindrance to the third party's ability to protect his or her own interests.[15]

In this case, petitioner is not in a long-term monogamous same-sex relationship. He has not attempted to marry nor was prevented by the State from doing so. This makes his lack of direct interest in the enforcement of the assailed provisions of the Family Code patent.

Neither does petitioner qualify as a taxpayer as he has not alleged illegal disbursement of public funds or that a tax measure is involved in this case. He does not assail the validity of an election law, so he also does not have standing as a voter. Finally, he is not a legislator nor an association and therefore cannot claim standing as such.

C

The petition-in-intervention cannot cure the defects of the petition.

An intervention is merely ancillary and supplemental to an existing litigation. It is not an independent action. It presupposes the pendency of a suit in a court of competent jurisdiction; in other words, jurisdiction over the same is governed by jurisdiction over the main action. Perforce, a court which has no jurisdiction over the principal action has no jurisdiction over a complaint-in-intervention.[16]

As stated earlier, the petition before Us lacks the essential requisites for judicial review. This ousts the Court of jurisdiction to take cognizance of the same. More, jurisprudence instructs that a petition-in-intervention cannot create an actual controversy for the main petition. The cause of action must be made out by

---

[15] *White Light Corporation v. City of Manila*, G.R. No. 122846, January 20, 2009, 576 SCRA 416, 430- 431.

[16] *Bangko Sentral ng Pilipinas v. Campa, Jr.,* G.R. No. 185979, March 16, 2016, 787 SCRA 476, 498, citing *Asian Terminals v. Bautista*, G.R. No. 166901, October 27, 2006, 505 SCRA 748, 763.

the allegations of the petition without the aid of any other pleading.[17]

In any event, the petition-in-intervention is, in itself, wanting and cannot lend any validity to the main petition. The LGBTS Church, while claiming to intervene on behalf of its members, failed to satisfy the following requirements to successfully maintain third-party standing: (1) the litigant must have suffered an 'injury-in-fact,' thus giving him/her a "sufficiently concrete interest" in the outcome of the case in dispute; (2) the litigant must have a close relation to the third party; and (3) there must be some hindrance to the third party's ability to protect his/her own interests.[18] The first and third elements are missing. As will be discussed in detail later, the LGBTS Church failed to show how the challenged law injures it and its members. On the other hand, the filing of the petition-in-intervention by the two couples, who are members of the LGBTS Church, proved that they are sufficiently capable to acting to protect their own interest. Any invocation of third party-standing is thus misplaced.

D

Neither can the transcendental importance doctrine save the petition and the petition-in-intervention. This doctrine dispenses only with the requirement of *locus standi*. It does not override the requirements of actual and justiciable controversy, a condition *sine qua non* for the exercise of judicial power.[19]

Very recently in *Gios-Samar, Inc. v. Department of Transportation and Communications*,[20] the Court held that mere invocation of the transcendental importance doctrine cannot,

---

[17] *De Borja v. Pinalakas na Ugnayan ng Maliliit na Mangingisda ng Luzon, Mindanao at Visayas*, G.R. Nos. 185320 & 185348, April 19, 2017, 823 SCRA 550, 570.

[18] *White Light Corporation v. City of Manila*, G.R. No. 122846, January 20, 2009, 576 SCRA 416, 430-431.

[19] *De Borja v. Pinalakas na Ugnayan ng Maliliit na Mangingisda ng Luzon, Mindanao at Visayas, supra* note 17 at 578. Citations omitted.

[20] G.R. No. 217158, March 12, 2019.

absent a showing that the issue raised is one of law, excuse a violation of the rule on hierarchy of courts. Hence, when a question before the Court involves the determination of factual issues indispensable to the resolution of a legal issue, the Court will refuse to resolve the factual question regardless of the invocation of the transcendental or paramount importance of the case.[21]

II

As stated at the outset, the petition and the petition-in-intervention raise issues which the Court cannot resolve in the absence of a factual foundation of record. Their decision to bring the case directly before the Court is unwarranted and constitutes ground for the outright dismissal of the petition.

While the Court has original and concurrent jurisdiction with the Regional Trial Court (RTC) and the Court of Appeals (CA) over petitions seeking the issuance of writs of *certiorari* and prohibition, litigants do not have unfettered discretion to invoke the Court's original jurisdiction. The doctrine of hierarchy of courts dictates that direct recourse to this Court is allowed only to resolve questions of law.[22]

I note that petitioner did couch his petition and the petition-in-intervention in a manner as to purport to present a pure legal question, that is, whether Articles 1 and 2 of the Family Code are constitutional. He argued that the assailed provisions are unconstitutional because they violate his (and other homosexuals'): (1) due process right/liberty to marry a person of the same-sex;[23] (2) right to equal protection of the laws;[24] and (3) right to found a family within a marriage in accord with their religious convictions under Section 3(1), Article VX

---

[21] *Id.*

[22] *Gios-Samar, Inc. v. Department of Transportation and Communications*, *supra* note 20.

[23] *Rollo*, p. 16.

[24] *Id.* at 20.

of the Constitution.[25] Before this Court can reach the issue of constitutionality, however, it first needs to determine whether petitioner's asserted liberty interest exists. The query at the outset is, therefore, is: **"Did petitioner lose something that fits into one of the three protected categories of life, liberty, or property?"**[26] **"If in the affirmative, the next question to ask is: "Is it a fundamental right protected by the Constitution?"**

I had occasion to express my views on the concept of fundamental rights under constitutional law in my Concurring and Dissenting Opinion in *Versoza v. People of the Philippines, et al*.[27] decided today. They bear some repetition here.

A

The concept of fundamental rights, once described as "liberties that operate as trumps,"[28] was first extensively covered by the Court, through Chief Justice Puno, in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*.[29] There, the Court, citing Gerald Gunther, traced its history and development

---

[25] *Id.* 11-12; Section 3 provides: The State shall defend:

(1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood; x x x

[26] See *People v. Larrañaga*, G.R. No. 138874, February 3, 2004, 421 SCRA 530, 555-556 (2004).

x x x **In evaluating a due process claim, the court must determine whether life, liberty, or property interest exists**, and if so, what procedures are constitutionally required to protect that right. **Otherwise stated, the due process clause calls for two separate inquiries in evaluating an alleged violation: did the plaintiff lose something that fits into one of the three protected categories of life, liberty, or property?;** and, if so, did the plaintiff receive the minimum measure of procedural protection warranted under the circumstances? (Emphasis supplied.)

[27] G.R. No. 184535, August 28, 2019.

[28] Easterbrook, "*Implicit and Explicit Rights of Association*," Vol. 10 Harvard Journal of Law and Public Policy (1987), pp. 91-92.

[29] G.R. No. 148208, December 15, 2004, 446 SCRA 299.

in the context of American constitutional equal protection analysis.[30]

The recognition of an asserted liberty interest as "fundamental" has significant legal consequences. Traditionally, liberty interests are protected only against *arbitrary* government interference. If the government can show a *rational* basis for believing that its interference advances a legitimate legislative objective, a claim to a liberty interest may fail.[31] Where, however, a liberty interest has been accorded an "elevated" status — that is, by characterizing it as a right (or a fundamental right), then the government is subject to a *higher* burden of proof to justify intrusions into these interests, namely, the requirements of strict scrutiny in equal protection cases[32] and that of compelling state interest in due process cases.[33] As the United States Supreme Court (US Supreme Court) has warned, affixing the label "fundamental" to such liberty interests would place them outside the arena of public debate and legislative action.[34] Resultantly, and as is also true in this jurisdiction, fundamental rights have been deemed to include only those basic liberties explicitly or implicitly guaranteed by the Bill of Rights of the Constitution.[35]

B

There seems to me little disagreement as to the "fundamental" nature of an asserted liberty interest when the same can be read from the text of the Bill of Rights of the Constitution

---

[30] *Id.* at 371-374.

[31] Crump, *"How do the Courts Really Discover Unenumerated Fundamental Rights – Cataloguing the Methods of Judicial Alchemy,"* 19 Harv. J. L. & Pub. Pol'y 795 (1996), pp.799-800.

[32] See *Central Bank Employees Association, Inc. v. Bangko Central ng Pilipinas, supra* note 29.

[33] See *Obergefell v. Hodges*, 576 U.S. ____ (2015).

[34] *Id.*

[35] *Republic v. Manalo*, G.R. No. 221029, April 24, 2018, citing *J.* Brion, Separate Opinion in *Biraogo v. Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010, 637 SCRA 78, 359-360.

itself. Thus, when a state act is alleged to have implicated an **explicit** "fundamental right," *i.e.*, a right textually found in the Bill of Rights, the Court has been wont to subject the government to a *higher* burden to justify its challenged action: This the Court did in *Ebralinag v. The Division Superintendent of Schools of Cebu*,[36] (on religious beliefs); *Legaspi v. Civil Service Commission*,[37] (on the right of the people to information on matters of public concern); *Disini, Jr. v. Secretary of Justice*,[38] (on the right to freedom of expression, right to privacy, and right against unreasonable searches and seizures); *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*,[39] (on the right to travel); *Chavez v. Gonzales*,[40] (on the freedom

---

[36] G.R. No. 95770, March 1, 1993, 219 SCRA 256. The Court annulled and set aside orders expelling petitioners from school, thereby upholding their right under the Constitution to refuse to salute the Philippine flag as guaranteed under Section 5, Article III.

[37] G.R. No. 72119, May 29, 1987, 150 SCRA 530. The CSC was ordered, *via mandamus*, to open its register of eligibles for the position of sanitarian, and to confirm or deny, the civil service eligibility of certain identified individuals for said position in the Health Department of Cebu City, in furtherance of the fundamental right provided under Section 7, Article III of the Constitution.

[38] G.R. No. 203335, February 18, 2014, 716 SCRA 237. The Court struck down as unconstitutional Sections 4(c)(3), 12, and 19 of the Cybercrime Law for being violative of Sections 4, 3, and 2, respectively, of Article III of the Constitution.

[39] *J.* Leonen Separate Opinion in *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, G.R. No. 225442, August 8, 2017, 835 SCRA 350. This case involved a challenge against curfew ordinances for minors for being violative of Section 6, Article III of the Constitution. There, the Court chose to apply the strict scrutiny test and found that while the government was able to show a compelling state interest, it failed to show that the regulation set forth was the least restrictive means to protect such interest or the means chosen is narrowly tailored to accomplish the interest.

[40] G.R. No. 168338, February 15, 2008, 545 SCRA 441. The Court nullified the official government statements warning the media against airing the alleged wiretapped conversation between the President and other personalities. According to the Court, any attempt to restrict the exercise guaranteed under Section 4, Article III must be met with "an examination so critical that only a danger that is clear and present would be allowed to curtail it."

of the press); *Newsounds Broadcasting Network, Inc. v. Dy*,[41] (on the right to free speech and freedom of the press); and *Kabataan Party-List v. Commission on Elections*,[42] (on the right to vote).

C

How should the Court proceed if the right asserted to be fundamental is not explicitly found in the Bill of Rights or other provisions of the Constitution, or where the fundamental right is asserted to flow from generally-stated rights such as due process and equal protection? Justice Harlan of the US Supreme Court has famously noted that "the full scope of the liberty guaranteed by the Due Process Clause cannot be found in, or limited by, the precise terms of the specific guarantees elsewhere provided in the Constitution."[43]

---

[41] G.R. Nos. 170270 & 179411, April 2, 2009, 583 SCRA 333, 334. The Court held that respondents' actions, which ranged from withholding permits to operate to the physical closure of those stations under color of legal authority, failed to pass the test of strict scrutiny which it deemed appropriate to assess content-based restrictions on speech. According to the Court, "[a]s 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." Due to the government's failure to show a compelling state interest, the Court granted petitioner's prayer for a writ of *mandamus* and ordered respondents to immediately issue the requisite permits.

[42] G.R. No. 221318, December 16, 2015, 777 SCRA 574. A challenge was made against a COMELEC resolution setting a shorter deadline for voter registration, one outside of the period provided by Section 8 of Republic Act No. 8189, otherwise known as the "Voter's Registration Act of 1996." The Court found that existing laws grant the COMELEC the power to fix other periods and dates for pre-election activities only if the same cannot be reasonably held within the period provided by law. Since the COMELEC was unable to justify why the mandate of continuing voter registration cannot be reasonably held within the period provided, the Court nullified the deadline set by the COMELEC for being unduly restrictive of the people's right to vote.

[43] *Poe v. Ullman*, 367 U.S. 497, 543 (1961), *J*. Harlan Dissenting Opinion; see also my Concurring Opinion in *Versoza* on how the US Supreme Court has given "fundamental" status to otherwise unenumerated rights.

In this jurisdiction, this Court has had occasion to rule on assertions of **unenumerated** fundamental rights:

In the 1924 case of *People v. Pomar*,[44] and reminiscent of the *Lochner*-era rulings, this Court declared unconstitutional provisions of law which required employers to pay a woman employee, who may become pregnant, her wages for 30 days before and 30 days after confinement. Citing a long line of US Supreme Court *Lochner*-era decisions, this Court found that the right to liberty includes **the right to enter into (and terminate) contracts**.[45]

Philippine adherence to this ruling would, however, be short-lived.[46] As Justice Fernando would later explain in *Edu v. Ericta*,[47] the decision in *Pomar* was largely brought about by the fact that "our Supreme Court had no other choice as the Philippines was then under the United States," where only a year before *Pomar*, a statute providing for minimum wages was declared in *Adkins* to be constitutionally infirm. The Court (and the Constitutional Convention) would adopt a more

---

[44] G.R. No. L-22008, 46 Phil. 440 (1924).

[45] x x x [S]aid section creates a term or condition in every contract made by every person, firm, or corporation with any woman who may, during the course of her employment, become pregnant, and a failure to include in said contract the terms fixed by the law, makes the employer criminally liable subject to a fine and imprisonment. Clearly, therefore, the law has deprived, every person, firm, or corporation owning or managing a factory, shop or place of labor of any description within the Philippine Islands, of his right to enter into contracts of employment upon such terms as he and the employee may agree upon. The law creates a term in every such contract, without the consent of the parties. Such persons are, therefore, deprived of their liberty to contract. The [C]onstitution of the Philippine Islands guarantees to every citizen his liberty and one of his liberties is the liberty to contract. (Emphasis supplied.) *Id.* at 454.

[46] See *Calalang v. Williams*, 70 Phil. 726 (1940); *Antamok Goldfields Mining Company v. Court of Industrial Relations*, 70 Phil. 341 (1940). See also *J.* Fernando's Opinion in *Alfanta v. Noe*, G.R. No. L-32362, September 19, 1973, 53 SCRA 76.

[47] G.R. No. L-32096, October 24, 1970, 35 SCRA 481.

deferential attitude towards government regulation of economic relations and covering such subjects as "collective bargaining, security of tenure, minimum wages, compulsory arbitration, the regulation of tenancy as well as the issuance of securities, and control of public services."[48]

In the meantime, and taking its cue from the US Supreme Court, this Court would also go on to recognize unenumerated, yet fundamental, non-economic rights. For example, although the Bill of Rights speaks only of a right of privacy over communication and correspondence, the Court, in the 1968 case of *Morfe v. Mutuc*,[49] adopted the reasoning in *Griswold* and recognized a constitutional right to *personal* privacy. In *Oposa v. Factoran, Jr.*,[50] this Court accorded fundamental right status to an asserted liberty interest in "a balanced and healthful ecology" under Section 16, Article II of the 1987 Constitution.

---

[48] *Id.* at 493. Citations omitted. Justice Fernando further writes:

x x x [T]o erase any doubts, the Constitutional Convention saw to it that the concept of *laissez-faire* was rejected. **It entrusted to our government the responsibility of coping with social and economic problems with the commensurate power of control over economic affairs.** Thereby it could live up to its commitment to promote the general welfare through state action. **No constitutional objection to regulatory measures adversely affecting property rights, especially so when public safety is the aim, is likely to be heeded, unless of course on the clearest and most satisfactory proof of invasion of rights guaranteed by the Constitution.** x x x

x x x x x x x x x

It is in the light of such rejection of the *laissez-faire* principle that during the Commonwealth era, no constitutional infirmity was found to have attached to legislation covering such subjects as collective bargaining, security of tenure, minimum wages, compulsory arbitration, the regulation of tenancy as well as the issuance of securities, and control of public services. So it is likewise under the Republic this Court having given the seal of approval to more favorable tenancy laws, nationalization of the retail trade, limitation of the hours of labor, imposition of price control, requirement of separation pay for one month, and social security scheme. (Emphasis supplied; citations omitted.) *Id.* at 491-493.

[49] G.R. No. L-20387, January 31, 1968, 22 SCRA 424.

[50] G.R. No. 101083, July 30, 1993, 224 SCRA 792.

In *Imbong v. Ochoa, Jr.*[51] which involved a number of challenges against the constitutionality of Republic Act No. 10354,[52] this Court recognized the constitutional right of parents to exercise parental control over their minor-child and a liberty interest in the access to safe and non-abortifacient contraceptives hinged on a **right to health** under Section 15, Article II[53] and other sections of the Constitution. In *Capin-Cadiz v. Brent Hospital and Colleges, Inc*.,[54] the Court held that the constitutional right to personal liberty and privacy should be read to include a woman's **right to choose whether to marry** and **to decide whether she will bear and rear her child outside of marriage**.[55]

Most recently, this Court in *Republic v. Manalo*,[56] applying equal protection analysis, upheld, pursuant to a **fundamental right to marry**, a liberty interest on the part of a Filipino spouse to be recapacitated to marry, in cases where a valid foreign divorce has been obtained.

III

Unlike the case of rights that can be located on the text of the Bill of Rights, the rules with respect to locating unenumerated "fundamental" rights, however, are not clear. According to Justice Harlan, speaking in the context of identifying the full scope of liberty protected under the Due Process Clause, the endeavor essentially entails an attempt at finding a balance

---

[51] G.R. No. 204819, April 8, 2014, 721 SCRA 146.

[52] Also known as the Responsible Parenthood and Reproductive Health Act of 2012.

[53] CONSTITUTION, Art. II, Sec. 15:

The State shall protect and promote the right to health of the people and instill health consciousness among them.

[54] G.R. No. 187417, February 24, 2016, 785 SCRA 18.

[55] See *J*. Jardeleza Concurring Opinion, *id.* at 49-50.

[56] G.R. No. 221029, April 24, 2018.

between "respect for the liberty of the individual x x x and the demands of organized society."[57]

The question that presents itself then is **how** one determines whether an implied liberty interest being asserted is "fundamental," as to call for the application of strict scrutiny. For its part, the US Supreme Court has attempted, over time, to craft principled formulations on how to identify such "unenumerated" or "implied" rights:

> x x x [T]he Court has used a wide variety of methods, ranging from the restrained approach of locating protected interests in the constitutional text to the generous test of evaluating interests by the importance they have for contemporary individuals. Because the Justices do not uniformly agree upon these methods, it is also understandable that opinions for the Court rarely express consensus about the way the methods are chosen, or whether they fit into the hierarchy, or whether some methods are preferable in some situations and others in other situations. x x x
>
> These methods lie along a continuum, all the way from hair-trigger formulas that can support a cornucopia of fundamental rights to stingy theories that protect virtually nothing that is not undeniably enumerated, x x x [n]o one method is comprehensive or exclusive, and indeed, the Justices themselves often have used two or three different theories in combination while analyzing a single interest. x x x[58] (Citations omitted.)

---

[57] *J.* Harlan Dissenting Opinion in *Poe v. Ullman, supra* note 43 at 542.

[58] Crump, "*How Do the Courts Really Discover Unenumerated Fundamental Rights — Cataloguing the Methods of Judicial Alchemy*," 19 Harv. J. L. & Pub. Pol'y 795 (1996), p. 839. In his article, Crump surveyed more than 10 methodologies used by the court for recognizing unenumerated fundamental rights. These include the "history and tradition" test under *Washington v. Glucksberg*, 521 U.S. 702 (1997), the "essential requisite for ordered liberty" test under *Palko v. Connecticut*, 302 U.S. 319 (1937), to the "importance to the individual test" under *Goldberg v. Kelly*, 397 U.S. 254 (1970).

*This* Court has not laid down clear guidelines on this matter. Thus, reference to American scholarly commentary is again instructive.

In his article *An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court*, Robert Farrell wrote that the US Supreme Court uses "a multiplicity of methods of identifying implied fundamental rights."[59] After a survey of US Supreme Court cases, Farrell has classified the different methods used by the Court in categorizing certain rights as fundamental. These are either because the asserted rights: (1) are important;[60] (2) are implicit in the concept of ordered liberty[61]

---

[59] Farrell, *"An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court*, 26 St. Louis U. Pub. L. Rev. 203 (2007), p. 209.

[60] *Id.* at 217-221. The US Supreme Court used the "importance" test in *Skinner v. Oklahoma*, 316 U.S. 535 (1942), in striking down a state statute providing for the sterilization of habitual criminals, which by law was limited to perpetrators of felonies involving moral turpitude. The US Supreme Court did not uphold the fundamental right to procreate on the basis of any language in the Bill of Rights; rather, it simply asserted, based on an incontrovertible fact of human existence, that marriage and procreation are fundamental to the very existence and survival of the race. This appears to be the test/ approach considered and used by the Court in *Oposa v. Factoran, Jr.,* G.R. No. 101083, July 30, 1993, 224 SCRA 792.

[61] Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra* note 59 221-224. In *Palko v. Connecticut*, 302 U.S. 319 (1937), the US Supreme Court confined fundamental liberties to those that are "implicit in the concept of ordered liberty" such that "neither liberty nor justice would exist if they were sacrificed." *Palko* concerned a state statute which allowed for the re-trial of an accused if made upon the instance of the State. There, the accused, who was initially convicted for the crime of murder in the second degree and sentenced to life in prison, was, upon re-trial, convicted for the crime of murder in the first degree and sentenced to death. An action to challenge said state statute was brought before the US Supreme Court which thereafter upheld it, saying "[t]he right to trial by jury and the immunity from prosecution except as the result of an indictment may have value and importance. Even so, they are not of the very essence of a scheme of ordered liberty. To abolish them is not to violate a 'principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" See also Crump, "*How Do the Courts Really Discover Unenumerated Fundamental Rights – Cataloguing the Methods of Judicial Alchemy*," 19 Harv. J. L. & Pub. Pol'y 795 (1996), p. 871.

or implicitly guaranteed by the Constitution;[62] (3) are deeply rooted in the Nation's history and tradition;[63] (4) need protection

---

[62] Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra* note 59 at 224-225. The US Supreme Court also used the "implicit" test in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 135 (1973), where it rejected an asserted "implied right to education." In seeming rejection of the importance test, the US Supreme Court declared:

> x x x [T]he importance of a service performed by the State does not determine whether it must be regarded as fundamental for purposes of examination under the Equal Protection Clause. x x x
>
> x x x x x x x x x
>
> It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. Thus, the key to discovering whether education is "fundamental" is not to be found in comparisons of the relative societal significance of education, as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution.
>
> **Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected. As we have said, the undisputed importance of education will not, alone, cause this Court to depart from the usual standard for reviewing a State's social and economic legislation.** (Emphasis supplied.) *Id.* at 30-35.

[63] Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra* note 59 at 225-235. Under this approach, the test of whether or not a right is fundamental is to be determined by whether or not it is rooted in our Nation's history and traditions that is, whether the asserted liberty has been the subject of traditional or historical protection (See also Crump, "*How Do the Courts Really Discover Unenumerated Fundamental Rights — Cataloguing the Methods of Judicial Alchemy*," *supra* note 58 at 860). In *Bowers v. Hardwick*, the US Supreme Court upheld a Georgia sodomy statute. It claimed that the right asserted, which it described as "the claimed constitutional right of homosexuals to engage in acts of sodomy" was not considered fundamental within the nation's history and traditions, as is evidenced by a slew of anti-sodomy acts from the time of the enactment of the Bill of Rights to about the time the case was decided. See also the 1934 case of *Snyder v. Massachusetts*, 291 U.S. 97 (1934), where an accused sought to challenge his conviction for the crime of murder

from government action that shocks the conscience;[64] (5) are necessarily implied from the structure of government[65] or from

---

on the ground that he was denied permission to attend a view, which was ordered by the court on motion of the prosecution, at the opening of the trial. The jurors, under a sworn bailiff, visited the scene of the crime, accompanied by the judge, the counsel for both parties, and the court stenographer. The Court affirmed the conviction as there was no showing that there was a history or tradition in the State of Massachusetts affording the accused such right. It held that "[t]he constitution and statutes and judicial decisions of the Commonwealth of Massachusetts are the authentic forms through which the sense of justice of the People of that Commonwealth expresses itself in law. We are not to supersede them on the ground that they deny the essentials of a trial because opinions may differ as to their policy or fairness." For more recent applications, see *Michael H. v. Gerald D.*, 491 U.S. 110, 130 (1989) and *Washington v. Glucksberg*, 521 U.S. 702 (1997). See, however, *J*. Kennedy's Opinion in *Obergefell v. Hodges*, 576 U.S. __ (2015), where the Court held that "[h]istory and tradition guide and discipline this inquiry but do not set its outer boundaries. x x x That method respects our history and learns from it without allowing the past alone to rule the present."

[64] Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra* note 59 at 235-237. In the case of *Rochin v. California*, 342 U.S. 165 (1952), the US Supreme Court held that the act of the police in arranging to have a suspect's stomach pumped to produce evidence of illegal drugs constituted a kind of conduct that "shocks the conscience" and therefore violated the Due Process Clause of the Constitution. This test was again seen appropriate to evaluate "abusive executive action," which in said case was a police car chase which resulted in the death of one of those being chased. The Court eventually found in favor of government as what was determinant of whether the challenged action "shocks the conscience" was not negligence or deliberate indifference but whether there was "an intent to harm suspects physically or worsen their legal plight." Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court*, 26 St. Louis U. Pub. L. Rev. 203 (2007), p. 236.

[65] Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra* note 59 at 237-239. In *Shapiro v. Thompson*, 394 U.S. 618 (1969), the US Court considered the constitutional "right to travel interstate" which was alleged to have been infringed by a Connecticut statute which provided that residents cannot receive welfare benefits until they had lived in the state for at least one year. According to the Court, while unwritten in the Constitution, the right to travel is "fundamental to the concept of our Federal Union," which was, by and large, made up of several sovereign states coming together.

the structure of the Constitution;[66] (6) provide necessary access to government processes;[67] and (7) are identified in previous Supreme Court precedents.[68]

There is no one mode of constitutional interpretation that has been recognized as appropriate under all circumstances.

---

The New Union would not have been possible, and would have made no sense, unless citizens of that Union were free to travel from one end of it to another. Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court*, 26 St. Louis U. Pub. L. Rev. 203 (2007), pp. 237-239.

[66] Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court, supra* note 59 at 240-241. In *Griswold v. Connecticut*, 381 U.S. 479 (1965), which dealt with the right of married couples to use contraceptives, the US Supreme Court, speaking through *J.* Douglas, "spoke of the 'penumbras formed by emanations' from the guarantees of specific kinds of privacy in the Bill of Rights and used these x x x as a basis for finding a more generalized, more encompassing right of privacy." Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court,* 26 St. Louis U. Pub. L. Rev. 203 (2007), p. 240.)

[67] Farrell writes that the US Court has found implied constitutional rights to vote (See *Reynolds v. Sims*, 377 U.S. 533 [1964]) and to some level of access to court processes (See *Griffin v. Illinois*, 351 U.S. 12 [1956] and *Boddie v. Connecticut*, 401 U.S. 371 [1971]) on the ground that "legislation and adjudication in the courts are essential elements of a democracy and that a limitation on access to these two institutions is a threat to the institution of government itself." Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court*, 26 St. Louis U. Pub. L. Rev. 203 (2007) pp. 241-245.

[68] In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), the Supreme Court used *stare decisis*, in particular its decision in the case of *Roe v. Wade*, 410 U.S. 113 (1093), to explain the nature of the fundamental right to privacy as it related to abortion. *Roe*, in turn, also enumerated several cases from which it understood to have recognized a broad and generalized right to privacy (which includes a woman's decision whether or not to terminate her pregnancy) that is part of the Fourteenth Amendment "liberty." (Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court*, 26 St. Louis U. Pub. L. Rev. 203 (2007), p 245-246.) This approach appears to have been used by this Court in *People v. Pomar*, 46 Phil. 440 (1924) and *J.* Jardeleza in his Concurring Opinion in *Capin-Cadiz v. Brent Hospital and Colleges, Inc.*, G.R. No. 187417, February 24, 2016, 785 SCRA 18.

In fact, one would find critiques for every approach in scholarly commentaries on the subject.[69] Nevertheless, and despite the particular shortcomings of each individual approach, it is my view that the Court should endeavor to be deliberate and open about its choice of approach in fundamental rights cases. This, to my mind, would help greatly not only in furthering the public's understanding of the Court's decisions in complex constitutional cases; it would reinforce the credibility of Our decisions, by exacting upon the Court and its members the duty to clearly and consistently articulate the bases of its decisions in difficult constitutional cases.

A

The method by which the US Supreme Court determined the existence of the fundamental right to same-sex marriage in *Obergefell v. Hodges*[70] (*Obergefell*) is instructive.

There, the US Supreme Court considered not only the ancient history of marriage but also its development through time. To quote Justice Kennedy: "The history of marriage is one of both continuity and change."[71] The US Supreme Court also noted the legal and societal progression of the rights of homosexuals from being condemned as immoral to being accorded protection under the law, as depicted in the case of *Lawrence v. Texas*.[72] It must be stressed, however, that the US Supreme Court did not receive and evaluate evidence on these matters for the first time on appeal. The plaintiffs in *Obergefell* did not file a suit

---

[69] For in depth discussions of the different methods and approaches, see Crump, "*How do the Courts Really Discover Unenumerated Fundamental Rights — Cataloguing the Methods of Judicial Alchemy*," 19 Harv. J. L. & Pub. Pol'y 795 (1996); and Farrell, "*An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court*," 26 St. Louis U. Pub. L. Rev. 203 (2007).

[70] 135 S. Ct. 2584 (2015).

[71] *Id.* at 2595.

[72] 539 U.S. 558 (2003). In *Lawrence*, the US Supreme Court reversed its earlier ruling in *Bowers v. Hardwick*, 478 U.S. 186 (1986) and recognized a liberty of consensual sexual conduct.

directly to the US Supreme Court. Rather, they instituted original actions before their respective Federal District Courts which conducted trials and hearings. Thus, the facts upon which the US Supreme Court based its decision were already a matter of record.

In *DeBoer v. Synder* (*DeBoer*),[73] one of the cases that comprised *Obergefell*, plaintiffs April DeBoer and Jayne Rowse challenged the validity of the Michigan Marriage Amendment (MMA) which prohibited same-sex marriage on the ground of violation of the due process and equal protection clauses of the Fourteenth Amendment. They claimed that they and their children were injured by their ineligibility to petition for joint adoption because the State of Michigan permits only a single person or, if married, couples of opposite-sex, to adopt.[74] Thus, they argue that each of their three children can have only one of them as his/her legal parent. In case tragedy were to befall either DeBoer or Rowse, the other would have no legal rights over their children.[75]

The District Court assumed that the appropriate level of scrutiny is rational basis test; hence, it framed the issue as whether the MMA proscribed a conduct in a manner that is rationally-related to any conceivable legitimate governmental purpose.[76] **It then declared that whether the rationales for the Michigan laws furthered a legitimate state interest is a "triable issue of fact" and held a nine-day trial on the issue**.[77] The State of Michigan offered the following reasons for excluding same-sex couples from marriage: (1) to provide children with "biologically-connected" role-models of both genders that are necessary to foster healthy psychological

---

[73] 772 F.3d 388 (2014). The District Court declared MMA and its implementing rules unconstitutional for violating the equal protection clause.

[74] *Deboer v. Snyder*, 973 F. Supp. 2d 757, 760-761 (2014).

[75] *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

[76] *Deboer v. Snyder*, *supra* note 74.

[77] *Deboer v. Snyder*, 772 F.3d 388, 397 (2014).

development; (2) to avoid the unintended consequences that might result from redefining marriage; (3) to uphold tradition and morality; and (4) to promote the transition of "naturally procreative relationships into stable unions."[78]

Both parties presented expert witnesses (which included psychologists, sociologists, law professors, and historians) to prove their respective arguments. The psychologist testified with respect to the relation/non-relation of the quality of a person's child-rearing skills to his/her sexual orientation. The sociologist testified about the stability of same-sex couples and the progress of the children they raised as compared to children raised by heterosexual married couples. The law professor spoke about the effect of the MMA to children raised by same-sex couples if the sole legal parent dies or is incapacitated. The historian narrated the history and bases of civil marriages not only in Michigan but in every state in the country.[79]

Meanwhile, similar to *Deboer* and also instructive here, is *Perry v. Schwarzenegger*,[80] which involved two same-sex couples who challenged the validity of "Proposition 8," a voter-enacted amendment to the California Constitution restricting marriage to one between a man and a woman. Perry, *et al*. alleged that they were denied marriage licenses by their respective county authorities on the basis of Proposition 8, which, in turn, deprived them of their rights to due process and equal protection of the laws.[81] Specifically, they asserted that the freedom to marry the person of one's choice is a fundamental right protected by the due process clause. Proposition 8 should thus be subjected to a heightened scrutiny under the equal protection clause because

---

[78] *Deboer v. Snyder, supra* note 74 at 760.

[79] *Deboer v. Snyder*, 973 F. Supp. 2d 757, 760, 761-768 (2014).

[80] 704 F. Supp. 2d 921 (2010). Note that *Perry* is not one of the cases that comprise *Obergefell*.

[81] *Id.* at 927. The elected state officials of California, on the other hand, refused to defend the constitutionality of Proposition 8, so this task was taken up by its proponents.

gays and lesbians constitute a suspect class, singled out for unequal treatment and discriminated based on sexual orientation.[82]

Since the factual premises underlying Perry, *et al.*'s claim were disputed, the US District Court for the Northern District of California (California District Court) set the matter for trial. The action was tried for more than two weeks (or from January 11 to 27, 2010).[83] The California District Court determined the following issues: (1) whether any evidence supports California's refusal to recognize marriage between two people

---

[82] *Id.* at 929.

[83] *Id.* The California District Court asked the parties to submit evidence to address 19 **factual** questions: (1) the history of discrimination gays and lesbians have faced; (2) whether the characteristics defining gays and lesbians as a class might in any way affect their ability to contribute to society; (3) whether sexual orientation can be changed, and if so, whether gays and lesbians should be encouraged to change it; (4) the relative power of gays and lesbians, including successes of both pro-gay and antigay legislation; (5) the long-standing definition of marriage in California; (6) whether the exclusion of same-sex couples from marriage leads to increased stability in opposite-sex marriage; (7) whether permitting same-sex couples to marry destabilizes opposite-sex marriage; (8) whether a married mother and father provide the optimal child-rearing environment; (9) whether excluding same-sex couples from marriage promotes this environment; (10) whether and how California has acted to promote these interests in other family law contexts; (11) whether or not Proposition 8 discriminates based on sexual orientation or gender or both; (12) whether the availability of opposite-sex marriage is a meaningful option for gays and lesbians; (13) whether the ban on same-sex marriage meaningfully restricts options available to heterosexuals; (14) whether requiring one man and one woman in marriage promotes stereotypical gender roles; (15) whether Proposition 8 was passed with a discriminatory intent; (16) the voters' motivation or motivations for supporting Proposition 8, including advertisements and ballot literature considered by California voters; (17) the difference in actual practice of registered domestic partnerships, civil unions, and marriage; (18) whether married couples are treated differently from domestic partners in governmental and non-governmental contexts; and (19) whether the right [to marriage] asserted by Perry, *et al.*, is "deeply rooted in this Nation's history and tradition" and thus subject to strict scrutiny under the due process clause. Cited in David Boies and Theodore Olson, Redeeming the Dream, Proposition 8 and the Struggle for Marriage Equality, (2014), pp. 77-78.

of the (same) sex; (2) whether any evidence shows California has an interest in differentiating between same-sex and opposite-sex unions; and (3) whether the evidence shows Proposition 8 enacted a private moral view without advancing a legitimate government interest. **The parties were given full opportunity to present evidence in support of their positions and engaged in significant discovery procedures, including third-party discovery, to build an evidentiary record.**[84]

Perry, *et al.* presented nine expert witnesses, which include historians, economists, psychologists, political scientists, and a social epidemiologist, who, *inter alia*, testified that there is no meaningful difference between same-sex couples and opposite-sex couples.[85] Proposition 8 proponents, for their part, presented only two expert witnesses. In the end, the California District Court found that Proposition 8 proponents "failed to build a credible factual record to support their claim that [the law] served a legitimate government interest."[86] It thereafter proceeded to declare Proposition 8 unconstitutional because the evidence shows, among others, that it does nothing more than to enshrine in the Constitution the notion that opposite-sex couples are superior to same-sex couples.[87]

---

[84] *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 932.

[85] *Id*. at 934.

[86] *Id*. at 932.

[87] *Id.* at 1003. The defendant public officials of California elected not to appeal from the ruling of the California District Court. The proponents of Proposition 8, however, filed an appeal with the Ninth Circuit Court of Appeals. The Circuit Court found the proponents have standing under federal law to defend Proposition 8's constitutionality, but nevertheless affirmed the California District Court on the merits. On further appeal, the US Supreme Court found that the proponents have no standing to appeal the California District Court's ruling. It consequently vacated the decision of the Ninth Circuit Court of Appeals and remanded the case to said court with the directive to dismiss the appeal for lack of jurisdiction. *Hollingsworth et al. v. Perry et al.*, 570 U.S. 693 (2013).

B

In this case, petitioner and petitioners-in-intervention, as professed homosexuals, gays and lesbians, assert a fundamental right to enter into same-sex marriage.[88] They argue that the legal requirement that marriage be a union between a male and a female violates their rights to due process[89] and the equal protection of the laws.[90] On the former, they claim that there is no rational nexus between limiting marriage to opposite-sex couples and the state interest of protecting marriage as the foundation of the family.[91] They assert that: homosexuals can fulfill the essential marital obligations, heterosexuals are no better parents than homosexuals, and homosexuals can raise children well in the same manner that heterosexuals can.[92] With respect to their equal protection claim, petitioner asserts that classification on the basis of sexual orientation is suspect,[93] because, among others, sexual orientation is an immutable trait. Since the classification is suspect, strict scrutiny review must be resorted to. Petitioner further argues that even applying the rationality test, no substantial distinction can be made between same-sex and opposite-sex couples, because gay couples can do everything that opposite-sex couples are required to do by the Family Code, even if they cannot by themselves procreate.[94]

To my mind, however, these conflated claims to violations of due process and equal rights are uniformly anchored on assertions that present triable questions of fact, the resolution of which needs the reception of evidence. These questions, among others, include: (a) whether homosexuals, gays and

---

[88] *Rollo*, p. 21.

[89] *Id.* at 16-20.

[90] *Id.* at 20-28.

[91] *Id.* at 16.

[92] *Id.* at 19.

[93] *Id.* at 27.

[94] *Id.* at 28.

lesbians can fulfill the essential marital obligations; (b) whether or how procreation is an essential marital obligation; (c) whether homosexuals, gays and lesbians can raise children in a manner as well as heterosexuals can; (d) whether Filipino tradition can accommodate/accept same-sex marriage; and (e) whether homosexuals are, and should be, treated as a separate class.

With particular reference to equal protection, petitioner maintains that classifying individuals by sexual orientation and gender, so as to distinguish between same-sex and opposite-sex couples, is a suspect classification, thus triggering strict scrutiny.[95] He is reminded, however, that in *Ang Ladlad LGBT Party v. Commission on Elections*,[96] We withheld ruling, in the **absence of sufficient evidence**, on whether homosexuals should be treated as a separate class, *viz.*:

> x x x We disagree with the OSG's position that homosexuals are a class in themselves for the purposes of the equal protection clause. **We are not prepared to single out homosexuals as a separate class meriting special or differentiated treatment. We have not received sufficient evidence to this effect**, and it is simply unnecessary to make such a ruling today. x x x[97] (Emphasis supplied; citations omitted.)

Petitioner's reference to Chief Justice Puno's Separate Concurring Opinion in *Ang Ladlad*[98] does not help his cause. In fact, it only underscores the need for the reception of evidence, before homosexuals, gays and lesbians can be considered a suspect classification with respect to marriage rights. Particularly, evidence need to be received on: (a) whether there is a history of invidious discrimination against the class; (b) whether the distinguishing characteristic of the class indicate a typical class member's ability to contribute to society; (c) whether the

---

[95] *Id.* at 21.

[96] G.R. No. 190582, April 8, 2010, 618 SCRA 32.

[97] *Id.* at 65.

[98] *Rollo*, p. 21.

distinguishing characteristic is immutable; and (d) the political power of the subject class.[99]

Petitioner alleges that even if only the rational basis test is applied, the assailed provisions will fail since there is no substantial distinction between opposite-sex couples and same-sex couples respecting marriage. Both can perform the essential marital obligations under the Family Code. These are: (a) the obligation to live together, observe mutual love, respect, and fidelity, and render mutual help and support; (b) fix the family domicile; and (c) support the family and pay the expenses for such support and other conjugal obligations.[100] To reiterate, this argument still requires the presentation of documentary and testimonial evidence. It cannot be assumed especially since there are conflicting claims on these assertions.[101]

With respect to petitioner's claim that same-sex couples can raise children as well as opposite-sex couples,[102] We note that the intervenors-oppositors expressed a strong contrary view and argue that children raised by heterosexual couples fare better than those who are not.[103] The reception of scientific and expert opinion is probably necessary to assist the Court in resolving this issue.

C

Petitioner and petitioner-intervenors' argument that the Family Code, by excluding same-sex couples from marriage, have placed an undue burden on their religious freedom by failing to legally recognize their relationship[104] similarly calls for the reception of evidence.

---

[99] *Id.* at 22.

[100] *Id.* at 28.

[101] See *rollo*, pp. 49-50.

[102] *Rollo*, p. 9.

[103] *Id.* at 285. Paragraph 24 of Opposition-In-Intervention.

[104] *Id.* at 558. Paragraph 44, Petitioner's opening statement, oral arguments.

Petitioner contends that Articles 1 and 2 of the Family Code are unconstitutional because they prohibit same-sex couples from founding a family through the vehicle of marriage in accordance with their religious convictions, a right protected under Section 3(1) Article XV of the Constitution.[105] Petitioners-intervenors, meanwhile, claim that they are of the religious conviction that Christianity does not treat homosexuality as a sin, and that Christianity does not prohibit same-sex marriage; hence, gay and lesbian Christians can also enter into marriage.[106] They further submit that there exists no substantial distinction between their religious convictions and the religious convictions of Filipino Catholics and Filipino Muslims, and yet the latter's religious beliefs enjoy legal recognition from the State.[107]

For its part, the CRG argues that sex-based conceptions of marriage do not violate religious freedom. It claims that the limitation of marriage to opposite-sex couples is a valid state regulation grounded on a purely legitimate secular purpose. The compelling state interests in procreation, foundation of the family, and preservation of the tradition and history of marriage, are enshrined in the Constitution. The CRG maintains that limiting civil marriages to opposite-sex couples is not unconstitutional simply because a particular religion or religious group claims that it goes against their religious beliefs. According to the CRG, allowing such situation will render the State subservient to the beliefs of said religion or religious group.[108]

Relevant to the Court's consideration of the religious argument is the free exercise clause of the 1987 Constitution.[109] This

---

[105] *Id.* at 11-12. Section 3 provides: The State shall defend:

(1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood; x x x

[106] *Id.* at 144.

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

[108] *Id.* at 329. Paragraphs 106 and 109, OSG's Supplemental Comment with Leave of Court, p. 36.

[109] Section 5, Article III of the 1987 Constitution declares that "[n]o law shall be made respecting an establishment of religion, or prohibiting

clause guarantees the liberty of religious conscience and prohibits any degree of compulsion or burden, whether direct or indirect, in the practice of one's religion.[110] In *Estrada v. Escritor*,[111] the Court established benevolent neutrality-accommodation as the regime under which a claim of violation of religious freedom should be considered. The following factual questions should be resolved through the presentation of evidence: (1) whether the claimant's right to religious freedom has been burdened by the government regulation; (2) whether the claimant is sincere in his/her belief, which in turn constitutes a central tenet of their proclaimed religion; and (3) whether the State has compelling interest to override the claimant's religious belief and practice.

Applying the foregoing analysis to this case, petitioner must first show how the assailed provisions of the Family Code created a burden on their right to the free exercise of religion; while

---

the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed." It likewise declares that "no religious test shall be required for the exercise of civil or political rights." This provision in the Bill of Rights encapsulates the Religion Clauses of our Constitution — the Non-Establishment Clause and the Free Exercise Clause.

[110] *Estrada v. Escritor*, A.M. No. P-02-1651 (formerly OCA I.P.I. No. 00-1021-P), August 4, 2003, 408 SCRA 1, 134.

[111] A.M. No. P-02-1651 (formerly OCA I.P.I. No. 00-1021-P), June 22, 2006, 492 SCRA 1, 66. In *Escritor*, the Court is confronted with the issue of whether Escritor's claim of religious freedom could warrant carving out an exemption from the Civil Service Law. Escritor, a court interpreter, was charged with immorality because she cohabited with a man other than her husband during the subsistence of her marriage. In her defense, Escritor countered that Jehovah's Witnesses, a religious sect to which she is a member, legitimizes a union which is otherwise adulterous or bigamous provided that the parties sign a Declaration of Faithfulness. She and her partner executed and signed a Declaration of Faithfulness in 1991, thus they are regarded by their Church as husband and wife. In resolving the case, the Court inquired into three things: (1) whether Escritor's right to religious freedom has been burdened; (2) whether Escritor is sincere in her religious belief; and (3) whether the state has compelling interest to override Escritor's religious belief and practice.

on the part of the LGBTS Church, it must prove, foremost, that it is a religion and that same-sex marriage is a central tenet of its faith. Second, petitioner and the petitioners-intervenors must demonstrate that they hold a sincere belief in this tenet. Third, the CRG must establish that the state has a compelling interest to limit marriage to opposite-sex couples. As was shown earlier, these are factual matters requiring the presentation of evidence.

Final Words

It is my view that the case before Us presents a cautionary tale of how **not** to prove a fundamental right in the context of public interest litigation. I believe though, that with the dismissal of their petitions, concerned counsel have been punished enough. Nevertheless, the pursuit (and, maybe, ultimate acceptance) of the idea of marriage equality need not end here. Rather, zealous fealty to the Constitution's strictures on case and controversy and the hierarchy of courts should give the idea of marriage equality a sporting chance to be, in time, vigorously and properly presented to the Court.

For the reasons above-stated, I vote to **DISMISS** the petition.

## SEPARATE OPINION

**PERALTA, *J.*:**

The Court ought to dismiss the case outright on the ground that there is no actual case or controversy ripe for judicial determination. Also, the petitioner does not have any *locus standi*. And even if we were to touch on the merits, he has not made out a clear case for a declaration of the unconstitutionality of the provisions of the *Family Code* (Executive Order No. 209) relative to its definition of marriage as a union between a man and a woman.

At the outset, it is to be pointed out that the role of the Court in constitutional adjudication is to determine the rights of the people under the Constitution, an undertaking that demands,

among others, the presence of an actual case or controversy ripe for judicial pronouncement, and that the case must be raised by one who has the personality or standing to do so. Here, the petitioner fails to satisfy both requisites. He is practically beseeching the Court to come up with an advisory opinion about the presence of constitutionally protected right to same-sex marriages — in effect seeking to "convert the Court into an Office of Ombudsman for the ventilation of generalized grievances."[1]

An actual case or controversy refers to an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory. The controversy needs to be definite and concrete, bearing upon the legal relations of parties who are pitted against each other due to their adverse legal interests.[2] Further, "[a]n aspect of the 'case-or-controversy' requirement is the requisite of 'ripeness.' In the United States, courts are centrally concerned with whether a case involves uncertain contingent future events that may not occur as anticipated, or indeed may not occur at all. Another concern is the evaluation of the twofold aspect of ripeness: *first*, the fitness of the issues for judicial decision; and *second*, the hardship to the parties entailed by withholding court consideration. In our jurisdiction, the issue of ripeness is generally treated in terms of actual injury to the plaintiff. Hence, a question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it."[3]

It has been held that "as to the element of injury, such aspect is not something that just anybody with some grievance or pain may assert. It has to be **direct and substantial** to make it worth the court's time, as well as the effort of inquiry into the constitutionality of the acts of another department of government.

---

[1] Separate Opinion of then Associate Justice Vicente V. Mendoza in *Tatad v. Garcia, Jr.*, 313 Phil. 296, 341 (1995).

[2] *John Hay Peoples Alternative Coalition v. Lim*, 460 Phil. 530, 545 (2003).

[3] *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*, 686 Phil. 357, 369 (2012).

If the asserted injury is more imagined than real, or **is merely superficial and insubstantial**, then the courts may end up being importuned to decide a matter that does not really justify such an excursion into constitutional adjudication. The rationale for this constitutional requirement of *locus standi* is by no means trifle. Not only does it assure the vigorous adversary presentation of the case; more importantly, it must suffice to warrant the Judiciary's overruling the determination of a coordinate, democratically elected organ of government, such as the President, and the clear approval by Congress, in this case. Indeed, the rationale goes to the very essence of representative democracies."[4]

Intrinsically related to the presence of an actual case or controversy ripe for adjudication is the requirement that the issue be raised by the proper party, or the issue of *locus standi*. Even as this Court is the repository of the final word on what the law is, we should always be aware of the need for some restraint on the exercise of the power of judicial review. As then Associate Justice, later Chief Justice, Reynato S. Puno then intoned in one of his dissents: "Stated otherwise, courts are neither free to decide *all* kinds of cases dumped into their laps nor are they free to open their doors to *all* parties or entities claiming a grievance. The rationale for this constitutional requirement of *locus standi* is by no means trifle. It is intended 'to assure a vigorous adversary presentation of the case, and, perhaps more importantly to warrant the judiciary's overruling the determination of a coordinate, democratically elected organ of government.' It, thus, goes to the very essence of representative democracies."[5] Otherwise stated, "[a] party must show that he

---

[4] *Galicto v. Aquino III*, 683 Phil. 141, 172 (2012), citing Gorospe, *Songs, Singers and Shadows: Revisiting Locus Standi In Light Of The People Power Provisions Of The 1987 Constitution*, UST LAW REVIEW, Vol. LI, AY 2006-2007, pp. 15-16, citing *Montecillo v. Civil Service Commission*, 412 Phil. 524 (2001); *Tomas Claudio Memorial College, Inc. v. Court of Appeals*, 374 Phil. 859 (1999); and *Tañada v. Angara*, 338 Phil. 547 (1997), and, then Associate Justice Reynato S. Puno's Dissenting Opinion in *Kilosbayan v. Guingona, Jr.*, 302 Phil. 107, 190 (1994).

[5] *Kilosbayan, Incorporated v. Guingona, Jr., supra* note 4.

has been, or is about to be denied some personal right or privilege to which he is lawfully entitled. A party must also show that he has a real interest in the suit. By 'real interest' is meant a present substantial interest, as distinguished from a mere expectancy or future, contingent, subordinate, or inconsequential interest."[6]

Relative to the foregoing matter is the need to give the legislature space to do its job of determining policies as an aspect of the democratic process. In this regard, then Associate Justice Santiago M. Kapunan noted: "The idea that a norm of constitutional adjudication could be lightly brushed aside on the mere supposition that an issue before the Court is of paramount public concern does great harm to a democratic system which espouses a delicate balance between three separate but co-equal branches of government. It is equally of paramount public concern, *certainly paramount to the survival of our democracy*, that acts of the other branches of government are accorded due respect by this Court. x x x. Notwithstanding Article VIII, Section 1 of the Constitution, since the exercise of the power of judicial review by this Court is inherently anti-democratic, this Court should exercise a becoming modesty in acting as a *revisor* of an act of the executive or legislative branch."[7]

Prudential considerations should caution the Court from having to accept and decide each and every case presented to it just because the questions raised may be interesting, novel or challenging. There is a time for coffee table discussions of exotic ideas, but the Court does not sit to do such a discourse. In undertaking judicial review, it decides in accordance with the Fundamental Law issues that have particular relevance and application to actual facts and circumstances, not imagined or anticipated situations.

---

[6] *Montesclaros v. Commission on Elections*, 433 Phil. 620, 635-636 (2002).

[7] Dissenting opinion in *Kilosbayan, Incorporated v. Guingona, Jr., supra* note 4, at 211-212. (Emphasis supplied)

Petitioner Falsis does not assert that he has been directly injured by the provisions of the *Family Code*. If ever he would be prevented from marrying, that is still in the uncertain future, a contingency that may never happen. However, he tries to rectify this problem by making reference to the petition-in-intervention filed by *LGBTS Christian Church, Inc., et al.* who allegedly were prevented from having a same-sex marriage ceremony when the same-sex couple was not granted a marriage license. In this connection, ***intervention*** should never be allowed to be utilized as a means to correct a fatal omission in the principal action. Intervention is only ancillary to the main case and it should not be conveniently resorted to as a means to save the day for an intrinsically flawed petition.

And even if we were to go to the merits, I would like to call attention to the fact that the laws and judicial decisions are reflective of the reality in society – a recognition of the values and norms that the people hold, recognize and cherish. Congress is the democratic institution which initially may tackle issues and policies about interpersonal relations and institutions affecting its citizens, including the propriety or desirability of same-sex marriage. It is not for the courts to jump into the fray on the pretext that it is merely reading for the people the rights and liberties under the Constitution. Only in the presence of a clear violation of the tenets of the Fundamental Law may the courts proceed to declare that an unmistakable constitutional right has been impaired or otherwise trampled upon by the government. In the absence of such, the courts should stay their hand. In this particular instance, I do not see any such violation that would justify the Court getting into this social and political debate on same-sex marriages.

In any case, what is not to be overlooked is the reality that judicial adjudication has to be rooted in the Constitution and the laws which are expressions or manifestations of what society and the people aspire for, and the courts must necessarily get their bearings from them. Decisions cannot be oblivious to, nor detached from, what is the reality in society. In this particular instance, the petitioner keeps harking on the fundamental right to marry and by extension, right to same-sex marriage, claiming

that it is a constitutional right pursuant to the guarantee of equal protection. However, there is nothing in the text or background of the constitutional provision that would allow for such an expansive reading. To society, the framers of the Fundamental Law, and the people who ratified it, there is no indication that they understood marriage to be other than the union between people of the opposite sex. This has been the traditional, history-bound understanding of marriage in Philippine setting. Accordingly, if a radical or seismic departure from the commonly understood notion of marriage is to be had, the same has to be decreed by Congress and the President, and not imposed by judicial fiat. Debates about policy on matters like this are for the political departments, as elected representatives of the people, to decide on.

In regard to the American case recognizing same-sex marriages, the U.S. Supreme Court itself was quite careful to make reference to the changing social milieu which allowed for a shift in legal thinking. We do not have a similar situation here. What the U.S. Supreme Court said in this regard is quite instructive:

> The ancient origins of marriage confirm its centrality, but it has not stood in isolation from developments in law and society. The history of marriage is one of both continuity and change. That institution—even as confined to opposite-sex relations—has evolved over time.
>
> For example, marriage was once viewed as an arrangement by the couple's parents based on political, religious, and financial concerns; but by the time of the Nation's founding it was understood to be a voluntary contract between a man and a woman. See N. Cott, Public Vows: A History of Marriage and the Nation 9-17 (2000); S. Coontz, Marriage, A History 15-16 (2005). As the role and status of women changed, the institution further evolved. Under the centuries-old doctrine of coverture, a married man and woman were treated by the State as a single, male-dominated legal entity. See 1 W. Blackstone, Commentaries on the Laws of England 430 (1765). As women gained legal, political, and property rights, and as society began to understand that women have their own equal dignity, the law of coverture was abandoned. See Brief for Historians of Marriage et al. as Amici Curiae 16-19. These and other developments in the institution of marriage over the past centuries were not mere superficial changes. Rather,

they worked deep transformations in its structure, affecting aspects of marriage long viewed by many as essential. See generally N. Cott, Public Vows; S. Coontz, Marriage; H. Hartog, Man & Wife in America: A History (2000).

These new insights have strengthened, not weakened, the institution of marriage. Indeed, changed understandings of marriage are characteristic of a Nation where new dimensions of freedom become apparent to new generations, often through perspectives that begin in pleas or protests and then are considered in the political sphere and the judicial process.

This dynamic can be seen in the Nation's experiences with the rights of gays and lesbians. Until the mid-20th century, same-sex intimacy long had been condemned as immoral by the state itself in most Western nations, a belief often embodied in the criminal law. For this reason, among others, many persons did not deem homosexuals to have dignity in their own distinct identity. A truthful declaration by same-sex couples of what was in their hearts had to remain unspoken. Even when a greater awareness of the humanity and integrity of homosexual persons came in the period after World War II, the argument that gays and lesbians had a just claim to dignity was in conflict with both law and widespread social conventions. Same-sex intimacy remained a crime in many States. Gays and lesbians were prohibited from most government employment, barred from military service, excluded under immigration laws, targeted by police, and burdened in their rights to associate. See Brief for Organization of American Historians as *Amicus Curiae* 5-28.

For much of the 20th century, moreover, homosexuality was treated as an illness. When the American Psychiatric Association published the first Diagnostic and Statistical Manual of Mental Disorders in 1952, homosexuality was classified as a mental disorder, a position adhered to until 1973. See Position Statement on Homosexuality and Civil Rights, 1973, in 131 Am. J. Psychiatry 497 (1974). Only in more recent years have psychiatrists and others recognized that sexual orientation is both a normal expression of human sexuality and immutable. See Brief for American Psychological Association *et al*. as *Amici Curiae* 7-17.

In the late 20th century, following substantial cultural and political developments, same-sex couples began to lead more open and public lives and to establish families. This development was followed by a quite extensive discussion of the issue in both governmental and private

sectors and by a shift in public attitudes toward greater tolerance. As a result, questions about the rights of gays and lesbians soon reached the courts, where the issue could be discussed in the formal discourse of the law.

This Court first gave detailed consideration to the legal status of homosexuals in *Bowers v. Hardwick,* 478 U.S. 186 (1986). There it upheld the constitutionality of a Georgia law deemed to criminalize certain homosexual acts. Ten years later, in *Romer v. Evans*, 517 U.S. 620 (1996), the Court invalidated an amendment to Colorado's Constitution that sought to foreclose any branch or political subdivision of the State from protecting persons against discrimination based on sexual orientation. Then, in 2003, the Court overruled *Bowers*, holding that laws making same-sex intimacy a crime "demea[n] the lives of homosexual persons." *Lawrence v. Texas*, 539 U. S. 558, 575.[8]

x x x x x x x x x

The right to marry is fundamental as a matter of history and tradition, but rights come not from ancient sources alone. They rise, too, from a better informed understanding of how constitutional imperatives define a liberty that remains urgent in our own era. Many who deem same-sex marriage to be wrong reach that conclusion based on decent and honorable religious or philosophical premises, and neither they nor their beliefs are disparaged here. But when that sincere, personal opposition becomes enacted law and public policy, the necessary consequence is to put the imprimatur of the State itself on an exclusion that soon demeans or stigmatizes those whose own liberty is then denied. Under the Constitution, same-sex couples seek in marriage the same legal treatment as opposite-sex couples, and it would disparage their choices and diminish their personhood to deny them this right.[9]

In fine, the claim of alleged unconstitutionality of the Family Code provisions defining marriage as a union between a man and a woman has no leg to stand on. It is not for this Court to write into the law purported rights when they are not expressly or by clear implication deemed available under the Fundamental Law. Same-sex marriage is a policy matter better left to the deliberations of the elected officials of the country.

---

[8] *Obergefell v. Hodges*, 576 U.S. (2015), at 6-8, Slip Decision. (https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf, accessed _____)

[9] *Id.* at 18-19, Slip Opinion.

**EN BANC**

[G.R. Nos. 234789-91. September 3, 2019]

**FELICITAS D. NACINO, HELEN E. RAMACULA, and THE VOLUNTEERS AGAINST CRIME AND CORRUPTION, INC.,** *petitioners, vs.* **THE OFFICE OF THE OMBUDSMAN, represented by Ombudsman CONCHITA CARPIO-MORALES, BENIGNO SIMEON C. AQUINO III, ALAN LM. PURISIMA, and GETULIO P. NAPEÑAS,** *respondents.*

**SYLLABUS**

**1. CRIMINAL LAW; REVISED PENAL CODE; RECKLESS IMPRUDENCE; DEFINED.—** Article 365 of the RPC defines reckless imprudence as follows: – x x x Reckless imprudence consists in voluntary, but without malice, doing or fa[i]ling to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place. x x x In all, We do not find probable cause to charge Aquino with reckless imprudence resulting in multiple homicide. If it would be necessary to invoke remote justifications to thrust a respondent to court, then We would have been remiss in our duty to uphold the law and protect the innocent from the torment of a criminal prosecution. The Court also does not find probable cause to charge Purisima of the same offense.

**2. POLITICAL LAW; ADMINISTRATIVE LAW; PHILIPPINE NATIONAL POLICE (PNP); EXECUTIVE ORDER NO. 546, SERIES OF 2006; IMPLEMENTING RULES AND REGULATIONS THEREOF; REQUIRE COORDINATION WITH THE NEAREST TACTICAL UNIT OF THE ARMED FORCES OF THE PHILIPPINES (AFP) TO ENSURE COORDINATED AND FOCUSED OPERATIONS OF THE PNP IN THE PARTICULAR AREA; VIOLATED IN CASE AT BAR.—**

[T]he SAF failed to coordinate with the AFP prior to the launch of the operations. The coordinating instructions of *Oplan Exodus* provide that "lateral coordination with friendly forces before, during and after the operation is highly encouraged," instead of mandatory. The *oplan* was also designed to be an all-PNP operation, and guidance for request for artillery and air support was made "as necessary" in the exfiltration phase of the operation. The Senate Report observed that this strategy runs counter to the Implementing Rules and Regulations of Executive Order No. 546, series of 2006 which provides that the PNP "[must] coordinate with the nearest tactical unit of the AFP to ensure coordinated and focused operations in the particular area." The strategy also runs counter to the PNP Operational Procedures issued in March 2010, which provides that "PNP units may either operate as a single force or as a part of joint PNP-AFP combat operations. In both cases, lateral coordination is a must." The Senate Report found that if only Napeñas prepared the *Oplan Exodus* in accordance with the guidelines of the PNP Operational Procedures, it would have been easier for the AFP to provide support or reinforcement even on short notice. Unfortunately, Napeñas did not provide a comprehensive plan to the AFP and merely informed it time-after-target, when the SAF commandos had already been engaged by hostile forces. These facts led the Senate to conclude that the "most fatal mistake made by the mission planners of *Oplan Exodus* was their decision against prior coordination with the AFP, x x x" which could have saved lives.

**3. ID.; EXECUTIVE DEPARTMENT; PRESIDENT OF THE REPUBLIC DOES NOT EXERCISE DIRECT CONTROL OVER THE PNP UNDER THE DOCTRINE OF QUALIFIED POLITICAL AGENCY; CASE AT BAR.—** Aquino's suggestions during the briefing at Bahay Pangarap in Malacañang to increase the number of troops and coordinate with the AFP appear to be spontaneous remarks to a completed operation plan presented to him for his information. Napeñas himself declared that it is not unusual for the President to know high-level operations. Moreover, Aquino admittedly did not have military or police background and thus could not have influenced Napeñas who, as director of the SAF, had the expertise to conceptualize and implement an operation to serve arrest warrants against international terrorists. The apparent purpose of Aquino's suggestions is to reinforce the desired positive outcome of the

operation. His actuations do not constitute a participation in the planning and implementation of *Oplan Exodus* since, as President of the Republic, he does not exercise direct control over the PNP under the doctrine of qualified political agency. Notably, in the end, it was still Napeñas who determined the number of troops to be deployed, and it was still his concept of time-on-target coordination that prevailed, although it was not actually followed.

**4. ID.; ADMINISTRATIVE LAW; EXECUTIVE ORDER NO. 226, SERIES OF 1995; DOCTRINE OF COMMAND RESPONSIBILITY; INSTITUTIONALIZED IN ALL GOVERNMENT OFFICES INCLUDING THE PNP.—** The Senate states that there is always a hierarchical structure in every organization in which authority is exercised. This is supposedly the essence of "chain of command." While the term is often associated with the military, it has been applied to hierarchical structures in civilian government agencies and private enterprises. Accordingly, the Senate continues, where there is a chain of command, the doctrine of command responsibility applies, which also is not restricted to the military after Executive Order No. 226, series of 1995 (EO 226) institutionalized the doctrine in all government offices including the PNP.

**5. ID.; ID.; REPUBLIC ACT NO. 6975 (DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT ACT OF 1990); PHILIPPINE NATIONAL POLICE (PNP); COMMAND AND DIRECTION THEREOF IS VESTED IN THE CHIEF OF THE PNP; PRESIDENT OF THE REPUBLIC IS NOT PART OF THE CHAIN OF COMMAND; CASE AT BAR.—** To be sure, the President of the Republic of the Philippines is not part of the chain of command of the PNP. Under Section 26 of Republic Act No. 6975, the command and direction of the PNP is vested in the Chief of the PNP. That the PNP chain of command does not include the President is further confirmed by the PNP BOI Report itself which clearly stated that with respect to *Oplan Exodus*, the chain of command in the PNP should have been: Police Deputy Director General Leonardo Espina, the Officer-in-Charge of the PNP (OIC-PNP) as senior commander, and Police and SAF Director Getulio Napeñas as intermediate commander, excluding PNP Director General Purisima "who could not legally form part of the Chain of Command by reason of his suspension."

**6. ID.; JUDICIAL DEPARTMENT; COMMANDER-IN-CHIEF POWER OF THE PRESIDENT; DOES NOT INCLUDE THE NATIONAL POLICE FORCE SINCE THE POLICE FORCE, NOT BEING INTEGRATED WITH THE MILITARY, IS NOT PART OF THE AFP.—** The President's power over the PNP is subsumed in his general power of control and supervision over the executive department of the government. In fact, in *Carpio v. Executive Secretary* We held that "the national police force does not fall under the Commander-in-Chief power of the President. This is necessarily so since the police force, not being integrated with the military, is not a part of the Armed Forces of the Philippines. As a civilian agency of the government, it x x x is [only] subject [to] the exercise by the President of the power of executive control." The case of *Saez v. Macapagal-Arroyo* cited by the Senate described the President as the commander-in-chief of the AFP, not the PNP. As such, he necessarily possesses control over the military that qualifies him as a superior within the purview of the command responsibility doctrine. Given these rulings, as the President is not part of the chain of command in the PNP, it follows that he does not exercise command responsibility over this civilian organization.

**7. ID.; ADMINISTRATIVE LAW; EXECUTIVE ORDER NO. 226, SERIES OF 1995; DOCTRINE OF COMMAND RESPONSIBILITY; ELEMENTS THAT MUST BE ESTABLISHED TO HOLD SOMEONE LIABLE UNDER THE DOCTRINE OF COMMAND RESPONSIBILITY; NOT ESTABLISHED IN CASE AT BAR.—** [C]ommand responsibility has a technical meaning. In *Saez*, We ruled that to hold someone liable under the doctrine of command responsibility, the following elements must obtain: a) the existence of a superior-subordinate relationship between the accused as superior and the perpetrator of the crime as his subordinate; b) the superior knew or had reason to know that the crime was about to be or had been committed; and c) the superior failed to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof. In this case, since Aquino is considered a superior of the AFP but not the PNP which is the agency involved in this case, the first element is not satisfied. Likewise, even granting that Aquino may be considered a "superior" of the PNP, the last two elements are also not satisfied since it

was not shown by evidence that he knew or had reason to know that a crime was about to be or had been committed, and that he failed to take steps to prevent the criminal act or punish its perpetrators. Indeed, *Oplan Exodus* was a legitimate police operation. Administrative and criminal charges against private respondents and other PNP officials have been lodged not until after its execution, in view of the large casualties incurred by the SAF.

**8. ID.; ID.; ID.; ID.; ADMINISTRATIVE LIABILITY WILL NOT ATTACH ABSENT PROOF OF ACTUAL ACT OR OMISSION CONSTITUTING NEGLECT OF DUTY; CASE AT BAR.—** It may be argued that Aquino exercises command responsibility over the PNP under EO 226, Section 1. x x x Aquino may be included in the catchall phrase "any government official or supervisor," but he may still not be held liable considering that he had no knowledge of any crime that the PNP was about to commit or has committed, and for which he failed to act. In any event, the provision at most makes a commander liable *administratively* for neglect of duty. In this connection, We held in *Principe v. Fact-Finding & Intelligence Bureau, Office of the Ombudsman* that administrative liability will not attach absent proof of actual act or omission constituting neglect of duty. In the absence of substantial evidence of gross neglect, administrative liability could not be based on the principle of command responsibility. The negligence of the superior's subordinates is not tantamount to his own negligence.

**9. CRIMINAL LAW; REVISED PENAL CODE; RECKLESS IMPRUDENCE; IN NEGLIGENCE OR IMPRUDENCE, WHAT IS PRINCIPALLY PENALIZED IS THE MENTAL ATTITUDE OR CONDITION BEHIND THE ACT, THE DANGEROUS RECKLESSNESS, LACK OF CARE OR FORESIGHT, THE *IMPRUDENCIA PUNIBLE*; CASE AT BAR.—** Verily, to the mind of the Court, and as evinced by the record, it is only Napeñas among the three private respondents who *may* be susceptible to a prosecution for reckless imprudence, being the head of the SAF that planned and implemented *Oplan Exodus*. In the same breath, however, We hold that no probable cause exists to charge him of such crime. In negligence or imprudence, what is principally penalized is the mental attitude or condition behind the act, the dangerous recklessness, lack of care or foresight, the *imprudencia punible*. Among the elements

constitutive of the offense of reckless imprudence, what perhaps is most central to a finding of guilt is the conclusive determination that the accused has exhibited, by his voluntary act without malice, an inexcusable lack of precaution because it is that which supplies the criminal intent so indispensable as to bring an act of mere negligence and imprudence under the operation of the penal law. A conscious indifference to the consequences of the conduct is all that is required from the standpoint of the frame of mind of the accused. We hold that there was negligence on the part of Napeñas in the planning and execution of *Oplan Exodus*, but the confluence of other factors contributing to its tragic ending prevents Us from finding probable cause to charge him with reckless imprudence resulting in multiple homicide. x x x Without doubt, Napeñas had been negligent, as borne by both the Senate and PNP-BOI reports. However, We find it difficult to isolate the effects of his negligence from the effects of all the other factors that contributed to the loss of lives in the implementation of *Oplan Exodus*. x x x In any case, to charge Napeñas with reckless imprudence would be to charge under his responsibility the consequences of all incidents that contributed to the death of the 44 SAF members, even those beyond what he and his team may or should have reasonably foreseen during the planning and execution of *Oplan Exodus*—which is not fair. Moreover, it would pose a threat to future law enforcement undertakings if military and police officials would be held susceptible to criminal charges for injury or death resulting from a legitimate operation. It will be like a Sword of Damocles hanging over their heads, which can paralyze them and consequently maim the government's efforts to curb criminality in the interest of self-preservation. There is no perfect law enforcement operation. To the contrary, they are mostly idiosyncratic and risky. There is no guarantee of police officers' safety even in developed countries possessed of sophisticated crime-fighting technology. In view of all the attendant circumstances, We do not find probable cause to charge Napeñas with reckless imprudence resulting in multiple homicide.

**APPEARANCES OF COUNSEL**

*Topacio Law Office* for petitioners.
*The Solicitor General* for respondents.

*Ponciano Dexter S. Corpus* for respondent Purisima.
*Brilliantes Arcilla Martinez Diokno and Dela Cruz Law Offices* for respondent Napeñas.
*Go & Umali* for respondent Aquino III.
*Poblador Bautista & Reyes* for Aquino III.

## D E C I S I O N

**JARDELEZA, *J.*:**

This is a petition for *certiorari*[1] filed under Rule 65 of the Rules of Court, seeking the annulment and reversal of the Office of the Ombudsman's (Ombudsman) Consolidated Resolution[2] dated June 13, 2017 and Consolidated Order[3] dated September 5, 2017 for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction insofar as they dismissed the complaints for 44 counts of reckless imprudence resulting in multiple homicide filed against private respondents former President Benigno Simeon C. Aquino III (Aquino), former Philippine National Police (PNP) Chief Alan LM. Purisima (Purisima), and former PNP-Special Action Force (SAF) Director Getulio P. Napeñas (Napeñas) in the following cases:

1. *Erlinda D. Allaga, Warlito B. Mejia, and Volunteers Against Crime and Corruption, Inc., represented by Dante LA. Jimenez and Arsenio G. Evangelista v. Benigno Simeon C. Aquino III, Alan LM. Purisima, and Getulio P. Napeñas*, docketed as OMB-C-C-16-0419;[4]
2. *Celistino A. Kiangan, Julie F. Danao, and Felicitas D. Nacino v. Benigno Simeon C. Aquino III, Alan*

---

[1] *Rollo*, pp. 3-48.

[2] *Id.* at 53-88.

[3] *Id.* at 89-115.

[4] *Id.* at 53, 117-153.

*LM. Purisima, and Getulio P. Napeñas*, docketed as OMB-C-C-16-0435,[5] and

3. *Telly R. Submilla, Helen E. Ramacula, and Lorna G. Sagonoy v. Benigno Simeon C. Aquino III, Alan LM. Purisima, and Getulio P. Napeñas*, docketed as OMB-C-C-16-0448.[6]

Senate Committee Report No. 120[7] dated March 18, 2015 otherwise known as "The Committee Report in the Mamasapano Incident" (Senate Report) summarized the core events that ultimately led to the filing of this case, as follows:

> Close to midnight of January 24th of [2015], after several failed and aborted attempts in the past, almost 400 highly trained commandos belonging to the elite Special Action Force (SAF) of the Philippine National Police (PNP) unilaterally launched *OPLAN EXODUS* to serve standing warrants of arrest against 2 internationally wanted terrorists and mass murderers, namely, ZULKIFLI BIN HIR @ Marwan ("Marwan") and AHMAD AKMAD BATABOL USMAN @ Basit Usman ("Usman") in Mamasapano, Maguindanao ("Mamasapano"). A few minutes after 4:00 a.m. the following day, 25 January 2015, the 84th Seaborne Special Action Company of the PNP-SAF ("Seaborne") was able to neutralize Marwan, but Usman slipped away. In the ensuing firefight that lasted for several hours thereafter against hostile forces that included members of the Moro Islamic Liberation Front (MILF), the Bangsamoro Islamic Freedom Fighters (BIFF) and other Private Armed Groups (PAGs) in the area, 44 SAF troopers fell, 15 others were wounded, and 5 non-combatants were fatally caught in the crossfire. x x x[8]

This tragedy stunned the nation and led to the opening of investigations by the Senate and the PNP. The Senate Committees on Public Order and Dangerous Drugs, Peace, Unification and Reconciliation, and Finance jointly held public

---

[5] *Id.* at 53, 737-773.

[6] *Id.* at 54, 774-809.

[7] *Id.* at 155-283.

[8] *Id.* at 155.

hearings,[9] while the PNP formed its own Board of Inquiry (PNP-BOI).[10] The Senate's findings and recommendations were embodied in the Senate Report.[11] The findings of the PNP-BOI, on the other hand, were embodied in its report entitled "The Mamasapano Report" dated March 2015[12] (PNP-BOI Report).

These reports, in turn, led to the filing of charges, three of which were the aforementioned complaints lodged with the Ombudsman. Complainants were mostly parents of the members of the SAF who were killed in the conduct of the police operation dubbed as *Oplan Exodus*. Except for the names and circumstances of complainants, the three complaints bore essentially the same allegations and called for private respondents Aquino, Purisima, and Napeñas to be held guilty of 44 counts of reckless imprudence resulting in multiple homicide "as a consequence of their deliberate acts of imprudence, inexcusable negligence and lack of foresight and precaution."[13] The complaints outlined the facts that allegedly point to the criminal culpability of each private respondent.

With respect to Aquino, the complaints averred that "[h]e helped plan 'Oplan: Exodus' with gross and inexcusable negligence, and thereafter approved the operation with full knowledge that it was flawed,"[14] as allegedly shown by the following circumstances:

1. He approved the recommendation of Purisima and Napeñas on the dates on which the operation shall be conducted.[15]

---

[9] *Id.* at 155-156.

[10] *Id.* at 610.

[11] *Supra* note 7.

[12] *Rollo*, pp. 608-736.

[13] *Id.* at 123.

[14] *Id.* at 125. Emphasis and italics omitted.

[15] *Id.*

2. He had full participation in *Oplan Exodus*;[16] and

3. He allowed then suspended PNP Chief Purisima to participate not only in the planning of *Oplan Exodus* but also in the running of the operation, and even in giving information and intelligence while the operation was ongoing.[17]

Complainants concluded that Aquino's conduct "was illegal and improper, and smacks of criminal and inexcusable negligence, because it is of common knowledge that at the time, Respondent Purisima was incapable of discharging the functions of Chief of the PNP due to a subsisting suspension by the Office of the Ombudsman." Thus, he should not have left the intelligence, planning, control, and command of *Oplan Exodus* to Purisima who then had no authority over the PNP. Complainants accused Aquino of "running roughshod over the PNP's chain-of-command," quoting heavily from the reports rendered by the Senate and PNP-BOI to support their allegations.[18]

Complainants also attributed negligence to Aquino for not lifting a finger "to rescue his soldiers" as Commander-in-Chief. They argued that Aquino was in Zamboanga City for the most part of January 25, 2015 with the Secretaries of Defense and Interior and Local Government, the Chief of Staff of the Armed Forces of the Philippines (AFP), and the Officer-in-Charge (OIC) of the PNP.[19] Yet, Aquino allegedly "communicated only with Purisima about the operation." He could have employed all means at his disposal to rescue the beleaguered troops, but he remained indifferent, used unreliable Short Message Service (SMS), and apprised himself of the situation at Mamasapano through a lone source—Purisima. Consequently, he was unable

---

[16] *Rollo*, pp. 126-132.

[17] *Id.* at 132-138.

[18] *Id.* at 133-137. Emphasis omitted.

[19] *Id.* at 76. At the time, the designated OIC of the PNP was Police Deputy Director General Leonardo Espina.

to monitor the progress of the operation and order forces to timely give succor to the SAF troops.[20]

With respect to Purisima, while complainants alleged that he had already been charged with usurpation of authority before the Sandiganbayan, they nonetheless insisted that he is criminally negligent and thus should be held liable for the death of the 44 SAF members because of the following circumstances:

1. Upon Purisima's instruction, knowledge of *Oplan Exodus* was kept from the Secretary of the Department of Interior and Local Government (DILG) and the OIC of the PNP until the morning of January 25, 2015, where both the 84th Seaborne Special Action Company of the SAF (Seaborne) and the 55th Special Action Command (SAC) were already engaged with hostile forces which, according to the Senate Report, is in disregard of the requirements of lateral coordination mandated by the Joint Implementing Rules and Regulations to Executive Order No. 546, series of 2006 and PNP Operational Procedures issued in March 2010.[21]
2. Purisima did not practice his own doctrine of time-on-target since, as shown in the Senate Report, actual coordination was done time--after-target. "Time-on-target" means that the AFP units shall he advised about the operation when the Seaborne troops are at the target area. The Seaborne reached the target area at around 3:00 a.m., but it was only at 5:06 a.m. on January 25, 2015, or more than two hours after, that Napeñas sent a text message to the AFP.[22]
3. Purisima was criminally remiss in giving intelligence inputs during the planning and execution of the operation. Complainants cited the PNP-BOI Report which states

---

[20] *Id.* at 138.

[21] *Id.* at 140-142.

[22] *Id.* at 142.

that the planners of *Oplan Exodus* failed to adequately consider the topography of the area of operations. Under the plan, the troops would use the same routes to infiltrate and leave the area of operations. No alternative exfiltration routes were established. At the crucial stage of the crisis, Purisima also kept providing inaccurate and ambiguous information from unreliable sources, which resulted in eventual erroneous decisions.[23]

Finally, as regards Napeñas, complainants alleged that he had been charged by the Ombudsman with usurpation of authority and grave misconduct. Nevertheless, as with Purisima, Napeñas should be found criminally negligent and liable for the death of the 44 SAF members due to the following circumstances:

1. Napeñas unlawfully took orders from Purisima, knowing fully that the latter was divested of the legal right to issue orders to his subordinates by virtue of his suspension.[24]

2. Napeñas planned *Oplan Exodus* negligently, imprudently, unskillfully, and without any forward vision, quoting the following findings in the Senate Report:

    i.) PNP Intelligence prior to the launch of *Oplan Exodus* indicated that there were more than 1,000 hostile troops at or near the target area, yet SAF deployed only 392 personnel for the entire operation;

    ii.) SAF mission planners were informed of the possibility of *pintakasi*, a common practice among Muslim armed groups where groups normally opposed to each other would come together and fight side-by-side against a common enemy or intruding force, but SAF leadership failed to address this;

---

[23] *Id.* at 143.

[24] *Id.* at 144.

iii.) SAF leadership was unaware that the Moro Islamic Liberation Front (MILF) had mortar capability;

iv.) There was no properly prepared operation plan; and

v.) Napeñas informed the AFP of SAF's law enforcement operation to get two high-value targets time-after-target, when SAF commandos had been engaged by hostile forces.[25]

3. While *Oplan Exodus* was in progress, Napeñas was transmitting inaccurate intelligence and information which proved fatal.[26]

According to complainants, all of the above circumstances, taken together, indubitably establish probable cause that private respondents acted with inexcusable negligence and imprudence that make them probably guilty of reckless imprudence, as defined and penalized under Article 365 of the Revised Penal Code (RPC).[27]

In its assailed Consolidated Resolution[28] dated June 13, 2017, the Ombudsman dismissed the complaints for reckless imprudence resulting in multiple homicide against all private respondents but found probable cause to charge Aquino with violation of Article 177 of the RPC and Section 3(a) of Republic Act No. (RA) 3019,[29] in conspiracy with Purisima and Napeñas. It thus ordered the filing of the appropriate informations against Aquino.[30]

---

[25] *Id.* at 145-146.

[26] *Id.* at 147.

[27] *Id.* at 149.

[28] *Supra* note 2.

[29] Anti-Graft and Corrupt Practices Act.

[30] *Rollo*, p. 86.

Preliminarily, the Ombudsman noted that in its Consolidated Decision dated June 25, 2015 in administrative cases docketed as OMB-P-A-14-0333 and OMB-P-A-14-0659, it found Purisima and his co-respondents guilty of grave misconduct, serious dishonesty, and grave abuse of authority for which they were meted the penalty of dismissal from the service with all its accessory penalties.[31] Further, in prior complaints against Purisima, Napeñas, and other PNP officials relative to the Mamasapano incident, docketed as OMB-P-C-15-0434 and OMB-P-C-15-0232 (criminal cases) and OMB-P-A-15-0485 and OMB-P-A-15-0253 (administrative cases), the Ombudsman issued a Joint Resolution dated March 10, 2016, finding probable cause against Purisima and Napeñas, in conspiracy with one another, for usurpation of authority or official functions under Article 177 of the RPC and violation of Section 3(a) of RA 3019, as amended.[32] Thus, the finding of probable cause in the assailed Consolidated Resolution for violation of Article 177 of the RPC and Section 3(a) of RA 3019 pertained only to Aquino.

In ruling that no probable cause exists to charge private respondents with reckless imprudence resulting in homicide, the Ombudsman held that the designation of the offense in a complaint or in a directive to file a counter-affidavit is neither conclusive nor controlling, for it may formulate and designate the offense and direct the filing of the corresponding information on the basis of the evidence presented in the course of the preliminary investigation.[33] In this case, even if private respondents were negligent, the proximate cause of the death of the 44 SAF members, as well as the wounding of the 15 SAF troopers, was the intentional act of shooting by hostile forces that included members of the MILF, Bangsamoro Islamic Freedom Fighters (BIFF), and Private Armed Groups (PAGs). Such act by these hostile forces constituted an efficient intervening

---

[31] *Id.* at 55.

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

[33] *Id.* at 66.

cause in the purported negligence of private respondents during the planning, preparation, and actual implementation of *Oplan Exodus*,[34] which may not necessarily be considered as within their full control, whether with a prior and timely coordination with government forces. An efficient intervening cause is the new and independent act which itself is a proximate cause of an injury and which breaks the causal connection between the original wrong and the injury. The Ombudsman held that, at best, the purported criminal negligence on the part of private respondents was only contributory.[35]

The Ombudsman's finding of probable cause against Aquino for violation of Article 177 of the RPC and Section 3(a) of RA 3019 is anchored on the findings of the Senate Report on the actual manner and extent of participation of Purisima in *Oplan Exodus* during the time that he was on preventive suspension *vis-à-vis* the conduct and demeanor of Aquino towards Purisima at the time.[36]

The Ombudsman also accorded merit to Napeñas' claim in his consolidated counter-affidavit[37] that Purisima ordered Napeñas to join him in providing a mission update to the President on January 9, 2015 at Bahay Pangarap in Malacañang, giving Napeñas a strong impression that Purisima was under the direction of the President.[38] The Ombudsman likewise considered the transcript of text messages exchanged between Purisima and Napeñas, and Purisima and Aquino regarding *Oplan Exodus* prior to and on the day of its implementation on January 25, 2015, which purportedly were not repudiated by either Aquino or Purisima.[39]

---

[34] *Id.* at 68.

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

[36] *Id.* at 74.

[37] *Id.* at 869-901.

[38] *Id.* at 77.

[39] *Id.* at 78.

The Ombudsman held that this exchange of text messages does not agree with Aquino's assertion that he merely utilized Purisima as a "resource person providing vital information" for *Oplan Exodus*. It declared as misplaced Aquino's assertion that as the Chief Executive, he can directly order any subordinate to do what must be done.[40] The Ombudsman observed that despite being under preventive suspension, Purisima played an active role in *Oplan Exodus*, as shown by the record of text messages and findings of the Senate Report, to the point that he was exercising a degree of authority and discretion over Napeñas and, consequently, over the operation.[41]

The Ombudsman moreover echoed the words of the Senate Report that Aquino "assented to, or at the very least failed to prevent" Purisima in the commission of usurpation of authority or official functions under Article 177 of the RPC. In other words, Purisima would not have been placed in such a position of continuing to conduct himself, in relation to *Oplan Exodus*, in a manner as if he was not under preventive suspension at the time, were it not for the complicity and influence of Aquino. The Ombudsman thus concluded that there is probable cause against Aquino for violation of Article 177 of the RPC, in conspiracy with Purisima and Napeñas. Likewise, probable cause exists against Aquino, in conspiracy with Purisima and Napeñas, for violation of Section 3(a) of RA 3019 since, with the complicity and influence of Aquino, the order of preventive suspension issued by the Ombudsman was violated and usurpation of authority or official functions under Article 177 of the RPC was committed.[42]

Aquino filed a motion for partial reconsideration[43] dated July 18, 2017, praying for a partial reversal of the Ombudsman's Consolidated Resolution for violation of his constitutionally-

---

[40] *Id.* at 80, 1108; citing Aquino's counter-affidavit.

[41] *Id.* at 80-81.

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

[43] *Id.* at 1126-1144.

protected right to be informed of the nature and cause of the accusation against him and for failure to establish and substantiate the presence of the elements of the offense. Complainants Telly Submilla, Felicitas Nacino, Celestino Kiangan,[44] Julie Danao, and Volunteers Against Crime and Corruption, Inc. (VACC), through Dante Jimenez and Arsenio Evangelista, also filed a consolidated motion for reconsideration[45] dated July 19, 2017, insisting that there is probable cause to charge private respondents with 44 counts of reckless imprudence resulting in homicide. In its Consolidated Order[46] dated September 5, 2017, the Ombudsman denied the motions.

Hence, this petition for *certiorari* attributing grave abuse of discretion on the part of the Ombudsman in dismissing the complaint for reckless imprudence resulting in multiple homicide against private respondents. Petitioners insist that the Ombudsman's treatment of "the intentional act of shooting by hostile forces that included members of the MILF, BIFF, and PAGs" as constituting the efficient intervening cause is contrary to law and existing jurisprudence.[47] According to them, citing an American source, the rule should be that "where harmful consequences are brought by intervening and independent forces the operation of which might have been reasonably foreseen, there will be no break in the chain of causation of such a character as to relieve the actor from liability."[48] Petitioners also cite American cases, as well as the case of *Abrogar v.*

---

[44] *Id.* at 91. As observed by the Ombudsman in its September 5, 2017 Consolidated Order, a certain Victoria Kiangan appeared as signatory to the consolidated motion for reconsideration, but no such person appeared as complainant in any of the three complaints. A Celestino A. Kiangan appeared as complainant in OMB-C-C-16-0435, but he is not among the signatories to the consolidated motion for reconsideration. Nevertheless, the motion for reconsideration was given due course.

[45] *Id.* at 946-960.

[46] *Supra* note 3.

[47] *Rollo*, p. 21.

[48] *Id.* at 22.

*Cosmos Bottling Company*,[49] that purport to apply this rule. They then argue that the shooting and killing of the 44 SAF members by the combined elements of the MILF, BIFF, and PAGs cannot be considered as an efficient intervening cause because such event was known and foreseeable to private respondents and could have been avoided by the latter if only they acted with due diligence in the planning and execution of *Oplan Exodus*.[50]

In fact, petitioners add, *Oplan Exodus* was the 10th operation planned by the PNP to arrest Zulkifli Bin Hir *a.k.a.* Marwan (Marwan). Previous operations have been aborted because of risks of heavy resistance from armed groups. Aquino himself admitted in his counter-affidavit[51] that he was "informed that there are an estimated 3,400 hostile forces in the area of operations," and since it is a "basic and long-standing doctrine that a minimum ratio of 3:1 of attackers to defenders is crucial to the success of the operations," he "cautioned and stressed the need to respondent Napeñas that he should take consideration of the culture of *pintakasi* x x x."[52]

Petitioners moreover submit that, since the presence of armed groups in the area of operation was discussed in the January 9, 2015 briefing, the consequences of a firefight were known and foreseeable to private respondents. Further, considering that the operation would involve the attempted arrest of notoriously dangerous and armed terrorists, private respondents were aware that poor planning and execution of the operation will result to casualties for the SAF. Napeñas himself conceded that *Oplan Exodus* was "a high risk mission," and he anticipated that "SAF will incur at least ten (10) casualties." Petitioners consequently insist that the proximate cause of the killing of the 44 SAF members was the reckless imprudence and

---

[49] *Id.* at 27-31; G.R. No. 164749, March 15, 2017.

[50] *Rollo*, p. 31.

[51] *Id.* at 843-868.

[52] *Id.* at 31.

inexcusable negligence of private respondents in the planning and execution of the operation, which was "overwhelmingly established by the Observations/Findings of the Senate Report."[53]

Petitioners finally allude to portions of the PNP-BOI Report which allegedly "complements the findings of the Senate Report" and details the participation of private respondents in *Oplan Exodus*. They assert that the findings of the Senate and PNP-BOI speak volumes on the inherent defects of *Oplan Exodus* and conclude that, in sending the SAF to a high-risk mission based on an operation plan that the Senate Report summed up as "poorly planned and executed," "intentionally broke the chain of command," "was not followed to details," "badly coordinated," and with "badges of failure from the very start," private respondents set in motion the chain of events that led to the untimely death of the 44 SAF members. Thus, as shown by the circumstances, "shooting by hostile forces" cannot be deemed as an efficient intervening event that broke the chain of events caused by private respondents' negligent acts considering that such external act ought to have been reasonably foreseen in the planning of *Oplan Exodus*.[54]

In a Resolution[55] dated December 13, 2017, the Court ordered respondents to file their respective comments on the petition.

On January 25, 2018, the Office of the Solicitor General (OSG) filed a manifestation in lieu of comment (to the petition dated November 2, 2017),[56] stating that it will not represent the Ombudsman in the case and will act as the People's Tribune. It cited the case of *Rubio, Jr. v. Sto. Tomas*[57] where the Court held that "it is also incumbent upon [the OSG] to present to the Court the position that will legally uphold the best interests of

---

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

[54] *Id.* at 37-43.

[55] *Id.* at 961-962.

[56] *Id.* at 966-1010.

[57] G.R. No. 83067, March 22, 1990, 183 SCRA 571.

the Government although it may run counter to a client's position."[58]

The OSG condemns the Consolidated Resolution of the Ombudsman for having been issued with grave abuse of discretion. It echoes the findings of both the Senate and PNP-BOI and the arguments of complainants, and likewise concludes that private respondents' liability is grounded on the faulty planning and execution of *Oplan Exodus*, an inexcusable lack of precaution, regardless of the presence of hostile forces in the battle ground.[59] In other words, the shooting of the 44 SAF members by combined elements of MILF, BIFF, and PAGs cannot be considered an efficient intervening cause because such event was known and foreseeable and could have been avoided with due diligence in the planning and execution of *Oplan Exodus*.[60] The proximate cause of the deaths of the 44 SAF members was thus the negligence of private respondents.[61] The OSG prays for the Court to set aside the assailed Consolidated Resolution and Consolidated Order, direct the Ombudsman to file 44 counts of reckless imprudence resulting in homicide against private respondents, and issue a temporary restraining order or writ of preliminary injunction to stall the arraignment of private respondents for usurpation of authority.[62]

On January 26, 2018, Purisima filed his comment[63] on the petition, pointing out that the assailed Consolidated Resolution made no specific finding against him and found probable cause only against Aquino for usurpation of official functions and violation of Section 3(a) of RA 3019. This is because he has already been indicted in Criminal Case Nos. SB-17-CRM-0120 (for Usurpation of Official Functions) and SB-17-CRM-0121

---

[58] *Rollo*, p. 579.

[59] *Id.* at 973-979.

[60] *Id.* at 994.

[61] *Id.* at 996.

[62] *Id.* at 1005.

[63] *Id.* at 1017-1029.

[for Violation of Section 3(a) of RA 3019] in connection with *Oplan Exodus*. In fact, he was already arraigned before the Sandiganbayan on February 23, 2017, to which he entered a plea of "Not Guilty." Since he is already facing trial for intentional offenses, it would be highly irregular and anomalous to charge him again with criminal negligence for the same acts constituting such intentional offenses.[64]

Even then, Purisima reiterates the defenses he raised in the consolidated counter-affidavit[65] he filed before the Ombudsman, which showed why the acts he performed in connection with *Oplan Exodus* while under preventive suspension do not amount to criminal negligence, much less intentional felony.[66] He points out that the Joint Resolution of the Ombudsman dated March 10, 2016 in OMB-P-C-15-0434 and OMB-P-C-15-0232 reveals that there is absolutely no documentary or testimonial evidence to show that he ever participated in the planning of *Oplan Exodus*. There is also absolutely no statement or claim by any witness that he ever attended any of the planning sessions conducted by the SAF for the successive operation plans to capture Marwan and Ahmad Akmad Batabol Usman *a.k.a.* Basit Usman (Usman), including *Oplan Exodus*. The fact is that he never attended any of the planning sessions because, as early as April 2014, he had already delegated the command and control over law enforcement operations against Marwan and Usman to the SAF Director in accordance with Section 26 of RA 6975[67] which empowers the PNP Chief to delegate his authority to any of his subordinate officers.[68] Not having been involved in the planning and execution of *Oplan Exodus*, whatever action he took during his preventive suspension in compliance with the earlier guidance and instructions of Aquino

---

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

[65] *Id.* at 810-835.

[66] *Id.* at 1019.

[67] Department of the Interior and Local Government Act of 1990.

[68] *Rollo*, pp. 1019-1020.

did not amount to an unlawful exercise of the functions of the PNP Chief, or even criminal negligence. Also, the January 9, 2015 briefing with Aquino was not a planning session but simply a briefing intended to inform and update the latter on the latest developments on the continuing law enforcement operations against Marwan and Usman.[69] In that briefing, Aquino merely reiterated the policy guidance he had already given for the earlier operation plans for which he was also briefed, leaving the tactical details of *Oplan Exodus* to the SAF. Purisima asserts that he participated in the briefing as facilitator or resource person, which should not be deemed as involvement in the planning of the operation. He then prays for the petition to be dismissed for lack of merit.[70]

On February 5, 2018, Aquino filed his comment/opposition [to the petition for *certiorari* dated November 2, 2017].[71] He argues that there was no negligence on his part that could have served as the "first act" in the chain of causation leading to the death of the 44 members of the SAF. It is inaccurate to say that he approved *Oplan Exodus* since it was a component of an on-going police operation to serve long-standing arrest warrants against high-value targets which preceded his presidency by seven years. As detailed by both the Senate and PNP-BOI reports, several operations towards the same end had been conducted without his involvement. Given that he was a civilian with no military or police background, he was merely on the receiving end of the reports on the operation and was apprised of the activities before, during, and after the conduct of the operations by the persons-in-charge to whom he would respond with comments, observations, and suggestions. Despite his lack of specialized training and expertise, Aquino said he determined the need for the PNP to coordinate with the AFP to ensure the success of the operation and that SAF will have timely and adequate reinforcement should it be

---

[69] *Id.* at 1022.

[70] *Id.* at 1024.

[71] *Id.* at 1062-1097.

necessary. In this view, he ordered Napeñas to coordinate with the AFP and relied on the latter's assurance that proper coordination with the AFP will be done. As civilian Commander-in- Chief of the AFP and leader of the PNP, he was ultimately aware only of the broad strokes of the operation and could have contributed only in general matters. He could not have been expected to understand all the details of *Oplan Exodus* and its implementation.[72]

As regards Purisima's participation in the operation, Aquino alleges that he merely treated Purisima as a resource person whom he could consult, given his extensive experience on such a sensitive matter, not to mention that Purisima had been privy to similar previous operations to arrest the subject high-value targets. Aquino was impelled by good faith and a sense of duty to consider all sources of information which could be vital to the success of the operation.[73]

In response to the allegation that he failed to rescue SAF members when they were trapped in the crossfire, Aquino emphasizes that he was given misleading information during the actual implementation of *Oplan Exodus*. He insisted on being updated regularly on the development of the operation, but on the day hostilities broke out, there was no urgency in the messages that he received or any indication that things had gone awry in the operation. Not having been properly involved, he was prevented from acting promptly during the execution and aftermath of the operation. Thus, the Ombudsman was correct in stating that he was not the proximate cause of the deaths of the 44 SAF members because there was no negligence on his part to speak of.[74]

Aquino, however, alleges grave error and abuse of discretion on the part of the Ombudsman in filing informations for usurpation of official functions and violation of Section 3(a) of RA 3019

---

[72] *Id.* at 1065-1068.

[73] *Id.* at 1068.

[74] *Id.* at 1069.

against him, as these are charges entirely unrelated to the original charge. He claims that he was denied due process when he was not given opportunity to refute such charges.[75] Moreover, the respective informations filed against him do not show the presence of all the elements of either crime.[76]

Also on February 5, 2018, the OSG filed a motion to elevate the case to the Court *En Banc* (with leave of Court).[77] While stating that it does not doubt the capacity of the Court's First Division to render a lawful, fair, and just resolution of the case, it nonetheless moves for the case to be decided *En Banc* "in view of the factual circumstances attendant in [the] case" and for being "imbued with national interest."[78] In a Resolution[79] dated April 23, 2018, the Court required respondents to file their respective comments on the motion.

On February 6, 2018, public respondent Ombudsman filed its comment (with opposition to the issuance of a Temporary Restraining Order (TRO) and/or writ of preliminary injunction) with manifestation,[80] asserting that it did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the assailed Consolidated Resolution and Consolidated Order which dismissed the complaints for 44 counts of reckless imprudence resulting in homicide against private respondents.[81] It maintains that the circumstances obtaining in the case fail to support a finding of probable cause for reckless imprudence or criminal negligence since the negligence in the planning, preparation, and actual implementation of *Oplan Exodus* was subsequently broken by the occurrence of an efficient intervening

---

[75] *Id.* at 1075-1076.

[76] *Id.* at 1080-1083.

[77] *Id.* at 1145-1157.

[78] *Id.* at 1147.

[79] *Id.* at 1289-1291.

[80] *Id.* at 1158-1180.

[81] *Id* at 1160-1161.

cause, which is the intentional act of shooting by hostile forces. This is also the actual, direct, immediate, and proximate cause of the deaths of the 44 SAF members.[82] It strictly adhered to the jurisprudential parameters of probable cause and dismissed the complaints since one of the elements of the crime charged is wanting—that the negligent act must be the proximate cause of the deaths of the 44 SAF members.[83] In any event, it submits that only one count of reckless imprudence resulting in multiple homicide may be charged, regardless of the number of resulting deaths, since Article 365 of the RPC penalizes the negligent or careless act and not its result. It then opposes petitioners' prayer for the issuance of a TRO and/or writ of preliminary injunction on the ground that injunction will not lie to enjoin a criminal prosecution because public interest requires that criminal acts be immediately investigated and prosecuted for the protection of society. Moreover, petitioners failed to establish the requirements for their issuance. Hence, it prayed for the denial of the application for provisional remedies and the dismissal of the petition.[84]

In a Resolution[85] dated February 7, 2018, the Court impleaded the Sandiganbayan as party respondent in these cases and issued a TRO enjoining the Ombudsman and all persons acting upon its orders from implementing the assailed Consolidated Resolution and Consolidated Order, and the Sandiganbayan from proceeding with the arraignment of private respondents in the subject cases.

On February 26, 2018, Napeñas filed his comment/opposition (to the petition for *certiorari*).[86] He considers as "dubious, if not outright hilarious" petitioners' allegation that "the shooting and killing of the [44 SAF members] by the combined elements of the MILF, BIFF and [PAGs] cannot be considered as an

---

[82] *Id.* at 1166.

[83] *Id.* at 1169.

[84] *Id.* at 1172-1175.

[85] *Id.* at 1052-1056.

[86] *Id.* at 1182-1195.

efficient intervening cause because such event was known and foreseeable to herein respondents, and the same could have been avoided had respondents acted with due diligence in the planning and execution of '*Oplan Exodus*.'"[87] According to Napeñas, all members of the SAF knew, from the time they voluntarily joined the SAF, that they were putting their lives on the line for the fulfillment of the PNP's motto, "To Serve and Protect," for the accomplishment of the SAF's primary mission to counter terrorism and for the love of the country. No person in his right mind would believe that there is no danger associated with trying to arrest one of the most wanted terrorists in the world. Knowing that the targets and mission are lawful and legitimate, proper planning and preparations were done, and the mission was approved by the highest authority. Napeñas alleges that he had no other choice but to carry out the operation lest he wilt be charged of insubordination.[88]

Napeñas also reiterates the statement in his consolidated counter-affidavit that he did his best to secure the much-needed artillery support from the AFP. All information that the AFP requested had been provided as early as 8:39 in the morning of January 25, 2015, but the artillery support requested did not come until almost 6:00 p.m. Rigorous time and effort were also exerted by Napeñas, other officers of the SAP, and the unit and personnel who would execute the operations in the planning before they came up with the concept of operations and the *oplan* itself. As director of the SAF, Napeñas' sworn duty is to serve and protect the nation against the evils wrought by international terrorists like Marwan. He was then simply performing his duty in accordance with the knowledge, training, experience, and expertise he possessed as one of the pioneers of the SAF.[89]

---

[87] *Id.* at 1189. Emphasis and italics omitted.

[88] *Id.* at 1189-1190.

[89] *Id.* at 1190-1191.

Napeñas subscribes to the Ombudsman's finding that the proximate cause of death of the 44 SAF members was not his negligence but "the devious desire of the combined forces of the MILF, BIFF, and other Private Armed Groups, who coddled terrorists like Marwan and Usman, to barbarically and mercilessly take the irreplaceable lives" of these 44 SAF members. Moreover, Aquino, together with Purisima, abandoned his men and placed all the blame on Napeñas. In view of the circumstances, Napeñas submits that the Ombudsman did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in rendering its assailed Consolidated Resolution and Consolidated Order directing the dismissal of the cases against him. The instant petition should thus be dismissed for absolute lack of merit and lack of evidence.[90]

On February 27, 2018, the OSG filed its reply (to the comment filed by the Office of the Ombudsman dated January 26, 2018) with leave of Court,[91] mainly reiterating the position it took in its manifestation (in lieu of comment).

On April 23, 2018, the Court issued a Resolution[92] requiring petitioners to file a consolidated reply on the comment/opposition of Aquino, comment of the Ombudsman, and comment/opposition of Napeñas, among others.

On August 31, 2018, Aquino filed his comment/opposition [to: motion to elevate the case to the Court *En Banc* (with leave of Court) dated November 2, 2017].[93]

On September 17, 2018, petitioners filed their consolidated reply.[94]

---

[90] *Id.* at 1191-1192.

[91] *Id.* at 1274-1286.

[92] *Supra* note 79.

[93] *Rollo*, pp. 1303-1313.

[94] *Id.* at 1333-1348.

On September 26, 2018, Purisima filed his comment (to the motion to elevate the case to the Court *En Banc*), praying for the motion to be denied for utter lack of merit.[95]

On October 8, 2018, the Ombudsman filed its manifestation (in lieu of comment), stating that it interposes no objection to the motion to elevate the case to the Court *En Banc* and submits the determination of its propriety to the sound discretion of the Court pursuant to its internal rules.[96]

On February 20, 2019, the Court's First Division issued a Resolution referring the consolidated cases to the Court *En Banc en consulta*.[97] In its Resolution[98] dated February 26, 2019, the Court *En Banc* accepted the case.

On June 25, 2019, the Court received a manifestation[99] from the Ombudsman, stating that it filed a motion to withdraw information in Criminal Case Nos. SB-17-CRM-2144 to 2145 entitled *People of the Philippines v. Aquino* pending before the Sandiganbayan. The motion to withdraw information[100] attached to the manifestation pertinently states:

> After a review of the assailed Consolidated Resolution and Consolidated Order dated June 13, 2017 and September 5, 2017, respectively, in OMB-C-C-16-0419, OMB-C-C-16-0415 and OMB-C-C-16-0448, subject of the TRO, the undersigned finds no sufficient ground and evidence to charge accused Benigno Simeon C. Aquino III for violation of Section 3(a) of Republic Act No. 3019 and for Usurpation of Official Functions under Article 177 of the Revised Penal Code, being then the President of the Republic of the Philippines during the time material to these cases.

---

[95] *Id.* at 1360-1368.

[96] *Id.* at 1368-A-1368-F.

[97] *Id.* at 1369.

[98] *Id.* at 1370.

[99] *Id.* at 1372-1374.

[100] *Id.* at 1375-1378.

**WHEREFORE**, premises considered, it is most respectfully prayed of this Honorable Court that the People of the Philippines be allowed to withdraw the Informations in Criminal Case Nos. SB-17-CRM-2144 and SB-17-CRM-2145 as against accused Benigno Simeon C. Aquino III and, thereafter the same be considered dismissed, without prejudice to the filing of appropriate charges against accused after the conduct of preliminary investigation.

In a Resolution[101] dated July 2, 2019, We noted the Ombudsman's manifestation and required all the parties, including the OSG, to file their comment thereon within a non-extendible period of 10 days from notice.

Aquino filed his comment (to the Office of the Ombudsman's manifestation dated June 24, 2019)[102] on July 15, 2019, averring that the action taken by the Ombudsman is consistent with his position that there is no probable cause to indict him for violation of Section 3(a) of RA 3019 and Article 177 of the RPC. Hence, he is not objecting to the withdrawal of the respective informations filed against him.

In their comment[103] of even date, petitioners similarly expressed no objections to the Ombudsman's motion to withdraw information, and even went further by stating that the charges sought to be withdrawn are groundless and meant only to protect and insulate Aquino from graver charges. They prayed for the Court to allow the People of the Philippines to withdraw the subject informations and direct the Ombudsman to file 44 counts of reckless imprudence resulting to homicide against Aquino.

On July 17, 2019, Napeñas filed his comment (to respondent Office of the Ombudsman's June 24, 2019 manifestation),[104] stating that he does not question the wisdom of the Ombudsman's decision to withdraw the cases filed against Aquino and defers

---

[101] *Id.* at 1379.

[102] *Id.* at 1381-1387.

[103] *Id.* at 1388-1392.

[104] *Id.* at 1393-1397.

to the Sandiganbayan's sound discretion as regards its disposition. Nonetheless, he submits that if there is nothing illegal or criminal in Aquino's acts, justice dictates that he should also be held *not* liable for the same offenses since he merely followed Aquino's just, legal, and proper orders to neutralize one of the world's most wanted terrorists.

On July 22, 2019, the OSG filed its comment (to the manifestation of the Office of the Ombudsman dated June 24, 2019).[105] Essentially, it argues that while the Ombudsman has the sole prerogative to withdraw the informations in the exercise of its prosecutory powers under the Constitution, that should not pave the way for Aquino's exoneration from the crime of reckless imprudence resulting in multiple homicide. Moreover, the withdrawal of the informations should be accompanied by the filing of appropriate charges to ensure that all responsible public officials will be held accountable for the "botched" *Oplan Exodus*.

Finally, on July 26, 2019, Purisima filed his comment[106] stating that he has no objections to the withdrawal of the informations filed against Aquino. However, since he merely acted as an adviser to the President and did not exercise the powers or authority of the PNP Chief in relation to the Mamasapano incident, the informations filed against him should also be withdrawn.

The sole issue brought before Us for resolution is whether or not the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the complaints for reckless imprudence resulting in multiple homicide filed against private respondents. In this view, We do not deal with matters concerning the other charges filed against Aquino, more so pre-empt the resolution of the Ombudsman's motion to withdraw information. The Sandiganbayan retains exclusive jurisdiction and competence to determine the outcome of the

---

[105] *Id.* at 1411-1422.

[106] *Id.* at 1430-1435.

criminal cases filed before it and any disposition of these cases rests upon its sound discretion.[107]

Preliminary considerations having been tackled, We deny the petition and hold that there is no probable cause to charge private respondents with reckless imprudence resulting in multiple homicide.

Article 365 of the RPC defines reckless imprudence as follows:

> Art. 365. *Imprudence and negligence*. – x x x
>
> x x x x x x x x x
>
> Reckless imprudence consists in voluntary, but without malice, doing or falling to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place.
>
> x x x x x x x x x

The Ombudsman held that in reckless imprudence resulting in multiple homicide in relation to the operation of a vehicle, it must be shown that there was a direct causal connection between the negligence and injuries or damages sustained, or that such reckless negligence was the proximate cause of the collision.[108] It cited the definition of proximate cause that We laid down in the case of *Vallacar Transit, Inc. v. Catubig*,[109] to wit:

> Proximate cause is defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. And more comprehensively, the proximate legal cause is

---

[107] *Fuentes v. Sandiganbayan*, G.R. No. 164664, July 20, 2006, 495 SCRA 784.

[108] *Rollo*, p. 67.

[109] *Id.*; G.R. No. 175512, May 30, 2011, 649 SCRA 281. See also *Dumayag v. People*, G.R. No. 172778, November 26, 2012, 686 SCRA 347.

that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.[110]

Gauging by this standard, the Ombudsman held that the proximate cause of the death of the 44 SAF members was the intentional act of shooting by hostile forces that included members of the MILF, BIFF, and PAGs.[111] This intentional act was an "active external [factor] that may not necessarily be considered as "within the full control of respondents, whether with a prior and timely coordination with government forces."[112] It constituted an "efficient intervening cause in the purported negligence of [private] respondents during the planning, preparation, and actual implementation of *Oplan Exodus*,"[113] that breaks the relation of cause and effect, *i.e.*, the purported negligence and the resulting death or injury.[114]

Petitioners strongly differ. Citing predominantly American cases and *Abrogar v. Cosmos Bottling Company and Intergames, Inc*.[115] *vis-à-vis* the Senate Report, petitioners argue that the proximate cause of the killing of the 44 SAF members was the reckless imprudence and inexcusable negligence of private respondents in the planning and execution of *Oplan Exodus*. They assert that the killing of these SAF

---

[110] *Supra* note 108.

[111] *Rollo,* p. 68.

[112] *Id.* at 72.

[113] *Id.* at 68, 72.

[114] *Id*. at 72.

[115] G.R. No. 164749, March 15, 2017, 820 SCRA 301.

members by the combined elements of the MILF, BIFF, and PAGs cannot be considered an efficient intervening cause because such event was known and foreseeable to private respondents and could have been avoided if only they acted with diligence in the planning and execution of *Oplan Exodus*.[116]

Before ruling on whether private respondents had been negligent, whether their negligence was the proximate cause of the death of the 44 SAF members, and consequently, whether probable cause exists in order to charge them with the crime of reckless imprudence resulting in multiple homicide, We should first determine the main actors who were responsible for the planning and implementation of *Oplan Exodus*. This is so because a person who merely had knowledge of the operation cannot stand on the same plane and be legally accountable in the same way as the person who directly conceptualized and executed it. It is fundamental that criminal responsibility is personal and that in the absence of conspiracy, one cannot be held criminally liable for the act or default of another.[117] Here, the three private respondents have different involvements in the operation. Hence, the existence of probable cause to charge them of reckless imprudence must be assessed in accordance with their respective acts. We do not agree with petitioners that all of them are equally negligent.

The record shows that the mission to arrest Marwan and Usman had always been lodged with the SAF, with the first mission to capture Marwan predating the appointment of Purisima as PNP Chief. The Senate Report recounted that local authorities received information in 2003 that Marwan was hiding in Mindanao, for which the SAF launched its first operation to capture Marwan in December 2010.[118] Napeñas personally supervised this operation, code-named "*Oplan Pitas*," which had been unsuccessful as the target appeared to have been

---

[116] *Rollo*, pp. 19-43.

[117] *Vizconde v. Intermediate Appellate Court*, G.R. No. 74231, April 10, 1987, 149 SCRA 226, 233.

[118] *Rollo*, p. 179.

tipped of his impending arrest. In July 2012, Napeñas supervised another operation to apprehend Marwan, dubbed as "*Oplan Smart Bomb*." The target again managed to escape, giving the SAF a well-founded belief that Marwan's group had been warned.[119] Several operation plans had been conceived to capture Marwan and Usman, but all proved unsuccessful for various reasons such as failed coordination with the AFP, the presence of heavily-armed groups in the area of operation, and equipment failure.[120] However, one thing is clear: these operation plans emanated from the PNP, with the SAF headed by Napeñas at the forefront.

In fact, Napeñas explained in his consolidated counter-affidavit[121] that the practice of the SAF in conducting mission planning is to start with the unit and personnel executing the operations.[122] Accordingly, in the run-up to *Oplan Exodus*, the mission planning group of the SAF was again organized on December 23, 2014, composed of Napeñas, several officials of the PNP, the Commander of the Seaborne, and the 5th Batallion Commander.[123]

In the Senate inquiry held on January 27, 2016, Napeñas testified that he was the one who approved and signed *Oplan Exodus*[124] and the one who handled and directed its operations, not Purisima or Aquino.[125] He decided on the exact date of the operation,[126] and only the entire operating troops knew about it. He did not inform Purisima nor Aquino of its execution.[127]

---

[119] *Id.* at 872-873.

[120] *Id.* at 179-182, 873-877.

[121] *Id.* at 869-901.

[122] *Id.* at 875.

[123] *Id.* at 182-183.

[124] *Id.* at 447.

[125] *Id.* at 446.

[126] *Id.* at 443.

[127] *Id.* at 442.

In effect, Napeñas confirmed Purisima's statement in the same Senate inquiry that "it was the PNP-SAF who approved and crafted the plan" and that *Oplan Exodus* was a "PNP-SAF plan."[128] The OSG itself acknowledged the Senate Report's finding that Napeñas was responsible for the planning of *Oplan Exodus*, and even added that Napeñas assumed full responsibility and liability for the effects of carrying out Purisima's orders.[129] Indubitably, Napeñas, as director of the SAF, was the *driver* of *Oplan Exodus*, having fully managed and controlled the mission from start to finish.

The factors that led to the tragic ending of *Oplan Exodus* may be attributed to the SAF alone. In fact, the Senate Report discussed the SAF's failure to conduct adequate intelligence, planning, and coordination with the AFP. *First*, the topography of the area of operations was not adequately considered. Less than half of the Seaborne troops were able to reach the target area, with the rest unable to cross the river nearest the target area because the water was much deeper than anticipated and the water current was too strong. The 55th, 45th, and 42nd SACs were not able to reach their designated waypoints, while the 41st SAC reached its designated waypoint several hours late. The troops were also made to use the same routes to enter and leave the area of operations with no alternative exit route.[130]

*Second*, while intelligence in the possession of the PNP prior to the launch of *Oplan Exodus* indicated that there were more than 1,000 hostile troops at or near the target area, the SAF deployed only 392 personnel for the entire operation, with almost a quarter of them positioned to guard the main supply route that was far away from the theatre of action. Moreover, SAF

---

[128] *Id.* at 434.

[129] *Id.* at 988.

[130] *Id.* at 203-204.

leadership failed to address the tradition of *pintakasi*[131] and its consequences.[132]

*Third*, the SAF were not aware that the MILF had mortar capability, as revealed by the surviving SAF trooper. Had they known of this fact, the complexion of their preparations would have been different.[133]

*Fourth*, the SAF failed to coordinate with the AFP prior to the launch of the operations. The coordinating instructions of *Oplan Exodus* provide that "lateral coordination with friendly forces before, during and after the operation is highly encouraged," instead of mandatory. The *oplan* was also designed to be an all-PNP operation, and guidance for request for artillery and air support was made "as necessary" in the exfiltration phase of the operation. The Senate Report observed that this strategy runs counter to the Implementing Rules and Regulations of Executive Order No. 546, series of 2006[134] which provides that the PNP "[must] coordinate with the nearest tactical unit of the AFP to ensure coordinated and focused operations in the particular area." The strategy also runs counter to the PNP Operational Procedures issued in March 2010, which provides that "PNP units may either operate as a single force or as a part of joint PNP-AFP combat operations. In both cases, lateral coordination is a must." The Senate Report found that if only

---

[131] *Id.* at 204-205. *Pintakasi* is described in the Senate Report as a practice common among Muslim armed groups where groups normally opposed to each other would come together and fight side by side against a common enemy or an intruding force. This practice is deeply rooted in the culture, tradition, and religion of Muslim communities in Mindanao. The target area of *Oplan Exodus* is a tightly-knit community in which the people are related by consanguinity.

[132] *Id.*

[133] *Rollo*, pp. 205-206.

[134] Directing the Philippine National Police to Undertake Active Support to the Armed Forces of the Philippines in Internal Security Operations for the Suppression of Insurgency and Other Serious Threats to National Security, Amending Certain Provisions of Executive Order No. 110 Series of 1999 and For Other Purposes.

Napeñas prepared the *Oplan Exodus* in accordance with the guidelines of the PNP Operational Procedures, it would have been easier for the AFP to provide support or reinforcement even on short notice. Unfortunately, Napeñas did not provide a comprehensive plan to the AFP and merely informed it time-after-target, when the SAF commandos had already been engaged by hostile forces. These facts led the Senate to conclude that the "most fatal mistake made by the mission planners of *Oplan Exodus* was their decision against prior coordination with the AFP, x x x" which could have saved lives.[135]

On top of poor planning and execution, the Senate Report also observed that *Oplan Exodus* broke the chain of command, was not followed to the details, was badly coordinated, and had badges of failure from the very start.[136]

It is the foregoing missteps that ostensibly placed the SAF troopers in a compromising situation, as in fact they suffered grievously in the hands of various armed groups in the battlefield and were direly met with heavy casualties. As the foregoing lapses may be attributed to the SAF, with Napeñas at its helm, We hold that among the three private respondents, it is Napeñas *alone* who may be liable for a charge of reckless imprudence resulting in multiple homicide.

Napeñas alleged in his consolidated counter-affidavit that Aquino "ordered, headed and stamped his approval on the high-risk operations conducted against Marwan and Usman," and even gave orders to Purisima in the conduct of *Oplan Exodus*, one of which states "Basit should not get away."[137] Moreover, in the Senate inquiry held on January 27, 2016, Napeñas alleged that Aquino participated in the planning and preparation for the operation by approving the suggested alternative date of execution[138] and

---

[135] *Rollo*, pp. 206-210.

[136] *Id.* at 210.

[137] *Id.* at 1208-1209.

[138] *Id.* at 443. The transcript of the Senate inquiry dated January 27, 2016 states:

ordering the increase in the number of troops and coordination with the AFP.[139]

However, these acts barely qualify Aquino as an active player in the entire scheme of the operations, more so point to any criminal negligence on his part.

*First*, as mentioned above, since December 2010, it was the SAF, at most times supervised by Napeñas, that conceptualized and implemented operations to capture international terrorist Marwan after he was earlier reported to be residing in Mindanao. The earliest indication of Aquino's knowledge of these operations to capture high-value targets is dated April 2014, when Purisima presented the concept of operation of a mission called "*Oplan Wolverine*" to high-ranking government officials, including Aquino and former DILG Secretary Manuel Roxas.[140] In fact, the record shows that it was Purisima who faithfully reported information and updates to Aquino regarding the succeeding operations. There is no indication that Aquino sought these information or that Purisima updated him for any other reason than the fact that the subjects are internationally-wanted criminals who have perpetrated murder and other crimes in various jurisdictions, who carried substantial rewards for their capture, who have strong links to terrorist groups in Mindanao,[141] and the arrest of whom the President of the Republic of the Philippines should normally be concerned about.

*Second*, with respect to Aquino's alleged approval of the "secondary date" of the execution of *Oplan Exodus*, records show that following the briefing at Bahay Pangarap on January

---

**THE SENATE PRESIDENT.** You decided on your own when the execution will be and you decided it will be on the 25th of January.

**MR. NAPEÑAS.** Yes, Your Honor, based on the recommendation that is approved by the President who said, "Okay," on the window from 23 to 26, Your Honor.

[139] *Id.* at 311, 317, 446.

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

[141] *Id.* at 176-178.

9, 2015, Purisima informed Aquino of Napeñas' preference for the "secondary date" through a text message, to which Aquino replied with a simple "Okay."[142] Aside from the fact that this date was recommended by Napeñas himself,[143] Aquino's cursory reply was a mere formality, an acknowledgment of a preference made by the leader of the operating troops. Purisima's message was not an indication of Aquino's involvement in the planning and execution of *Oplan Exodus*, but a form of giving deference to his position. The facts should not be convoluted to add more to what had been clearly intended.

*Third*, Aquino's suggestions during the briefing at Bahay Pangarap in Malacañang to increase the number of troops and coordinate with the AFP appear to be spontaneous remarks to a completed operation plan presented to him for his information. Napeñas himself declared that it is not unusual for the President to know high-level operations.[144] Moreover, Aquino admittedly did not have military or police background[145] and thus could not have influenced Napeñas who, as director of the SAF, had the expertise to conceptualize and implement an operation to serve arrest warrants against international terrorists. The apparent purpose of Aquino's suggestions is to reinforce the desired positive outcome of the operation. His actuations do not constitute

---

[142] *Id.* at 320.

[143] *Id.* at 318-319.

[144] *Id.* at 526-527. The transcript of the Senate inquiry dated January 27, 2016 states:

**SEN. TRILLANES**. x x x Director Napeñas, is it unusual for a commander to be aware of an operation plan? Or let's put in this case (*sic*), the commander-in-chief, unusual *po ba iyon na malalaman ng Presidente o* commander-in-chief *ang plano [sa] isang* operation plan? x x x

**MR. NAPEÑAS**. It is usual, Your Honor, that he should know high level of operations.

**SEN. TRILLANES**. Okay. So, is there anything illegal about it *na malaman niya* about *ang* operation?

**MR. NAPEÑAS**. No, Your Honor.

[145] *Id.* at 1067.

a participation in the planning and implementation of *Oplan Exodus* since, as President of the Republic, he does not exercise direct control over the PNP under the doctrine of qualified political agency.[146] Notably, in the end, it was still Napeñas who determined the number of troops to be deployed, and it was still his concept of time-on-target coordination that prevailed,[147] although it was not actually followed.[148]

---

[146] The PNP is under the executive branch of the government, over which the President exercises the power of control, but not direct control under the doctrine of qualified political agency (*Carpio v. Executive Secretary*, G.R. No. 96409, February 14, 1992, 206 SCRA 290).

[147] *Rollo*, pp. 527-528. The transcript of the Senate inquiry dated January 27, 2016 states:

**SEN. TRILLANES.** x x x

Now, *noon bang nag-usap kayo ni Presidente, nagbigay ba siya sa iyo ng ili-limit mo lang iyong gagawin mo or bibigyan ka niya ng* latitude *para ma-accomplish niyo iyong mission niyo*, sir?

**MR. NAPENAS.** *Hindi nagbigay ng limit at hindi rin niya denifayn* (define) *iyong* latitude *na sinasabi niyo*, Your Honor.

**SEN. TRILLANES.** Okay. So, in short, *kahit isang libong tropa ang ilagay mo diyan, puwede, wala siyang sinabing hanggang ganitong [tropa ka] lang*.

**MR. NAPEÑAS**. Yes, Your Honor.

**SEN. TRILLANES**. Okay. So, *wala siyang binigay na* limitation*, hindi siya nag* hold back. *Ngayon, may binigay ba siya na* order *sa inyo na huwag mag-coordinate sa* Armed Forces?

**MR. NAPEÑAS**. None, Your Honor.

**SEN. TRILLANES**. Okay. So, in short, *may binigay ba siya sa inyo na order na mag-coordinate kayo* with the Armed Forces?

**MR. NAPEÑAS**. Yes, Your Honor.

**SEN. TRILLANES**. Okay. So, *maliwanag na binigyan kayo ng kalayaan para magplano at i-execute iyong plano*.

[148] *Id.* at 529-530. The transcript of the Senate inquiry dated January 27, 2016 states:

**SEN. TRILLANES**. x x x

Anyway, *pupunta tayo dito sa*, specifically, *dito sa* time on target procedure *ninyo*. S*inabi niyo sa plano ninyo that na-approve ng Presidente*, you will inform the other different agencies once the main effort would reach the target, did you do that, Director Napeñas?

*Finally*, nothing on record shows that Aquino gave orders to Purisima during the conduct of *Oplan Exodus*. The latter merely forwarded to Aquino the messages sent by Napeñas on the outcome and incidents of the operation, and Aquino, at some points, merely asked for clarification. His statement that "Basit should not get away" is an expression of displeasure, rather than an order. This much may be gathered from the surrounding circumstances.

The Senate Report stated that as the PNP is under the DILG, the President, as Chief Executive, exercises supervision and control over the PNP. Given that the President gave the policy direction to arrest Marwan and Usman, and that he approved *Oplan Exodus* with full knowledge of its operational details, he is ultimately responsible for the success or failure of the mission. It suggests Aquino's accountability under the doctrine of command responsibility.[149]

Two observations may be made in this regard. *First*, there is no evidence that the policy direction to arrest Marwan and Usman came from Aquino. As mentioned, SAF operations to capture these two high-value targets commenced in 2010, but the Senate Report indicates that the earliest period that Aquino learned of the mission to arrest the two criminals was in 2014, when Purisima presented to him and other high-ranking government officials the concept of operations of *Oplan Wolverine*. The Senate Report evinces that from 2010 until 2014, before *Oplan Exodus* was implemented in 2015, there

---

**MR. NAPEÑAS**. Yes, Your Honor, with a little delay because of the situation on the ground.

**SEN. TRILLANES**. Director Napeñas, let's be truthful. *Pag sinabi niyong* time on target, *pagdating doon ahora mismo doon dapat ang* coordination, sir. *Ginawa ninyo iyan*, sir, *o hindi?*

**MR. NAPEÑAS**. *Nagawa namin iyong* coordination, Your Honor, *na-delay.*

**SEN. TRILLANES**. So, *hindi* time on target *iyon*, based on your own plan.

**MR. NAPEÑAS**. Yes, Your Honor.

[149] *Id.* at 247-248.

had been nine unsuccessful attempts to capture Marwan and Usman.[150] The SAF's operation plans for the succeeding missions evolved, taking into consideration the cause of failure, additional intelligence gathered, and other relevant information. It could not be said that the policy direction for *Oplan Exodus* came from Aquino inasmuch as it is the SAF's function to serve arrest warrants and conduct counter-terrorism operations against local and international terrorist groups.[151] No policy direction is required for the performance of the SAF's mandate. As a legitimate police operation, *Oplan Exodus* did not require Aquino's approval, and any purported approval he made was sure to be merely a formality.

Our *second* point is that Aquino cannot be held criminally accountable under the doctrine of command responsibility.

The Senate states that there is always a hierarchical structure in every organization in which authority is exercised. This is supposedly the essence of "chain of command." While the term is often associated with the military, it has been applied to hierarchical structures in civilian government agencies and private enterprises.[152] Accordingly, the Senate continues, where there is a chain of command, the doctrine of command responsibility applies, which also is not restricted to the military[153] after Executive Order No. 226, series of 1995[154] (EO 226) institutionalized the doctrine in all government offices including the PNP.[155]

To be sure, the President of the Republic of the Philippines is not part of the chain of command of the PNP. Under Section

---

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

[151] See https://pnp-saf.org.ph/index.php/about-us/function. Last accessed on August 16, 2019.

[152] *Rollo*, p. 235.

[153] *Id.* at 235-237.

[154] "Institutionalization of the Doctrine of 'Command Responsibility' in All Government Offices, Particularly at All Levels of Command in the Philippine National Police and Other Law Enforcement Agencies."

[155] *Rollo*, p. 237.

26 of Republic Act No. 6975,[156] the command and direction of the PNP is vested in the Chief of the PNP. That the PNP chain of command does not include the President is further confirmed by the PNP BOI Report itself which clearly stated that with respect to *Oplan Exodus*, the chain of command in the PNP should have been: Police Deputy Director General Leonardo Espina, the Officer-in-Charge of the PNP (OIC-PNP) as Senior commander, and Police and SAF Director Getulio Napeñas as intermediate commander, excluding PNP Director General Purisima "who could not legally form part of the Chain of Command by reason of his suspension."[157]

The President's power over the PNP is subsumed in his general power of control and supervision over the executive department of the government. In fact, in *Carpio v. Executive Secretary*[158] We held that "the national police force does not fall under the Commander-in-Chief power of the President. This is necessarily so since the police force, not being integrated with the military, is not a part of the Armed Forces of the Philippines. As a civilian agency of the government, it x x x is [only] subject [to] the exercise by the President of the power of executive control."[159] The case of *Saez v. Macapagal-Arroyo*[160] cited by the Senate described the President as the commander-in-chief of the AFP, not the PNP. As such, he necessarily possesses control over the military that qualifies him as a superior within the purview of the command responsibility doctrine. Given these rulings, as the President is not part of the chain of command in the PNP, it follows that he does not exercise command responsibility over this civilian organization.

---

[156] "An Act Establishing the Philippine National Police Under a Reorganized Department of the Interior and Local Government, and for Other Purposes," also known as the "Department of the Interior and Local Government Act of 1990."

[157] *Id.* at 669.

[158] G.R. No. 96409, February 14, 1992, 206 SCRA 290.

[159] *Id.* at 302.

[160] G.R. No. 183533, September 25, 2012, 681 SCRA 678.

Besides, command responsibility has a technical meaning. In *Saez*, We ruled that to hold someone liable under the doctrine of command responsibility, the following elements must obtain: a) the existence of a superior-subordinate relationship between the accused as superior and the perpetrator of the crime as his subordinate; b) the superior knew or had reason to know that the crime was about to be or had been committed; and c) the superior failed to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof. In this case, since Aquino is considered a superior of the AFP but not the PNP which is the agency involved in this case, the first element is not satisfied. Likewise, even granting that Aquino may be considered a "superior" of the PNP, the last two elements are also not satisfied since it was not shown by evidence that he knew or had reason to know that a crime was about to be or had been committed, and that he failed to take steps to prevent the criminal act or punish its perpetrators. Indeed, *Oplan Exodus* was a legitimate police operation. Administrative and criminal charges against private respondents and other PNP officials have been lodged not until after its execution, in view of the large casualties incurred by the SAF.

It may be argued that Aquino exercises command responsibility over the PNP under EO 226, Section 1 of which states:

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

Aquino may be included in the catchall phrase "any government official or supervisor," but he may still not be held liable considering that he had no knowledge of any crime that the PNP was about to commit or has committed, and for which he failed to act. In any event, the provision at most makes a

commander liable *administratively* for neglect of duty. In this connection, We held in *Principe v. Fact-Finding & Intelligence Bureau, Office of the Ombudsman*[161] that administrative liability will not attach absent proof of actual act or omission constituting neglect of duty. In the absence of substantial evidence of gross neglect, administrative liability could not be based on the principle of command responsibility. The negligence of the superior's subordinates is not tantamount to his own negligence.

The Senate found that the most fatal mistake made by the mission planners of *Oplan Exodus* was their decision against prior coordination with the AFP and that the bare coordination with the AFP units in the area was "time on target."[162] The record bears that Aquino gave directions to Napeñas to increase the number of troops and inform the AFP and PNP OIC of the operation, but Napeñas disregarded these. Apparently, it was Napeñas' failure to reasonably execute Aquino's recommendations that yielded fatal results. Hence, it would be unjust to find Aquino probably guilty of a crime for Napeñas' own negligence or disobedience to his orders.

In all, We do not find probable cause to charge Aquino with reckless imprudence resulting in multiple homicide. If it would be necessary to invoke remote justifications to thrust a respondent to court, then We would have been remiss in our duty to uphold the law and protect the innocent from the torment of a criminal prosecution.

The Court also does not find probable cause to charge Purisima of the same offense.

The Senate Report stated that even before January 9, 2015, Purisima was already barred from performing the functions of the PNP Chief due to his suspension, yet: 1) he made himself present when Napeñas gave a briefing and mission update on *Oplan Exodus* to the President on January 9, 2015 at Bahay Pangarap in Malacañang; 2) after the meeting, Purisima gave

---

[161] G.R. No. 145973, January 23, 2002, 374 SCRA 460.

[162] *Rollo*, p. 210.

instruction to Napeñas: "*Huwag mo munang sabihan iyong dalawa. Saka na pag nandoon na. Ako na ang bahala kay General Catapang*." Hence, upon Purisima's instructions, knowledge of *Oplan Exodus* was kept from the Secretary of the DILG and the OIC of the PNP until the morning of January 25, 2015; 3) Purisima continued to involve himself in *Oplan Exodus* by exchanging messages with Napeñas before and during the operation; and 4) Purisima provided updates to Aquino on the progress of the operation.[163]

However, Purisima alleges that as early as April 2014, he had already delegated the command and control over the law enforcement operations against Marwan and Usman to then SAF Director Napeñas.[164] The latter admitted this when he testified during the Senate inquiry on January 27, 2016 that he was the one handling and directing the operation, not Purisima or Aquino.[165] Full responsibility over the operation was thus lodged on Napeñas.

Moreover, the actions of Purisima enumerated by the Senate did not put in motion the sequence of events that eventually led to the death of the 44 SAF members. Purisima's presence during the briefing in Malacañang on January 9, 2015, communicating with Napeñas during the operation, and providing updates to Aquino all have nothing to do with the planning and implementation of *Oplan Exodus*.

---

[163] *Id.* at 238-240.

[164] *Id.* at 1020.

[165] *Id.* at 446. The transcript of the Senate inquiry dated January 27, 2016 states:

**THE SENATE PRESIDENT.** General Napeñas you were the one handling and directing the operations in Maguindanao area on that day. *Kayo po. Hindi po ba?*

**MR. NAPEÑAS.** Yes, sir, Your Honor.

**THE SENATE PRESIDENT.** *Kayo lahat. Hindi man si* General Purisima, *hindi si Presidente. Kayo*.

**MR. NAPEÑAS.** Yes, sir, Your Honor, *ako po*.

Purisima explains that he arranged for the briefing on January 9, 2015 to inform the President of the ongoing law enforcement operations to capture internationally-wanted terrorists.[166] If Purisima were the brains behind *Oplan Exodus*, then he should have presented the operation plan to the President himself. His instruction to Napeñas that *"Huwag mo munang sabihan iyong dalawa. Saka na pag nandoon na. Ako na ang bahala kay General Catapang*"[167] was not his original strategy, but rather sprang from Napeñas' own time-on-target[168] concept of informing the AFP and the PNP OIC of the operation. Regardless of this instruction, Napeñas would have done the same thing as in fact, without waiting for Purisima, Napeñas informed the AFP through a text message of the ongoing law enforcement operation at 5:06 a.m. of January 25, 2015, two hours after the troops reached the target area at 3:00 a.m. The Senate Report found that this was the first attempt at "coordination" made by the SAF with a unit of the AFP, which was late as the SAF troopers were already engaged with hostile forces and needed reinforcement to assist them in their exfiltration.[169] During the conduct of the operation, there is no indication that Purisima gave orders to Napeñas. The record bears that he merely gave guidance on the result of his coordination with the AFP and other persons, and asked for updates which he forwarded to the President. Looking at the big picture, Purisima's main role in the entire undertaking appeared merely to connect the SAF to the President. *Oplan Exodus* was admittedly the brainchild of the SAF, led by Napeñas. The fact that Purisima worked on the sidelines is an internal recognition of his lack of authority to act because of his suspension from office. He may have offended the law in that respect, but We are not convinced that his participation *per se* placed in motion the series of events that eventually led to the

---

[166] *Id.* at 1022.

[167] *Id.* at 238.

[168] *Id.* at 196-197. "Time-on-target" means that the AFP shall be advised of the operation when the Seaborne is at the target area.

[169] *Id.* at 197.

death of the 44 SAF members, and for which he should be prosecuted for reckless imprudence resulting in multiple homicide.

Verily, to the mind of the Court, and as evinced by the record, it is only Napeñas among the three private respondents who *may* be susceptible to a prosecution for reckless imprudence, being the head of the SAF that planned and implemented *Oplan Exodus*. In the same breath, however, We hold that no probable cause exists to charge him of such crime.

In negligence or imprudence, what is principally penalized is the mental attitude or condition behind the act, the dangerous recklessness, lack of care or foresight, the *imprudencia punible*.[170] Among the elements constitutive of the offense of reckless imprudence, what perhaps is most central to a finding of guilt is the conclusive determination that the accused has exhibited, by his voluntary act without malice, an inexcusable lack of precaution because it is that which supplies the criminal intent so indispensable as to bring an act of mere negligence and imprudence under the operation of the penal law. A conscious indifference to the consequences of the conduct is all that is required from the standpoint of the frame of mind of the accused.[171]

We hold that there was negligence on the part of Napeñas in the planning and execution of *Oplan Exodus*, but the confluence of other factors contributing to its tragic ending prevents Us from finding probable cause to charge him with reckless imprudence resulting in multiple homicide.

It is pertinent to note that *Oplan Exodus* was devised by a mission planning group composed of Napeñas and other officials of the PNP.[172] In the course of preparations, SAF units involved in the operation conducted rehearsals, exercises of movements, and live firing exercises. Napeñas and other PNP officials

---

[170] *Rafael Reyes Trucking Corporation v. People*, G.R. No. 129029, April 3, 2000, 329 SCRA 600, 617.

[171] *Caminos, Jr. v. People,* G.R. No. 147437, May 8, 2009, 587 SCRA 348, 358.

[172] *Rollo*, pp. 182-183.

conducted their final mission planning in coordination with all the unit commanders and key personnel involved in the operation near the date of the actual operation.[173]

Despite preparations, the troops encountered setbacks during the actual operation. The first was when the navigator of the Seaborne troops encountered problems with his Global Positioning System (GPS), which required the guides to lead the way. However, since the guides were familiar with the area only during daytime, they became disoriented, causing more than an hour's delay in the movement of the Seaborne.[174] The Seaborne troops also had difficulty negotiating the terrain and the strong river current, which resulted in more delay in reaching the target area. In turn, all supporting troops whose movements needed to be synchronized with that of the Seaborne were also delayed, with some even failing to reach their target areas.[175] As found by the PNP-BOI, it took almost six hours for the Seaborne to reach the target area. Because they were running late, their leader decided to raid Marwan's hut with just 13 men[176] out of a total of 38 Seaborne members.[177] There was no force available to raid Usman's hut which was just 100 meters away from Marwan's.[178] Before neutralizing Marwan, a "booby trap" exploded, alerting members of the BIFF. Two members of the Seaborne were wounded in the ensuing initial firefight. As it attempted to exit the target area, the Seaborne was engaged by hostile forces, and was not able to link up with the 55th SAC because of the heavy volume of enemy fire.[179]

As discussed, Napeñas informed an AFP unit of the ongoing law enforcement operation at 5:06 a.m. of January 25, 2015.

---

[173] *Id.* at 191-193.

[174] *Id.* at 691.

[175] *Id.* at 193.

[176] *Id.* at 691.

[177] *Id.* at 193.

[178] *Id.* at 691.

[179] *Id.* at 194-195.

At 6:00 a.m., the PNP OIC called an AFP Unit to seek support for the beleaguered PNP troops. Between 7:00 a.m. and 9:00 a.m., Napeñas and other SAF officers contacted different officers of the AFP for reinforcement and indirect artillery support. The AFP approved the deployment of army troops and mechanized infantry to reinforce the SAF but withheld approval of the request to provide indirect fire support for lack of details of the firefight.[180] In the Senate inquiry conducted on January 27, 2016, several senators expressed dismay in the protracted manner in which the AFP responded to the beleaguered SAF,[181] with one senator observing that no one is taking responsibility, and that PNP and AFP officials were pointing fingers at each other.[182]

Another upset encountered in the conduct of the operation was the failure in communication. At 8:20 a.m., AFP troops were deployed but were unable to link up with the elements of the 55th SAC because they could not contact the latter.[183] On this point, the PNP-BOI found that during the firefight, communication was cut off among the troops. The reason could have been that the SAF troopers used a brand of handheld radios that was not meant for use in military-type operations. Many of this type of radios were soaked in water and thus became useless. Also, their batteries were good for only a few hours, being easily discharged due to wear and tear. The troops used their cellphones as back-up communication device, but these cellphones proved unreliable due to erratic signal. The lack of communication among the SAF units involved in the operation affected the situational awareness, reinforcement effort, and decisions of its commanders. The poor interoperability of radios used by the AFP and SAF troopers also made the reinforcement efforts more cumbersome.[184]

---

[180] *Id.* at 197-199.

[181] *Id.* at 370-376, 455-471, 489, 534-546, 570-572, 579-580.

[182] *Id.* at 489.

[183] *Id.* at 199-200.

[184] *Id.* at 695-697.

With respect to firepower, the PNP-BOI narrated that the lone survivor of the 55th SAC reported that several rounds of his M203 grenade launcher were duds.[185]

The PNP-BOI also found that the 55th SAC, 35 out of 36 members of which were killed in the firefight, were trapped in the cornfields although there was a defensible position 100 meters from their location, as shown by a row of coconut trees. The standard operating procedure (SOP) when occupying an area or position in an unfamiliar terrain was to secure the perimeter and conduct reconnaissance to look for cover, vantage positions, and observation posts. However, the 55th SAC did not follow this SOP.[186]

There is also an indication that the other SAF units, consisting of about 200 commandos, did not provide the necessary assistance to the besieged 55th SAC.[187] In the Senate inquiry conducted on January 27, 2016, a sergeant of the Philippine Army who was a part of the unit sent to reinforce the SAF testified that after his group linked up with the 45th, 42nd, and 41st SAC, he found the latter unable to provide support to the 55th SAC as in fact they just stayed in their respective positions, unwilling to go inside the site of the battle.[188] This agrees with the finding of the PNP-BOI that the platoon leaders of these SAC units claimed that enemy fire coming from all directions prevented them from reinforcing the 55th SAC. However, none of these troopers were wounded, which is inconsistent with the claim that they have been under heavy enemy fire.[189]

The SAF was engaged in gun battle with MILF with whom the government had existing peace talks at the time. According to the Senate Report, the MILF engaged the SAF even if they knew that these were policemen from the uniform they were

---

[185] *Id.* at 696.

[186] *Id.* at 693.

[187] *Id.* at 699.

[188] *Id.* at 537-540.

[189] *Id.* at 699.

wearing, with the apparent objective of wiping them out. Prior coordination with the MILF would have mitigated the circumstances, but in this case, there was none. However, while hostilities were ongoing and representatives of the government met with counterparts in the MILF to explain that the SAF was conducting a law enforcement operation in the area, the MILF did not end the fight. They even fired at wounded SAF troopers and shot some of them at close range. They took the firearms, equipment, uniforms, and personal effects of the killed SAF troopers and did not return them.[190] Medico-legal reports on autopsies conducted on cadavers of slain troopers of the 55th SAC revealed that 27 (out of 35) of them were shot in the head as "finishing touches."[191] The Senate moreover found that the MILF coddled criminals and terrorists. During the Senate hearings, the MILF denied that they knew Marwan and Usman, yet these terrorists had been their residents for almost a decade, with Marwan training recruits in the area to maim and kill.[192]

Without doubt, Napeñas had been negligent, as borne by both the Senate and PNP-BOI reports. However, We find it difficult to isolate the effects of his negligence from the effects of all the other factors that contributed to the loss of lives in the implementation of *Oplan Exodus*.

Lack of prior coordination with the AFP was seen by the Senate as the most fatal mistake made by the mission planners of *Oplan Exodus*.[193] However, Napeñas explained that past law enforcement operations against high-value targets failed because of apparent leak in information.[194] On the belief that

---

[190] *Rollo*, pp. 215-219.

[191] *Id.* at 202.

[192] *Id.* at 219.

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

[194] In his consolidated counter-affidavit, Napeñas narrated that in the failed operation to capture Marwan in December 2010, the text message of the AFP to the representative of the peace panel was found in Marwan's

the AFP was compromised, he recommended a time-on-target coordination with it.[195] On the other hand, coordination with the representatives of the government in the peace process would not have guaranteed that MILF will not join the fray, in light of the Senate's finding of MILF's seeming lack of sincerity that was manifestly demonstrated by its treatment of the SAF in the battlefield and the appearance that it had been coddling Marwan and other terrorists. These factors required Napeñas to make a delicate balancing act in relation to *Oplan Exodus*.

We also cannot discount the sad reality that the equipment and ammunition of our police force can be inferior or deficient. It can adversely affect police operations and spell the difference between life and death. Unfortunately, that is the standard to which our policemen should adapt, unless authorities take serious steps towards the expeditious modernization of the PNP. The apparent lack of training on the part of some members of the SAC, exhibited by their hesitation to enter the battlefield to provide much needed reinforcement to their beleaguered colleagues is much disturbing. Unfortunately, the Court is not furnished with information on the outcome of any investigation pertaining to this matter.

---

cellphone which was recovered from the operation. This gave SAF the well-founded impression that Marwan and his troops have been warned of the SAF's arrival through their spies from the AFP, many of whom married the locals living in the areas controlled by the MILF, BIFF, and Abu Sayyaf (*Id.* at 872). Two years later, in July 2012, another operation to capture Marwan was conceived. Part of the operation plan was to inform the government peace panel representatives who shall in turn inform their counterparts in the MILF. The operation again failed after Marwan escaped just before the SAF troops arrived. Based on the information obtained from the cellphones, computers, and documents recovered from the hideout, Marwan was likely informed by the MILF of the operation (*Id.* at 873). In this view, the Senate Report states:

> In December 2010, the PNP-SAF launched an operation to arrest Marwan. Minutes before the arrival of the arresting troops at his location in Sulu, Marwan managed to escape. Another operation of the PNP-SAF to capture Marwan was conducted in July 2012 in Butig, Lanao del Sur. Again, Marwan managed to escape (*Id.* at 179-180).

[195] *Id.* at 444-445.

In any case, to charge Napeñas with reckless imprudence would be to charge under his responsibility the consequences of all incidents that contributed to the death of the 44 SAF members, even those beyond what he and his team may or should have reasonably foreseen during the planning and execution of *Oplan Exodus*—which is not fair. Moreover, it would pose a threat to future law enforcement undertakings if military and police officials would be held susceptible to criminal charges for injury or death resulting from a legitimate operation. It will be like a Sword of Damocles hanging over their heads, which can paralyze them and consequently maim the government's efforts to curb criminality in the interest of self-preservation. There is no perfect law enforcement operation. To the contrary, they are mostly idiosyncratic and risky. There is no guarantee of police officers' safety even in developed countries possessed of sophisticated crime-fighting technology.

In view of all the attendant circumstances, We do not find probable cause to charge Napeñas with reckless imprudence resulting in multiple homicide.

In fine, the Ombudsman did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the complaints for reckless imprudence resulting in multiple homicide filed against private respondents.

**WHEREFORE,** the petition is **DISMISSED**. The Ombudsman's Consolidated Resolution dated June 13, 2017 and Consolidated Order dated September 5, 2017 issued in OMB-C-C-16-0419, OMB-C-C-16-0435, and OMB-C-C-16-0448 are **AFFIRMED** insofar as they found no probable cause to charge private respondents Benigno Simeon C. Aquino III, Alan LM. Purisima, and Getulio P. Napeñas with reckless imprudence resulting in multiple homicide.

**SO ORDERED.**

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

**EN BANC**

[G.R. No. 240873. September 3, 2019]

**SOLICITOR GENERAL JOSE C. CALIDA, MILAGROS O. CALIDA, JOSEF CALIDA, MICHELLE CALIDA, and MARK JOREL CALIDA,** *petitioners, vs.* **SENATOR ANTONIO "SONNY" TRILLANES IV, THE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS (BLUE RIBBON COMMITTEE), and +THE COMMITTEE ON CIVIL SERVICE, GOVERNMENT REORGANIZATION, AND PROFESSIONAL REGULATION,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; LEGISLATIVE DEPARTMENT; POWER TO CONDUCT INQUIRIES IN AID OF LEGISLATION; NOT ABSOLUTE; INVESTIGATION IN AID OF LEGISLATION MUST COMPLY WITH THE RULES OF PROCEDURE OF EACH HOUSE OF CONGRESS, AND MUST NOT VIOLATE INDIVIDUAL RIGHTS ENSHRINED IN THE BILL OF RIGHTS.—** The legislative power to conduct investigations in aid of legislation is conferred by Article VI, Section 21 of the 1987 Constitution. x x x While this power is not found in the present Constitution's precursors, this Court in *Arnault v. Nazareno* clarified that such power did not need textual grant as it was implied and essential to the legislative function: Although there is no provision in the Constitution expressly investing either House of Congress with power to make investigations and exact testimony to the end that it may exercise its legislative functions advisedly and effectively, such power is so far incidental to the legislative function as to be implied. x x x Nonetheless, despite the constitutional grant, the power of both the House of Representatives and the Senate to conduct investigations in aid of legislation is not absolute. Citing *Watkins v. United States*, this Court in *Bengzon, Jr. v. Senate Blue Ribbon Committee* emphasized that "[n]o inquiry is an end itself[.]" It explained that an investigation in aid of legislation must comply with the

rules of procedure of each House of Congress, and must not violate the individual rights enshrined in the Bill of Rights. In *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, this Court explained further that a legislative inquiry must prove to be in aid of legislation and not for other purposes, pronouncing that "Congress is neither a law enforcement nor a trial agency." x x x Additionally, legislative inquiry must respect the individual rights of the persons invited to or affected by the legislative inquiry or investigation. Hence, the power of legislative inquiry must be carefully balanced with the private rights of those affected. A person's right against self-incrimination and to due process cannot be swept aside in favor of the purported public need of a legislative inquiry. It must be stressed that persons invited to appear before a legislative inquiry do so as resource persons and not as accused in a criminal proceeding. Thus, they should be accorded respect and courtesy since they were under no compulsion to accept the invitation extended before them, yet they did so anyway. Their accommodation of a request should not in any way be repaid with insinuations.

2. **ID.; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; LIMITED TO AN ACTUAL CASE AND CONTROVERSY; ACTUAL CASE AND CONTROVERSY, DEFINED.—** This Court's power of judicial review is limited to an actual case and controversy. An actual case and controversy exists when there is a conflict of legal rights or opposite legal claims capable of judicial resolution and a specific relief. The controversy must be real and substantial, and must require a specific relief that courts can grant.

3. **ID.; ID.; ID.; ID.; MOOT CASES; A CASE BECOMES MOOT WHEN IT LOSES ITS JUSTICIABILITY, AS THERE IS NO LONGER A CONFLICT OF LEGAL RIGHTS WHICH WOULD ENTAIL JUDICIAL REVIEW; WHEN THE COURT MAY STILL RULE ON ISSUES THAT ARE OTHERWISE MOOT; NOT ESTABLISHED IN CASE AT BAR.—** A case becomes moot when it loses its justiciability, as there is no longer a conflict of legal rights which would entail judicial review. This Court is precluded from ruling on moot cases where no justiciable controversy exists. However, exceptions do exist. *David v. Macapagal-Arroyo* enumerated the circumstances when this Court may still rule on issues that

are otherwise moot: Courts will decide cases, otherwise moot and academic, if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review. None of the established exceptions exist in this case.

**APPEARANCES OF COUNSEL**

*Jose A. Bernas, Diana Ann E. Somera, Michael Angelo Escudero & Charmaine A. Abes* for petitioners.

*Reynaldo Bustos Robles* for respondent Trillanes IV.

**R E S O L U T I O N**

**LEONEN, *J.*:**

A case becomes moot when it may no longer be the subject of judicial review, as there is no conflict of legal rights which would entail judicial resolution.

This Court resolves a Petition for *Certiorari* and Prohibition[1] filed by Solicitor General Jose C. Calida (Calida), Milagros O. Calida, Josef Calida, Michelle Calida, and Mark Jorel Calida. They pray that Antonio Trillanes IV (Trillanes), then a sitting senator, be permanently prohibited from conducting a legislative inquiry into their alleged conflict of interest on government contracts awarded to their security services company. They also pray for the issuance of a temporary restraining order or writ of preliminary injunction.[2]

Petitioners claim that Proposed Senate Resolution No. 760[3] does not contain any intended legislation. Instead, it merely

---

[1] *Rollo*, pp. 3-41.

[2] *Id.* at 35.

[3] *Id.* at 45-47. Proposed Senate Resolution No. 760 urges "the Senate Committee on Civil Service and Government Reorganization to conduct an

calls for an investigation on any conflict of interest regarding the award of government contracts to Vigilant Investigative and Security Agency, Inc., a company owned by petitioner Calida and his family.[4] They likewise claim that respondent Trillanes acted without authority in issuing invitations to the resource persons, as the invitations were sent out without the Senate body's approval of the proposed resolution.[5]

Furthermore, petitioners insist that the investigation is clearly intended merely to target and humiliate them.[6] Thus, they pray that respondent Trillanes, as the chair of the Senate Committee on Civil Service, Government Reorganization, and Professional Regulation (Committee on Civil Service), be prohibited from conducting a legislative inquiry against them.[7]

On August 16, 2018,[8] this Court directed respondent Trillanes to comment on the Petition.

In his Comment/Opposition,[9] respondent Trillanes denies that the scheduled hearing was without Senate authority or that he acted on his own. He points out that Proposed Senate Resolution No. 760 underwent first reading and was formally and officially referred by Senate President Vicente C. Sotto III, with the concurrence of the Senate Body, to the Committee on Civil Service as primary committee, and the Senate Committee on the Accountability of Public Officers and Investigations (Blue Ribbon Committee) as secondary committee. Thus, he

---

inquiry, in aid of legislation, on the conflict of interest of Solicitor General Jose Calida, arising from security service contracts between national government agencies and Vigilant Investigative and Security Agency, Inc."

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

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

[6] *Id.* at 22.

[7] *Id.* at 35.

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

[9] *Id.* at 78-102.

stresses that the invitations extended to petitioners were sent in his official capacity as Committee on Civil Service chair.[10]

Additionally, respondent Trillanes states that on August 7, 2018, upon Senator Miguel Zubiri's (Senator Zubiri) motion and without objection from the Senate body, Proposed Senate Resolution No. 760 was referred to the Committee on Rules for study. The following day, again upon Senator Zubiri's motion and without objection, the Senate body approved the change of referral of Proposed Senate Resolution No. 760 from the Committee on Rules to the Blue Ribbon Committee as primary committee, and Committee on Civil Service as secondary committee.[11]

Respondent Trillanes asserts that with the formal change of referral, the task of initiating the investigations for Proposed Senate Resolution No. 760 fell to the Blue Ribbon Committee. Thus, he stresses, the initial hearing conducted by the Committee on Civil Service was considered *functus officio* and the scheduled hearing sought to be restrained has been rendered moot by supervening events.[12]

In any case, respondent Trillanes emphasizes that petitioners "were never under any legal compulsion to attend"[13] the committee hearing. He points out that they were issued mere invitations, not subpoenas.[14]

Finally, respondent Trillanes underscores that the Senate's power and authority to conduct investigations in aid of legislation are provided in the Constitution.[15] He asserts that this issue is a political question, which is outside this Court's jurisdiction.[16]

---

[10] *Id.* at 84-85.

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

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

[13] *Id.* at 91.

[14] *Id.* at 91-92.

[15] *Id.* at 94-95.

[16] *Id.* at 95-96.

On August 31, 2018, petitioners filed a Supplemental Petition[17] where they impleaded the Blue Ribbon Committee and Committee on Civil Service. They prayed that these committees also be enjoined from conducting joint hearings on Proposed Senate Resolution No. 760.[18]

In a September 4, 2018 Resolution,[19] this Court directed petitioners to reply to respondent Trillanes' Comment.

In their Reply,[20] petitioners reiterate that respondent Trillanes lacked the authority to issue the August 1, 2018 invitation because the Senate, as a body, had not yet approved Proposed Senate Resolution No. 760.[21] They emphasize that the proposed resolution itself was unconstitutional as it lacked legislative intent.[22]

In an October 9, 2018 Resolution,[23] this Court directed the parties to file their respective memoranda. Both parties complied.[24]

The sole issue for this Court's resolution is whether or not respondents, then Senator Antonio "Sonny" Trillanes IV, the Committee on Accountability of Public Officers and Investigations, and the Committee on Civil Service, Government Reorganization, and Professional Regulation, should be enjoined from conducting hearings in aid of legislation over Proposed Senate Resolution No. 760.

The Petition has no merit.

---

[17] *Id.* at 212-257.

[18] *Id.* at 215-224.

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

[20] *Id.* at 286-305.

[21] *Id.* at 289-291.

[22] *Id.* at 291.

[23] *Id.* at 307-309.

[24] *Id.* at 358-408, for petitioners, and 445-471, for respondent Trillanes.

**I**

The legislative power to conduct investigations in aid of legislation is conferred by Article VI, Section 21 of the 1987 Constitution, which provides:

> SECTION 21. The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

While this power is not found in the present Constitution's precursors, this Court in *Arnault v. Nazareno*[25] clarified that such power did not need textual grant as it was implied and essential to the legislative function:

> Although there is no provision in the Constitution expressly investing either House of Congress with power to make investigations and exact testimony to the end that it may exercise its legislative functions advisedly and effectively, such power is so far incidental to the legislative function as to be implied. In other words, the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which is not infrequently true—recourse must be had to others who do possess it. Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed.[26] (Citation omitted)

Nonetheless, despite the constitutional grant, the power of both the House of Representatives and the Senate to conduct investigations in aid of legislation is not absolute. Citing *Watkins v. United States*,[27] this Court in *Bengzon, Jr. v. Senate Blue*

---

[25] 87 Phil. 29 (1950) [Per J. Ozaeta, *En Banc*].

[26] *Id.* at 45.

[27] 354 U.S. 178, I L. ed. 2d 1273 (1957).

*Ribbon Committee*[28] emphasized that "[n]o inquiry is an end itself[.]"[29] It explained that an investigation in aid of legislation must comply with the rules of procedure of each House of Congress, and must not violate the individual rights enshrined in the Bill of Rights.[30]

In *Neri v. Senate Committee on Accountability of Public Officers and Investigations*,[31] this Court explained further that a legislative inquiry must prove to be in aid of legislation and not for other purposes, pronouncing that "Congress is neither a law enforcement nor a trial agency."[32] It declared:

> No matter how noble the intentions of respondent Committees are, they cannot assume the power reposed upon our prosecutorial bodies and courts. The determination of who is/are liable for a crime or illegal activity, the investigation of the role played by each official, the determination of who should be haled to court for prosecution and the task of coming up with conclusions and finding of facts regarding anomalies, especially the determination of criminal guilt, are not functions of the Senate. Congress is neither a law enforcement nor a trial agency. Moreover, it bears stressing that no inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress, *i.e.*, legislation. Investigations conducted solely to gather incriminatory evidence and "punish" those investigated are indefensible. There is no Congressional power to expose for the sake of exposure.[33] (Citation omitted)

Additionally, legislative inquiry must respect the individual rights of the persons invited to or affected by the legislative inquiry or investigation. Hence, the power of legislative inquiry must be carefully balanced with the private rights of those

---

[28] 280 Phil. 829 (1991) [Per *J.* Padilla, *En Banc*].

[29] *Id.* at 848.

[30] *Id.* at 841.

[31] 586 Phil. 135 (2008) [Per *J.* Leonardo-De Castro, *En Banc*].

[32] *Id.* at 189.

[33] *Id.*

affected. A person's right against self-incrimination[34] and to due process[35] cannot be swept aside in favor of the purported public need of a legislative inquiry.

It must be stressed that persons invited to appear before a legislative inquiry do so as resource persons and not as accused in a criminal proceeding. Thus, they should be accorded respect and courtesy since they were under no compulsion to accept the invitation extended before them, yet they did so anyway. Their accommodation of a request should not in any way be repaid with insinuations.

The basic rules of decorum and decency must govern any undertaking done in one's official capacity as an agent of the State, in tacit recognition of one's role as a public servant.

However, the deportment and decorum of the members of any constitutional organ, such as both Houses of Congress during a legislative inquiry, are beyond the judicial realm. All this Court can do is exercise its own power with care and wisdom, acting in a manner befitting its dignified status as public servant and never weaponizing shame under the guise of a public hearing.

## II

This Court's power of judicial review is limited to an actual case and controversy.[36] An actual case and controversy exists

---

[34] CONST., Art. III, Sec. 17 provides:

SECTION 17. No person shall be compelled to be a witness against himself.

[35] CONST., Art. III, Sec. 1 provides:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[36] CONST., Art. VIII, Sec. 1 provides:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable,

when there is a conflict of legal rights or opposite legal claims capable of judicial resolution and a specific relief.[37] The controversy must be real and substantial, and must require a specific relief that courts can grant.[38]

A case becomes moot when it loses its justiciability, as there is no longer a conflict of legal rights which would entail judicial review. This Court is precluded from ruling on moot cases where no justiciable controversy exists.

However, exceptions do exist. *David v. Macapagal-Arroyo*[39] enumerated the circumstances when this Court may still rule on issues that are otherwise moot:

> Courts will decide cases, otherwise moot and academic, if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review.[40] (Emphasis in the original, citations omitted)

None of the established exceptions exist in this case.

This Court takes judicial notice that Proposed Senate Resolution No. 760[41] was filed on May 30, 2018, during the second regular session of the 17th Congress. The 17th Congress

---

and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[37] *David v. Macapagal-Arroyo*, 522 Phil. 705, 753 (2006) [Per *J.* Sandoval-Gutierrez, *En Banc*] citing ISAGANI A. CRUZ, *PHILIPPINE POLITICAL LAW*, 259 (2002 ed.).

[38] *Land Bank of the Philippines v. Fastech Synergy Philippines, Inc.,* 816 Phil. 422, 445 (2017) [Per *J.* Leonen, Second Division].

[39] 522 Phil. 705 (2006) [Per *J.* Sandoval-Guttierrez, *En Banc*].

[40] *Id.* at 754.

[41] *Rollo*, pp. 45-47.

closed on June 4, 2019,[42] while the 18th Congress opened on July 22, 2019[43] and will close in June 2022.

With the closing of the 17th Congress, the investigation into Proposed Senate Resolution No. 760 automatically ceased, rendering this case moot as "the conflicting issue that may be resolved by the court cease[d] to exist."[44]

This Court also takes judicial notice that respondent Trillanes has reached the end of his two-year term as senator. Thus, petitioners' prayer for this Court to permanently prohibit him from conducting an investigation into their supposed conflict of interest has likewise been rendered moot.

**WHEREFORE,** the Petition is **DISMISSED**.

**SO ORDERED.**

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

---

[42] S. Res. 17, 17th Cong., 3rd Session (2019), available at <https://www.senate.gov.ph/lisdata/3016526942!.pdf> (last accessed on September 2, 2019).

[43] S. Res. 2, 18th Cong., 1st Session (2019), available at <http://comappt.gov.ph/images/pdfiles/LegCal_8th_1st.pdf> (last accessed on September 2, 2019).

[44] *Republic v. Moldex Realty, Inc.*, 780 Phil. 553, 560 (2016) [Per *J.* Leonen, Second Division].

**EN BANC**

[G.R. No. 244274. September 3, 2019]

**NORMAN CORDERO MARQUEZ,** *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

**SYLLABUS**

1. **POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL POWER; INCLUDES THE DUTY OF THE COURTS OF JUSTICE TO SETTLE ACTUAL CONTROVERSIES INVOLVING RIGHTS WHICH ARE LEGALLY DEMANDABLE AND ENFORCEABLE; EXCEPTIONS.—** Here, it was only on January 23, 2019 that the COMELEC *En Banc* rendered its' assailed ruling and ultimately decided that Marquez is a nuisance candidate. After receiving a copy of the Resolution on January 28, 2019, he filed this petition on February 14, 2019. Meanwhile, the COMELEC finalized the list of senatorial candidates on January 31, 2019 started printing ballots for national candidates on February 9, 2019 and completing the printing of the same on April 26, 2019. Given this chronology of events, this Court was little wont to issue a TRO, as the same would only delay the conduct of the May 13, 2019 elections. Moreover, given that the COMELEC appears to be applying the same rule with respect to other aspiring candidates, there is reason to believe that the same issue would likely arise in future elections. Thus, the Court deems it proper to exercise its power of judicial review to rule with finality on whether lack of proof of financial capacity is a valid ground to declare an aspirant a nuisance candidate.

2. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; WHEN PRESENT; ESTABLISHED IN CASE AT BAR.—** We find that the COMELEC committed grave abuse of discretion in declaring Marquez a nuisance candidate on the ground of failure to prove financial capacity to sustain the financial rigors of waging a nationwide campaign. There is grave abuse of discretion: (1) when an act is done contrary to the Constitution, the law or jurisprudence; or (2) when it is executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias. Both elements

appear to be present in this case. x x x The COMELEC cannot condition a person's privilege to be voted upon as senator on his or her financial capacity to wage a nationwide campaign. Quite obviously, the financial capacity requirement is a property requirement. x x x The COMELEC gravely abused its discretion when it declared Marquez a nuisance candidate *on the ground of lack of proof of his financial capacity to wage a nationwide campaign*. By so doing, the COMELEC has effectively imposed a "property qualifications are inconsistent with the nature and essence of the Republican system ordained in our Constitution and the principle of social justice underlying the same x x x" already and clearly proscribed under Our ruling in *Maquera*.

**3. POLITICAL LAW; ELECTION LAWS; BATAS PAMBANSA BLG. 881 (OMNIBUS ELECTION CODE); SECTION 69 THEREOF ON NUISANCE CANDIDATES; DOES NOT REQUIRE PROOF OF FINANCIAL CAPACITY BEFORE AN ASPIRANT MAY BE ALLOWED TO RUN IN THE NATIONAL ELECTIONS.—** While Section 26, Article II of the 1987 Constitution provides that "[t]he State shall guarantee equal access to opportunities for public service," it is equally undisputed that there is no constitutional right to run for public office. It is, rather, a privilege subject to limitations imposed by law. x x x To effectuate this State interest, the Congress in Section 69 of BP 881, provided the grounds by which a candidate may be considered a nuisance candidate. x x x It is allegedly pursuant to x x x that the COMELEC declared Marquez a nuisance candidate. A cursory examination of the text of Section 69 and Section 1, Rule 24 of COMELEC Resolution No. 9523 would, however, show that both are silent as to the requirement of proof of financial capacity before an aspirant may be allowed to run in the national elections. There is utterly no textual support for the claim.

**4. ID.; ID.; REPUBLIC ACT NO. 7166 (SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS); SECTION 13 THEREOF; MERELY SETS THE CURRENT ALLOWABLE LIMIT ON EXPENSES OF CANDIDATES AND POLITICAL PARTIES FOR AN ELECTION CAMPAIGN; DOES NOT REQUIRE A FINANCIAL REQUIREMENT FOR THOSE SEEKING TO RUN FOR PUBLIC OFFICE, SUCH THAT FAILURE TO PROVE CAPACITY TO MEET THE ALLOWABLE EXPENSE**

**LIMITS WOULD CONSTITUTE A GROUND TO DECLARE ONE NUISANCE CANDIDATE.—** Neither can the COMELEC seek succor behind the provisions of Section 13 of RA 7166, which it interpreted as imposing a financial capacity requirement (or proof thereof) on those seeking to run for national office. x x x Section 13 of RA 7166 merely sets the current allowable limit on expenses of candidates and political parties for election campaign. It does not (whether by intention or operation) require a financial requirement for those seeking to run for public office, such that failure to prove capacity to meet the allowable expense limits would constitute ground to declare one a nuisance candidate. The COMELEC's invocation of Section 13, without making explicit, by rule, the minimum amount that meets the financial capacity requirement, is constitutionally anathema because it violates the equal protection rights of Marquez and **all** of the other candidates it disqualified on this ground. Since the COMELEC did not require all candidates for senator to declare the amount of money they had, and were committed, to fund their campaign (whether evidenced by bank certification, guarantee or standby-letter of credit, for instance), one wonders how the COMELEC chose who to target for disqualification.

**5. POLITICAL LAW; ELECTION LAWS; BATAS PAMBANSA BLG. 881 (OMNIBUS ELECTION CODE); SECTION 69 THEREOF ON NUISANCE CANDIDATES; A CANDIDATE'S FINANCIAL CAPACITY TO SUSTAIN THE RIGORS OF WAGING A NATIONWIDE CAMPAIGN DOES NOT NECESSARILY EQUATE TO A *BONAFIDE* INTENTION TO RUN FOR PUBLIC OFFICE.—** The COMELEC cannot conflate the *bona fide* intention to run with a financial capacity requirement. A candidate's financial capacity to sustain the rigors of waging a nationwide campaign does not *necessarily* equate to a *bona fide* intention to run for public office. The COMELEC's burden is thus to show a reasonable correlation between proof of a *bona fide* intention to run, on the one hand, and proof of financial capacity to wage a nationwide campaign on the other.

**LEONEN, *J., separate opinion:***

**1. POLITICAL LAW; ELECTION LAWS; BATAS PAMBANSA BLG. 881 (OMNIBUS ELECTION CODE);**

**DISQUALIFICATIONS; LACK OF FINANCIAL CAPACITY IS NOT ONE OF THE ESTABLISHED DISQUALIFICATIONS.—** Aside from enumerating the qualifications of candidates for public office, the Omnibus Election Code likewise specifies the circumstances that will render a person disqualified from running for public office. x x x Nowhere in the Omnibus Election Code does it say that the lack of financial capacity to hit the campaign trail is one (1) of the established disqualifications.

**2. ID.; ID.; ID.; NUISANCE CANDIDATES; A CANDIDATE IS DEEMED A NUISANCE IF THERE IS PATENTLY NO INTENTION TO RUN FOR OFFICE AND THE CANDIDACY WAS LODGED MERELY TO CREATE A CONFUSION; TO CHARACTERIZE A CANDIDATE AS A NUISANCE CANDIDATE, LACK OF FINANCIAL CAPACITY CANNOT BE A BASIS.—** Neither can the lack of financial capacity be the basis to characterize a candidate as a nuisance candidate. The Omnibus Election Code provides that a candidate is deemed to be a nuisance if there is patently no intention to run for office and the candidacy was lodged merely to create confusion. x x x A candidate who purportedly lacks financial capacity to back his or her run for public office cannot be lumped together with another candidate who was found to have mocked or caused disrepute to the election process. They share no similarities. As the *ponencia* aptly pointed out, this Court has declared as early as 1965 in *Marquera v. Borra* that property qualifications cannot be imposed on aspirants to public office. Doing so goes against "social justice[,] [which] presupposes equal opportunity for all, rich and poor alike, and that, accordingly, no person shall, by reason of poverty, be denied the chance to be elected to public office)".]" In *Co v. House of Representatives Electorate Tribunal*. this Court emphasized that the Constitution does not require property ownership for a candidate to be qualified to run. x x x In *Martinez III,* this Court did not declare financial capacity as a requirement to run for public office; rather, it stated that the similarity in names, coupled with his lack of financial resources and political support, pointed to Martinez as a nuisance candidate. The same is true in *Reverend Pamatong v. Commission on Elections* which underscored the need for "practical considerations" to determine if a candidate was a nuisance to save not only time and effort, but also the

hundreds and millions of pesos that would have been wasted in printing copies of the certified list of candidates, voters' information sheets, and official ballots. In *Reverend Pamatong*, this Court did not say that it was solely the lack of financial capacity to run a nationwide campaign that would classify a candidate as a nuisance. Instead, it referred to the parameters contained in the Omnibus Election Code to determine.' whether one was a bona fide or a nuisance candidate. Clearly, the lack of financial capacity does not by itself suffice to disqualify a candidate, or have him or her declared a nuisance candidate.

**3. CIVIL LAW; EFFECT AND APPLICATION OF LAWS; JUDICIAL DECISIONS THAT APPLY OR INTERPRET LAWS OR THE CONSTITUTION BECOME PART OF THE LAW OF THE LAND; WHILE AMERICAN JURISPRUDENCE IS A HELPFUL GUIDE IN THE COURT'S DECISION-MAKING, IT SHOULD NOT BE CONSIDERED AS PRECEDENT.—** I appreciate the *ponencia's* detailed discussion on the history of the requirement of capable of repetition yet evading review as an exception to the general rule on mootness. However, I disagree with the liberal use of American jurisprudence as part of the basis of the *ponencia's* ruling. Judicial decisions that apply or interpret laws or the Constitution become part of the law of the land. Although not laws in themselves, judicial decisions illustrate what the laws mean and establish the legislative intent behind them, serving as a guiding authority in the resolution of all other cases concerning similar issues. In *Ombudsman Carpio Morales v. Court of Appeals* this Court, citing *Southern Cross Cement Corporation v. Cement Manufacturers Association of the Philippines*, explained that while American jurisprudence is a helpful guide in this Court's decision-making, it should not be considered as precedent. Judicial decisions, with their unique General Register numbers, are easy to access. Compilations of our decisions and reports are regularly published in the Philippine Reports and Supreme Court Reports Annotated. Moreover, copies of our promulgated decisions and signed resolutions have been made available for downloading in the Supreme Court E-Library. In this manner, it is easy for members of the legal profession, law students, and any interested person to access this Court's decisions. American jurisprudence, on the other hand, is not easily available simply because we do not have ready access to

> it. Also, members of the Philippine Bar are generally unfamiliar with the nuances of the American judicial system. Including American jurisprudence in our judicial decisions elevates it to becoming part of our law, even if it may contradict our own statutes or the Constitution. Additionally, American jurisprudence does not treat judicial precedents with the same deference like we do, where we consider our jurisprudence to be part of the law of the land. x x x [C]onsidering American jurisprudence's less stringent approach towards precedence, this Court should tread carefully when adopting it. Otherwise, we may inadvertently incorporate into our law an idea or doctrine that may have already been overturned or completely discarded by its original source. Our ancestors fought valiantly to overthrow the yoke of colonialism. The least this Court can do to acknowledge their heroism, and to instill the idea that our sovereignty resides in our Filipino people, is to draw from our own jurisprudence. I am certain that, with respect to our own needs, we are wiser than our former colonizers.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for respondent.

**D E C I S I O N**

**JARDELEZA, *J.*:**

The question presented is whether the Commission on Elections (COMELEC) may use lack of proof of financial capacity to sustain the financial rigors of waging a nationwide campaign, by itself, as a ground to declare an aspirant for senator a nuisance candidate. We hold that the COMELEC may not.

On October 15, 2018, petitioner Norman Cordero Marquez (Marquez) filed his Certificate of Candidacy (CoC) for the position of senator in the May 13, 2019 national and local elections. He is a resident of Mountain Province, a real estate broker, and an independent candidate.[1]

---

[1] *Rollo*, p. 59.

On October 22, 2018, the COMELEC Law Department, *motu proprio*, filed a petition[2] to declare Marquez a nuisance candidate. The Law Department argued that: (1) Marquez was "virtually unknown to the entire country except maybe in the locality where he resides;[3]" and (2) though a real estate broker, he, absent clear proof of financial capability, "will not be able to sustain the financial rigors of a nationwide campaign."[4]

Marquez countered that he: is the co-founder and sole administrator of Baguio Animal Welfare (BAW), an animal advocacy group, and is thus, known in various social media and websites;[5] is a member of relevant task forces and advisory committees;[6] is in regular consultations with government offices to discuss animal welfare issues and concerns;[7] has been interviewed in television and radio shows;[8] has travelled all over to promote his advocacy;[9] and has received donations and contributions from supporters.[10]

He argues that the COMELEC should not discount "the potential for vastly untapped sector of animal lovers, raisers and handlers, and the existing local and foreign benefactors and donors who are willing and capable to (*sic*) subsidize the expenses of a social-media-enhanced national campaign."[11]

The COMELEC First Division on December 6, 2018, cancelled Marquez' CoC,[12] citing this Court's ruling in *Martinez*

---

[2] *Id.* at 31-42.

[3] *Id.* at 36.

[4] *Id.*

[5] *Rollo*, p. 45.

[6] *Id.* at 46.

[7] *Id.*

[8] *Rollo*, p. 48.

[9] *Id.* at 49-50.

[10] *Id.* at 52.

[11] *Id.* at 53.

[12] *Id.* at 58-62.

*III v. House of Representatives Electoral Tribunal and Benhur L. Salimbangon (Martinez III)*[13] that "[i]n elections for national positions x x x the sheer logistical challenge posed by nuisance candidates gives compelling reason for the Commission to exercise its authority to eliminate nuisance candidates who obviously have no financial capacity or serious intention to mount a nationwide campaign."[14] The amounts set forth in Section 13 of Republic Act No. (RA) 7166[15] "would at least require [Marquez] to prove that he can mount a viable nationwide campaign" and "x x x running as an independent further decreases a candidate's chances with even more limited resources at his disposal."[16]

Marquez filed a motion for reconsideration[17] which the COMELEC *En Banc* denied on January 23, 2019.[18] Hence, this petition.[19]

The main issue presented is whether the COMEEEC committed grave abuse of discretion in declaring Marquez a nuisance candidate for his failure to prove his financial capability to mount a nationwide campaign.

Marquez maintains that he has a *bona fide* intention to run for office and can sustain a nationwide campaign "given the campaign-enhanced support from existing and expanded donors base, locally and internationally, and the overwhelming hospitality and endorsement of pet organizations and animal-based livelihood groups all over the Philippines."[20] Section 13

---

[13] G.R. No. 189034, January 12, 2010, 610 SCRA 53.

[14] *Rollo*, p. 58.

[15] An Act Providing For Synchronized National and Local Elections and For Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes.

[16] *Rollo*, p. 61.

[17] *Id.* at 64-75.

[18] *Id.* at 79-83.

[19] *Id.* at 3-28.

[20] *Id.* at 6.

of RA 7166 "represent(s) expense ceilings but not necessarily the actual expenses that a candidate must spend out of his personal resources."[21]

More so, "the power of social media has emerged as a potent, yet cost effective, element in the candidate's ability to wage a nationwide campaign."[22] Given the advent of social media and "the spirit of the new-generation-internet-based campaigns," Marquez maintains he is capable of launching a "revolutionary" and "unprecedented internet-powered online campaign, coupled with host-dependent campaign sorties, on a nationwide scope" that will not require the "unwarranted exorbitant costs associated with the traditional cash-dependent campaigns of the other Senatorial candidates."[23]

He prays that a writ of injunction and temporary restraining order (TRO) be issued to prevent the COMELEC from deleting his name in the final list of senatorial candidates in the printed ballots and to enjoin COMELEC to include his name in all the certified list of senatorial candidates issued for public information until after the Court shall have resolved the petition.[24]

The Office of the Solicitor General (OSG), representing the COMELEC, seeks the dismissal of the petition because the issues raised involve errors of judgment not reviewable through a special civil action for *certiorari* under Rule 65 of the Rules of Court.[25] Marquez essentially questions the COMELEC's appreciation of facts that led to its determination of the issue of whether he should be declared a nuisance candidate.[26]

The OSG rejects Marquez' argument that "the principles enunciated by this Court in *Pamatong v.*

---

[21] *Id.* at 17.

[22] *Id.* at 23.

[23] *Id.*

[24] *Rollo*, pp. 24-25.

[25] *Id.* at 105-108.

[26] *Id.*

*COMELEC*[27] (*Pamatong*) and *Martinez III* have been rendered irrelevant in light of the emerging power of social media."[28]

The OSG also argues that the COMELEC acted within its jurisdiction. Section 69 of *Batas Pambansa Bilang* (BP) 881, also known as the Omnibus Election Code (OEC) is a valid limitation on the privilege to seek elective office. Citing *Pamatong* and *Martinez III,* the OSG argues that the State has a compelling interest to ensure that its electoral exercises are rational, objective and orderly. Thus, the COMELEC may exercise its authority to eliminate candidates who obviously have no financial capacity or serious intention to mount a nationwide campaign. The OSG also noted that, the Court already applied COMELEC Resolution No. 6452 dated December 10, 2003 in appreciating the instances where the COMELEC may *motu proprio* refuse to give due course to or cancel a CoC. Among those instances listed are some of the requirements that Marquez claims ought to have been incorporated in the election rules and regulations. He thus cannot claim that there are no rules incorporating the standards applied by the COMELEC in finding him a nuisance candidate.[29]

Marquez also failed to prove that he is financially capable of waging a nationwide campaign for the 2019 elections. He did not substantiate his claim of capability to utilize the social media to launch an effective campaign. His allegation that statistics are in his favor to win the election was unsubstantiated. Thus, his claim that his campaign would not require the "unwarranted exorbitant costs associated with the traditional cash-dependent campaigns of the other senatorial candidates" has no leg to stand on.[30]

Consequently, the OSG opposes Marquez' prayer for the issuance of a writ of injunction and TRO.

---

[27] G.R. No. 161872, April 13, 2004, 427 SCRA 96.

[28] *Rollo*, p. 111.

[29] *Id.* at 108-113.

[30] *Id.* at 113-116.

We grant the petition.

I

The Court is well aware that the May 13, 2019 national and local elections have concluded, with the proclamation of the top 12 candidates receiving the highest number of votes as senators-elect. This development would ordinarily result in the dismissal of the case on the ground of mootness. Since ajudgment in one party's (*i.e.*, Marquez) favor will not serve any useful purpose nor have any practical legal effect because, in the nature of things, it cannot be enforced,[31] the Court would normally decline jurisdiction over it.[32]

The Court's power to adjudicate is limited to actual, ongoing controversies. Paragraph 2, Section 1, Article VIII of the 1987 Constitution provides that "judicial power includes the duty of the courts of justice **to settle actual controversies** involving rights which are legally demandable and enforceable x x x." Thus, and as a general rule, this Court will not decide moot questions, or abstract propositions, or declare principles or rules of law which cannot affect the result as to the thing in issue in the case before it.[33]

Such rule, however, admits of exceptions. A court will decide a case which is otherwise moot and academic if it finds that: (a) there was a grave violation of the Constitution; (2) the case involved a situation of exceptional character and was of paramount public interest; (3) the issues raised required the

---

[31] *Huibonhoa v. Guisande*, G.R. No. 197474, January 10, 2019; *Timbol v. Commission on Elections*, G.R. No. 206004, February 24, 2015, 751 SCRA 456, 462, citing *COCOFED-Philippine Coconut Producers Federation, Inc. v. Commission on Elections*, G.R. No. 207026, August 6, 2013, 703 SCRA 165, 175.

[32] *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia, (Philippines),* G.R. No. 209271, July 26, 2016, 798 SCRA 250, 270.

[33] *Id.* at 270, citing *Pormento v. Estrada*, G.R. No. 191988, August 31, 2010, 629 SCRA 530, 533.

formulation of controlling principles to guide the Bench, the Bar and the public; and (4) the case was capable of repetition yet evading review.[34]

We find that the fourth exception obtains in this case.

At this point, tracing the history of the capable of repetition yet evading review exception to the doctrine on mootness is in order.

The United States (U.S.) Supreme Court first laid down the exception in 1911, in *Southern Pacific Terminal Company v. Interstate Commerce Commission.*[35] In that case, the Interstate Commerce Commission ordered appellants to cease and desist from granting a shipper undue preference over wharfage charges. The questioned Order, which was effective for about two years expired while the case inched its way up the appellate process, and before a decision could be rendered by the U.S. Supreme Court. The Court refused to dismiss the appeal as moot, holding:

> x x x The questions involved in the orders of the Interstate Commerce Commission are usually continuing (as are manifestly those in the case at bar) and their consideration ought not to be, as they might be, defeated, by short term orders, capable of repetition, yet evading review, and at one time the Government and at another time the carriers have their rights determined by the Commission without a chance of redress.[36]

The exception would find application in the 1969 election case of *Moore v. Ogilvie*.[37] Petitioners were independent candidates from Illinois for the offices of electors for President and Vice President of the U.S., for the 1968 election. They questioned an Illinois statute which required candidates for the post of such electors to be nominated by means of signatures of at least 25,000 qualified voters, provided the 25,000 signatures

---

[34] *Id.* at 270-271.

[35] 219 U.S. 498 (1911).

[36] *Id.* at 515.

[37] 394 U.S. 814 (1969).

include the signatures of 200 qualified voters spread from each of at least 50 counties. While petitioners filed petitions containing 26,500 signatures of qualified Voters, they failed to satisfy the *proviso*.

Although the 1968 election was over by the time the case reached the U.S. Supreme Court for decision, the Court did not dismiss the case as moot, ruling that "the burden which x x x allowed to be placed on the nomination of candidates for statewide offices remains and controls future elections, as long as Illinois maintains her present system as she has done since 1935. The problem is therefore "capable of repetition, yet evading review."[38]

Similarly, the U.S. Supreme Court in 1973 applied the exception in *Roe v. Wade*.[39] There, a pregnant woman in 1970 filed a petition challenging the anti-abortion statutes of Texas and Georgia. The case was not decided until 1973 when petitioner was no longer pregnant. Despite being mooted, the U.S. Supreme Court ruled on the merits of the petition, explaining:

> The usual rule in federal cases is that an actual controversy must exist at stages of appellate or *certiorari* review, and not simply at the date the action is initiated.
>
> **But when, as here, pregnancy is a significant fact in the litigation, the normal 266-day human gestation period is so short that the pregnancy will come to term before the usual appellate process is complete. If that termination makes a case moot, pregnancy litigation seldom will survive much beyond the trial stage, and appellate review will be effectively denied.** Our law should not be that rigid. Pregnancy often comes more than once to the same woman, and in the general population, if man is to survive, it will always be with us. Pregnancy provides a classic justification for a conclusion of nonmootness. It truly could be "capable of repetition, yet evading review."[40] (Citations omitted; emphasis supplied.)

---

[38] *Id.* at 816.

[39] 410 U.S. 113 (1973).

[40] *Id.* at 125.

By 1975, the U.S. Supreme Court would lay down two elements required to be present in a case before the exception applies. In *Weinstein v. Bradford*,[41] the Court, explaining its ruling in *Sosna v. Iowa*,[42] clarified that in the absence of a class action, the "capable of repetition yet evading review" doctrine was limited to the situation where two elements combined: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration; and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again.[43]

In Our jurisdiction, the Court would first apply the exception in *Alunan III v. Mirasol*,[44] an election case. There, petitioners assailed a Department of Interior and Local Government (DILG) Resolution exempting the City of Manila from holding elections for the *Sangguniang Kabataan* (SK) on December 4, 1992. Petitioners argued that the elections previously held on May 26, 1990 were to be considered the first under the Local Government Code. The Court was then confronted with the issue of whether the COMELEC can validly vest in the DILG control and supervision of the SK Elections. While the second elections were already held on May 13, 1996, during the pendency of the petition, the Court ruled that the controversy raised is capable of repetition yet evading review because the same issue is **"likely to arise in connection with every SK election and yet, the question may not be decided before the date of such elections."**[45]

---

[41] 423 U.S. 147 (1975).

[42] 419 U.S. 393 (1975).

[43] *Weinstein v. Bradford, supra* note 41 at 149; see also *Lewis v. Continental Bank Corporation*, 494 U.S. 472, 475 (1990).

[44] G.R. No. 108399, July 31, 1997, 276 SCRA 501.

[45] *Id.* at 501-502. Emphasis supplied.

The Court would then apply the exception in the subsequent cases of *Sanlakas v. Executive Secretary,*[46] *David v. Macapagal-Arroyo,*[47]

---

[46] G.R. No. 159085, February 3, 2004, 421 SCRA 656. Several petitions were filed before this Court challenging the validity of Proclamation No. 427 and General Order No. 4 which were issued on July 27, 2003 in the wake of the Oakwood occupation by some three hundred junior officers and enlisted men of the Armed Forces of the Philippines (AFP). Through these issuances, the President declared a state of rebellion, and directed the AFP and the Philippine National Police to suppress rebellion, respectively. While the Court ruled that the issuance of Proclamation No. 435, which declared that the state of rebellion ceased to exist, has rendered the case moot, it nevertheless found the controversy capable of repetition yet evading review. We emphasized that the Court was previously precluded from ruling on a similar question in *Lacson v. Perez* (G.R. No. 147780, May 10, 2001, 357 SCRA 756), *i.e.*, the validity of President Gloria Macapagal-Arroyo's declaration of a state of rebellion thru Proclamation No. 38, due to the lifting of the declaration of a "state of rebellion" in Metro Manila on May 6, 2001. The Court explained:

> Once before, the President on May 1, 2001 declared a state of rebellion and called upon the AFP and the PNP to suppress the rebellion through Proclamation No. 38 and General Order No. 1. On that occasion, "an angry and violent mob armed with explosives, firearms, bladed weapons, clubs, stones and other deadly weapons, assaulted and attempted to break into Malacanang." Petitions were filed before this Court assailing the validity of the President's declaration. Five days after such declaration, however, the President lifted the same. The mootness of the petitions in *Lacson v. Perez* and accompanying cases precluded this Court from addressing the constitutionality of the declaration.
>
> To prevent similar questions from reemerging, we seize this opportunity to finally lay to rest the validity of the declaration of a state of rebellion in the exercise of the President's calling out power, the mootness of the petitions notwithstanding. (*Id.* at 664-665.)

[47] G.R. No. 171396, May 3, 2006, 489 SCRA 160. Petitioners challenged the constitutionality of Presidential Proclamation No. 1017 and General Order No. 5 issued by the President, which declared a state of national emergency, in order to defeat a plot to unseat or assassinate President Arroyo, on or about February 24, 2006, hatched by military officers, leftist insurgents of the New People's Army (NPA), and members of the political opposition. While President Arroyo subsequently lifted Proclamation No. 1017 by issuing Presidential Proclamation No. 1021 on March 3, 2006, or after just one week, the Court held that it did not decline jurisdiction as the controversy is capable of repetition yet evading review. Justice Brion, referring to *David*

*Belgica v. Ochoa*[48] and in the more recent case of *Philippine Association of Detective and Protective Agency Operators (PADPAO) v. COMELEC*.[49]

---

*v. Macapagal-Arroyo*, in his Concurring and Dissenting Opinion in the *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)* (G.R. No. 183591, October 14, 2008, 568 SCRA 402), explained that while David lacked an extended explanation on the exception to mootness, the Court's action in *David* and *Sanlakas* are essentially correct because of the history of the emergencies that had attended the administration of President Macapagal-Arroyo since she assumed office. Consequently, by the time David was decided, the Court's basis and course of action in the said cases had already been clearly laid.

[48] G.R. No. 208566, November 19, 2013, 710 SCRA 1. Petitioners assailed the constitutionality of the Executive Department's lump-sum, discretionary funds under the 2013 General Appropriations Act, known as the Priority Development Assistance Fund (PDAF). While the Executive Department asserted that it undertook to reform, and President Benigno Simeon S. Aquino III declared that he had already abolished, the PDAF, the Court ruled that these events did not render the case moot and academic. It recognized that the preparation and passage of the national budget is, by constitutional imprimatur, a matter of annual occurrence. Furthermore, the evolution of the ubiquitous Pork Barrel System, through its multifarious iterations throughout the course of history, lends a semblance of truth to petitioners' claim that "the same dog will just resurface wearing a different collar." Thus, the Court ruled that the issues underlying the manner in which certain public funds are spent, if not resolved at the most opportune time, are capable of repetition yet evading review.

[49] G.R. No. 223505, October 3, 2017, 841 SCRA 524. Similar to *Alunan*, the Court's opportunity to grant practical relief was limited by the shortness of the election period. In this case, petitioner assailed the validity of Section 2(e), Rule 111 of COMELEC Resolution No. 10015 which required private security agencies to comply with requirements and conditions prior to obtaining authority to bear, carry and transport firearms outside their place of work or business and in public places, during the election period. The Court resolved the challenge against the COMELEC Resolution, thus:

The election period in 2016 was from January 10 until June 8, 2016, or a total of only 150 days. The petition was filed only on April 8, 2016. **There was thus not enough time for the resolution of the controversy. Moreover, the COMELEC has consistently issued rules and regulations on the Gun Ban for previous elections in accordance with RA 7166**: Resolution No. 8714 for the 2010 elections, Resolution No. 9561-A for the 2013 elections, and the assailed Resolution No. 10015 for the 2016 elections. Thus, **the COMELEC is expected to promulgate similar rules in the next elections.**

Here, it was only on January 23, 2019 that the COMELEC *En Banc* rendered its assailed ruling and ultimately decided that Marquez is a nuisance candidate. After receiving a copy of the Resolution[50] on January 28, 2019, he filed this petition on February 14, 2019. Meanwhile, the COMELEC finalized the list of senatorial candidates on January 31, 2019[51] started printing ballots for national candidates on February 9, 2019[52] and completing the printing of the same on April 26, 2019.[53] Given this chronology of events, this Court was little wont to issue a TRO, as the same would only delay the conduct of the May 13, 2019 elections.

Moreover, given that the COMELEC appears to be applying the same rule with respect to other aspiring candidates,[54] there is reason to believe that the same issue would likely arise in future elections. Thus, the Court deems it proper to exercise

---

**Prudence accordingly dictates that the Court exercise its power of judicial review to finally settle this controversy**. (Emphasis supplied.) (*Id.* at 542-543.)

See also *Cardino v. Commission on Elections* (G.R. No. 216637, March 7, 2017, 819 SCRA 586), where this Court deemed it appropriate to resolve the issue on the merits despite the expiration of the contested term of office, considering that litigation on the question of eligibility of one of the parties is capable of repetition in that it is likely to recur if she would again run for public office.

[50] *Rollo*, pp. 79-83.

[51] See https://news.abs-cbn.com/news/01/31/09/comelec-names-63-candidates-for-2019-senatorial-elections, last accessed on August 19, 2019.

[52] See https://news.mb.com.ph/2019/02/09/comelec-starts-printing-64-m-ballots-for-may-polls/, last accessed on August 19, 2019.

[53] See https://www.rappler.com/nation/politics/elections/2019/229065-comelec-finishes-ballot-printing, last accessed on August 19, 2019.

[54] There is at least one case pending before the Court involving essentially the same issue (cancellation by the COMELEC of an aspirant's CoC on the ground of lack of proof of financial capacity to wage a nationwide campaign), albeit filed by a different party. (See *Angelo Castro De Alban v. COMELEC, et al.* [*De Alban v. COMELEC, et al.*], G.R. No. 243968, currently pending with the First Division.)

its power of judicial review to rule with finality on whether lack of proof of financial capacity is a valid ground to declare an aspirant a nuisance candidate.[55]

II

We find that the COMELEC committed grave abuse of discretion in declaring Marquez a nuisance candidate on the ground of failure to prove financial capacity to sustain the financial rigors of waging a nationwide campaign. There is grave abuse of discretion: (1) when an act is done contrary to the Constitution, the law or jurisprudence; or (2) when it is executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias.[56] Both elements appear to be present in this case.

A

We already declared in *Maquera v. Borra (Maquera)*,[57] that the right to vote *and to be voted for* shall not be made to depend upon the wealth of the candidate. We held that the State cannot require candidacy for a public office to be conditioned on the ability to file a surety bond equivalent to the one-year salary of the position sought. This is a constitutionally impermissible property qualification. *Maquera's* rationale applies with equal cogency in this case. The COMELEC cannot condition a person's privilege to be voted upon as senator on his or her financial capacity to wage a nationwide campaign. Quite obviously, the financial capacity requirement is a property requirement.

---

[55] See also *Alunan III v. Mirasol*, *supra* note 44.

[56] *Information Technology Foundation of the Philippines v. Commission on Elections*, G.R. No. 159139, January 13, 2004, 419 SCRA 141, 148, citing *Republic v. Cocofed*, G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462, 493, and *Tañada v. Angara*, G.R. No. 118295, May 2, 1997, 272 SCRA 18, 79.

[57] G.R. No. L-24761, September 7, 1965, 15 SCRA 7.

In *Maquera*, We declared RA 4421 as unconstitutional insofar as it required "all candidates for national, provincial, city and municipal offices" to "post a surety bond equivalent to the one-year salary or emoluments of the position to which he is a candidate x x x." The Court ruled that the law had the following effects: (1) preventing or disqualifying candidates from running although they possess the qualifications prescribed by the Constitution or law because they cannot pay the premium; and (2) imposing property qualifications in order that a person could run for public office and that the people could validly vote for him. Former Chief Justice Cesar Bengzon, in his Concurring Opinion, explained why both effects are constitutionally impermissible:

> The Constitution, in providing for the qualification of Congressmen, sets forth only age, citizenship, voting and residence qualifications. No property qualification of any kind is thereunder required. Since the effect of Republic Act 4421 is to require of candidates for Congress a substantial property qualification, and to disqualify those who do not meet the same, it goes against the provision of the Constitution which, in line with its democratic character, requires no property qualification for the right to hold said public office.
>
> Freedom of the voters to exercise the elective franchise at a general election implies the right to freely choose from all qualified candidates for public office. The imposition of unwarranted restrictions and hindrances precluding qualified candidates from running is, therefore, violative of the constitutional guaranty of freedom in the exercise of elective franchise. It seriously interferes with the right of the electorate to choose freely from among those eligible to office whomever they may desire.
>
> x x x x x x x x x
>
> Nuisance candidates, as an evil to be remedied, do not justify the adoption of measures that would bar poor candidates from running for office. Republic Act 4421 in fact enables rich candidates, whether nuisance or not, to present themselves for election. Consequently, it cannot be sustained as a valid regulation of elections to secure the expression of the popular will.[58]

---

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

The COMELEC gravely abused its discretion when it declared Marquez a nuisance candidate *on the ground of lack of proof of his financial capacity to wage a nationwide campaign*. By so doing, the COMELEC has effectively imposed a "property qualifications are inconsistent with the nature and essence of the Republican system ordained in our Constitution and the principle of social justice underlying the same x x x"[59] already and clearly proscribed under Our ruling in *Maquera*.

B

While Section 26, Article II of the 1987 Constitution provides that "[t]he State shall guarantee equal access to opportunities for public service," it is equally undisputed that there is no constitutional right to run for public office. It is, rather, a privilege subject to limitations imposed by law.[60] Thus, in *Pamatong*, We explained the rationale behind the prohibition against nuisance candidates and the disqualification of candidates who have not evinced a *bona fide* intention to run for public office:

> x x x The State has a compelling interest to ensure that its electoral exercises are rational, objective, and orderly. Towards this end, the State takes into account the practical considerations in conducting elections. Inevitably, the greater the number of candidates, the greater the opportunities for logistical confusion, not to mention the increased allocation of time and resources in preparation for the election. These practical difficulties should, of course, never exempt the State from the conduct of a mandated electoral exercise. At the same time, remedial actions should be available to alleviate these logistical hardships, whenever necessary and proper. Ultimately, a disorderly election is not merely a textbook example of inefficiency, but a rot that erodes faith in our democratic institutions.[61]

---

[59] *Id.* at 9.

[60] *Timbol v. Commission on Elections*, G.R. No. 206004, February 24, 2015, 751 SCRA 456, 464, citing *Pamatong v. Commission on Elections*, *supra* note 27.

[61] *Pamatong v. Comelec*, *supra* note 27 at 97.

To effectuate this State interest, the Congress in Section 69 of BP 881, provided the grounds by which a candidate may be considered a nuisance candidate, to wit:

> Sec. 69. *Nuisance candidates*. – The Commission may *motu proprio* or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate.

Section 1, Rule 24 of COMELEC Resolution No. 9523, which governed the May 13, 2019 elections and virtually an exact copy of Section 69 of the OEC, similarly provides:

> Rule 24 – Proceedings Against Nuisance Candidates
>
> Sec. 1. *Grounds*. – Any candidate for any elective office who filed his certificate of candidacy to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or who by other acts or circumstances is clearly demonstrated to have no *bona fide* intention to run for the office for which the certificate of candidacy has been filed, thus preventing a faithful determination of the true will of the electorate, may be declared a nuisance candidate, and his certificate of candidacy may be denied due course or may be cancelled.

It is allegedly pursuant to these provisions that the COMELEC declared Marquez a nuisance candidate. A cursory examination of the text of Section 69 and Section 1, Rule 24 of COMELEC Resolution No. 9523 would, however, show that both are silent as to the requirement of proof of financial capacity before an aspirant may be allowed to run in the national elections. There is utterly no textual support for the claim.

Neither can the COMELEC seek succor behind the provisions of Section 13 of RA 7166, which it interpreted as imposing a

financial capacity requirement (or proof thereof) on those seeking to run for national office.[62] The Section provides:

> Sec. 13. *Authorized Expenses of Candidates and Political Parties*. – The agreement amount that a candidate or registered political party may spend for election campaign shall be as follows:
>
> (a) For candidates. – Ten pesos (₱10.00) for President and Vice-President; and for other candidates Three Pesos (₱3.00) for every voter currently registered in the constituency where he filed his certificate of candidacy: Provided. That a candidate without any political party and without support from any political party may be allowed to spend Five Pesos (₱5.00) for every such voter; and
>
> (b) For political parties. – Five pesos (₱5.00) for every voter currently registered in the constituency or constituencies where it has official candidates.
>
> Any provision of law to the contrary notwithstanding any contribution in cash or in kind to any candidate or political party or coalition of parties for campaign purposes, duly reported to the Commission shall not be subject to the payment of any gift tax.

Section 13 of RA 7166 merely sets the current allowable limit on expenses of candidates and political parties for election campaign.[63] It does not (whether by intention or operation) require a financial requirement for those seeking to run for public office, such that failure to prove capacity to meet the allowable expense limits would constitute ground to declare one a nuisance candidate.

The COMELEC's invocation of Section 13, without making explicit, by rule, the minimum amount that meets the financial capacity requirement, is constitutionally anathema because it violates the equal protection rights of Marquez and all of the other candidates it disqualified on this ground. Since the COMELEC did not require **all** candidates for senator to declare the amount of money they had, and were committed, to fund

---

[62] *Rollo*, pp. 60-61.

[63] *Ejercito v. Commission on Elections*. G.R. No. 212398, November 25, 2014, 742 SCRA 210, 216.

their campaign (whether evidenced by bank certification, guarantee or standby-letter of credit, for instance), one wonders how the COMELEC chose who to target for disqualification. By its public pronouncements, the COMELEC disqualified 70 senatorial candidates.[64] Comparing the COMELEC Legal Department's *motu proprio* motion to cancel in this case with the one it employed in *De Alban v. COMELEC, et al.,*[65] it seems the Legal Department employed a cookie-cutter motion, generally alleging lack of financial capacity in a transparent attempt to shift the burden of proof upon the candidate, without setting forth by rule the acceptable minimum financial capacity. This process puts an unfair and impermissible burden upon the candidate.

D

The COMELEC cannot conflate the *bona fide* intention to run with a financial capacity requirement.

A candidate's financial capacity to sustain the rigors of waging a nationwide campaign does not *necessarily* equate to a *bona fide* intention to run for public office. The COMELEC's burden is thus to show a reasonable correlation between proof of a *bona fide* intention to run, on the one hand, and proof of financial capacity to wage a nationwide campaign on the other. This is the import of the U.S. Supreme Court ruling in *Bullock v. Carter*.[66]

---

[64] See https://cnnphilippines.com/news/2019/01/07/comelec-disqualifies-senatorial-aspirants.html; see also https://newsinfo.inquirer.net/1070498/comelec-disqualifies-70-senatorial-aspirants-from-midterm-polls. Both last accessed on August 19, 2019.

[65] *De Alban v. COMELEC, et al., rollo,* G.R. No. 243968, pp. 41-48.

[66] 405 U.S. 134 (1972). Here, the U.S. Supreme Court declared as unconstitutional the Texas law which provided that a candidate must pay a filing fee as a condition to having his name placed on the ballot in the primary election. The three appellees met all the qualifications to be a candidate in the Democratic primaries in different counties but were unable to pay the assessments required of candidates in their respective counties.

While the U.S. Supreme Court recognized that a State has a legitimate interest in regulating the number of candidates on the ballot,[67] it ruled that the State cannot achieve its objectives by totally arbitrary means and that the criterion for differing treatment must bear some relevance to the object of legislation:

> There is no escape from the conclusion that the imposition of filing fees ranging as high as $8,900 tends to limit the number of candidates entering the primaries. However, even under conventional standards of review, a State cannot achieve its objectives by totally arbitrary means; the criterion for differing treatment must bear some relevance to the object of the legislation. To say that the filing fee requirement tends to limit the ballot to the more serious candidates is not enough. There may well be some rational relationship between a candidate's willingness to pay a filing fee and the seriousness with which he takes his candidacy, but the candidates in this case affirmatively alleged that they were unable, not simply unwilling, to pay the assessed fees, and there was no contrary evidence. It is uncontested that the filing fees exclude legitimate as well as frivolous candidates. And even assuming that every person paying the large fees required by Texas law takes his own candidacy seriously, that does not make him a "serious candidate" in the popular sense. If the Texas fee requirement is intended to regulate the ballot by weeding out spurious candidates, it is extraordinarily ill-fitted to that goal; other means to protect those valid interests are available.[68] (Citations omitted.)

Similarly, in *Lubin v. Panish*,[69] the U.S. Supreme Court rejected the capability of a candidate to pay a filing fee as a test of genuineness of a candidacy:

> **Filing fees, however large, do not, in and of themselves, test the genuineness of a candidacy or the extent of the voter support of an aspirant for public office.** A large filing fee may serve the legitimate function of keeping ballots manageable but, standing alone,

---

[67] These include interests to prevent the clogging of its election machinery, avoid voter confusion, assure that the winner is the choice of a majority, or at least a strong plurality, and to protect the integrity of the political processes from frivolous or fraudulent candidacies.

[68] *Bullock v. Carter, supra* note 66 at 145-146.

[69] 415 U.S. 709 (1974).

it is not a certain test of whether the candidacy is serious or spurious. A wealthy candidate with not the remotest chance of election may secure a place on the ballot by writing a check. Merchants and other entrepreneurs have been known to run for public office simply to make their names known to the public. We have also noted that prohibitive filing fees, such as those in *Bullock*, can effectively exclude serious candidates. Conversely, if the filing fee is more moderate, as here, impecunious but serious candidates may be prevented from running. Even in this day of high-budget political campaigns some candidates have demonstrated that direct contact with thousands of voters by "walking tours" is a route to success. **Whatever may be the political mood at any given time, our tradition has been one of hospitality toward all candidates without regard to their economic status.**

The absence of any alternative means of gaining access to the ballot inevitably renders the California system exclusionary as to some aspirants. As we have noted, the payment of a fee is an absolute, not an alternative, condition, and failure to meet it is a disqualification from running for office. Thus, California has chosen to achieve the important and legitimate interest of maintaining the integrity of elections by means which can operate to exclude some potentially serious candidates from the ballot without providing them with any alternative means of coming before the voters. Selection of candidates solely on the basis of ability to pay a fixed fee without providing any alternative means is not reasonably necessary to the accomplishment of the State's legitimate election interests. Accordingly, we hold that in the absence of reasonable alternative means of ballot access, a State may not, consistent with constitutional standards, require from an indigent candidate filing fees he cannot pay.

In so holding, we note that **there are obvious and well-known means of testing the "seriousness" of a candidacy which do not measure the probability of attracting significant voter support solely by the neutral fact of payment of a filing fee. States may, for example, impose on minor political parties the precondition of demonstrating the existence of some reasonable quantum of voter support by requiring such parties to file petitions for a place on the ballot signed by a percentage of those who voted in a prior election. Similarly, a candidate who establishes that he cannot pay the filing fee required for a place on the primary ballot may be required to demonstrate the "seriousness" of his candidacy by persuading a substantial number of voters to sign a petition**

**in his behalf**. The point, of course, is that ballot access must be genuinely open to all, subject to reasonable requirements. California's present system has not met this standard.[70] (Citations omitted; emphasis supplied.)

E

The COMELEC's reliance on *Pamatong* and *Martinez III* to support the cancellation of Marquez' CoC on the ground of his failure to prove his financial capacity is also misplaced.

For one, there is nothing in this Court's Resolution in *Pamatong* which suggests that the Court permitted the cancellation of Pamatong's CoC on the ground that he had no financial capacity to sustain the financial rigors of waging a nationwide campaign. At most, the Court, quoting *Jenness v. Fortson*,[71] only required that the candidate show "**a significant modicum of support** before his or her name is printed on the ballot."[72]

*Martinez III,* on the other hand, involved a controversy between two candidates with similar names vying for the same position which, for the Court, caused confusion among the voters.[73]

---

[70] *Id.* at 717-718. See also *American Party of Texas v. White, Secretary of Texas*, 415 U.S. 767 (1974), where the U.S. Supreme Court ruled that requiring independent candidates to evidence a "significant modicum of support," *i.e.*, through signatures of a particular percentage of voters, is not unconstitutional.

[71] 403 U.S. 431 (1971). Significantly, in *Jenness v. Fortson*, the significant modicum of support referred to did **not** involve a candidate's **financial** capacity but rather the support of registered voters as indicated by their signatures in a nominating petition. (Emphasis supplied.)

[72] *Id.* at 442. Emphasis supplied.

[73] *Martinez III v. House of Representatives Electoral Tribunal, supra* note 13 at 53. The Court said:

In controversies pertaining to nuisance candidates as in the case at bar, the law contemplates the likelihood of confusion which the similarity of surnames of two (2) candidates may generate. A nuisance candidate is thus defined as one who, based on the attendant circumstances, has no *bona fide*

It was only in view of the "dirty" practice by unscrupulous politicians of fielding nuisance candidates with the same surnames as leading contenders that the Court proceeded to consider the personal circumstances, including the financial capability, of the nuisance candidate Edelito C. Martinez *vis-a-vis* his opponent Celestino A. Martinez.[74]

---

intention to run for the office for which the certificate of candidacy has been filed, his sole purpose being the reduction of the votes of a strong candidate, upon the expectation that ballots with only the surname of such candidate will be considered stray and not counted for either of them.

x x x x x x x x x

Given the realities of elections in our country and particularly contests involving local positions, what emerges as the paramount concern in barring nuisance candidates from participating in the electoral exercise is the avoidance of confusion and frustration of the democratic process by preventing a faithful determination of the true will of the electorate, more than the practical considerations mentioned in *Pamatong*. A report published by the Philippine Center for Investigative Journalism in connection with the May 11,1998 elections indicated that **the tactic of fielding nuisance candidates with the same surnames as leading contenders had become one (1) "dirty trick" practiced in at least 18 parts of the country**. x x x (Emphasis supplied.)

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

What needs to be stressed at this point is the apparent failure of the HRET to give weight to relevant circumstances that make the will of the electorate determinable, following the precedent in *Bautista*. These can be gleaned from the findings of the Commission on the personal circumstances of Edilito C. Martinez clearly indicating lack of serious intent to run for the position for which he filed his certificate of candidacy, foremost of which is his sudden absence after such filing. In contrast to petitioner who is a well-known politician, a former municipal mayor for three (3) terms and a strong contender for the position of Representative of the Fourth Legislative District of Cebu (then occupied by his mother), it seems too obvious that Edilito C. Martinez was far from the voters' consciousness as he did not even campaign nor formally launch his candidacy. x x x

x x x The evidence clearly shows that Edilito C. Martinez, who did not even bother to file an answer and simply disappeared after filing his certificate of candidacy, was an unknown in politics within the district, a "*habal-habal*" driver who had neither the financial resources nor political support to sustain his candidacy. The similarity of his surname with that of petitioner was meant to cause confusion among the voters and spoil petitioner's chances of winning the congressional race for the Fourth Legislative District of Cebu.

In contrast, Marquez here was disqualified not on the basis of the similarity of his name with another senatorial candidate, a ground explicitly provided for in Section 69 of the OEC, but for the *sole* reason that he failed to show proof of his financial capacity to wage a nationwide campaign. This, however, has already been proscribed following Our ruling in *Maquera*.

Considering the foregoing, the Court finds it unnecessary, if not premature, to resolve the issues raised regarding social media.

It bears reiterating that the Court acknowledges the COMELEC's legitimate objective in weeding out candidates who have not evinced a *bona fide* intention to run for office from the electoral process. Any measure designed to accomplish the said objective should, however, not be arbitrary and oppressive and should not contravene the Republican system ordained in our Constitution. Unfortunately, the COMELEC's preferred standard falls short of what is constitutionally permissible.

**WHEREFORE,** the petition is **GRANTED**. The Resolution dated January 23, 2019 of the COMELEC *En Banc* is **REVERSED** and **SET ASIDE**.

No costs.

**SO ORDERED.**

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

*Leonen, J.,* concurs, see separate opinion.

## SEPARATE OPINION

**LEONEN, *J.*:**

I concur that the property test should not be the only ground to disqualify a candidate for public office or be the sole basis to declare him or her a nuisance candidate.

## I

Aside from enumerating the qualifications of candidates for public office, the Omnibus Election Code likewise specifies the circumstances that will render a person disqualified from running for public office. Sections 12 and 68 of the Omnibus Election Code state:

> SECTION 12. Disqualifications. — Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.
>
> This disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified.
>
> . . . . . .
>
> SECTION 68. Disqualifications. — Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code: (d) solicited, received or made any contribution prohibited under Sections 89. 95, 96. 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

Nowhere in the Omnibus Election Code does it say that the lack of financial capacity to hit the campaign trail is one (1) of the established disqualifications.

Neither can the lack of financial capacity be the basis to characterize a candidate as a nuisance candidate. The Omnibus Election Code provides that a candidate is deemed to be a nuisance if there is patently no intention to run for office and the candidacy was lodged merely to create confusion:

> SECTION 69. Nuisance candidates. — The Commission may, *motu proprio* or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been tiled to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no bona tide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the Hue will of the electorate.

A candidate who purportedly lacks financial capacity to back his or her run for public office cannot be lumped together with another candidate who was found to have mocked or caused disrepute to the election process. They share no similarities. As the *ponencia* aptly pointed out, this Court has declared as early as 1965 in *Marquera v. Borra*[1] that property qualifications cannot be imposed on aspirants to public office. Doing so goes against "social justice[,] [which] presupposes equal opportunity for all, rich and poor alike, and that, accordingly, no person shall, by reason of poverty, be denied the chance to be elected to public office[.]"[2]

In *Co v. House of Representatives Electorate Tribunal*,[3] this Court emphasized that the Constitution does not require property

---

[1] 122 Phil. 412 (1965) [*Per Curiam, En Banc*].

[2] *Id.* at 415.

[3] 276 Phil. 758 (1991) [Per *J*. Gutierrez, *En Banc*].

ownership for a candidate to be qualified to run. This was reiterated in *Representative Fernandez v. House of Representatives Electoral Tribunal:*[4]

> Certainly, the Constitution does not require a congressional candidate to be a property owner in the district where he seeks to run but only that he resides in that district for,at least a year prior to election day. To use ownership of property in the district as the determinative indicium of permanence of domicile or residence implies that only the landed can establish compliance with the residency requirement. This Court would be, in effect, imposing a property requirement to the right to hold public office, which property requirement would be unconstitutional.[5]

In *Martinez III v. House of Representatives Electoral Tribunal*,[6] this Court upheld the declaration of petitioner Edelito C. Martinez, who filed a certificate of candidacy to create confusion among voters, as a nuisance candidate:

> Petitioner should not be prejudiced by COMELEC's inefficiency and lethargy. Nor should the absence of objection over straying of votes during the actual counting bar petitioner from raising the issue in his election protest. The evidence clearly shows that Edilito C. Martinez, who did not even bother to file an answer and simply disappeared after filing his certificate of candidacy, was an unknown in politics within the district, a "*habal-habal*" driver who had neither the financial resources nor political support to sustain his candidacy. The similarity of his surname with that of petitioner was meant to cause confusion among the voters and spoil petitioner's chances of winning the congressional race for the Fourth Legislative District of Cebu.[7]

In *Martinez III,* this Court did not declare financial capacity as a requirement to run for public office; rather, it stated that the similarity in names, coupled with his lack of financial

---

[4] 623 Phil. 628 (2009) [Per *J.* Leonardo-De Castro, *En Banc*].

[5] *Id.* at 655.

[6] 624 Phil. 50 (2010) [Per *J.* Villarama, Jr., *En Banc*].

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

resources and political support, pointed to Martinez as a nuisance candidate.

The same is true in *Reverend Pamatong v. Commission on Elections*,[8] which underscored the need for "practical considerations"[9] to determine if a candidate was a nuisance to save not only time and effort, but also the hundreds and millions of pesos that would have been wasted in printing copies of the certified list of candidates, voters' information sheets, and official ballots.

In *Reverend Pamatong*, this Court did not say that it was solely the lack of financial capacity to run a nationwide campaign that would classify a candidate as a nuisance. Instead, it referred to the parameters contained in the Omnibus Election Code to determine whether one was a bona fide or a nuisance candidate.

Clearly, the lack of financial capacity does not by itself suffice to disqualify a candidate, or have him or her declared a nuisance candidate.

As I emphasized in my concurring and dissenting opinion[10] in *Atong Paglaum, Inc. v. Commission on Elections*,[11] our democratic and republican state is based on effective representation. Thus, the electorate's choices must be protected and respected:

> The core principle that defines (lie relationship between our government and those that it governs is captured in the constitutional phrase that ours is a "democratic and republican state." A democratic and republican state is founded on effective representation. It is also founded on the idea that it is the electorate's choices that must be given full consideration. We must always be sensitive in our crafting of doctrines lest the guardians of our electoral system be empowered to silence those who wish to offer their representation. We cannot

---

[8] 470 Phil. 711 (2004) [Per *J.* Tinga, *En Banc*].

[9] *Id.* at 719.

[10] 707 Phil. 454, 735-753 (2013) [Per *J.* Carpio, *En Banc*].

[11] 707 Phil. 454 (2013) [Per *J.* Carpio, *En Banc*].

replace the needed experience of our people to mature as citizens in our electorate.[12] (Citations omitted)

## II

I appreciate the *ponencia's* detailed discussion on the history of the requirement of capable of repetition yet evading review as an exception to the general rule on mootness.[13] However, I disagree with the liberal use of American jurisprudence as part of the basis of the *ponencia's* ruling.

Judicial decisions that apply or interpret laws or the Constitution become part of the law of the land.[14] Although not laws in themselves, judicial decisions illustrate what the laws mean and establish the legislative intent behind them,[15] serving as a guiding authority in the resolution of all other cases concerning similar issues.[16] In *Ombudsman Carpio Morales v. Court of Appeals*[17] this Court, citing *Southern Cross Cement Corporation v. Cement Manufacturers Association of the Philippines*,[18] explained that while American jurisprudence is a helpful guide in this Court's decision-making, it should not be considered as precedent.[19]

Judicial decisions, with their unique General Register numbers, are easy to access. Compilations of our decisions

---

[12] *Id.* at 738.

[13] *Ponencia*, pp. 5-7.

[14] CIVIL CODE, Art. 8.

[15] *People v. Licera*, 160 Phil. 270, 273 (1975) [Per *J*. Castro, First Division].

[16] Emiliano M. Lazaro. *The Doctrine of State Decisis and the Supreme Court of the Philippine Islands*, 16 PHIL. L. J. 404, 406 (1937) citing Sutherland Statutory Construction, 2nd Ed., Vol. 2, pp. 898-899.

[17] 772 Phil. 672 (2015) [Per *J*. Perlas-Bernabe, *En Banc*].

[18] 503 Phil. 485 (2005) [Per *J*. Tinga, *En Banc*].

[19] *Ombudsman Carpio Morales v. Court of Appeals*, 772 Phil. 672, 759 (2015) [Per *J*. Perlas-Bernabe, *En Banc*].

and reports are regularly published in the Philippine Reports and Supreme Court Reports Annotated. Moreover, copies of our promulgated decisions and signed resolutions have been made available for downloading in the Supreme Court E-Library. In this manner, it is easy for members of the legal profession, law students, and any interested person to access this Court's decisions.

American jurisprudence, on the other hand, is not easily available simply because we do not have ready access to it. Also, members of the Philippine Bar are generally unfamiliar with the nuances of the American judicial system.

Including American jurisprudence in our judicial decisions elevates it to becoming part of our law, even if it may contradict our own statutes or the Constitution. Additionally, American jurisprudence does not treat judicial precedents with the same deference like we do, where we consider our jurisprudence to be part of the law of the land.

James Madison, a lawyer and the fourth president of the United States of America, acknowledged the binding force of judicial precedence,[20] but also recognized its limitation. He said: "That cases may occur which transcend all authority of precedents must be admitted, but they form exceptions which will speak for themselves and must justify themselves."[21]

This tension between upholding and reexamining precedents is seen in the history of the US Supreme Court's decisions. For one, the US Supreme Court under Chief Justice John Marshall (Chief justice Marshall) has, in several instances,[22] been observed

---

[20] CALEB NELSON, *STARE DECISIS AND DEMONSTRABLY ERRONEOUS PRECEDENTS*, 87 VIRGINIA LAW REVIEW, 10-14 (2001).

[21] 9 JAMES MADISON, *WRITINGS OF JAMES MADISON* 443 (GAILLARD HUNT ED., 1831). Reprinting the Letter from James Madison to C.E. Haynes.

[22] Thomas R. Lee, *Stare Decisis in Historical Perspective: From the Founding Era to the Rehnquist Court,* 52 VANDERBILT LAW REVIEW 647, 667-668 (1999).

to not refer to judicial precedence even if it had already settled that same issue before. Nonetheless, the Marshall Court recognized the binding effect of judicial precedents.[23]

In *United States v. Deveaux*,[24] Chief Justice Marshall, in referring to previous cases where the US Supreme Court had assumed jurisdiction over a dispute between a corporation and an individual, wrote: "Those decisions are not cited as *authority*; for they were made without considering this particular point; but they have much *weight*, as they show that this point neither occurred to the bar or the bench."[25] He also noted: "[T]he precedents of this court, though they were not decisions on argument, ought not to be absolutely disregarded."[26]

The authority bestowed upon judicial precedents saw a diminution in the 20th century, when "a feeling of freedom exists

---

In several decisions, the Marshall Court did not cite previous cases, which involved similar issues. An example is *Cohens v. Virginia*, where the issue was whether the Supreme Court has jurisdiction over an appeal from a conviction by a state court in Virginia. Chief Justice Marshall's opinion for the Court disagreed with the State's argument that the Supreme Court's appellate jurisdiction only applies to lower federal courts. This issue was already conclusively settled in the earlier case of *Martin v. Hunter's Lessee*, yet there was no mention of such previous case in Chief Justice Marshall's opinion.

In *McCulloch v. Maryland*, the same method was also used. Chief Justice Marshall concluded that the formation of a national bank was a necessary and proper exercise of powers expressly given to Congress. This conclusion was already reached by Chief Justice Marshall 14 years earlier in *United States v. Fisher*, yet there was also no mention of such previous case in *McCulloch*.

[23] *Id.* at 670.

[24] 9 U.S. 61 (1809).

[25] Thomas R. Lee, *Stare Decisis in Historical Perspective: From the Founding Era to the Rehnquist Court,* 52 VANDERBILT LAW REVIEW 647, 672 (1999), citing *United States v. Deveaux*, 9 U.S. 61 (1809).

[26] *Id.* citing *United States v, Deveaux*, 9 U.S. 61 (1809).

which would strike an English judge as revolutionary."[27] In *Hertz v. Woodman*:[28]

> The Circuit Court of Appeals was obviously not bound to follow its own prior decision. The rule of *stare decisis*, though one tending to consistency and uniformity of decision, is not indexible. Whether it shall be followed or departed from is a question entirely within the discretion of the court, which is again called upon to consider a question once decided.[29]

Meanwhile, in *Thurston v. Fritz*,[30] the Supreme Court of Kansas held:

> The doctrine of *stare decisis* does not preclude a departure from precedent established by a series of decisions clearly erroneous, unless property complications have resulted, and a reversal would work a greater injury and injustice than would ensue by following the rule.[31]

Thus, considering American jurisprudence's less stringent approach towards precedence, this Court should tread carefully when adopting it. Otherwise, we may inadvertently incorporate into our law an idea or doctrine that may have already been overturned or completely discarded by its original source.

Our ancestors fought valiantly to overthrow the yoke of colonialism. The least this Court can do to acknowledge their heroism, and to instill the idea that our sovereignty resides in our Filipino people, is to draw from our own jurisprudence. I

---

[27] Arthur L. Goodhart, *Case Law in England and America*, 15 CORNELL L. REVIEW 173, 180 (1930).

[28] 218 U.S. 205, 212, 30 Sup. Ct. 621, 622 (1910).

[29] Arthur L. Goodhart, *Case Law in England and America*, 15 CORNELL L. REVIEW 173, 180 (1930) citing *Hertz v. Woodman*, 218 U.S. 205, 212, 30 Sup. Ct. 621, 622 (1910).

[30] 91 Kan. 468, 475, 138 Pac. 625, 627 (1914).

[31] Arthur L. Goodhart, *Case Law in England and America*, 15 CORNELL L. REVIEW 173, 181 (1930) citing *Thurnston v. Fritz*, 91 Kan. 468, 475, 138 Pac. 625, 627 (1914).

am certain that, with respect to our own needs, we are wiser than our former colonizers.

**ACCORDINGLY**, I vote to **GRANT** the Petition.

---

**EN BANC**

[G.R. No. 246209. September 3, 2019]

**MONICO A. ABOGADO, ROBERTO M. ASIADO, LARRY HUGO, ANGELO SADANG, NONELON BALBONTIN, SALITO LAGROSA, ARZEL BELIDAN, RONALD GRANDIA, TROY LAGROSA, RONEL BADILLA, ARCHIE GARCIANO, REGIDOR ASIADO, ELY LOPEZ, EXPEDITO MAGDAYAO, RENY MAGBANUA, ROMULO CANA, JR., ROGELIO HINGPIT, JONEL HUGO, ROBERT VALDEZ, RIZEN GALVAN, RICARDO NATURAL, SANNY BELIDAN, ROWEL P. EJONA, FELIX ULZON, RAFFY M. ASIADO, PRIMO M. ASIADO, ADRIAN P. ABAYAN, RANDY DACUMOS, DANILO BELONO, ROMEO MALAGUIT, DENNIS BANIA, JASON VILLAMOR, GARY CASTILLOS, ALBERTO SONIO, DOLIE DUSONG, BJ PIRING and JING MALINAO (collectively known as the "KALAYAAN PALAWAN FARMERS AND FISHERFOLK ASSOCIATION"), NILO LABRADOR, WILFREDO LABANDELO and ROLANDO LABANDELO, and INTEGRATED BAR OF THE PHILIPPINES,** *petitioners, vs.* **DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, represented by SECRETARY HON. ROY A. CIMATU, DEPARTMENT OF AGRICULTURE, represented by SECRETARY HON. EMMANUEL PIÑOL, BUREAU OF FISHERIES**

**AND AQUATIC RESOURCES, represented by NATIONAL DIRECTOR HON. EDUARDO B. GONGONA, PHILIPPINE NAVY, represented by FLAG OFFICER IN COMMAND HON. VADM ROBERT EMPEDRAD, PN, PHILIPPINE COAST GUARD, represented by COMMANDANT HON. ADMIRAL ELSON E. HERMOGINO, PCG, PHILIPPINE NATIONAL POLICE, represented by CHIEF HON. PDG. OSCAR ALBAYALDE, PNP MARITIME GROUP, represented BY DIRECTOR HON. PCSUPT RODELIO B. JOCSON, and DEPARTMENT OF JUSTICE, represented by SECRETARY HON. MENARDO I. GUEVARRA,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; RULES OF PROCEDURE FOR ENVIRONMENTAL CASES; WRIT OF *KALIKASAN*, NATURE OF; THE DEGREE OF ENVIRONMENTAL DAMAGE MUST BE SUFFICIENTLY GRAVE AND MUST BE EXAMINED ON A CASE-TO-CASE BASIS. —** [A] writ of *kalikasan* is an extraordinary remedy that "covers environmental damages the magnitude of which transcends both political and territorial boundaries." The damage must be caused by an unlawful act or omission of a public official, public employee, or private individual or entity. It must affect the inhabitants of at least two (2) cities or provinces. x x x the quantum of evidence is not specifically stated. x x x This Court explained that "the Rules [of Procedure for Environmental Cases] do[es] not define the exact nature or degree of environmental damage but only that it must be sufficiently grave, in terms of the territorial scope of such damage[.]" Every petition, therefore, must be examined on a case-to-case basis. x x x

**2. ID.; ID.; ID.; PARTIES THAT SEEK THE ISSUANCE OF THE WRIT OF *KALIKASAN* CARRY THE BURDEN TO SUBSTANTIATE THE ELEMENTS OF THE WRIT AND THEIR EVIDENCE MUST BE READY BY THE TIME THE PETITION IS FILED; THE WRIT CANNOT AND SHOULD NOT SUBSTITUTE OTHER REMEDIES THAT MAY BE**

**AVAILABLE TO THE PARTIES. —** Parties that seek the issuance of the writ of *kalikasan*, whether on their own or on others' behalf, carry the burden of substantiating the writ's elements. Before private parties or public interest groups may proceed with the case, they must be ready with the evidence necessary for the determination of the writ's issuance. x x x This was, unfortunately, not the only time that environmental advocates have come to this Court unprepared. x x x The imminence or emergency of an ecological disaster should not be an excuse for litigants to do away with their responsibility of substantiating their petitions before the courts. As with any special civil action for extraordinary writs, parties seeking the writ of *kalikasan* must be ready with the evidence required to prove their allegations by the time the petition is filed. Hasty slipshod petitions, filed in the guise of environmental advocacy, only serve to undermine that advocacy[.] x x x Environmental advocacy requires more than passion for saving the environment. x x x A writ of *kalikasan* cannot and should not substitute other remedies that may be available to the parties, whether legal, administrative, or political. Mere concern for the environment is not an excuse to invoke this Court's jurisdiction in cases where other remedies are available.

3. **ID.; ID.; WRIT OF CONTINUING *MANDAMUS*, DEFINED; WHERE THERE WAS UNLAWFUL NEGLECT IN THE ENFORCEMENT OF ENVIRONMENTAL LAWS OR THE UNLAWFUL EXCLUSION IN THE USE OF ENJOYMENT OF AN ENVIRONMENTAL RIGHT, A WRIT OF CONTINUING *MANDAMUS* MAY BE AVAILED OF UNDER RULE 8; THIS PROCEDURE MUST ALSO BE SUFFICIENT IN FORM AND SUBSTANCE, OTHERWISE IT MAY BE DISMISSED OUTRIGHT. —** A writ of continuing *mandamus*, on the other hand, "is a special civil action that may be availed of 'to compel the performance of an act specifically enjoined by law.'" x x x While Rule 2 of the Rules of Procedure for Environmental Cases provides a civil procedure for the enforcement or violation of environmental laws, Rule 8 provides a distinct remedy and procedure for allegations of unlawful neglect in the enforcement of environmental laws or the unlawful exclusion in the use or enjoyment of an environmental right. As with the procedure in special civil actions for *certiorari*, prohibition, and *mandamus*, this procedure also

requires that the petition should be sufficient in form and substance before a court can take further action. Failure to comply may be basis for the petition's outright dismissal. x x x The writ is essentially a *continuing* order of the court, as it: . . . "permits the court to retain jurisdiction after judgment in order to ensure the successful implementation of the reliefs mandated under the court's decision" and, in order to do this, "the court may compel the submission of compliance reports from the respondent government agencies as well as avail of other means to monitor compliance with its decision."

**4. ID.; ID.; ID.; REQUIRING PERIODIC SUBMISSION OF COMPLIANCE REPORT DOES NOT MEAN THAT THE COURT ACQUIRES SUPERVISORY POWERS OVER ADMINISTRATIVE AGENCIES; THIS REMEDY SHOULD NEITHER VIOLATE THE PRINCIPLE OF SEPARATION OF POWERS NOR BE USED TO SUPPLANT EXECUTIVE OR LEGISLATIVE PRIVILEGES. —** [R]equiring the periodic submission of compliance reports does not mean that the court acquires supervisory powers over administrative agencies. This interpretation would violate the principle of the separation of powers since courts do not have the power to enforce laws, create laws, or revise legislative actions. The writ should not be used to supplant executive or legislative privileges. Neither should it be used where the remedies required are clearly political or administrative in nature. For this reason, every petition for the issuance of a writ of continuing *mandamus* must be clear on the guidelines sought for its implementation and its termination point. Petitioners cannot merely request the writ's issuance without specifically outlining the reliefs sought to be implemented and the period when the submission of compliance reports may cease.

**5. LEGAL ETHICS; RULES OF COURT; WITHDRAWAL OF COUNSEL; MAY BE ALLOWED EITHER WITH A WRITTEN CONSENT OF THE CLIENT OR FOR A "GOOD CAUSE"; FAILURE TO CONTACT THE CLIENT DESPITE DILIGENT EFFORTS IS NOT CONSIDERED A GOOD CAUSE. —** A counsel may only be allowed to withdraw from the action either with the written consent of the client or "from a good cause." x x x Failure to contact the client despite diligent efforts is not considered under this Rule as a

"good cause" upon which a lawyer may withdraw from the case without first seeking the client's written conformity. x x x Counsels' filing of their Motion to Withdraw as Counsel without prior notice to the clients is a violation of the very rule they sought to uphold. The Petition's withdrawal compromises their clients' litigation, since the case will be dismissed without their consent and without prior notice. x x x Petitioners' counsels had the responsibility, right at the start of their engagement, to establish the modality of communication with their clients. Mere difficulty in contacting the client is not a sufficient reason for his or her counsel to abandon his or her cause, more so in this case where counsels are rendering legal aid *pro bono*. Counsels should exert the same amount of professionalism, regardless of their client's capacity to pay for their services.

**PERALTA, *J.*, *separate opinion:***

1. **REMEDIAL LAW; RULES OF PROCEDURE FOR ENVIRONMENTAL CASES; THE PETITION FOR WRIT OF *KALIKASAN* SHOULD HAVE BEEN DISMISSED OUTRIGHT; REASONS.—** The petition for writ of *kalikasan* should have been dismissed outright for the following reasons: (1) no judicial affidavits were attached to the petition to support that claim that respondents omitted, failed and/or refused to enforce Philippine Laws at the Panatag Shoal, the Ayungin Shoal, and the Panganiban reef; (2) the foreign fishermen and other foreign entities who violated Philippine environmental laws in the said shoals and reef, have not been impleaded in the petition as respondents; and (3) the factual and evidentiary issues raised must be referred to the Court of Appeals, for appropriate resolution.

2. **ID.; ID.; THE PETITION FOR WRIT OF CONTINUING *MANDAMUS* SHOULD ALSO BE DISMISSED IN VIEW OF THE ABSENCE OF A CLEAR ALLEGATION HOW RESPONDENTS HAVE FAILED OR HAVE BEEN REMISS IN PERFORMING THEIR DUTIES IN ENFORCING ENVIRONMENTAL LAWS.—** The petition for writ of continuing *mandamus* should, likewise, be dismissed outright, because there is no clear allegation how respondents have failed or have been remiss in performing their duties in enforcing environmental laws. The petition should have been filed first

with the Court of Appeals because there are factual and evidentiary issues raised. Although the rules may or may not allow a hearing, the allegations in the petition clearly show facts that have to be established and proven, through judicial affidavits and memoranda.

**JARDELEZA, *J.*, *separate opinion:***

**1. REMEDIAL LAW; RULES OF PROCEDURE FOR ENVIRONMENTAL CASES; PETITION FOR WRIT OF *KALIKASAN*; THE PRESENT PETITION IS AN ATTEMPT ON THE PART OF THE PETITIONERS TO ENFORCE COMPLIANCE WITH THE ARBITRAL AWARD IN FAVOR OF THE PHILIPPINES AGAINST CHINA CONCERNING THE INTERPRETATION AND APPLICATION OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS).—** It is my view that the case brought before Us now is an attempt on the part of petitioners to enforce compliance with the Arbitral Award, this time, through the use of domestic environmental laws. Specifically, petitioners, on the strength of the findings of violations of environmental laws within the Philippine's EEZ, *as set forth in the arbitral award*, seek the issuance of writs of *kalikasan* and continuing *mandamus* to enjoin respondents-government agencies to comply with their duties to protect and preserve the marine environment, as allegedly provided under the provisions of Republic Act No. 8550, or the Philippine Fisheries Code of 1998, as amended.

**2. ID.; ID.; ID.; PETITIONER MUST STILL OBSERVE THE RULE ON HIERARCHY OF COURTS; THIS COURT IS NOT A TRIER OF FACTS.—** While the Court shares original and concurrent jurisdiction with the Court of Appeals (over actions seeking the issuance of writs of *kalikasan* and continuing *mandamus*) and the Regional Trial Courts (for petitions for writs of continuing *mandamus* only), petitioners must still observe the rule on hierarchy of courts and seek immediate resort with this Court only to resolve pure questions of law. As this case demonstrates, a proceeding for the issuance of writs of *kalikasan* and continuing *mandamus* necessarily involves the evaluation of evidence and resolution of factual questions which this Court is not wont to undertake. To reiterate, this Court is not a trier

of facts. We are unsuited to receive and evaluate evidence in the first instance; these are the primary functions of the lower courts or regulatory agencies. Thus, and unless the questions involved are purely legal in nature, the doctrine of hierarchy of courts should be observed. To my mind, due process considerations, at the very least, demand that such matters be first and fully presented before a trier of fact, fully equipped to receive and evaluate evidence in the first instance.

**APPEARANCES OF COUNSEL**

*Jose Manuel I. Diokno* for petitioners.
*The Solicitor General* for respondents.

**R E S O L U T I O N**

**LEONEN, *J.*:**

Cases involving the public interest which seek to protect the marginalized and oppressed deserve more attention from their lawyers as compared with any other case. Those who have the least deserve to have more in law.

Before this Court is an Omnibus Motion with Manifestation[1] and Compliance with Motion[2] requesting, among others, the withdrawal of a Petition seeking writs of *kalikasan* and continuing *mandamus*.

On April 16, 2019, a Petition[3] was filed by the Integrated Bar of the Philippines, Monico A. Abogado, Roberto M. Asiado, Larry Hugo, Angelo Sadang, Nonelon Balbontin, Salito Lagrosa, Arzel Belidan, Ronald Grandia, Troy Lagrosa, Ronel Badilla, Archie Garciano, Regidor Asiado, Ely Lopez, Expedito Magdayao, Reny Magbanua, Romulo Cana, Jr., Rogelio Hingpit, Jonel Hugo, Robert Valdez, Rizen Galvan, Ricardo Natural, Sanny Belidan, Rowel P. Ejona, Felix Ulzon, Raffy M. Asiado,

---

[1] *Rollo*, pp. 836-846.

[2] *Id.* at 875-891.

[3] *Id.* at 3-48.

Primo M. Asiado, Adrian P. Abayan, Randy Dacumos, Danilo Belono, Romeo Malaguit, Dennis Bania, Jason Villamor, Gary Castillos, Alberto Sonio, Dolie Dusong, BJ Piring, and Jing Malinao,[4] all members of the Kalayaan Palawan Farmers and Fisherfolk Association, along with Nilo Labrador, Wilfredo Labandelo, and Rolando Labandelo, who were residents of Sitio Kinabuksan, Cawag, Zambales.

They sought the issuance of writs of *kalikasan* and continuing *mandamus* under A.M. No. 09-6-8-SC, or the Rules of Procedure for Environmental Cases, over Panatag Shoal (Scarborough Shoal), Panganiban Reef (Mischief Reef), and Ayungin Shoal (Second Thomas Shoal), located within the Philippines' exclusive economic zone.

Petitioners relied on the Permanent Court of Arbitration's findings in its July 12, 2016 Arbitral Award[5] that Chinese fisherfolk and China's construction of artificial lands have caused severe environmental damage to the marine environment of these areas. They alleged that their "constitutional right to a balanced and healthful ecology"[6] was being threatened and was being violated due to the "omissions, failure, and/or refusal of Respondents to enforce Philippine laws in Panatag Shoal, Ayungin Shoal, and Panganiban Reef."[7]

Respondents in this case include the Department of Environment and Natural Resources, represented by Secretary Roy A. Cimatu, the Department of Agriculture, represented by Secretary Emmanuel Piñol, the Bureau Of Fisheries and Aquatic Resources, represented by National Director Eduardo B. Gongona, the Philippine Navy, represented by Flag Officer In Command Robert Empedrad, the Philippine Coast Guard,

---

[4] Only 24 of 37 association members verified the Petition (*Rollo*, pp. 38-40). Rowel was sometimes spelled Rowl in the *rollo*.

[5] *In the Matter of the South China Sea Arbitration*, PCA Case No. 2013-19, July 12, 2016, https://pca-cpa.org/wp-content/uploads/sites/175/2016/07/PH-CN-20160712-Award.pdf (last accessed on September 2, 2019).

[6] *Rollo*, p. 32.

[7] *Id.*

represented by Admiral Elson E. Hermogino, the Philippine National Police, represented by Chief Oscar Albayalde, the Philippine National Police Maritime Group, represented by Director Rodelio B. Jocson, and the Department Of Justice, represented by Secretary Menardo I. Guevarra.

On May 3, 2019, this Court issued a Writ of *Kalikasan* and ordered respondents to file a verified return within a non-extendible period of 10 days from receipt of notice.[8]

On May 24, 2019, respondents, through the Office of the Solicitor General, filed their Verified Return with Comment.[9] They argued that the Petition suffered from fatal procedural infirmities, which should have warranted its dismissal. They alleged that the Petition failed to state a cause of action since petitioners merely relied on the 2016 Arbitral Award as evidence and failed to attach the required judicial affidavits of witnesses.[10]

Respondents likewise made several factual allegations to substantiate their argument that they complied with environmental laws and regulations in the protection and preservation of Panatag Shoal (Scarborough Shoal), Panganiban Reef (Mischief Reef), and Ayungin Shoal (Second Thomas Shoal).[11] They submitted that since the case involved the conduct of foreign relations, the remedies sought by petitioners were diplomatic and political in nature, and hence "transcend[ed] mere enforcement of environmental laws."[12]

On June 4, 2019, this Court issued a Resolution[13] setting the case for oral arguments.[14] Preliminary conference was held

---

[8] *Id.* at 227-229.

[9] *Id.* at 235-283.

[10] *Id.* at 243-244.

[11] *Id.* at 251-259.

[12] *Id.* at 259-260.

[13] *Id.* at 588-597.

[14] Oral arguments had initially been scheduled on June 25, 2019 but was later reset to July 2, 2019 (*rollo*, p. 639).

on June 18, 2019. On the same day, this Court issued the Advisory[15] for oral arguments. Parties were informed to submit their written copies of opening statements, tables of authorities, copies of any document to be presented, and all slide presentations no later than July 1, 2019.[16]

On July 2, 2019, this Court issued a Resolution[17] informing the parties that Associate Justice Antonio T. Carpio voluntarily inhibited from the case.

The first round of oral arguments was held on July 2, 2019. Petitioners' counsel Atty. Andre C. Palacios and collaborating counsel Atty. Jose Manuel I. Diokno presented their opening statements and were interpellated by this Court *En Banc*.[18]

On July 9, 2019, the oral arguments resumed, with Solicitor General Jose C. Calida (Solicitor General Calida) about to present respondents' arguments. However, before presenting his opening statement, he orally manifested that he be allowed to submit as additional compliance a Manifestation and Motion,[19] along with its attached documents, to be admitted as part of the case records.[20]

The documents attached to the Manifestation and Motion were affidavits[21] executed by 19 of the 40 fisherfolk-petitioners before respondent Bureau of Fisheries and Aquatic Resources, requesting that their signatures be withdrawn from the Petition, which they claimed they did not read and was not explained to them before signing. They stated that they had been misinformed

---

[15] *Rollo*, pp. 621-626.

[16] *Id.* at 624.

[17] *Id.* at 770-A-770-E.

[18] *Id.* at 770-B-770-C.

[19] *Id.* at 771-777. This document was physically distributed by the Office of the Solicitor General to the Court *En Banc* and to petitioners' counsels during oral arguments.

[20] *Id.* at 808-A.

[21] *Id.* at 778-808.

about the nature of the Petition filed before this Court. Thinking that the respondents would be the foreign nationals who caused the environmental damage, they said that they were surprised to hear that the case was instead filed against the Bureau of Fisheries and Aquatic Resources and the Philippine Navy, whom they considered allies.

In particular, the affidavits read:

**[Sinumpaang Salaysay of petitioners Monico Abogado and Roberto Asiado, May 29, 2019]**

1. Kami ay minsang kinausap ni Atty[.] Ann Fatima Chavez patungkol sa pag proteksyon sa lugar naming sa Pag-Asa laban sa mga dayuhan gaya ng mga intsik at Vietnamese na gumagamit ng cyanide at dinamita sa kanilang pangingisda;

2. May inilatag syang dokumento sa amin kung paano mapangalagaan ang kalikasan sa aming lugar at para sa aming ikabubuti bilang mangingisda. Ipinaliwanag pa sa amin kung ano ang mga nakasaad sa dokumento na ang layunin lamang ay ang pangalagaan ang karagatan na buong nasasakupan ng Kalayaan, at para rin sa kapakanan naming mga mangingisda;

. . . . . .

6. *Walang nabanggit sa amin na kakasuhan ang ano mang ahensya ditto (sic) dahil kung nagkaganon, talagang di kami pipirma. Nagulat na lang kami nang malaman namin na tila ginagamit ang asosasyon namin sa Kalayaan upang kasuhan pala ang mismong mga ahensya na ito na syang katuwang namin doon*;

7. Pagkatapos ng pag-uusap na iyon, ipinabatid naming sa aming mga kasamahan na may pipirmahan sila at suportahan namin ito dahil ang buong akala naman namin baka may donasyon o benepisyo para sa aming mga mangingisda at kasamahang magsasaka;

8. *Ang buod ng salaysay na ito ay upang ilahad ang katotohanan na iba ang paliwanag sa amin ni Atty. Chavez sa lumalabas ngayon na reklamo "daw" na mula sa amin. Ito po ay mariin naming pinapasinungalingan. Di po katanggap-tanggap sa amin na mismong navy at coast guard na siyang katuwang namin sa Pag-Asa ay kakasuhan namin ngayon. Wala kaming alam dito at di naming suportado and inihaing petisyon laban sa mga ahensyang ito*;

9. *Wala kaming kopya na nakuha dahil buong tiwala kami dun sa aming napag-usapan para sa aming benepisyo at kapakanan. Muli, walang nabanggit na pagsasampa ng reklamo laban sa katuwang naming mga ahensyang ito. Parang niloko po kami sa lagay na 'to e. Maganda ang samahan naming ng navy pero tila sinisira kami sa isa't isa.*[22] (Emphasis supplied)

**[Sinumpaang Salaysay of petitioner Monico Abogado, June 27, 2019]**

8. Nagtungo ulit ako ng Navy sa sumunod na araw at doon ko na lang nalaman na pati pala ang mga ibang ahensiya ng gobyerno, kasali na ang BFAR, ay kinasuhan din pala gamit ang aming asosasyon bilang petitioner. At masakit sa loob ko na may isinama pang ibang pangalan na hindi naman myembro ng aming asosasyon tulad nina, NILO LABRADOR, WILFREDO LABANDELO at ROLANDO LABANDELO na hindi namin ka-myembro, at di namin kilala. Kami ay 37 lang na miyembro ng aming asosasyon at hindi sila kasali. *Para sa akin, isang malaking panlilinlang ito at panggagamit lamang sa aming asosasyon. Kaming mga maliliit ang naiipit dito.* Ngayong araw ko lang nalaman na ang nasabing tatlong mangingisda pala ay kasama naming napangalanan bilang petitioner pala at hindi pinapalabas bilang myembro ng aming asosasyon;

9. Pinapatunayan ko po na wala akong kinalaman sa petisyon na sinasabi nila laban sa mga ahensiya ng gobyerno. Wala akong nababasa na petisyon laban sa Navy, BFAR at ibang ahensiya. Wala akong pinipirmahan na petisyon laban sa mga ahensiya. Na sa pagkakatanda ko ay may nabanggit lamang si Atty. Chavez sa akin dati na petisyon laban sa mga dayuhang nangingisda sa Kalayaan ngunit ang petisyon na sinasabi niya ay hindi ko din nakita at pinirmahan.

. . . . . .

14. Wala akong anumang hawak na kopya ng petisyon laban sa mga dayuhang mangingisda at wala din akong hawak na kopya ng petisyon laban sa mga ahensiya ng gobyerno. Muli, walang nabanggit sa akin na pagsasampa ng reklamo laban sa katuwang naming mga ahensyang ito. Parang niloko yung asosasyon namin. Maganda ang samahan namin sa Navy at iba pang ahensiya pero tila sinisira kami sa isa't isa;

---

[22] *Id.* at 803-804.

15. *Na ngayong araw ko lang nakita ang buong kopya ng sinasabing petisyon. Nagulat ako na may nakita akong katulad ng aking pirma duon sa baba ng "verification" ng parte ng petisyon. Muli, wala akong natatandaan na may pinirmahan akong ganun at wala din akong nababasang ganung papel*[.][23] (Emphasis supplied)

**[Sinumpaang Salaysay of petitioner Roberto Asiado, June 27, 2019]**

4. May inilatag siyang dokumento sa akin kung paano mapangangalagaan ang kalikasan sa aming lugar at para sa aming ikabubuti bilang mga mangingisda. Ang sabi ni Atty. Ann Fatima Chavez akin (*sic*) ay dokumentong ito ay isang petisyon laban sa mga dayuhan, sa kanilang illegal na pangingisda at paninira sa ating karagatan. Ipinaliwanag pa sa akin kung ano ang mga nakasaad sa dokumento na ang layunin lamang ay ang pangalagaan ang karagatan na buong nasasakupan ng Pag-Asa, Kalayaan, Palawan, at para rin sa kapakanan naming mga mangingisda;

5. *Pinasadahan kong binasa ang dokumento na ito pero dahil maganda naman ang pagkapaliwanag at mahaba-haba siyang basahin at dahil malaki ang tiwala ko kay Atty. Ann Fatima Chavez, pumayag ako na pumirma dito kahit na di ko nabasa ang nilalaman ng petisyon*;

6. Dito ako pansamantalang nakabase sa Puerto Princesa, Palawan, at dahil ako ang president ng aming asosasyon, ako ang siyang kinausap patungkol sa sinasabing layunin na maprotektahan ang kapakanan naming mga mangingisda sa Pag-Asa, Kalayaan, Palawan;

7. Ako mismo ang naghatid ng napirmahang petisyon na galing sa Pag-Aasa, Kalayaan, Palawan sa law office nina Atty. Chavez sa may gasoline station sa Malvar, Puerto Princesa, Palawan. Matapos noon, di na kami nagkita pa ni Atty. Chavez;

. . . . . .

11. *Wala akong nakuhang kopya ng petisyon dahil buo ang tiwala ko kay Atty. Chavez. Muli, walang nabanggit na pagsasampa ng reklamo laban sa mga ahensyang ito. Parang niloko po kami ni Atty. Chavez sa lagay na ito. Maganda ang samahan naming ng BFAR, Philippine Navy at Philippine Coast guard pero tila sinisira kami laban sa isa't isa*[.][24] (Emphasis supplied)

---

[23] *Id.* at 792-793.

[24] *Id.* at 796-797.

**[Sinumpaang Salaysay of petitioner Arzel Belidan, June 27, 2019]**

2. Noong mga February 2018, nasa opisina ako ng asosasyon namin dito sa Puerto Princesa. Pinatawag ako para utusang magpadala ng isang envelope papuntang Brgy. Pag-asa, Kalayaan, Palawan;

3. Ang envelope na aking ipinadala ay naka seal ng masking tape, at naka address ito sa pangalan ni Nonelon Balbontin, myembro ng aming asosasyon na naka base sa Brgy. Pag-asa, Kalayaan, Palawaan noon;

4. Hindi ko nakita ang loob ng envelope. Hindi ko rin po binuksan ang envelope na iyon. Wala akong alam sa nilalaman na dokumento ng envelope na iyon, at kung ano na ang nangyari duon pagkatapos kong naipadala ito;

5. *Ngayon, nagulat nalang po ako na may petisyon daw kaming inihain laban sa mga ahensya ng gobyerno, at ang pangalan ko ay nakasali sa mga nag rereklamo. Ako din ay nabigla ng may pirma ako sa nasabing petition. Sa katunayan wala akong pinipirmahan napetsyon laban sa mga ahensya ng gobyerno kagaya ng BFAR, Philippine Navy, Philippine Coast Guard at iba pa*;

6. Wala naman po akong reklamo sa mga nasabing ahensya ng gobyerno dahil ang mga ito ang tumutulong at kaagapay at katuwang namin sa Brgy. Pag-Asa, Kalayaan, Palawan;

7. Marami pong naitulong ang BFAR, Philippine Navy at Philippine Coast Guard sa amin;

8. Ang buod ng salaysay na ito ay upang ilahad ang katotohanan na hindi ako pumirma sa nasabing reklamo laban sa mga ahensyang ito. Di po katanggap-tanggap sa akin na mismong BFAR, Philippine Navy at Philippine Coast Guard na siyang katuwang namin sa Pag-Asa ay kakasuhan namin ngayon. Wala kaming alam dito at di namin suportado ang inihaing petisyon laban sa mga ahensyang ito[.][25] (Emphasis supplied)

**[Sinumpaang Salaysay of petitioner Angelo Sadang, July 4, 2019]**

2. Na ako ay nautusang mag pa-ikot ng dalawang pahina ng papel para pirmahan ng mga kasama ko sa asosasyon;

---

[25] *Id.* at 800-801.

3. *Ang pagkakaalam ko po ang papel na iyon ay para sa mga benepisyo ng ibibigay ng gobyerno para sa amin. Wala akong kaalaman na ang papel na iyon ay kaso pala laban sa gobyerno*; at

4. Noong nakaraang linggo ko lang nalaman sa president naming (*sic*) na meron palang isang petisyon laban sa mga ahensiya ng gobyerno na kami daw ang nagsampa. Pinapatunayan ko po na wala akong kinalaman sa petisyon at wala akong pinipirmahan na petisyon laban sa mga ahensiya[.][26] (Emphasis supplied)

**[Handwritten letter of petitioner Randy Dacumos, July 4, 2019]**

Ako[,] RANDY DACUMOS[,] resid[e]nte ng Bgy. Pag-Asa, Mun. of Kalayaan Member ng Samahan ng Fisher Fo[l]ks[.] Ako po ay nagulat ng (*sic*) malaman kong nadawit [ang aming] pangalan sa isinampa[ng] kaso[.] Gusto ko pong malaman nin[y]o na wala akong pin[i]rmahang papel [na] kinakas[u]han ang ibang [ahensya] ng go[by]erno.[27]

**[Handwritten letter of petitioner Larry Hugo, July 4, 2019]**

Ako po si Larry Hugo nagmula po ako sa bayan ng Kalayaan. Ako yong Vice Prest. (*sic*) ng Samahan ng mga [illegible] na mangingisda ng Kalayaan[.] Hindi po totoo na kami po ay pumirma doon sa sinasabing [illegible] kas[u]han ang B[F]AR, NAVY[.] Inos[e]nt[e] po kami sa naturang problema[.] Nagamit lamang po ang aming Samahan para sa kanilang mga masamang plano kung ano man yon![28]

**[Handwritten letter of petitioner Romulo Caña, Jr., July 4, 2019]**

Ako po si Romulo C. Caña, Jr. taga Barangay Pag-asa Kalayaan Palawan[.] Wala po akong alam sa pirmahan nagulat nalang po ako na nadamay ang pangalan ko sa kaso. Ang alam kolang (*sic*) ay may ipamimigay sila sa amin [b]ilang tulong po sa amin. Wala talaga po akong alam diyan.[29]

---

[26] *Id.* at 786.

[27] *Id.* at 805.

[28] *Id.* at 806.

[29] *Id.* at 807.

**[Handwritten letter of petitioner Danilo Belono, July 4, 2019]**

Ako si Danilo Belono.

May asawa at anak[.] Naninirahan sa Pag-Asa, Kalayaan, Palawan[.] Isa po ak[o]ng member sa Fish[er] Fo[lk.] Hindi po alam na ganon ang ma[n]gyayari[.] Hindi po kami nag pirma laban sa ibang samahan na t[u]m[u]t[u]long saamin (*sic*) tulad po na BFAR at mga su[n]dalo[.][30]

**[Pinagsamang Sinumpaang Salaysay of petitioners Regidor Asiado and Richard Galvan, July 5, 2019 and Pinagsamang Sinumpaang Salaysay of petitioners Dennis Bania, Felix Ulzon, Jing Malinao, Ronald Grandia, Expedito Magdayao, Robert Valdez, Raffy M. Asiado, Primo M. Asiado, Adrian P. Abayan, and Romeo M. Malaguit, July 5, 2019]**

2. Na nalaman na lang namin mula sa mga kasamahan namin sa asosasyon na meron palang isang petisyon laban sa mga ahensiya ng gobyerno na kami daw ang nagsampa. *Pinapatunayan po naming (sic) na wala kaming kinalaman sa petisyon*;

3. Na hindi po naming (*sic*) kayang kasuhan ang mga ahensiya ng gobyerno dahil sila ang tumutulong sa aming mga mangingisda;

4. Walang nabang[g]it sa amin na kakasuhan ang ano mang ahensya ng gobyerno ng ating bansa dahil kung nag kaganoon, talagang di kami pipirma. Nagulat na lang kami nang malaman namin na tila ginagamit ang asosasyon namin sa Kalayaan upang kasuhan pala ang mismong mga ahensya na ito na syang katuwang namin sa Kalayaan[.][31] (Emphasis supplied)

**[Sinumpaang Salayasay of petitioners Wilfredo M. Labandelo and Nilo P. Labrador, July 5, 2019]**

5. Noong Abril 2019, kami (Wilfredo Labandelo, Nilo Labrador) ay pinapatawag ng IBP sa kanilang tanggapan sa Maynila kung saan may pinakita sa aming Petition. Kung anuman ang nilalaman ng Petition na ito ay hindi namin nalaman noong pagkakataong iyon sapagkat di kami binigyan ng pagkakataon para mabasa ang nilalalman nito.

---

[30] *Id.* at 808.

[31] *Id.* at 779 and 781. The contents of both affidavits were the same.

6. *Sinubukan rin naming manghingi ng kopya ng nasabing Petition sa IBP at pinangakuan na bibigyan nito subalit hanggang ngayon wala pa rin nakakarating sa amin. Sa dahilang ito, pinapatunayan namin na hanggang sa araw na ito ay hindi pa rin namin alam ang buong nilalaman ng Petition na ito.*

7. *Nalaman nalang namin sa news na aming napanood sa telebisyon at sa Rappler na ang Petition na aming pinirmahan pala ay tungkol sa mga nangyayaring problema sa West Philippine Sea.*

8. Pinapatunayan namin na wala kaming kinalaman sa naturang Petition na laban sa anumang ahensiya ng gobyerno sapagkat ito ay magkaiba sa kasalukuyang problema na inilapit namin sa IBP gaya ng pagpapasara ng paaralan, at ang pagpapaalis sa mga naninirahan sa Sitio Kinabukasan.

9. Lumapit po kami sa IBP na walang intensyong magreklamo o mag-file ng Petition laban sa mga ahensiya ng gobyerno gaya ng BFAR, DENR, DA, Philippine Coast Guard, at iba pa. Wala rin po nabanggit sa amin sa kahit anumang pagkakataon na magsasampa kami kasama ng IBP ng anumang kaso sa mga nasabing ahensiya.[32] (Emphasis supplied)

Petitioners' counsels objected to Solicitor General Calida's Manifestation and Motion, arguing that it was unethical for respondent Bureau of Fisheries and Aquatic Resources to have conferred with petitioners without their counsels' knowledge.[33]

In view of this development, the parties were required to move in the premises and submit their respective compliances by 4:30 p.m. on July 12, 2019.[34]

On July 12, 2019, petitioners' counsels filed a Motion for Extension of Time to Confer with Clients and Obtain Special Authority.[35] Citing Rule 138, Section 23[36] of the Rules of Court,

---

[32] *Id.* at 784-785.

[33] *Id.* at 808-A-808-B.

[34] *Id.* at 808-C.

[35] *Id.* at 809-813.

[36] RULES OF COURT, Rule 138, Sec. 23 provides:

they requested a 10-day extension, or until July 22, 2019, to confer with their clients before proceeding with any action that would result in the termination of the case.

The Office of the Solicitor General, on the other hand, filed a Compliance (Re: Order to Move in the Premises).[37] It opposed the Motion for Extension of Time, saying that the pleading "will not cure the infirmity that the Petition was initiated by counsel without the full knowledge and understanding of the fisherfolk-petitioners."[38] As such, it requested that the case be immediately dismissed.[39]

On July 16, 2019, this Court issued a Resolution[40] granting the Motion for Extension of Time until 12:00 noon of July 19, 2019 and noting the Compliance. It also reminded counsels for all parties to observe the rule on *sub judice* and refrain from making statements about the case to the media or on social media.[41]

At 4:18 p.m. on July 19, 2019, petitioners' counsels filed an Omnibus Motion with Manifestation.[42] They informed this Court that they met with six (6) of the fisherfolk-petitioners, who signified that they no longer wished to pursue the case. They also signed a handwritten letter, which read:

---

SECTION 23. *Authority of attorneys to bind clients*. — Attorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, and in taking appeals, and in all matters of ordinary judicial procedure. But they cannot, without special authority, compromise their client's litigation, or receive anything in discharge of a client's claim but the full amount in cash.

[37] *Rollo*, pp. 814-829.

[38] *Id.* at 816.

[39] *Id.* at 817.

[40] *Id.* at 830-832.

[41] *Id.* at 831.

[42] *Id.* at 836-846.

*Mga Ginoo,*

*Una po sa lahat ay nais naming magpasalamat sa inyong panahong ginugol sa pakikipagpulong sa amin.*

*Matapos po ang ating pag-uusap kahapon, isinangguni po namin ang usapin sa mga kapwa naming kasapi at aming napagkaisahang iatras nyo na lamang ang kaso, nang sa gayon ay maging tahimik na ang aming mga buhay.*

*Bilang mga kinatawan ng samahan ng Fisherfolks ng Kalayaan at upang patunayan ang kagustuhan ng nakararami, aming inilagda ang aming mga pangalan ngayong araw na ito sa Lungsod ng Pto. Princesa.*[43]

Petitioners' counsels stated that the lawyers of the Integrated Bar of the Philippines-Palawan Chapter were able to meet with these six (6) fisherfolk-petitioners in Puerto Princesa City as they could not leave yet for Pag-asa Island due to engine trouble in their vessel. As for the 20 other fisherfolk-petitioners who had signed the Petition, the lawyers were unable to meet them as they were "on Pag-asa Island and the undersigned counsels cannot travel to meet them there; or . . .communicate with them as Philippine telephone companies have no or very weak network coverage there."[44]

Petitioners' counsels also stated that despite "heavy rain, strong wind, and large waves[,]"[45] the lawyers of the Integrated Bar of the Philippines-Zambales Chapter exerted efforts to meet with the three (3) fisherfolk-petitioners in Sitio Kinabuksan, Zambales. However, they were only able to meet with petitioner Wilfredo Labandelo (Wilfredo), who informed them that his brother, petitioner Rolando Labandelo (Rolando), had already moved to Palawan on June 22, 2019 and that petitioner Nilo Labrador (Labrador) has since relocated to another place on

---

[43] *Id.* at 838.

[44] *Id.* at 839. Counsels explained that lawyers of the Palawan Chapter were able to meet with petitioner Ricardo Natural on July 14, 2019, but he did not meet them on July 15, 2019 for the signing of the withdrawal letter.

[45] *Id.* at 840.

July 12, 2019 but did not leave any contact details.[46] Petitioner Wilfredo also executed a handwritten letter stating:

*Mga Ginoo:*

*Pakiurong nyo ang kaso namin Abogado vs. DENR*[.][47]

Petitioners' counsels also informed this Court that on July 19, 2019, the Integrated Bar of the Philippines Board of Governors adopted resolutions requesting the Petition's withdrawal.[48] Moreover, they again objected to the Office of the Solicitor General's Manifestation and Motion dated July 9, 2019, which they said "has caused this case to become a media spectacle instead of being a case that presents important issues concerning the environment in the West Philippine Sea."[49] Thus, they prayed that this Court:

1. GRANT the following Petitioners' Motion to Withdraw the Petition for the following Petitioners:

    1. MONICO ABOGADO
    2. ROBERTO ASIADO
    3. NONELON BALBONTIN
    4. RANDY DACUMOS
    5. ANGELO SADANG
    6. RENY MAGBANUA
    7. WILFREDO LABANDELO
    8. THE INTEGRATED BAR OF THE PHILIPPINES

2. GRANT the undersigned counsels' Motion to Withdraw as Counsel for the following Petitioners:

    1. RICARDO NATURAL
    2. LARRY HUGO
    3. ARZEL BELIDAN
    4. RONALD GRANDIA

---

[46] *Id.* at 840-841.

[47] *Id.* at 840.

[48] *Id.* at 841 and 863.

[49] *Id.* at 842.

5. RONEL BADILLA
6. EXPEDITO MAGDAYAO
7. JONEL HUGO
8. ROBERT VALDEZ
9. SANNY BELIDAN
10. ROWL P. EJONA (*sic*)
11. FELIX ULZON
12. RAFFY M. ASIADO
13. PRIMO M. ASIADO
14. ADRIAN P. ABAYAN
15. DANILO BELONO
16. ROMEO MALAGUIT
17. DENNIS BANIA
18. JING MALINAO
19. NILO LABRADOR
20. ROLANDO LABANDELO.

3. GRANT the Petitioners' Motion to Expunge from the Records Respondents' Manifestation [and] Motion filed on 9 July 2019.

4. NOTE the above manifestations.[50]

In a July 30, 2019 Resolution,[51] this Court deferred action on the Motion to Withdraw as Counsel and required petitioners' counsels to:

(a) exert more efforts to reach their clients through means of communication they have established when they engaged them as their clients; (b) provide adequate proof that the 20 other clients have actual knowledge of the contents of their petition; and (c) provide legal justification that the Motion to Withdraw as Counsel may be granted while leaving most of the petitioners without representation.[52]

Petitioners' counsels were given a non-extendible period of seven (7) days[53] to comply with the Resolution.

---

[50] *Id.* at 843-844.

[51] *Id.* at 865-867.

[52] *Id.* at 865-866.

[53] Considering that this Court declared a work suspension on August 2, 2019 and early dismissal of its employees on August 9, 2019, the last equitable day for filing would be August 13, 2019.

On August 14, 2019, petitioners' counsels filed a Motion to Admit Compliance with Motion.[54] In it, they explained that while they were able to send through registered mail a copy of the Compliance to the Office of the Solicitor General on August 13, 2019, "the heavier-than-usual traffic"[55] caused their messenger to arrive a few minutes after 5:00 p.m. and fail to file, the pleading before this Court. Hence, they prayed that the Compliance with Motion still be admitted by this Court.

In their attached Compliance with Motion,[56] petitioners' counsels explained that on August 4, 2019, members of the Integrated Bar of the Philippines-Zambales Chapter met with fisherfolk-petitioners Rolando and Labrador, who provided them with letters stating:

*Mga ginoo!*

*Pakiurong nyo ang kaso naming Abogado vs. DENR*

Rolano M. Labandelo
Aug. 4/ 2019 (*sic*)

. . . . . .

*Mga ginoo:*

*Pakiurong nyo ang kaso namin Abogado vs. DENR*

Nilo Labrador
Oua. 4/ 2019 (*sic*)[57]

---

[54] *Rollo*, pp. 872-874.

[55] *Id.* at 873.

[56] *Id.* at 875-883.

[57] *Id.* at 877.

Petitioners' counsels likewise stated that Atty. Josefina Ela Bueno, the former president of the Integrated Bar of the Philippines-Zambales Chapter, executed an affidavit narrating how she and the other officers of the Chapter met with and explained the Petition's contents to the fisherfolk-petitioners, recounting how the latter voluntarily signed its Verification/ Certification.[58] "However, due to logistical difficulties brought about by the inclement weather and the distance between Zambales and Manila,"[59] petitioners' counsels said that the affidavit could not be attached to the pleading. Hence, they prayed for additional time to file this affidavit.[60]

To prove the difficulties in contacting their clients, petitioners' counsels attached a Certification[61] from the Kalayaan Municipal Administrator, who stated that there had been no cellphone or internet service in Pag-asa Island from the third quarter of 2016 until July 27, 2019.[62]

Petitioners' counsels further manifested that on August 2, 2019, in Puerto Princesa City members of the Integrated Bar of the Philippines-Palawan Chapter met with fisherfolk-petitioner Ricardo Natural (Natural), who expressed his desire to withdraw the case.[63]

Petitioners' counsels likewise manifested that at around 10:00 a.m. on the same day, they were able to videoconference with 12 of the fisherfolk-petitioners, namely, Arzel Belidan, Ronald Grandia, Expedito Magdayao, Jonel Hugo, Robert Valdez, Felix Ulson, Raffy Asiado, Adrian Abayan, Danilo Belono, and Jing Malinao. They did the same with two (2) other fisherfolk-petitioners, Romeo Malaguit and Dennis Bania,

---

[58] *Id.*

[59] *Id.* at 878.

[60] *Id.* at 878 and 882.

[61] *Id.* at 889, Compliance with Motion, Annex "F".

[62] *Id.* at 879.

[63] *Id.* at 879.

at 2:00 p.m. that day. While fisherfolk-petitioner Larry Hugo (Larry) was unable to join the video conference, he, together with the 14 fisherfolk-petitioners, executed a letter stating their desire to join the other fisherfolk-petitioners in withdrawing the Petition.[64]

Petitioners' counsels alleged that Sanny Belidan (Sanny) and Rowel Ejona (Ejona), the remaining fisherfolk-petitioners who have yet to give their conformity to the Petition's withdrawal, could not be contacted despite several attempts through their mobile phones.[65] Leonila De Jesus, the officer-in-charge for Pag-asa Island, also confirmed that they were not in Pag-asa Island.[66] Petitioners' counsels maintained, however, that two (2) officers of the Kalayaan Palawan Farmers and Fisherfolk Association would execute an affidavit narrating the circumstances of their participation and their understanding of the Petition's contents. As such, they requested additional time to submit the affidavit.[67]

In sum, petitioners' counsels prayed that this Court:

1. NOTE this Compliance;
2. GRANT the undersigned counsels' motion for additional time, or until 16 August 2019 (Friday) to file the affidavit of Atty. Josefina Ela Bueno and the letter from the officers of the Kalayaan Palawan Farmers and Fisherfolk Association; and
3. GRANT the Motion to Withdraw the Petition.[68]

This Court resolves to grant the Motion to Withdraw the Petition. The Petition is dismissed, without passing upon any of the substantive issues raised. However, we take this occasion to discuss the following points.

---

[64] *Id.* at 879-880.

[65] *Id.* at 881.

[66] *Id.* at 879.

[67] *Id.* at 881-882.

[68] *Id.* at 882.

The nature of a writ of *kalikasan* is stated in Rule 7, Section 1 of the Rules of Procedure for Environmental Cases:[69]

SECTION 1. Nature of the writ. — The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

*Paje v. Casiño*[70] discusses the scope of the writ and the reliefs that may be granted under it:

The writ is categorized as a special civil action and was, thus, conceptualized as an extraordinary remedy, which aims to provide judicial relief from threatened or actual violation/s of the constitutional right to a balanced and healthful ecology of a magnitude or degree of damage that transcends political and territorial boundaries. It is intended "to provide a stronger defense for environmental rights through judicial efforts where institutional arrangements of enforcement, implementation and legislation have fallen short" and seeks "to address the potentially exponential nature of large-scale ecological threats."

Under Section 1 of Rule 7, the following requisites must be present to avail of this extraordinary remedy: (1) there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology; (2) the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and (3) the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

Expectedly, the Rules do not define the exact nature or degree of environmental damage but only that it must be sufficiently grave, in terms of the territorial scope of such damage, so as to call for the

---

[69] A.M. No. 09-6-8-SC, April 13, 2010.

[70] 752 Phil. 498 (2015) [Per *J*. Del Castillo, *En Banc*].

grant of this extraordinary remedy. The gravity of environmental damage sufficient to grant the writ is, thus, to be decided on a case-to-case basis.

If the petitioner successfully proves the foregoing requisites, the court shall render judgment granting the privilege of the writ of kalikasan. Otherwise, the petition shall be denied. If the petition is granted, the court may grant the reliefs provided for under Section 15 of Rule 7, to wit:

> Section 15. Judgment. — Within sixty (60) days from the time the petition is submitted for decision, the court shall render judgment granting or denying the privilege of the writ of *kalikasan*.
>
> The reliefs that may be granted under the writ are the following:
>
> (a) Directing respondent to permanently cease and desist from committing acts or neglecting the performance of a duty in violation of environmental laws resulting in environmental destruction or damage;
>
> (b) Directing the respondent public official, government agency, private person or entity to protect, preserve, rehabilitate or restore the environment;
>
> (c) Directing the respondent public official, government agency, private person or entity to monitor strict compliance with the decision and orders of the court;
>
> (d) Directing the respondent public official, government agency, or private person or entity to make periodic reports on the execution of the final judgment; and
>
> (e) Such other reliefs which relate to the right of the people to a balanced and healthful ecology or to the protection, preservation, rehabilitation or restoration of the environment, except the award of damages to individual petitioners.

It must be noted, however, that the above enumerated reliefs are non-exhaustive. The reliefs that may be granted under the writ are broad, comprehensive and non-exclusive.[71]

---

[71] *Id.* at 538-540 citing RULES OF PROCEDURE FOR ENVIRONMENTAL CASES and The Rationale and Annotation to the Rules of Procedure for Environmental Cases issued by the Supreme Court, pp. 78-79 and 133.

Thus, a writ of *kalikasan* is an extraordinary remedy that "covers environmental damages the magnitude of which transcends both political and territorial boundaries."[72] The damage must be caused by an unlawful act or omission of a public official, public employee, or private individual or entity. It must affect the inhabitants of at least two (2) cities or provinces.[73]

In civil, criminal, and administrative cases, parties are clear as to the quantum of evidence necessary to prove their case. Civil cases require a preponderance of evidence,[74] or "evidence which is of greater weight, or more convincing, that which is offered in opposition to it[.]"[75] Administrative cases require substantial evidence,[76] or "such relevant evidence as a reasonable

---

[72] *J.* Leonen, Concurring Opinion in *Arigo v. Swift*, 743 Phil. 8, 94 (2014) [Per *J.* Villarama, Jr., *En Banc*] citing The Rationale and Annotation to the Rules of Procedure for Environmental Cases, p. 133.

[73] RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, Sec. 1.

[74] See RULES OF COURT, Rule 133, Sec. 1, which provides:

SECTION 1. Preponderance of evidence, how determined. — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

[75] *Jison v. Court of Appeals*, 350 Phil. 138, 173 (1998) [Per *J.* Davide, Jr., First Division] citing 7 Vicente J. Francisco, *The Revised Rules of Court in the Philippines*, Evidence (Part II, Rules 131-134), 2-4, 542-543 (1973).

[76] See *Montemayor v. Bundalian*, 453 Phil. 158 (2003) [Per *J.* Puno, Third Division] citing *Lorena v. Encomienda*, 362 Phil. 248 (1999) [*J.* Panganiban, Third Division] and *Cortes v. Agcaoili*, 355 Phil. (1998) [Per *J.* Panganiban, *En Banc*].

mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise."[77] Criminal cases require proof beyond reasonable doubt,[78] or "that degree of proof which produces conviction in an unprejudiced mind."[79] In petitions for the issuance of a writ of *kalikasan*, however, the quantum of evidence is not specifically stated.

Other special civil actions such as *certiorari*,[80] prohibition,[81] and *mandamus*[82] must be filed by a party that is directly injured or will be injured by the act and omission complained of. However, a petition for the writ of *kalikasan* may be filed on behalf of those whose right is violated. The Rules of Procedure for Environmental Cases only requires that the public interest group is duly accredited.[83] Filing through representation is also allowed for other extraordinary writs such as *habeas corpus*,[84] *amparo*,[85] and *habeas data*.[86]

---

[77] *Id.* at 167 citing *Enrique v. Court of Appeals*, 299 Phil. 194 (1994) [Per *J*. Quiason, *En Banc*].

[78] See RULES OF COURT, Rule 133, Sec. 2, which 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.

[79] RULES OF COURT, Rule 133, Sec. 2.

[80] See RULES OF COURT, Rule 65, Sec. 1.

[81] See RULES OF COURT, Rule 65, Sec. 2.

[82] See RULES OF COURT, Rule 65, Sec, 3.

[83] See RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, Sec. 1.

[84] See RULES OF COURT, Rule 102, Sec. 3.

[85] A.M. No. 07-9-12-SC (2007), Sec. 2.

[86] A. M. No. 08-1-16-SC (2008), Sec. 2.

This Court explained that "the Rules [of Procedure for Environmental Cases] do[es] not define the exact nature or degree of environmental damage but only that it must be sufficiently grave, in terms of the territorial scope of such damage[.]"[87] Every petition, therefore, must be examined on a case-to-case basis. It is imperative, however, that even before a petition for its issuance can be filed, the petition must be *verified* and must contain:

(a) The personal circumstances of the petitioner;

(b) The name and personal circumstances of the respondent or if the name and personal circumstances are unknown and uncertain, the respondent may be described by an assumed appellation;

(c) The environmental law, rule or regulation violated or threatened to be violated, the act or omission complained of, and the environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

(d) All relevant and material evidence consisting of the affidavits of witnesses, documentary evidence, scientific or other expert studies, and if possible, object evidence;

(e) The certification of petitioner under oath that: (1) petitioner has not commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency, and no such other action or claim is pending therein; (2) if there is such other pending action or claim, a complete statement of its present status; (3) if petitioner should learn that the same or similar action or claim has been filed or is pending, petitioner shall report to the court that fact within five (5) days therefrom; and

(f) The reliefs prayed for which may include a prayer for the issuance of a TEPO.[88]

Parties that seek the issuance of the writ of *kalikasan*, whether on their own or on others' behalf, carry the burden of

---

[87] *Paje v. Casiño*, 752 Phil. 498, 539 (2015) [Per *J.* Del Castillo, *En Banc*].

[88] RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, Sec. 2.

substantiating the writ's elements. Before private parties or public interest groups may proceed with the case, they must be ready with the evidence necessary for the determination of the writ's issuance.

In *LNL Archipelago Minerals v. Agham Party List*,[89] this Court denied the petition for the issuance of the writ filed by a party list group advocating for the protection of the environment. This was due to the group's failure to substantiate its allegations:

> It is well-settled that a party claiming the privilege for the issuance of a Writ of Kalikasan has to show that a law, rule or regulation was violated or would be violated. In the present case, the allegation by Agham that two laws — the Revised Forestry Code, as amended, and the Philippine Mining Act — were violated by LAMI was not adequately substantiated by Agham. Even the facts submitted by Agham to establish environmental damage were mere general allegations.
>
> Second, Agham's allegation that there was a "mountain" [levelled] in LAMI's port site was earlier established as false as the "mountain" was non-existent as proven by the testimonies of the witnesses and reports made by environmental experts and persons who have been educated and trained in their respective fields.[90]

This was, unfortunately, not the only time that environmental advocates have come to this Court unprepared. In *Paje*,[91] this Court denied a petition filed against the construction of a coal-fired power plant in Subic Bay Industrial Park for the public interest group's failure to provide the necessary evidence:

> The records of this case painfully chronicle the embarrassingly inadequate evidence marshalled by those that initially filed the Petition for a Writ of *Kalikasan*. Even with the most conscientious perusal of the records and with the most sympathetic view for the interests of the community and the environment, the obvious conclusion that there was not much thought or preparation in substantiating the allegations

---

[89] 784 Phil. 456 (2016) [Per *J.* Carpio, *En Banc*].

[90] *Id.* at 480.

[91] 752 Phil. 498 (2015) [Per *J.* Del Castillo, *En Banc*].

made in the Petition cannot be hidden. Legal advocacy for the environment deserves much more.[92]

The imminence or emergency of an ecological disaster should not be an excuse for litigants to do away with their responsibility of substantiating their petitions before the courts. As with any special civil action for extraordinary writs, parties seeking the writ of *kalikasan* must be ready with the evidence required to prove their allegations by the time the petition is filed. Hasty slipshod petitions, filed in the guise of environmental advocacy, only serve to undermine that advocacy:

> Environmental advocacy is primarily motivated by care and compassion for communities and the environment. It can rightly be a passionately held mission. It is founded on faith that the world as it is now can be different. It implies the belief that the longer view of protecting our ecology should never be sacrificed for short-term convenience.
>
> However, environmental advocacy is not only about passion. It is also about responsibility. There are communities with almost no resources and are at a disadvantage against large projects that might impact on their livelihoods. Those that take the cudgels lead them as they assert their ecological rights must show that they have both the professionalism and the capability to carry their cause forward. When they file a case to protect the interests of those who they represent, they should be able to make both allegation and proof. The dangers from an improperly managed environmental case are as real to the communities sought to be represented as the dangers from a project by proponents who do not consider their interests.[93]

Environmental advocacy requires more than passion for saving the environment. Thus:

> Certainly, there is a need for leaders, organizations, and dedicated movements that amplify the concerns of communities, groups, and identities which tend to be put in the margins of forums dominated

---

[92] *J.* Leonen, Concurring and Dissenting Opinion in *Paje v. Casiño*, 752 Phil. 498, 715 (2015) [Per *J.* Del Castillo, *En Banc*].

[93] *Id.*

by larger and more politically connected commercial interests. This includes forums that create and implement regulatory frameworks. Liberal democratic deliberations at times fail to represent the silenced majority as it succumbs to the powerful minority.

While acknowledging this reality, we also need to be careful that the chambers of this court do not substitute for the needed political debate on public issues or the analytical rigor required by truths in science. We are Justices primarily. While politics and science envelope some of our important decisions, we should not lose the humility that the Constitution itself requires of us. We are an important part of the constitutional order: always only a part, never one that should dominate. Our decisions have the veneer of finality. It should never, however, be disguised superiority in any form or manner.

Political debates indeed also mature when we pronounce the nature of fundamental rights in concrete cases. Before cases ripen — or, as in this case, when it has become moot — restraint will be the better approach. We participate in the shaping of the content of these fundamental rights only with the guidance of an actual case. This, among others, distinguishes the judicial function from the purely political engagement.

. . . . . .

If any, the resolution of this case implies rigor in environmental advocacy. Vigilance and passion are the hallmarks of the public interest movement. There is no reason that the members of this movement should not evolve the proper skills and attitudes to properly work the legal system and understand the role of the judicial process. Environmental advocacy also requires an understanding of science and the locating of the proper place of various norms such as the precautionary principle. After all, representation of marginalized community voices deserves excellent representation and responsible leadership. Filing a judicial remedy almost two years too late and without the required scientific rigor patently required by the allegations and the arguments misses these standards.[94]

---

[94] *J.* Leonen, Concurring and Dissenting Opinion in *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*, 774 Phil. 508, 721-722 (2015) [Per *J.* Villarama, *En Banc*].

A writ of *kalikasan* cannot and should not substitute other remedies that may be available to the parties, whether legal, administrative, or political. Mere concern for the environment is not an excuse to invoke this Court's jurisdiction in cases where other remedies are available:

> The function of the extraordinary and equitable remedy of a Writ of *Kalikasan* should not supplant other available remedies and the nature of the forums that they provide. The Writ of *Kalikasan* is a highly prerogative writ that issues only when there is a showing of actual or imminent threat and when there is such inaction on the part of the relevant administrative bodies that will make an environmental catastrophe inevitable. It is not a remedy that is availing when there is no actual threat or when imminence of danger is not demonstrable. The Writ of *Kalikasan* thus is not an excuse to invoke judicial remedies when there still remain administrative forums to properly address the common concern to protect and advance ecological rights. After all, we cannot presume that only the Supreme Court can conscientiously fulfill the ecological duties required of the entire state.[95]

Moreover, there are other legal remedies available:

> The writ of *kalikasan* is not an all-embracing legal remedy to be wielded like a political tool. It is both an extraordinary and equitable remedy which assists to prevent environmental catastrophes. It does not replace other legal remedies similarly motivated by concern for the environment and the community's ecological welfare. Certainly, when the petition itself alleges that remedial and preventive remedies have occurred, the functions of the writ cease to exist. In case of disagreement, parties need to exhaust the political and administrative arena. Only when a concrete cause of action arises out of facts that can be proven with substantial evidence may the proper legal action be entertained.[96]

A writ of continuing *mandamus*, on the other hand, "is a special civil action that may be availed of 'to compel the

---

[95] *J.* Leonen, Concurring and Dissenting Opinion in *Paje v. Casiño*, 752 Phil. 498, 714 (2015) [Per *J.* Villarama, Jr., *En Banc*].

[96] *J.* Leonen, Concurring Opinion in *Arigo v. Swift*, 743 Phil. 8, 71 (2014) [Per *J.* Villarama, Jr., *En Banc*].

performance of an act specifically enjoined by law.'"[97] Rule 8, Section 1 of the Rules of Procedure for Environmental Cases provides:

SECTION 1. Petition for continuing *mandamus*. — When any agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty, attaching thereto supporting evidence, specifying that the petition concerns an environmental law, rule or regulation, and praying that judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied, and to pay damages sustained by the petitioner by reason of the malicious neglect to perform the duties of the respondent, under the law, rules or regulations. The petition shall also contain a sworn certification of non-forum shopping.

The rationale for the grant of the writ was explained in *Boracay Foundation, Inc. v. Province of Aklan*:[98]

> Environmental law highlights the shift in the focal-point from the initiation of regulation by Congress to the implementation of regulatory programs by the appropriate government agencies.
>
> Thus, a government agency's inaction, if any, has serious implications on the future of environmental law enforcement. Private individuals, to the extent that they seek to change the scope of the regulatory process, will have to rely on such agencies to take the initial incentives, which may require a judicial component. Accordingly, questions regarding the propriety of an agency's action or inaction will need to be analyzed.

---

[97] *Boracay Foundation, Inc. v. Province of Aklan*, 689 Phil. 218, 271 (2012) [Per J. Leonardo-De Castro, *En Banc*] citing The Rationale and Annotation to the Rules of Procedure for Environmental Cases p. 45.

[98] 689 Phil. 218 (2012) [Per. J. Leonardo-De Castro, *En Banc*].

> This point is emphasized in the availability of the remedy of the writ of *mandamus*, which allows for the enforcement of the conduct of the tasks to which the writ pertains: the performance of a legal duty.[99]

While Rule 2[100] of the Rules of Procedure for Environmental Cases provides a civil procedure for the enforcement or violation of environmental laws, Rule 8 provides a distinct remedy and procedure for allegations of unlawful neglect in the enforcement of environmental laws or the unlawful exclusion in the use or enjoyment of an environmental right. As with the procedure in special civil actions for *certiorari*, prohibition, and *mandamus*, this procedure also requires that the petition should be sufficient in form and substance before a court can take further action. Failure to comply may be basis for the petition's outright dismissal.[101]

Sufficiency in the substance of a petition for a writ of continuing *mandamus* requires:

---

[99] *Id.* at 271-272 citing The Rationale and Annotation to the Rules of Procedure for Environmental Cases, p. 76.

[100] See RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, Secs. 4 and 5. They provide:

SECTION 4. *Who may file*. — Any real party in interest, including the government and juridical entities authorized by law, may file a civil action involving the enforcement or violation of any environmental law.

SECTION 5. *Citizen suit*. — Any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws. Upon the filing of a citizen suit, the court shall issue an order which shall contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper of a general circulation in the Philippines or furnish all affected barangays copies of said order.

Citizen suits filed under R.A. No. 8749 and R.A. No, 9003 shall be governed by their respective provisions.

[101] See *Dolot v. Paje*, 716 Phil. 458 [Per *J*. Reyes, *En Banc*]. See also RULES OF COURT, Rule 65 and Rules of Procedure for Environmental Cases, Rule 8.

. . . that the petition must contain substantive allegations specifically constituting an actionable neglect or omission and must establish, at the very least, a *prima facie* basis for the issuance of the writ, *viz.*: (1) an agency or instrumentality of government or its officer unlawfully neglects the performance of an act or unlawfully excludes another from the use or enjoyment of a right; (2) the act to be performed by the government agency, instrumentality or its officer is specifically enjoined by law as a duty; (3) such duty results from an office, trust or station in connection with the enforcement or violation of an environmental law, rule or regulation or a right therein; and (4) there is no other plain, speedy and adequate remedy in the course of law.[102] (Citation omitted)

The writ is essentially a *continuing* order of the court, as it:

. . . "permits the court to retain jurisdiction after judgment in order to ensure the successful implementation of the reliefs mandated under the court's decision" and, in order to do this, "the court may compel the submission of compliance reports from the respondent government agencies as well as avail of other means to monitor compliance with its decision."[103]

However, requiring the periodic submission of compliance reports does not mean that the court acquires supervisory powers over administrative agencies. This interpretation would violate the principle of the separation of powers since courts do not have the power to enforce laws, create laws, or revise legislative actions.[104] The writ should not be used to supplant executive or legislative privileges. Neither should it be used where the remedies required are clearly political or administrative in nature.

For this reason, every petition for the issuance of a writ of continuing *mandamus* must be clear on the guidelines sought

---

[102] *Id.* at 472.

[103] *Boracay Foundation, Inc. v. Province of Aklan*, 689 Phil. 218, 272 (2012) [Per *J.* Leonardo-De Castro, *En Banc*] citing The Rationale and Annotation to the Rules of Procedure for Environmental Cases, p. 45.

[104] *See J.* Leonen, Dissenting Opinion in *West Tower Condominium Corporation v. First Philippine Industrial Corporation*, 760 Phil. 304 (2015) [Per *J.* Velasco, Jr., *En Banc*].

for its implementation and its termination point. Petitioners cannot merely request the writ's issuance without specifically outlining the reliefs sought to be implemented and the period when the submission of compliance reports may cease.

## II

This Court likewise takes this occasion to pass upon the prior Motion for Withdrawal as Counsels for 20 of the fisherfolk-petitioners.

There are 41 petitioners here, consisting of 37 fishers from Palawan, three (3) fishers from Zambales, and the Integrated Bar of the Philippines. Of the 37 fishers from Palawan, 13 did not verify the Petition.[105] Nineteen (19) of the 40 fisherfolk-petitioners from both Palawan and Zambales submitted affidavits[106] to respondent Bureau of Fisheries and Aquatic Resources disowning the Petition. In summary:

| | **Name of petitioner** | **Whether petitioner signed the Petition** | **Whether petitioner submitted an affidavit to the BFAR disowning the Petition** | **Whether petitioner requested to withdraw the Petition as of July 19, 2019** | **Whether petitioners' counsels asked to withdraw as counsels as of July 19, 2019** |
|---|---|---|---|---|---|
| 1. | Monico A. Abogado | Yes | Yes | Yes | |
| 2. | Roberto M. Asiado | Yes | Yes | Yes | |
| 3. | Larry Hugo | Yes | Yes | | Yes |

[105] *Rollo*, pp. 38-40.

[106] *Id.* at 778-808.

| | | | | | |
|---|---|---|---|---|---|
| 4. | Angelo Sadang | Yes | Yes | Yes | |
| 5. | Nonelon Balbontin | Yes | | Yes | |
| 6. | Salito Lagrosa | No | | | |
| 7. | Arzel Belidan | Yes | Yes | | Yes |
| 8. | Ronald Grandia | Yes | Yes | | Yes |
| 9. | Troy Lagrosa | No | | | |
| 10. | Ronel Badilla | Yes | | | Yes |
| 11. | Archie Graciano | No | | | |
| 12. | Regidor Asiado | No | Yes | | |
| 13. | Ely Lopez | No | | | |
| 14. | Expedito Magdayao | Yes | Yes | | Yes |
| 15. | Reny Magbanua | Yes | | Yes | |
| 16. | Romulo Cana, Jr. | No | Yes | | |
| 17. | Rogelio Hingpit | No | | | |
| 18. | Jonel Hugo | Yes | | | Yes |
| 19. | Robert Valdez | Yes | Yes | | Yes |
| 20. | Rizen Galvan | No | Yes | | |
| 21. | Ricardo Natural | Yes | | | Yes |
| 22. | Sanny Belidan | Yes | | | Yes |

| | | | | | |
|---|---|---|---|---|---|
| 23. | Rowel P. Ejona | Yes | | | Yes |
| 24. | Felix Ulzon | Yes | Yes | | Yes |
| 25. | Raffy M. Asiado | Yes | Yes | | Yes |
| 26. | Primo M. Asiado | Yes | Yes | | Yes |
| 27. | Adrian P. Abayan | Yes | Yes | | Yes |
| 28. | Randy Dacumos | Yes | Yes | Yes | |
| 29. | Danilo Belono | Yes | Yes | | Yes |
| 30. | Romeo Malaguit | Yes | Yes | | Yes |
| 31. | Dennis Bania | Yes | Yes | | Yes |
| 32. | Jason Villamor | No | | | |
| 33. | Gary Castillos | No | | | |
| 34. | Alberto Sonio | No | | | |
| 35. | Dolie Dusong | No | | | |
| 36. | BJ Piring | No | | | |
| 37. | Jing Malinao | Yes | Yes | | Yes |
| 38. | Nilo Labrador | Yes | Yes | | Yes |
| 39. | Wildredo Labandelo | Yes | Yes | Yes | |
| 40. | Rolando Labandelo | Yes | | | Yes |
| 41. | Integrated Bar of the Philippines | Yes | | Yes | |

On July 19, 2019, petitioners' counsels requested to withdraw as counsels for 18 of the fisherfolk-petitioners, namely, Natural, Larry, Sanny, Ejona, Arzel Belidan, Ronald Grandia, Ronel Badilla, Expedito Magdayao, Jonel Hugo, Robert Valdez, Felix Ulzon, Raffy M. Asiado, Primo M. Asiado, Adrian P. Abayan, Danilo Belono, Romeo Malaguit, Dennis Bania, and Jing Malinao, on the ground that they were "on Pag-asa Island and the undersigned counsels cannot travel to meet them there; or . . . communicate with them as Philippine telephone companies have no or very weak network coverage there."[107] As for two (2) of the fisherfolk-petitioners in Zambales, they reasoned that Labrador and Rolando have since moved away and did not leave any contact details.[108]

Rule 138, Section 26 of the Rules of Court provides the rule on withdrawal of counsels:

> RULE 138
> Attorneys and Admission to Bar
>
> . . . . . .
>
> SECTION 26. Change of attorneys. — An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party.

A counsel may only be allowed to withdraw from the action either with the written consent of the client or "from a good cause." In *Orcino v. Gaspar*:[109]

---

[107] *Id.* at 839.

[108] *Id.* at 840-841.

[109] 344 Phil. 792 (1997) [Per *J.* Puno, Second Division].

The rule in this jurisdiction is that a client has the absolute right to terminate the attorney-client relation at any time with or without cause. The right of an attorney to withdraw or terminate the relation other than for sufficient cause is, however, considerably restricted. Among the fundamental rules of ethics is the principle that an attorney who undertakes to conduct an action impliedly stipulates to carry it to its conclusion. He is not at liberty to abandon it without reasonable cause. A lawyer's right to withdraw from a case before its final adjudication arises only from the client's written consent or from a good cause.[110]

Canon 22, Rule 22.01 of the Code of Professional Responsibility provides the "good causes" under which a counsel may withdraw without the written conformity of the client:

CANON 22 — A LAWYER SHALL WITHDRAW HIS SERVICES ONLY FOR GOOD CAUSE AND UPON NOTICE APPROPRIATE IN THE CIRCUMSTANCES.

Rule 22.01 A lawyer may withdraw his services in any of the following cases:

a) When the client pursues an illegal or immoral course of conduct in connection with the matter he is handling;

b) When the client insists that the lawyer pursue conduct violative of these canons and rules;

c) When his inability to work with co-counsel will not promote the best interest of the client;

d) When the mental or physical condition of the lawyer renders it difficult for him to carry out the employment effectively;

e) When the client deliberately fails to pay the fees for the services or fails to comply with the retainer agreement;

---

[110] *Id.* at 797-798 citing *Rincoanda Telephone Company, Inc. v. Buenviaje*, 263 Phil. 654 (1990) [Per *J*. Medialdea, First Division]; REVISED RULES OF COURT, Rule 138, Sec. 26(2); Martin, *Legal and Judicial Ethics*, p. 102 [1988]; Pineda, *Legal and Judicial Ethics*, p. 266 [1994]; 7 C.J.S. 940; *Dais v. Garduño*, 49 Phil. 165, 169 (1925) [Per *J*. Ostrand, *En Banc*]; *Stork Country v. Mishel*, 173 N.W. 817, 820, 6 ALR 174 (1919); Agpalo, *Legal Ethics*, pp. 289-290 (1992); CODE OF PROFESSIONAL RESPONSIBILITY, Canon 22; and CANONS OF PROFESSIONAL ETHICS, Canon 44.

f) When the lawyer is elected or appointed to public office; and

g) Other similar cases.

Failure to contact the client despite diligent efforts is not considered under this Rule as a "good cause" upon which a lawyer may withdraw from the case without first seeking the client's written conformity. Had this Court granted the Motion to Withdraw as Counsel, 20 fisherfolk-petitioners would be left without counsel to inquire if they were still pursuing the case.

Even if we were to apply liberality and consider the fisherfolk-petitioners' affidavits disowning the Petition as their written conformity to counsels' withdrawal, the other fisherfolk-petitioners who verified the Petition but submitted no affidavit would have been left without any representation:

1. Ronel Badilla
2. Jonel Hugo
3. Ricardo Natural
4. Sanny Belidan
5. Rowel P. Ejona
6. Rolando Labandelo

To recall, petitioners' counsels filed a Motion for Extension of Time to Confer with Clients and Obtain Special Authority,[111] citing as basis Rule 138, Section 23 of the Rules of Court, which reads:

> SECTION 23. Authority of attorneys to bind clients. — Attorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, and in taking appeals, and in all matters of ordinary judicial procedure. But they cannot, without special authority, compromise their client's litigation, or receive anything in discharge of a client's claim but the full amount in cash.

Counsels' filing of their Motion to Withdraw as Counsel without prior notice to the clients is a violation of the very

---

[111] *Rollo*, pp. 809-813.

rule they sought to uphold. The Petition's withdrawal compromises their clients' litigation, since the case will be dismissed without their consent and without prior notice. In *Natividad v. Natividad*:[112]

> The cause of action, the claim or demand sued upon, and the subject matter of the litigation are all within the exclusive control of the client; and the attorney may not impair, compromise, settle, surrender, or destroy them without his client's consent.[113]

*Monteverde v. Court of Industrial Relations*[114] likewise held:

> The main issue is whether or not the Court of Industrial Relations correctly dismissed the case for unfair labor practice after it had rendered a decision dated March 21, 1968 on the motion of Atty. Juan G. Sison, Jr., counsel of the petitioners, without inquiring into the authority of the lawyer to ask for the dismissal of the case.
>
> It was stated in the dissenting opinion of Judge Amando C. Bugayong that nowhere in the minutes of the hearing of July 23, 1969 does it appear that the complainants have admitted in open court that they had authorized their counsel, Atty. Juan G. Sison, Jr., to enter into a settlement with the FIBISCO. All that is recorded in the minutes is the request for the sending of a notice of hearing to Atty. Juan G. Sison, Jr. both at his known address at Rm. 313 de Leon Bldg., Rizal Avenue, Manila and at 745 Dos Castillas, Sampaloc, Manila.
>
> It is elementary that lawyers "cannot, without special authority, compromise their client's litigation, or receive anything in discharge of a client's claim but the full amount in cash."
>
> It is clear that the Court of Industrial Relations erred in dismissing the case on the motion of Atty. Juan G. Sison, Jr. alone without inquiring into his authority. The Court of Industrial Relations did not even bother to find out what kind of settlement was entered into between Atty. Juan G. Sison, Jr. and the FIBISCO.[115]

---

[112] 51 Phil. 613 (1928) [Per *J*. Malcolm, *En Banc*].

[113] *Id.* at 619 citing 6 C. J. pp. 643, 646-648, 76 Am. Dec. p. 259 and *Holker vs. Parker* [1813], 7 Cranch, 436.

[114] 169 Phil. 253 (1977) [Per *J*. Fernandez, First Division].

[115] *Id.* at 256-257 citing REVISED RULES OF COURT, Rule 138, Sec. 23.

Thus, in *Belandres vs. Lopez Sugar Central Mill Company, Inc.*:[116]

"The broad implied or apparent powers of an attorney with respect to the conduct or control of litigation are, however, limited to matters which relate only to the procedure or remedy. The employment of itself confers upon the attorney no implied or apparent power or authority over the subject matter of the cause of action or defense; and, unless the attorney has expressly been granted authority with respect thereto, the power to deal with or surrender these matters is regarded as remaining exclusively in the client."

"The line of demarcation between the respective rights and powers of an attorney and his client is clearly defined. The cause of action, the claim or demand sued upon, and the subject matter of the litigation are all within the exclusive control of a client; and an attorney may not impair, compromise, settle, surrender, or destroy them without his client's consent. But all the proceedings in court to enforce the remedy to bring the claim, demand, cause of action, or subject matter of the suit to hearing, trial, determination, judgment, and execution, are within the exclusive control of the attorney."[117]

To prevent compromising the interests of the remaining fisherfolk-petitioners, this Court, instead of granting the Motion to Withdraw as Counsel, required counsels to exert more efforts in contacting their clients. In *Mercado v. Commission on Higher Education*:[118]

The rule that the withdrawal of a counsel with the written conformity of the client is immediately effective once filed in court, however, is not absolute. When the counsel's impending withdrawal with the written conformity of the client would leave the latter with no legal representation in the case, it is an accepted practice for courts to order the deferment of the effectivity of such withdrawal until such time that it becomes certain that service of court processes and other papers to the party-client would not thereby be compromised — either by the due substitution of the withdrawing counsel in the case or by

---

[116] 97 Phil. 100 (1955) [Per *J.* Labrador, First Division].

[117] *Id.* at 104-105 citing 7 C. J. S. pp. 899-900 and 6 C. J. S., p. 643.

[118] 699 Phil. 419 (2012) [Per *J.* Perez, *En Banc*].

the express assurance of the party-client that he now undertakes to himself receive serviceable processes and other papers. Adoption by courts of such a practice in that particular context, while neither mandatory nor sanctioned by a specific provision of the Rules of Court, is nevertheless justified as part of their inherent power to see to it that the potency of judicial processes and judgment are preserved.[119]

Petitioners' counsels had the responsibility, right at the start of their engagement, to establish the modality of communication with their clients. Mere difficulty in contacting the client is not a sufficient reason for his or her counsel to abandon his or her cause, more so in this case where counsels are rendering legal aid *pro bono*. Counsels should exert the same amount of professionalism, regardless of their client's capacity to pay for their services.

Nonetheless, it would be unjust for this Court to compel the two (2) remaining fisherfolk-petitioners, Sanny and Ejona, to continue with this case without legal counsel. Petitioners' counsels have likewise manifested that they exerted earnest attempts to contact them on their cellular phones but were unable to as the two were no longer in Pag-asa Island. This Court also takes note of the six (6) fisherfolk-petitioners' handwritten letter dated July 15, 2019, in which they manifested their representation of the other members of the fisherfolk association:

*Bilang mga kinatawan ng samahan ng Fisherfolks ng Kalayaan at upang patunayan ang kagustuhan ng nakararami, aming inilagda ang aming mga pangalan ngayong araw na ito sa Lungsod ng Pto. Princesa*.[120] (Emphasis supplied)

For this reason, this Court considers the Petition withdrawn as to all fisherfolk-petitioners. The case is considered dismissed, without passing upon any of the substantive issues raised.

**WHEREFORE,** the Motion to Withdraw the Petition is **GRANTED**. The case is considered **DISMISSED**, without passing upon any of the substantive issues raised.

---

[119] *Id.* at 436.

[120] *Rollo*, p. 838.

In view of the unusual procedural developments of this case, counsels of petitioners are **STERNLY WARNED** to be mindful of their duties and obligations under the Code of Professional Responsibility and that the same or similar infractions in the future shall be dealt with more severely by this Court.

**SO ORDERED.**

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

*Peralta* and *Jardeleza, JJ.*, see separate opinions.

*Carpio*, * *J.*, no part.

## SEPARATE OPINION

**PERALTA, *J.*:**

I agree that the motion for withdrawal of the *Petition for the Issuance of The Writ of Kalikasan and The Writ of Continuing Mandamus* should be granted. I must point out, however, that the petition should have been dismissed outright due to procedural and substantive defects.

The petition for writ of *kalikasan* should have been dismissed outright for the following reasons: (1) no judicial affidavits were attached to the petition to support that claim that respondents omitted, failed and/or refused to enforce Philippine Laws at the Panatag Shoal, the Ayungin Shoal, and the Panganiban reef; (2) the foreign fishermen and other foreign entities who violated Philippine environmental laws in the said shoals and reef, have not been impleaded in the petition as respondents; and (3) the factual and evidentiary issues raised must be referred to the Court of Appeals, for appropriate resolution.

---

* No part per Resolution dated July 2, 2019.

The petition for writ of continuing *mandamus* should, likewise, be dismissed outright, because there is no clear allegation how respondents have failed or have been remiss in performing their duties in enforcing environmental laws. The petition should have been filed first with the Court of Appeals because there are factual and evidentiary issues raised. Although the rules may or may not allow a hearing, the allegations in the petition clearly show facts that have to be established and proven, through judicial affidavits and memoranda.

The case of *MMDA, et al. v. Concerned Residents of Manila Bay, etc., et al.*[1] is different from this case because the Court took judicial notice of the pollution in Manila Bay, and the parties did not raise any contradictory facts. Here, the Office of the Solicitor General disputes the allegations insofar as respondents are being accused of malicious neglect in performing their official duties under the law, rules or regulations.

Section 2, Rule 7 of the Rules of Procedure for Environmental Cases requires that the verified petition for issuance of a writ of *kalikasan* should contain, among other matters, all relevant and material evidence consisting of the affidavits of witnesses, documentary evidence, scientific and other expert studies, and if possible, object evidence. Here, nothing in the Annexes attached to the petition pertains to respondents' supposed omission, failure and/or refusal to enforce Philippine Laws in Panatag Shoal, Ayungin Shoal, and Panganiban reef.

During the oral arguments on July 2, 2019, counsel for petitioners admitted the absence of judicial affidavits, and I explained the rationale for attaching such affidavits to support a petition for writ of *kalikasan*, thus:

**ASSOCIATE JUSTICE PERALTA:**

Some of the questions that I was thinking of asking you have already been asked by Justice Leonen. So I will just ask you some clarificatory questions. Number one is that **there is an admission**

---

[1] 595 Phil. 305 (2008).

**from you that x x x there are no judicial affidavits or competent evidence attached to your petition?**

**ATTY. PALACIOS:**

Yes, Your Honor, we're invoking the rule of the Rules of Court on mandatory judicial notice where the Court will take judicial notice without the requirement of submission of evidence, Your Honor.

**ASSOCIATE JUSTICE PERALTA:**

**But it is clear from the special rule that the petition must be accompanied by judicial affidavits. The reason why we require that is that, in all writs of *kalikasan* when we were preparing, when we were drafting this rule, all the issues that will be raised are factual. That's why we require the submission of judicial affidavit and competent evidence.** Now[,] if the facts that you alleged are disputed by the Solicitor General, can we resolve your petition? Just merely saying that we are, you are using the evidence submitted in the arbitral proceedings pertaining to the acts allegedly committed in the years 2012, 2013 and 2014?

**ATTY. PALACIOS:**

Well, yes, Your Honor. The Court may want to look at those submissions by the executive branch which actually are matters of mandatory judicial notice and. . . (interrupted)

**ASSOCIATE JUSTICE PERALTA:**

**The reason why we require judicial affidavit is that x x x the opposing party can cross-examine the person who alleged that an illegal act was committed. Without the judicial affidavit, which will now be the direct testimony of the witness, we cannot test the credibility of the affiant[,] because as I've said a while ago, we anticipated that all writs of *kalikasan* will involve factual issues because you just look at the elements, acts complained of, you have to establish what are the acts complained of, and then, the respondent, in their answer or in the return of the writ must likewise submit judicial affidavits and then indicate their defenses.** So how can we resolve this petition without the judicial affidavits on the part of the petitioners[,] and also judicial affidavits on the part of the respondents?

**ATTY. PALACIOS:**

Yes, Your Honor. I think this case presents a unique opportunity for the Court to examine the situation where there are x x x essential facts which can support the grant.

**ASSOCIATE JUSTICE PERALTA:**

Yeah, to me that's my problem. Because what you are saying is that the facts are not disputed.[2]

During the oral arguments, petitioner also implied that they did not implead as respondents the indispensable parties, namely, the foreign fishermen and other foreign entities who violated Philippine environmental laws in the said shoals and reef, thus:

**ASSOCIATE JUSTICE PERALTA:**

My other concern is this. **The acts complained of not only against the public officials, but also other persons because you have to implead the other persons who are violating our environmental law, to me, these are indispensable parties. If we issue a privilege of writ of *kalikasan*, would it be sufficient just to address them to the public official. Is it not that we have also to address those who are violating, those who are violating our environmental rights?**

**ATTY. PALACIOS:**

We believe, Your Honor, that **we have impleaded the necessary parties for this case**. And that we do not have to implead the private individuals who violated the Philippine environmental laws, they, Your Honor, are subject of criminal or administrative prosecution by the respondents.

**ASSOCIATE JUSTICE PERALTA:**

Probably, that will fall on x x x continuing *mandamus*. **The writ of *kalikasan* is to stop the parties from violating our environment. If it's the public official that is violating our environmental right, then, it can be the subject of the writ of *kalikasan* because the respondents here are public officials.**

**ATTY. PALACIOS:**

Yes, Your Honor.

**ASSOCIATE JUSTICE PERALTA:**

Who are supposed to enforce our environmental laws, *sa* continuing *mandamus iyan.*

---

[2] TSN, Oral Arguments, July 2, 2019, pp. 52-53. (Emphasis added)

**ATTY. PALACIOS:**
Yes, Your Honor.

**ASSOCIATE JUSTICE PERALTA:**
The writ of *kalikasan* is actually addressed to those who are violating[,] not to those who do not enforce the environmental law[.] [T]hat is why, probably, you filed two petitions in one petition. You put writ of *kalikasan* and writ of *mandamus* because if the writ of *kalikasan* is not proper then probably writ of *mandamus* will substitute[,] or will be the alternative resolution to your petitions, is it not?

**ATTY. PALACIOS:**
Yes, Your Honor, if I may respond, we are looking at the rules of writ of *kalikasan*, Rule 7[,] and in the section on the reliefs available to the parties[,] one of the reliefs, number one, the first relief that's available to the parties is a directive from the Court for the violator to cease and desist from the unlawful neglect of their duty, Your Honor.

**ASSOCIATE JUSTICE PERALTA:**
Because you know, Counsel, if we issue the privilege of the writ, and therefore, we will tell those who violate the rule against whom will the writ be issued?

**ATTY. PALACIOS:**
Your Honor.

**ASSOCIATE JUSTICE PERALTA:**
There are no respondents who are supposed to be the violators.

**ATTY. PALACIOS:**
Yes, Your Honor.... (interrupted)

**ASSOCIATE JUSTICE PERALTA:**
As simple as this, you have a company violating our environmental law, alright? And probably [emitting obnoxious,] or something that is obnoxious, and therefore, violation of our environmental law. Here comes a company. The writ will be issued against the company that's violating the environmental law. Here, you want a writ of *kalikasan* to be issued against the public official. The public official is not violating our environmental law. According to you[,] they are neglecting their duties to enforce the environmental law.

**ATTY. PALACIOS:**
Yes, Your Honor.[3]

The petition for writ of continuing *mandamus* should also be dismissed outright, because there is no clear allegation and judicial affidavits to show how respondents have failed or have been remiss in performing their duties in enforcing environmental laws. During the oral arguments, I discussed the nature of omission on the part of a public official to warrant the issuance of such writ of *mandamus*, the need for judicial affidavits and the factual and evidentiary nature of issues involved in a writ of *kalikasan* proceeding, thus:

**ASSOCIATE JUSTICE PERALTA:**
Okay, now let us go to continuing *mandamus*. The law is very clear [...] **unlawfully neglects his duty**. **We anticipated when we [were] drafting these rules[,] that if we do not place unlawfully neglects then mere negligence, the public official will be the subject matter of the continuing *mandamus*. Because there is [a] difference between mere negligence and unlawfully neglecting his duties. So can you [see] based [on] your evidence that the public officials are unlawfully neglecting their duties in enforcing environmental law. There is no judicial affidavit to prove that in the petition.** So what shall we do? I think the law is very clear. **Unlawfully neglect is not a mere negligence. So that the respondents could have also submitted their evidence to show that probably there is negligence but they did not unlawfully neglect their duties. That's why you know, we anticipated that all of these x x x, may involve factual issues that's why we required that these cases should also be brought to the Court of Appeals because the Court of Appeals is a Court where it can receive evidence[,] not the Supreme Court.** The Supreme Court was only included there because we do not divest the Supreme Court of jurisdiction of any case that may be brought before any other court. That's why the Supreme Court is included there as a forum over which the petition may be filed. But the issues are factual[.] [W]e do not [...] we cannot receive evidence here and require the parties to testify here, and then, cross-examine.

---

[3] *Id.* at 55-57. (Emphasis added)

**ATTY. PALACIOS:**
Yes, Your Honor.

**ASSOCIATE JUSTICE PERALTA:**
And then, because of the urgency, we require that this petition should be resolved within sixty (60) days. I hope the Solicitor General will not dispute the facts as you have stated a while ago. Because the moment that they will dispute the facts, who will now resolve [...] [t]hat the evidence of the petitioners is more credible than the evidence of the Solicitor General[?] Who will now resolve it?

**ATTY. PALACIOS:**
Yes, Your Honor.[4]

All told, while I agree with the grant of the Motion to Withdraw the Petition for the Issuance of the Writ of *Kalikasan* and of the Writ of Continuing *Mandamus*, I also submit the foregoing observations as to the proper recourse in light of the procedural and substantive defects of the Petition.

## SEPARATE OPINION

**JARDELEZA, *J.*:**

Petitioners come to this Court seeking, the issuance of writs of *kalikasan* and continuing *mandamus* against agencies of the Philippine government. They claim, among their causes of action, violations by China of environmental law within the Philippine exclusive economic zone (EEZ). Petitioners invoke factual findings made by the Arbitral Tribunal in the Award it issued in PCA Case No. 2013-19, entitled "*Republic of the Philippines v. The People's Republic of China*," a case filed by the Philippine Government concerning the interpretation and application of the United Nations Convention on the Law of the Sea (UNCLOS).

---

[4] *Id.* at 57-58. (Emphasis added)

The Arbitral Award is an undeniably unanimous,[1] historic, and sweeping victory,[2] not only for the government but also for the Filipino people. It has become an enduring part of international law, clarifying, as it did, important aspects of the UNCLOS, such as the nature of the maritime entitlements provided therein and the limits of their lawful exercise. Unfortunately, however, there is no international law enforcer or sheriff who can compel China to comply with the Arbitral Award. Such is a limitation of international law which makes enforcement of international law obligations, in general, and international awards, much like the one issued in our country's favor, in particular, a genuine challenge.

There are nevertheless a number of ways by which one can *attempt* to enforce international law obligations.[3] It is my view that the case brought before Us now is an attempt on the part of petitioners to enforce compliance with the Arbitral Award, this time, through the use of domestic environmental laws.

---

[1] See Permanent Court Arbitration Press Release, July 12, 2016 <https://pcacases.com/web/sendAttach/1801> (visited July 9, 2019); Panda, International Court Issues Unanimous Award in *Philippines v. China Case on South China Sea*, July 12, 2016 <https://thediplomat.com/2016/07/international-court-issues-unanimous-award-in-philippines-v-china-case-on-south-china-sea/> (visited July 9, 2019).

[2] See Perlez, Tribunal Rejects Beijing's Claims in South China Sea, July 12, 2016 <https://www.nytimes.com/2016/07/13/world/asia/south-china-sea-hague-ruling-philippines.html> (visited July 9, 2019); Graham, The Hague Tribunal's South China Sea Ruling: Empty Provocation or Slow-Burning Influence? August 18, 2016 <https://www.cfr.org/councilofcouncils/global_memos/p38227> (visited July 9, 2019).

[3] Legal remedies may include (1) filing by affected States of a case with the International Court of Justice (ICJ) or under other modes of dispute settlement provided in any or all of the erring State's treaty obligations (such as in this case, UNCLOS), (2) invocation, through diplomatic action or other peaceful means, of the responsibility of another State for an injury caused by an internationally wrongful act to a natural or legal person that is a national of that State (see Art. 1, Part 1, Draft Articles on Diplomatic Protection, 2006), and (3) those provided under human rights mechanisms before regional courts such as the Inter-American Court of Human Rights and the African Court, among others.

Specifically, petitioners, on the strength of the findings of violations of environmental laws within the Philippine's EEZ *as set forth in the arbitral award*,[4] seek the issuance of writs of *kalikasan* and continuing *mandamus* to enjoin respondents-government agencies to comply with their duties to protect and preserve the marine environment, as allegedly provided under the provisions of Republic Act No. 8550, or the Philippine Fisheries Code of 1998, as amended.[5]

As it turns out, petitioners decided to withdraw the action they filed. I concur with the majority in granting the motion to withdraw petition and considering the case dismissed without passing upon any of the issues raised.[6]

I submit this Opinion, however, to remind that the *ponencia's* pronouncement that "[b]efore any private parties or public interest groups proceed with the case, they must already be ready with the **evidence** necessary for the determination of [the writ's] issuance"[7] should be read in light of the Court's ruling in *Gios-Samar, Inc. v. Department of Transportation and Communication*.[8]

While the Court shares original and concurrent jurisdiction with the Court of Appeals (over actions seeking the issuance of writs of *kalikasan* and continuing *mandamus*) and the Regional Trial Courts (for petitions for writs of continuing *mandamus* only), petitioners must still observe the rule on hierarchy of courts and seek immediate resort with this Court only to resolve pure questions of law. As this case demonstrates, a proceeding for the issuance of writs of *kalikasan* and continuing *mandamus* necessarily involves the evaluation of evidence and resolution of factual questions which this Court is not wont to undertake.

---

[4] Petition for the issuance of the writ of *kalikasan* and the writ of continuing *mandamus*, p. 5.

[5] *Id.*

[6] *Ponencia*, p. 30.

[7] *Id.* at 18.

[8] G.R. No. 217158, March 12, 2019.

To reiterate, this Court is not a trier of facts. We are unsuited to receive and evaluate evidence in the first instance; these are the primary functions of the lower courts or regulatory agencies. Thus, and unless the questions involved are purely legal in nature, the doctrine of hierarchy of courts should be observed. To my mind, due process considerations, at the very least, demand that such matters be first and fully presented before a trier of fact, fully equipped to receive and evaluate evidence in the first instance.

---

**SECOND DIVISION**

[G.R. No. 182842. September 4, 2019]

**PCI LEASING & FINANCE, INC.,** *petitioner, vs.* **SPOUSES JAMES D. GUTIERREZ and CATHERINE R. GUTIERREZ,** *respondents.*

[G.R. No. 199393. September 4, 2019]

**SPOUSES DANTE R. GUTIERREZ and LOURDES D. GUTIERREZ, doing business under the name and style of CAPITOL ALLIED TRADING & TRANSPORT,** *petitioners, vs.* **PCI LEASING & FINANCE, INC.,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORECLOSURE OF REAL ESTATE MORTGAGE; AS A GENERAL RULE, ISSUANCE OF A WRIT OF POSSESSION IS A MINISTERIAL FUNCTION OF THE COURT, WHICH CANNOT BE ENJOINED OR RESTRAINED, EVEN BY THE FILING OF A CIVIL CASE FOR THE DECLARATION OF NULLITY OF THE FORECLOSURE AND CONSEQUENT AUCTION SALE;**

**CASE AT BAR.—** In extrajudicial foreclosures, a writ of possession may be issued either (1) within the redemption period; or (2) after the lapse of the redemption period. The first instance is based on a privilege provided under Section 7 of Act No. 3135; the second is based on the purchaser's right of ownership. As regards writs of possession issued within the redemption period, under Section 7 of Act No. 3135, as amended, the purchaser in a foreclosure sale may apply for a writ of possession by filing a petition in the form of an *ex parte* motion under oath, in the registration or cadastral proceedings of the registered property. The law requires only that the proper motion be filed, the bond approved and no third person is involved. The rule is likewise settled that the proceeding in a petition for a writ of possession is *ex parte* and summary in nature. As one brought for the benefit of one party only and without notice by the court to any person adverse of interest, it is a judicial proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard. The issuance of the writ of possession is, in turn, a ministerial function in the exercise of which trial courts are not granted any discretion. Since the judge to whom the application for writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure, it has been ruled that the ministerial duty of the trial court does not become discretionary upon the filing of a complaint questioning the mortgage. Corollarily, any question regarding the validity of the extrajudicial foreclosure sale and the resulting cancellation of the writ may, likewise, be determined in a subsequent proceeding as outlined in Section 8 of Act No. 3135. On the other hand, a writ of possession may also be issued after consolidation of ownership of the property in the name of the purchaser. It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of sale. As such, he is entitled to the possession of the property and can demand it any time following the consolidation of ownership in his name and the issuance of a new transfer certificate of title. In such a case, the bond required in Section 7 of Act No. 3135 is no longer necessary. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court. Thus,

as a general rule, the issuance of a writ of possession to a purchaser in a public auction is a ministerial function of the court, which cannot be enjoined or restrained, even by the filing of a civil case for the declaration of nullity of the foreclosure and consequent auction sale. x x x [T]he issue of whether the Quezon City and San Juan properties were validly redeemed is heavily disputed. Given the ministerial nature of the trial court's duty to issue a writ of possession after the purchaser has consolidated his ownership, any question regarding the regularity and validity of the mortgage or its foreclosure cannot be raised as justification for opposing the issuance of the writ. To be sure, a pending action for annulment of mortgage or foreclosure does not stay the issuance of a writ of possession. The trial court does not need to look into the validity of the mortgage or the manner of its foreclosure. The purchaser is entitled to a writ of possession without prejudice to the outcome of the pending annulment case. Issues concerning the sufficiency of the evidence presented to support the claim of redemption should be threshed out in a separate action instituted for the purpose.

**2. ID.; ID.; ID.; ID.; EXCEPTIONS; CASE AT BAR.—** In *Nagtalon v. United Coconut Planters Bank*, however, the Court recognized a few exceptions to the abovementioned rule, to wit: ***(1) Gross inadequacy of purchase price*** In *Cometa v. Intermediate Appellate Court* which involved an execution sale, the court took exception to the general rule in view of the unusually lower price (₱57,396.85 in contrast to its true value of ₱500,000.00) for which the subject property was sold at public auction. The Court perceived that injustice could result in issuing a writ of possession under the given factual scenario and upheld the deferment of the issuance of the writ. ***(2) Third party claiming right adverse to debtor/mortgagor*** In *Barican v. Intermediate Appellate Court*, consistent with Section 35, Rule 39 of the Rules of Court, the Court held that the obligation of a court to issue a writ of possession in favor of the purchaser in a foreclosure of mortgage case ceases to be ministerial when a third-party *in possession of the property* claims a right adverse to that of the debtor-mortgagor. In this case, there was a pending civil suit involving the rights of third parties who claimed ownership over the disputed property. The Court found the circumstances to be peculiar, necessitating an exception to the general rule. It thus ruled that where such third party claim and possession exist,

the trial court should conduct a hearing to determine the nature of the adverse possession. ***(3) Failure to pay the surplus proceeds of the sale to mortgagor*** We also deemed it proper to defer the issuance of a writ in *Sulit v. Court of Appeals* in light of the given facts, particularly the mortgagee's failure to return to the mortgagor the surplus from the proceeds of the sale (equivalent to an excess of approximately 40% of the total mortgage debt). We ruled that equitable considerations demanded the deferment of the issuance of the writ as it would be highly unfair and iniquitous for the mortgagor, who as a redemptioner might choose to redeem the foreclosed property, to pay the equivalent amount of the bid clearly in excess of the total mortgage debt. The present case is not analogous to any of the above-mentioned exceptions and the circumstances of the case do not merit an exception from the well-entrenched rule on the issuance of the writ of possession.

**APPEARANCES OF COUNSEL**

*Fornier Fornier Saño and Lagumbay* for Spouses Gutierrez.
*San Juan and Associates* for PCI Leasing & Finance, Inc.

**D E C I S I O N**

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

Assailed in these consolidated Petitions for Review on *Certiorari* filed under Rule 45 of the Rules of Court are the October 30, 2007 Decision[1] and the May 7, 2008 Resolution[2] of the Court of Appeals (CA), Second Division in CA-G.R. SP No. 96847, and the June 8, 2011 Decision[3] and the November 10,

---

[1] Penned by Associate Justice Lucas P. Bersamin (now the Chief Justice of the Court) with Associate Justices Portia Aliño Hormachuelos and Estela M. Perlas-Bernabe (now a Member of the Court), concurring; *rollo* (G.R. No. 182842), pp. 59-76.

[2] *Id.* at 78.

[3] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Normandie B. Pizarro and Rodil V. Zalameda (now a Member of the Court), concurring; *rollo* (G.R. No. 199393), pp. 48-61.

2011 Resolution[4] of the CA, Seventh Division in CA-G.R. SP No. 93391.

**The Facts**

Capitol Allied Trading & Transport (Capitol Allied) is a single proprietorship owned by the spouses Dante R. Gutierrez and Lourdes D. Gutierrez (spouses Gutierrez), the parents of spouses James Gutierrez and Catherine Gutierrez (spouses James and Catherine). Beginning December 14, 1999, the spouses Gutierrez obtained loans in the total amount of ₱48,246,000.00 from PCI Leasing & Finance, Inc. (PCI Leasing), covered by Promissory Note (PN) Nos. 15608, 15609, 16308, 16510, 16796, 16797, 15509, 15213, 15345, 16267, 16268, 16269, 16545, 16892, 16937 and 17028.[5]

To secure the payment of their loan obligations, the spouses Gutierrez mortgaged to PCI Leasing several real properties, including (1) under PN No. 15608, a condominium unit (Burgundy Condominium), covered by Condominium Certificate of Title (CCT) No. 10444-Registry of Deeds of Quezon City, owned by and registered in the names of spouses James and Catherine; (2) under PN No. 15609, a parcel of land and its improvements located in Blue Ridge Subdivision, Quezon City, covered by TCT No. 156111-Registry of Deeds of Quezon City owned by and registered in the names of spouses James and Catherine; and (3) under PN No. 15509, a condominium unit (Platinum 1000 Condominium), covered by CCT No. 9700-R-Registry of Deeds of San Juan.[6]

When the spouses Gutierrez defaulted in the payment of their obligations, PCI Leasing extrajudicially foreclosed the mortgages. As a result, the Quezon City properties were sold at a public auction held on July 30, 2003, while the San Juan property was sold on July 31, 2003. The certificates of sale

---

[4] *Id.* at 63-64.

[5] *Rollo* (G.R. No. 182842), p. 60.

[6] *Id.*

covering the properties were then issued to PCI Leasing as the highest bidder and were subsequently annotated on the titles.[7]

On October 15, 2003, PCI Leasing allowed the spouses Gutierrez to sell their properties located in San Fernando, Pampanga which were also mortgaged to PCI Leasing. Thus, for ₱14,500,000.00, said properties were sold to spouses Andy Paredes and Wendy Paredes. The proceeds of the sale were applied to the spouses Gutierrez's outstanding balance, which included the ₱12,426,676.36 obligation secured by the mortgage on the Quezon City and San Juan properties. The payment is evidenced by Official Receipt No. 228376,[8] dated October 27, 2003, issued by PCI Leasing and the Memorandum,[9] dated December 12, 2003, signed by PCI Leasing's Account Officer and Senior Assistant Manager Crispin Maniquis[10] (Maniquis). The application of payment is further borne out in the Affidavit[11] of Maniquis executed on August 29, 2005, to wit:[12]

x x x x x x x x x

6. The only amount applied as payment against the aforestated Real Estate Mortgages was the proceeds of the sale of the San Fernando City, Pampanga properties of the Spouses Dante and Lourdes Gutierrez in the total amount of ₱14,500,000.00 which was used to fully pay the total outstanding loans of ₱12,426,676.36 against the Real Estate Mortgages covered by Promissory Notes No. 15509, 15608, 15609, 16308, 16510, 16796 and 16797. The excess was applied in partial payment of the loans covered by the Chattel Mortgages.

7. On July 12, 2004, I was requested to submit figures to support the Compromise Agreement to be entered into between the Spouses Dante and Lourdes Gutierrez and PCILFI in Civil Case Nos. Q-0349661

---

[7] *Id.* at 61; *rollo* (G.R. No. 199393), pp. 50-51.

[8] *Rollo* (G.R. No. 199393), p. 143.

[9] *Rollo* (G.R. No. 182842), p. 113.

[10] Also referred to as "Crispin Maniquiz" in some parts of the *rollo* (G.R. No. 182842).

[11] *Rollo* (G.R. No. 182842), pp. 114-115.

[12] *Id.* at 61.

before Branch 45 of the Regional Trial Court of Quezon City. I submitted the same figure of ₱13,993,047.14 as the amount which was still due PCILFI from Spouses Dante and Lourdes Gutierrez. Said figure did not make any application of payment of the "proceeds" of the July 2003 foreclosure and sale of the properties covered by Promissory Notes Nos. 15509, 15608, 15609 and 16308.

8. This shows that PCILFI actually waived its rights over the foreclosure and sale of the properties covered by Promissory Notes Nos. 15509 (CCT No. 9700-R), 15608 (CCT No. N-10444), 15609 and 16308 (TCT No. 156111) and, in fact, the ₱14,500,000.00 which was received by PCILFI from the proceeds of the sale of the San Fernando City, Pampanga properties was applied as full payment of all loans covered by the Real Estate Mortgages, with an excess amount of over ₱2,000,000.00 which was applied as partial payment of the loans covered by the Chattel Mortgages.[13]

x x x x x x x x x

As of December 12, 2003, therefore, the unpaid balance of the spouses Gutierrez was reduced to ₱13,993,047.14, which was secured by chattel mortgages on their personal properties.[14]

On March 25, 2004, the spouses Gutierrez wrote to PCI Leasing requesting, among others, the release of the real estate mortgages on the Quezon City and San Juan properties. They believed that the application of payment amounted to a redemption of the properties. PCI Leasing, however, did not immediately reply to the letter-request.[15]

Subsequently, PCI Leasing filed a complaint against the spouses Gutierrez in the RTC, Quezon City, Branch 105, docketed as Civil Case No. Q-03-049661. On October 11, 2004, PCI Leasing and the spouses Gutierrez filed a Joint Motion for Judgment based on a compromise agreement, the subject of which was the balance of ₱13,993,047.14. Hence, on

---

[13] *Id.* at 115.

[14] *Id.* at 62.

[15] *Id.*; *rollo* (G.R. No. 199393), p. 51.

November 10, 2004, the RTC rendered its decision in Civil Case No. Q-03-049661, to wit:[16]

Plaintiff PCI Leasing & Finance, Inc. (PCILF) and defendants Spouses Dante Gutierrez and Lourdes Gutierrez, with the assistance of their respective counsel, submitted a joint motion for judgment based on compromise agreement which read as follows:

> WHEREAS, on various dates commencing December 14, 1999, PCILF extended various loans to SPS. GUTIERREZ in aggregate amount of PESOS: FORTY EIGHT MILLION TWO HUNDRED FORTY SIX THOUSAND (₱48,246,000.00), Philippine Currency, as evidenced by Promissory Notes Nos. 15608, 15609, 16308, 16510, 16796, 16967, 15509, 15213, 15345, 16268, 16269, 16267, 16545, 16892, 16937, and 17028;
>
> WHEREAS, as security for the payment of these loans, SPS. GUTIERREZ executed and signed in favour of PCILF Seven (7) Chattel Mortgages dated December 10, 1999, February 8, 2000, January 24, 2001, October 10, 2001, January 31, 2002, February 27, 2002 and March 14, 2002 ("SECURITY," for brevity);
>
> WHEREAS, SPS. GUTIERREZ failed to pay in full the above-mentioned loans when the same fell due and demandable, despite repeated demands made upon it by PCILF. As of July 13, 2004, the indebtedness owned by SPS. GUTIERREZ to PCILF stands in the total amount of PESOS: THIRTEEN MILLION NINE HUNDRED NINETY THREE THOUSAND FORTY SEVEN AND 14/100 (₱13,993.047.14), Philippine currency, inclusive of interest and penalties;
>
> WHEREAS, upon the request of SPS. GUTIERREZ, PCILF has agreed to restructure the term of payment of the balance of these loans by giving SPS. GUTIERREZ an additional period of thirty-six (36) months;
>
> NOW, THEREFORE, the parties hereto have agreed as follows:
>
> 1. SPS. GUTIERREZ shall pay PCILF the amount of PESO[S]: THIRTEEN MILLION NINE HUNDRED NINETY THREE

---

[16] *Rollo* (G.R. No. 182842), p. 63.

THOUSAND FORTY SEVEN AND 14/100 (₱13,993,047.14), Philippine currency ("OBLIGATION," for brevity) in the following manner:

1.1. For the first year beginning August 28, 2004, SPS. GUTIERREZ shall pay PCILF a monthly amortization of ₱225,000.00;

1.2. For the second year beginning July 28, 2005, SPS. GUTIERREZ shall pay PCILF a monthly amortization of ₱505,882.00; and

1.3 For the third year beginning August 28, 2006, SPS. GUTIERREZ shall pay PCILF a monthly amortization of ₱876,616.00.

2. PCILF agrees to waive in full the penalties that have accrued from January to August 2004 subject to the conditions stated in the fourth paragraph hereof.

3. The OBLIGATION shall remain secured by executing chattel mortgages. SPS. GUTIERREZ undertake to execute an Amendment of these mortgages as may be necessary in order to enforce the rights of PCILF over subject collateral securities.

4. In the event SPS. GUTIERREZ incurs default by failing to pay any two (2) monthly amortizations or by failing to comply with the terms and conditions under the original Promissory Notes and Chattel Mortgage contracts, the terms and conditions of which are incorporated hereto and made as integral parts hereof, and such default is not cured within thirty (30) days after the occurrence thereof, the OBLIGATION shall become due and demandable without need of demand and shall entitle PCILF to exercise its rights under the original loan and mortgage contracts. The waived penalties shall be reinstated and shall form part of the outstanding balance at the time of default. Furthermore, [PCILF] shall immediately be entitled to a Writ of Execution for the enforcement of the entire obligation as stated herein.

5. The parties hereto fully understand and agree that the foregoing arrangement is merely an accommodation granted by PCILF upon request of SPS. GUTIERREZ and shall not in any manner operate as a novation of the obligation of SPS. GUTIERREZ in favor of PCILF under the original loan and mortgage contracts.

6. The foregoing constitutes the latest agreement of the parties, and all previous agreements inconsistent herewith shall be deemed amended or modified accordingly.

WHEREFORE, there being nothing contrary to law, morals or public policy in the foregoing Compromise Agreement, the Court approves the same and renders judgment in accordance therewith.

SO ORDERED.[17]

Meanwhile, on October 27, 2004, the spouses Gutierrez received PCI Leasing's letter, dated October 26, 2004, advising that the ownership of the Quezon City and San Juan properties had been consolidated in PCI Leasing upon the expiration of the one-year redemption period and that as the new owner, it was entitled to the actual possession of the properties.[18]

*The RTC proceedings concerning the Quezon City properties*

On December 9, 2004, PCI Leasing filed in the RTC, Quezon City, Branch 219 a petition for the issuance of a writ of possession for the Quezon City properties. On January 13, 2005, however, PCI Leasing withdrew the petition, which was confirmed by the trial court in an Order, dated January 28, 2005.[19]

Then, on April 28, 2005, PCI Leasing wrote a letter to the Spouses Gutierrez demanding that the Quezon City properties be turned over under threat of legal action in case of refusal.[20]

On May 31, 2005, the spouses Gutierrez replied and insisted that the loans secured by the mortgages on the Quezon City properties had already been paid and that the mortgages should be considered as released.[21]

---

[17] *Rollo* (G.R. No. 182842), pp. 130-132.

[18] *Id.* at 65; *rollo* (G.R. No. 199393), p. 51.

[19] *Rollo* (G.R. No. 182842), *id.*

[20] *Id.* at 66.

[21] *Id.*

On June 24, 2005, PCI Leasing filed in the RTC, Quezon City, Branch 219 another petition for issuance of writ of possession, docketed as LRC Rec. No. Q-20070(05). The spouses James and Catherine filed a motion to suspend proceedings in LRC Rec. No. Q-20070(05), contending that the obligations for which their properties had been mortgaged were already fully paid, and as a consequence, PCI Leasing was not entitled to the issuance of a writ of possession.[22]

Meanwhile, on December 16, 2005, spouses James and Catherine initiated in the RTC, Quezon City, Branch 222 an action for the nullification of foreclosure, certificate of sale, and title and for the reconveyance of their properties (docketed as Civil Case No. 05-56950).[23]

On April 25, 2006, Judge Bayani V. Vargas (Branch 219) issued the first assailed order, denying the spouses James and Catherine's motion to suspend proceedings. Then, on September 11, 2006, Judge Evangeline Castillo-Marigomen (Branch 101) to whom LRC Rec. No. Q-20070(05) was reassigned, issued the second assailed order, allowing PCI Leasing to present evidence *ex parte* in support of the petition for the writ of possession.[24]

*The RTC proceedings concerning the San Juan property*

PCI Leasing filed a Petition for the Issuance of a Writ of Possession with the RTC, Pasig City, Branch 265, docketed as LRC Rec No. 6484. PCI Leasing, however, withdrew said petition, which was granted by the trial court in an Order, dated February 15, 2005. In a letter, dated April 28, 2005, PCI Leasing demanded from the spouses Gutierrez the delivery of possession of the San Juan property. Then, on June 27, 2005, PCI Leasing filed another Petition for the Issuance of a Writ of Possession before the RTC, Pasig City, Branch 68, docketed as LRC Rec.

---

[22] *Id.*

[23] *Id.*

[24] *Id.* at 67.

No. R-6557. The spouses Gutierrez filed a motion to dismiss. On August 30, 2005, the RTC Pasig conducted an *ex parte* presentation of evidence and on the following day, Judge Santiago G. Estrella rendered a decision granting the issuance of the writ of possession in favor of PCI Leasing.[25]

On September 29, 2005, the spouses Gutierrez filed a Complaint for Nullification of Foreclosure, Certificate of Sale and Title and Reconveyance with Damages, docketed as Civil Case No. 70545-SJ.[26]

*The CA Second Division Ruling (Quezon City properties)*

In a Decision dated October 30, 2007, the CA held that although the petition for the issuance of a writ of possession was to be heard *ex parte* and its issuance was ministerial, it was equally true that the issuance of the writ may be stayed due to compelling reasons. It declared that the trial court could not brush aside the spouses Gutierrez's credible showing of a redemption of the Quezon City properties within the one-year period from the registration of the certificate of sale through the application of payment effected on October 27, 2003. The appellate court noted that such redemption even appears to be admitted by PCI Leasing itself through the Official Receipt No. 228376, dated October 27, 2003, the December 12, 2003 Memorandum on the application of payment of its Account Officer and Senior Assistant Manager Maniquis, and the August 29, 2005 Affidavit of Maniquis, all of which unerringly indicated that the outstanding obligations of the spouses Gutierrez amounting to ₱12,426,676.36 were fully discharged and paid by the application of the sales proceeds of ₱14,500,000.00, with the excess being applied as partial payment for the spouses Gutierrez's other obligations which were secured by chattel mortgages. It concluded that as a natural consequence of the full discharge of the obligations secured by the mortgages on the Quezon City properties, the trial court's legal obligation

---

[25] *Rollo* (G.R. No. 199393), pp. 52-53.

[26] *Id.* at 54.

to issue the writ of possession in favor of PCI Leasing *ipso facto* ceased to be ministerial because the purchaser's right to possession was effectively terminated upon redemption.

PCI Leasing moved for reconsideration, but the same was denied by the CA in a Resolution dated May 7, 2008.[27]

*The CA Seventh Division Ruling (San Juan property)*

In a Decision dated June 8, 2011,[28] the CA ruled that PCI Leasing, as purchaser in the auction sale and the new owner of the San Juan property on the strength of a new title issued and registered under its name, was entitled to the contested writ of possession. It added that the purchaser in a foreclosure sale is entitled as a matter of right to a writ of possession regardless of whether or not there is a pending suit for annulment of the mortgage or the foreclosure proceedings.

The spouses Gutierrez moved for reconsideration, but the same was denied by the CA in a Resolution dated November 10, 2011.[29]

Aggrieved by the conflicting CA decisions, the spouses Gutierrez and PCI Leasing filed before the Court their respective Petitions for Review on *Certiorari*.

**Issue**

WHETHER PCI LEASING IS ENTITLED TO A WRIT OF POSSESSION DESPITE THE SPOUSES GUTIERREZ'S CLAIM OF REDEMPTION.

In their Consolidated Memorandum,[30] PCI Leasing argues that the CA Second Division abrogated unto itself the power to decide on factual issues which are properly the subject of the complaint for nullification of foreclosure, certificate of sale

---

[27] *Supra* note 2.

[28] *Supra* note 3.

[29] *Supra* note 4.

[30] *Rollo* (G.R. No. 182842), pp. 443-471.

and title and reconveyance; that it is in the said case that the spouses Gutierrez would have all the opportunity to prove their allegations; that any question regarding the validity of the mortgage or its foreclosure could not be a legal ground for refusing the issuance of a writ of possession; that regardless of whether or not there is a pending suit for annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice to the eventual outcome of said case; that the judge to whom an application for the issuance of a writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure because in the issuance of a writ of possession, no discretion is left to the trial court; that until the foreclosure sale of the property in question is annulled by a court of competent jurisdiction, the issuance of the writ of possession remains the ministerial duty of the trial court; and that the remedy of the spouses Gutierrez is to speed up the resolution of the case questioning the foreclosure sale.

In their Consolidated Memorandum,[31] the spouses Gutierrez, together with spouses James and Catherine, contend that the evidence on record cited by the CA Second Division showed that their outstanding obligations secured by real estate mortgages were fully discharged by the application of the sales proceeds of ₱14,500,000.00 from the sale of the mortgaged San Fernando, Pampanga properties, with the excess applied as partial payment of their remaining obligations secured by chattel mortgages; that the redemption was properly made within the one-year period, hence, the consolidation of ownership made by PCI Leasing was void; that the assailed Decision and Resolution of the CA Second Division were promulgated on October 30, 2007 and May 7, 2008, respectively, while the Decision and Resolution of the CA Seventh Decision were promulgated on June 8, 2011 and November 10, 2011, respectively, hence, the Seventh Division was bound by the findings and ruling of the Second Division; that the writ of possession may be withheld under certain circumstances if it is palpable on the face of the

---

[31] *Id.* at 477-518.

petition and the supporting documents thereof that the requirements of the law for its issuance are not present or that petitioner has not validly acquired ownership of the property sought to be possessed or that peculiar circumstances exist to warrant withholding of the same; that the CA Seventh Division should not have simply ignored the claims of the spouses Gutierrez because the subject properties had already been redeemed and the obligations secured by the mortgages had been fully discharged; and that the trial court cannot, in the guise of complying with a ministerial duty, ignore the clear and competent showing that the spouses Gutierrez had already redeemed the mortgaged properties.

**The Court's Ruling**

*As a general rule, the issuance of a writ of possession is a ministerial function of the court*

In extrajudicial foreclosures, a writ of possession may be issued either (1) within the redemption period; or (2) after the lapse of the redemption period. The first instance is based on a privilege provided under Section 7 of Act No. 3135; the second is based on the purchaser's right of ownership.[32]

As regards writs of possession issued within the redemption period, under Section 7 of Act No. 3135, as amended, the purchaser in a foreclosure sale may apply for a writ of possession by filing a petition in the form of an *ex parte* motion under oath, in the registration or cadastral proceedings of the registered property. The law requires only that the proper motion be filed, the bond approved and no third person is involved.[33]

The rule is likewise settled that the proceeding in a petition for a writ of possession is *ex parte* and summary in nature.[34]

---

[32] *680 Home Appliances, Inc. v. Court of Appeals*, 744 Phil. 481, 491-492 (2014).

[33] *Spouses Tolosa v. United Coconut Planters Bank*, 708 Phil. 134, 141 (2013).

[34] *Fernandez v. Espinoza*, 574 Phil. 292, 307 (2008).

As one brought for the benefit of one party only and without notice by the court to any person adverse of interest, it is a judicial proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard.[35] The issuance of the writ of possession is, in turn, a ministerial function in the exercise of which trial courts are not granted any discretion.[36] Since the judge to whom the application for writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure,[37] it has been ruled that the ministerial duty of the trial court does not become discretionary upon the filing of a complaint questioning the mortgage.[38] Corollarily, any question regarding the validity of the extrajudicial foreclosure sale and the resulting cancellation of the writ may, likewise, be determined in a subsequent proceeding as outlined in Section 8 of Act No. 3135.[39]

On the other hand, a writ of possession may also be issued after consolidation of ownership of the property in the name of the purchaser. It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of sale. As such, he is entitled to the possession of the property and can demand it any time following the consolidation of ownership in his name and the issuance of a new transfer certificate of title. In such a case, the bond required in Section 7 of Act No. 3135 is no longer necessary. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title,

---

[35] *Spouses Oliveros v. The Hon. Presiding Judge, RTC, Branch 24, Biñan, Laguna*, 558 Phil. 715, 726 (2007).

[36] *Spouses Esperidion v. Court of Appeals*, 523 Phil. 664, 667-668 (2006).

[37] *Idolor v. Court of Appeals*, 490 Phil. 808, 814 (2005).

[38] *Metropolitan Bank and Trust Company v. Tan*, 578 Phil. 464, 474 (2008).

[39] *Cua Lai Chu v. Laqui*, 626 Phil. 127, 137 (2010).

the issuance of the writ of possession becomes a ministerial duty of the court.[40]

Thus, as a general rule, the issuance of a writ of possession to a purchaser in a public auction is a ministerial function of the court, which cannot be enjoined or restrained, even by the filing of a civil case for the declaration of nullity of the foreclosure and consequent auction sale.

*Exceptions to the rule that issuance of a writ of possession is a ministerial function*

In *Nagtalon v. United Coconut Planters Bank*,[41] however, the Court recognized a few exceptions to the abovementioned rule, to wit:

***(1) Gross inadequacy of purchase price***

In *Cometa v. Intermediate Appellate Court* which involved an execution sale, the court took exception to the general rule in view of the unusually lower price (₱57,396.85 in contrast to its true value of ₱500,000.00) for which the subject property was sold at public auction. The Court perceived that injustice could result in issuing a writ of possession under the given factual scenario and upheld the deferment of the issuance of the writ.

***(2) Third party claiming right adverse to debtor/mortgagor***

In *Barican v. Intermediate Appellate Court*, consistent with Section 35, Rule 39 of the Rules of Court, the Court held that the obligation of a court to issue a writ of possession in favor of the purchaser in a foreclosure of mortgage case ceases to be ministerial when a third-party *in possession of the property* claims a right adverse to that of the debtor-mortgagor. In this case, there was a pending civil suit involving the rights of third parties who claimed ownership over the disputed property. The Court found the circumstances to be peculiar, necessitating an exception to the general rule. It thus ruled

---

[40] *Philippine National Bank v. Sanao Marketing Corporation*, 503 Phil. 260, 271-272 (2005).

[41] 715 Phil. 595 (2013).

that where such third party claim and possession exist, the trial court should conduct a hearing to determine the nature of the adverse possession.

***(3) Failure to pay the surplus proceeds of the sale to mortgagor***

We also deemed it proper to defer the issuance of a writ in *Sulit v. Court of Appeals* in light of the given facts, particularly the mortgagee's failure to return to the mortgagor the surplus from the proceeds of the sale (equivalent to an excess of approximately 40% of the total mortgage debt). We ruled that equitable considerations demanded the deferment of the issuance of the writ as it would be highly unfair and iniquitous for the mortgagor, who as a redemptioner might choose to redeem the foreclosed property, to pay the equivalent amount of the bid clearly in excess of the total mortgage debt.[42] (Citations omitted)

The present case is not analogous to any of the above-mentioned exceptions and the circumstances of the case do not merit an exception from the well-entrenched rule on the issuance of the writ of possession.

*The fact of redemption is heavily disputed. Hence, the general rule that issuance of a writ of possession is a ministerial function of the court should apply.*

A review of the records unequivocally shows that the parties presented conflicting evidence as to the application of the ₱14,500,00.00 payment. The official receipt showing that the spouses Gutierrez paid ₱14,500,000.00 did not contain any statement on the application of the amount. In fact, PCI Leasing claims that the ₱14,500,000.00 was instead used to redeem the San Fernando, Pampanga properties. In addition, Maniquis executed two conflicting affidavits on whether the Quezon City and San Juan properties were validly redeemed within the prescribed period. As a result of the parties' conflicting versions,

---

[42] *Id.* at 606-607.

the CA arrived at conflicting factual findings. Undoubtedly therefore, the issue of whether the Quezon City and San Juan properties were validly redeemed is heavily disputed. Given the ministerial nature of the trial court's duty to issue a writ of possession after the purchaser has consolidated his ownership, any question regarding the regularity and validity of the mortgage or its foreclosure cannot be raised as justification for opposing the issuance of the writ. To be sure, a pending action for annulment of mortgage or foreclosure does not stay the issuance of a writ of possession.[43] The trial court does not need to look into the validity of the mortgage or the manner of its foreclosure. The purchaser is entitled to a writ of possession without prejudice to the outcome of the pending annulment case.[44]

Issues concerning the sufficiency of the evidence presented to support the claim of redemption should be threshed out in a separate action instituted for the purpose. The rule remains that in petitions for the issuance of a writ of possession, the judge need not look into the validity of the mortgages or the manner of their foreclosure. In the same manner, when the mortgagor claims redemption, the judge is not mandated to determine whether the payment satisfies the obligation secured by the foreclosed property. Hence, in accordance with the ministerial duty of the trial courts to issue writs of possession and given that the issue of redemption is heavily disputed, the general rule should apply and the writs of possession should issue as a matter of course.

To reiterate, the ruling in this case is not a final determination of the veracity of the spouses Gutierrez's claim of redemption. The resolution of such issue is left to the sound discretion of the trial courts where the actions for nullification of foreclosure, certificate of sale, and title and for reconveyance of the properties are pending.

---

[43] *Baring v. Elena Loan and Credit Co., Inc*., G.R. No. 224225, August 14, 2017, 837 SCRA 133, 143.

[44] *BPI Family Savings Bank v. Golden Power Diesel Sales Center, Inc.*, 654 Phil. 385, 394 (2011).

**WHEREFORE,** the Petition in G.R. No. 182842 is **GRANTED**. The October 30, 2007 Decision and the May 7, 2008 Resolution of the Court of Appeals, Second Division in CA-G.R. SP No. 96847 are **REVERSED** and **SET ASIDE**.

The Petition in G.R. No. 199393 is **DENIED**. The June 8, 2011 Decision and the November 10, 2011 Resolution of the Court of Appeals, Seventh Division in CA-G.R. SP No. 93391 are **AFFIRMED**.

The Regional Trial Court, Quezon City, Branch 222 in Civil Case No. 05-56950 and Regional Trial Court, Pasig City, Branch 68 in Civil Case No. 70545-SJ are hereby **ORDERED** to resolve with dispatch the actions for nullification of foreclosure, certificate of sale and title, and reconveyance with damages.

**SO ORDERED.**

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

---

**THIRD DIVISION**

[G.R.No. 206598. September 4, 2019]

**SPOUSES SALVADOR BATOLINIO AND AMOR P. BATOLINIO, represented BY ROY B. PANTALEON as attorney-in-fact,** *petitioners, vs.* **SHERIFF JANET YAP-ROSAS and PHILIPPINE SAVINGS BANK,** *respondents.*

---

[*] Designated additional member per Raffle dated September 4, 2019 in lieu of Associate Justice Rodil V. Zalameda who recused himself from the case due to prior action in the Court of Appeals.

## SYLLABUS

1. **CIVIL LAW; AN ACT REGULATING FORECLOSURE OF REAL ESTATE MORTGAGE (ACT NO. 3135 AS AMENDED BY ACT NO. 4118); WHEN TO APPLY FOR ISSUANCE OF A WRIT OF POSSESSION IN AN EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE. —** [A] successful buyer of a foreclosed property bought at a public auction sale is authorized to apply for a writ of possession (1) during the redemption period upon filing of the corresponding bond; and, (2) after the expiration of the redemption period without any need of a bond.

2. **ID.; ID.; ACT NO. 3135 AS AMENDED BY ACT NO. 4118 *VIS-À-VIS* RULES OF COURT; AFTER THE LAPSE OF THE ONE-YEAR REDEMPTION PERIOD, WRIT OF POSSESSION IS A MATTER OF RIGHT; EXCEPTION THERETO DOES NOT APPLY IN THIS CASE; HAVING SOLD THE SUBJECT PROPERTIES, PETITIONERS NO LONGER HAD ANY RIGHT OVER IT AND CANNOT BE CONSIDERED AS THIRD PARTIES WITH AN ADVERSE INTEREST FROM THE JUDGMENT DEBTOR. —** Section 33, Rule 39 of the Rules of Court, which extends to extrajudicial foreclosure sales, explicitly provides that when no redemption is made within one year from the date of registration of the certificate of sale, the purchaser is already entitled to the possession of the subject property *unless* a third party is holding it adversely to the judgment debtor. It bears stressing that a purchaser in an extrajudicial foreclosure becomes the absolute owner of the subject property in case no redemption is made within one year from the registration of the certificate of sale. As the absolute owner, the purchaser is entitled to all the rights of ownership, including the right to possess the property. It, thus, follows that upon proper application and evidence of ownership, the issuance of a writ of possession becomes a ministerial duty of the court except where a third party is holding the property adversely to the judgment debtor. In the latter case, the issuance of a writ of possession is no longer ministerial and may not be done *ex parte* and hearing for the purpose of determining entitlement to possession must be held. Let it be stressed that by third party holding the property by adverse title or right, the Court refers to one who is in possession of the

disputed property *in his or her own right* such as a co-owner, a tenant or a usufructuary. In this case, petitioners insist that the RTC improperly issued a writ of possession in favor of private respondent on the contention that they were third parties holding the subject property adverse to the judgment debtor, Miñoza. Petitioners' contention is untenable. *First*, petitioners sold the subject property to Miñoza through a deed of absolute sale. By doing so, they relinquished their title over it in favor of the latter. This also means that from the time that they sold the subject property, petitioners no longer had any right over it and cannot be considered as third parties with an adverse interest from the judgment debtor. *Second*, as pointed out by the CA, the sale was an absolute one; thereby, it was without any reservation of ownership by its previous owners (petitioners). x x x *Third*, considering that the sale of real property is an effective mode of transferring ownership, it follows that there is sufficient reason to conclude that petitioners have *no* independent right over the subject property.

**3. ID.; ID.; NO VIOLATION OF PETITIONERS' RIGHT TO DUE PROCESS CONSIDERING THAT AN *EX PARTE* APPLICATION FOR A WRIT OF POSSESSION INVOLVES A PROCEEDING FOR THE BENEFIT OF ONE PARTY WITHOUT NECESSARILY GIVING NOTICE TO ANY ADVERSE PARTY; THAT PRIVATE RESPONDENT WAS NOT A PURCHASER OR MORTGAGEE IN GOOD FAITH WILL NOT PREVENT THE ISSUANCE OF A WRIT OF POSSESSION IN ITS FAVOR. —** It is also of equal importance to note that petitioners' right to due process was not violated considering that by its very nature, an *ex parte* application for a writ of possession involves a proceeding for the benefit of one party without necessarily giving notice to any adverse party. It is summary in nature and a mere incident in the transfer of title. It does not bar any purported adverse party from filing a case for annulment of mortgage or foreclosure. At the same time, "not even a pending action to annul the mortgage or the foreclosure sale will by itself stay the issuance of a writ of possession x x x. The trial court, where the application for a writ of possession is filed, does not need to look into the validity of the mortgage or the manner of its foreclosure. The purchaser is entitled to a writ of possession without prejudice to the outcome of the pending annulment case." Under these

circumstances, the issue that private respondent was not a purchaser or mortgagee in good faith will not prevent the issuance of a writ of possession in its favor given that this issue is one that may be subject of a different proceeding, not the one involving the application for a writ of possession.

**APPEARANCES OF COUNSEL**

*Anselmo B. Adriano* for petitioners.
*Manuel Rivera Levosada and Sison Law Offices* for respondent Philippine Savings Bank.

**R E S O L U T I O N**

**INTING, *J.*:**

This Petition for Review on *Certiorari* assails the Decision[1] dated November 27, 2012 of the Court of Appeals (CA), dismissing the petition for *certiorari* filed therewith, and its Resolution[2] dated April 4, 2013, denying the motion for reconsideration, in CA-G.R. SP No. 117859.

*The Antecedents*

The present case stemmed from an *Ex Parte* Petition[3] for the issuance of a writ of possession filed by Philippine Savings Bank (private respondent). According to private respondent: on October 26, 2007, Nicefora Miñoza (Miñoza) obtained a loan from it in the amount of ₱5.7 Million;[4] as security thereof, Miñoza executed a real estate mortgage (REM) over a parcel of land registered under her name, located in Las Piñas City and covered by Transfer Certificate of Title (TCT) No. T-108184[5]

---

[1] *Rollo*, pp. 73-82; penned by Associate Justice Amelita G. Tolentino, and concurred in by Associate Justices Ramon R. Garcia and Danton Q. Bueser.

[2] *Id.* at 84-85.

[3] *Id.* at 243-248.

[4] *Id.* at 249.

[5] *Id.* at 191-193.

(subject property); Miñoza failed to pay the loan when it fell due; thus, private respondent instituted an extrajudicial foreclosure of the REM; and later, it emerged as the highest bidder at the public auction such that a certificate of sale was eventually issued in its favor and registered with the Registry of Deeds on June 23, 2008. Private respondent added that it demanded from Miñoza and all those persons claiming rights under her to vacate the subject property, but to no avail.

On July 29, 2010, the Regional Trial Court (RTC) of Las Piñas City, Branch 198 granted[6] the petition and issued the corresponding writ of possession.[7] In granting the petition, the RTC noted that after the certificate of sale was issued and subsequent to the expiration of the redemption period, private respondent caused the consolidation of title and anew one (TCT No. T-118772) was issued in its name. This being the case, the RTC ruled that the issuance of a writ of possession became a matter of right in favor of private respondent.

Meanwhile, spouses Salvador Batolinio and Amor P. Batolinio (petitioners) filed an Omnibus Motion with Prayer for the Issuance of a Preliminary Mandatory Injunction.[8] They claimed that they were the owners of the subject property, which was previously covered by TCT No. T-80337 under their name. They stated that in 2003, they mortgaged it to Union Bank of the Philippines (Union Bank), but in September 2007, through a certain Leonila Briones, Yolanda Vargas, and Fedeline Balbis, they decided to sell it to Miñoza for ₱2.435 Million. Allegedly, the aforesaid sale was subject to these conditions: (1) Miñoza would secure financing from one Velez and Maria Elena Simbulan, who, in turn, would pay petitioners' balance with Union Bank; (2) Miñoza would then secure a loan from private respondent for ₱5.5 Million using the same property as collateral;

---

[6] *Id.* at 138-140; penned by Judge Erlinda Nicolas-Alvaro.

[7] *Id.* at 136-137.

[8] *Id.* at 149-174.

and (3) upon approval of the loan, private respondent would release the proceeds to petitioners.

While petitioners asserted that Miñoza, in cahoots with other people, forged their signatures in the deed of sale and certificate of full payment pertaining to the subject property, they confirmed having executed a letter of guaranty for private respondent to facilitate the loan of Miñoza. At the same time, they stated that they filed an adverse claim on the subject property as well as a civil case[9] for cancellation of title, specific performance, and damages against Miñoza, among other persons.

Petitioners added that they were third persons claiming rights adverse to Miñoza; thus, they could not be deprived of the possession of the subject property without being heard of their claim first. They further argued that private respondent was not a mortgagee or purchaser for value as it purportedly did not observe due diligence before entering into a mortgage agreement with Miñoza. Lastly, they confirmed receiving a notice to vacate relative to the grant of private respondent's petition for the issuance of a writ of possession.

*Ruling of the RTC*

In its Order[10] dated December 17, 2010, the RTC denied petitioners' Omnibus Motion. It stressed that since its Decision dated July 29, 2010 already became final and executory, then the issuance of a writ of possession could no longer be enjoined. It added that it was its ministerial duty to issue a writ of possession upon the *ex parte* application of private respondent which had caused the extrajudicial foreclosure of the REM and acquired the subject property in a foreclosure sale. It decreed that the pendency of the civil case filed by petitioners would not bar the issuance of such writ in favor of private respondent.

Undaunted, petitioners filed a petition for *certiorari* with the CA.

---

[9] *Id.* at 208-221.

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

*Ruling of the CA*

On November 27, 2012, the CA dismissed the petition.

The CA elucidated that because petitioners sold the subject property to Miñoza through an absolute sale and made no reservation of ownership until its full payment, they parted with their ownership, leaving them without anymore right over the land in dispute. It also explained that petitioners could not be considered third parties whose rights were adverse to Miñoza because of the same reason that they already sold their rights and participation over the property through an absolute sale.

In addition, the CA ruled that petitioners' allegation that private respondent was not a mortgagee or buyer in good faith would not warrant the suspension of the writ of possession because questions on the validity of the mortgage, its foreclosure or sale were not grounds for the denial of the issuance of a writ of possession. Finally, it decreed that until the foreclosure sale was annulled, the issuance of the writ of possession was ministerial.

On April 4, 2013, the CA denied petitioners' motion for reconsideration.

Hence, petitioners filed this Petition raising the following issues:

*Issues*

a. x x x [W]hether it was correct for the [CA] to rule that the petitioners do not fall under the category of a "third party who [is] actually holding the property adversely to the judgment obligor" on the ground that the petitioners have already parted with their ownership of the subject property;

b. Whether it was correct for the [CA] to rule on an issue of fact – though not raised on appeal – which is yet to be determined by a lower court of competent jurisdiction;

c. Whether it was correct for the [CA] to rule that the issue of [private] respondent x x x being a mortgagee or buyer in good faith or for value does not warrant the suspension of the writ of possession;

d. Whether the RTC Branch 198 has been impartial or unbiased in adjudicating LRC Case No. LP 09-0030.[11]

Petitioners contend that the deed of sale they purportedly executed in favor of Miñoza was fraudulent. According to them, due to such forged deed, Miñoza acquired no right over the subject property and she could not convey it to private respondent; and, all transactions subsequent to the sale between her and private respondent are also void. They further claim that they have been in open, exclusive and continuous possession of the subject property which proves that they are its owners.

Petitioners likewise posit that they assert a claim of ownership adverse to that of Miñoza and private respondent. They argue that their rights as third parties cannot be resolved in an *ex parte* proceeding where they were not impleaded or where they did not appear to present their side.

Finally, petitioners maintain that private respondent was not a mortgagee or purchaser in good faith and for value because it did not exercise due diligence required of banking and financial institutions before entering into a mortgage contract with Miñoza. They insist that the fact that the property in dispute was not in possession of Miñoza at the time she contracted the loan should have placed private respondent on guard and prompted it to make a more thorough inquiry into its ownership.

Private respondent, on its end, argues, among other things, that petitioners were not adverse claimants because when they already sold the subject property, petitioners no longer hold any valid title over it. It also denies that petitioners are in actual possession of the property in dispute as they did not submit any certification that they reside therein.

*Our Ruling*

The Petition is without merit.

---

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

*Issuance of a writ of possession; when to apply, requirements*

Section 7 of Act No. 3135,[12] as amended by Act No. 4118,[13] provides for the manner for the issuance of a writ of possession in extrajudicial foreclosure of REM, to wit:

> Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the [*sic*] court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

Simply put, a successful buyer of a foreclosed property bought at a public auction sale is authorized to apply for a writ of possession (1) during the redemption period upon filing of the corresponding bond; and, (2) after the expiration of the redemption period without any need of a bond.[14]

---

[12] An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages, March 6, 1924.

[13] An Act to amend Act numbered Thirty-One-Hundred and Thirty-Five, Entitled "An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real-Estate Mortgages," December 7, 1933.

[14] See *Hernandez v. Ocampo, et al.,* 792 Phil. 854, 867 (2016).

*After the lapse of the one-year redemption period, writ of possession is a matter of right; exception*

Meanwhile, Section 33, Rule 39 of the Rules of Court, which extends to extrajudicial foreclosure sales,[15] explicitly provides that when no redemption is made within one year from the date of registration of the certificate of sale, the purchaser is already entitled to the possession of the subject property *unless* a third party is holding it adversely to the judgment debtor.[16]

It bears stressing that a purchaser in an extrajudicial foreclosure becomes the absolute owner of the subject property in case no redemption is made within one year from the registration of the certificate of sale. As the absolute owner, the purchaser is entitled to all the rights of ownership, including the right to possess the property.[17] It, thus, follows that upon proper application and evidence of ownership, the issuance of a writ of possession becomes a ministerial duty of the court

---

[15] *Sps. Gallent v. Velasquez*, 784 Phil. 44, 63 (2016).

[16] Section 33. *Deed and Possession to be Given at Expiration of Redemption Period; by Whom Executed or Given.* — If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. x x x

Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession or the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor. (35a)

[17] See *Heirs of Jose Peñaflor, namely: Jose Peñaflor, Jr., and Virginia P. Agatep, represented by Jessica P. Agatep vs. Heirs of Artemio and Lydia Dela Cruz, namely: Marilou, Juliet, Romeo, Ryan, and Ariel, all surnamed Dela Cruz,* G.R. No. 197797, August 9, 2017.

except where a third party is holding the property adversely to the judgment debtor. In the latter case, the issuance of a writ of possession is no longer ministerial and may not be done *ex parte* and hearing for the purpose of determining entitlement to possession must be held.[18] Let it be stressed that by third party holding the property by adverse title or right, the Court refers to one who is in possession of the disputed property *in his or her own right* such as a co-owner, a tenant or a usufructuary.[19]

In this case, petitioners insist that the RTC improperly issued a writ of possession in favor of private respondent on the contention that they were third parties holding the subject property adverse to the judgment debtor, Miñoza.

Petitioners' contention is untenable.

*First*, petitioners sold the subject property to Miñoza through a deed of absolute sale. By doing so, they relinquished their title over it in favor of the latter. This also means that from the time that they sold the subject property, petitioners no longer had any right over it and cannot be considered as third parties with an adverse interest from the judgment debtor. *Second*, as pointed out by the CA, the sale was an absolute one; thereby, it was without any reservation of ownership by its previous owners (petitioners). In fact, the interest of the judgment debtor stemmed from petitioners themselves which refutes the very claim of petitioners of a different interest from that of Miñoza. Third, considering that the sale of real property is an effective mode of transferring ownership, it follows that there is sufficient reason to conclude that petitioners have *no* independent right over the subject property.[20]

---

[18] See *China Banking Corp. vs. Spouses Lozada*, 579 Phil. 454, 473-475 (2008).

[19] *Id.* at 478-479.

[20] See *Heirs of Jose Peñaflor; namely: Jose Peñaflor, Jr., and Virginia P. Agatep, represented by Jessica P. Agatep v. Heirs of Artemio and Lydia Dela Cruz, namely: Marilou, Juliet, Romeo, Ryan, and Ariel, all surnamed Dela Cruz, supra* note P.

*No violation of due process of law*

Based on the foregoing disquisitions, petitioners cannot be deemed as third parties who were not privy to the debtor. They are not entitled to protection and may be removed from the subject property without violating their right to due process of law.[21]

Petitioners were no strangers to the transaction between private respondent and Miñoza. By their own account, they themselves confirmed that they decided to sell their property to Miñoza and that they were well aware of the mortgage that Miñoza and private respondent had entered into. Despite these assertions, petitioners may avail themselves of legal remedies should they maintain their entitlement to the subject property, that is, by filing an independent and separate action,[22] which they already did when they filed an action for cancellation of title against Miñoza, among other persons.

It is also of equal importance to note that petitioners' right to due process was not violated considering that by its very nature, an *ex parte* application for a writ of possession involves a proceeding for the benefit of one party without necessarily giving notice to any adverse party. It is summary in nature and a mere incident in the transfer of title. It does not bar any purported adverse party from filing a case for annulment of mortgage or foreclosure.[23] At the same time, "not even a pending action to annul the mortgage or the foreclosure sale will by itself stay the issuance of a writ of possession x x x. The trial court, where the application for a writ of possession is filed, does not need to look into the validity of the mortgage or the manner of its foreclosure. The purchaser is entitled to a writ of possession without prejudice to the outcome of the pending

---

[21] See *Hernandez v. Ocampo*, *supra* note 14, at 870.

[22] *Id.* at 873-874.

[23] See *Madriaga, Jr. v. China Banking Corporation*, 691 Phil. 770, 778-779 (2012).

annulment case."[24] Under these circumstances, the issue that private respondent was not a purchaser or mortgagee in good faith will not prevent the issuance of a writ of possession in its favor given that this issue is one that may be subject of a different proceeding, not the one involving the application for a writ of possession.

To recapitulate, the right of private respondent to the possession of the subject property was fully established. As the buyer in the foreclosure sale and to which the title to the property was already issued, private respondent's right over it is absolute, which the court must facilitate into delivering. In this regard, there being sufficient factual and legal bases in issuing the writ of possession in favor of private respondent, the CA correctly found that the RTC committed no grave abuse of discretion and there is no reason for the issuance of a writ of *certiorari* against the trial court.

**WHEREFORE,** the Petition is **DENIED**. The Decision dated November 27, 2012 and the Resolution dated April 4, 2013 of the Court of Appeals in CA-G.R. SP No. 117859 are **AFFIRMED**.

**SO ORDERED.**

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

---

[24] *Sps. Gallent v. Velasquez*, *supra* note 15.

**THIRD DIVISION**

[G.R. No. 209078. September 4, 2019]

**JOSEPH VILLASANA *y* CABAHUG,** *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; RULE 45 PETITION; LIMITED TO QUESTIONS OF LAW; FACTUAL FINDINGS OF THE TRIAL COURT WHEN AFFIRMED BY THE COURT OF APPEALS GENERALLY GIVEN GREAT WEIGHT; EXCEPTION. —** As a rule, only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. This Court is not a trier of facts. It is not our function to review evidence all over again. Furthermore, the factual findings of the trial court, especially when upheld by the Court of Appeals, are generally given great weight considering the trial court's unique position to directly observe a witness' demeanor on the stand. A departure from the general rule, however, may be warranted where facts of weight and substance have been overlooked, misconstrued, or misapplied.

**2. ID.; CRIMINAL PROCEDURE; WARRANTLESS ARREST; INSTANCES OF LAWFUL WARRANTLESS ARREST, EXPLAINED. —** A lawful arrest may be effected with or without a warrant. The instances of lawful arrest without warrant are provided in Rule 113, Section 5 of the Revised Rules of Criminal Procedure[.] Section 5(a) refers to an *in flagrante delicto* arrest, and requires compliance with the "overt act test," as explained in *People v. Cogaed:* [F]or a warrantless arrest of *in flagrante* delicto to be affected, "two elements must concur: (1) the person to be arrested must execute an overt act indicating that he [or she] has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer." Section 5(b), on the other hand, requires that at the time of the arrest, an offense had just been committed and the arresting officer had personal knowledge of the facts indicating that the accused had committed it. In both instances, the police officer must have personal knowledge of the commission of an offense. Under Section 5(a),

the officer himself or herself witnesses the crime; in Section 5(b), the officer knows that a crime has just been committed and had witnessed some facts that led him or her to believe that the person about to be arrested committed the offense.

**3. ID.; ID.; ID.; INFORMATION PROVIDED BY THE POLICE ASSET IS NOT SUFFICIENT TO JUSTIFY WARRANTLESS ARREST; THERE MUST BE INDEPENDENT CIRCUMSTANCES PERCEIVABLE BY THE ARRESTING OFFICERS THAT A CRIMINAL OFFENSE IS BEING COMMITTED. —** PO3 Martinez was about six (6) to ten (10) meters away when he saw petitioner emerge from an alley, talking to a woman while holding a plastic sachet. His testimony fails to state that he had personal knowledge that the sachet contained *shabu*, or that he saw the sachet containing white crystalline substance, to create a reasonable suspicion that the sachet did indeed contain *shabu*. x x x What appears from PO3 Martinez's narration of facts is that petitioner was arrested: (1) because of the informant's tip that he was selling drugs; and (2) because he was known to PO2 Magno and PO2 Sanchez. It is settled that "reliable information" provided by police assets alone is not sufficient to justify a warrantless arrest. There must be independent circumstances perceivable by the arresting officers suggesting that a criminal offense is being committed to comply with the exacting requirements of Rule 113, Section 5 of the Rules of Court. An accused must perform some overt act within plain view of the police officers indicating that she or "he has just committed, is actually committing, or is attempting to commit a crime." None was present in this case.

**4. ID.; ID.; ID.; EFFECTS OF ILLEGAL WARRANTLESS ARREST; SUBSEQUENT SEIZURE OF THE *SHABU* BECOMES UNREASONABLE; PETITIONER'S FAILURE TO QUESTION HIS ARREST BEFORE ENTERING HIS PLEA DOES NOT BAR HIM FROM RAISING THE INADMISSIBILITY OF THE ILLEGALLY SEIZED *SHABU*. —** With petitioner's arrest being illegal, the subsequent seizure of the *shabu* allegedly in his possession becomes "unreasonable." At this point, it must be emphasized that petitioner's failure to question his arrest before he made his plea only affects the jurisdiction of the court over his person and does not bar him from raising the inadmissibility of the

illegally seized *shabu*. A waiver of an illegal warrantless arrest does not carry with it a waiver of the inadmissibility of the evidence obtained during the illegal arrest. Because the dangerous drug was unlawfully seized, it cannot be used as evidence against petitioner.

**5. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; FOR SUCCESSFUL PROSECUTION THEREOF, THE STATE IS REQUIRED TO ESTABLISH THE IDENTITY OF THE DANGEROUS DRUGS AND THAT THE INTEGRITY OF WHICH WAS PRESERVED. ––** The *corpus delicti* in the prosecution for illegal possession of dangerous drugs consists in the dangerous drug itself, without which no conviction of the accused can be obtained. It is indispensable for the State to establish the identity of the dangerous drugs, the integrity of which must have been preserved. This requires proof beyond reasonable doubt that the drugs seized from the accused and subsequently examined in the laboratory are the same drugs presented in court as evidence.

**6. ID.; ID.; ID.; UNJUSTIFIED NONCOMPLIANCE WITH THE CHAIN OF CUSTODY PROVIDED UNDER SECTION 21 OF RA 9165 IS TANTAMOUNT TO FAILURE TO ESTABLISH THE *CORPUS DELICTI*; PETITIONER IS ACQUITTED.—** [E]ach link in the chain of custody of the seized drug must be accounted for to show that there was no "tampering, alteration[,] or substitution either by accident or otherwise." x x x The first and crucial stage in the chain of custody is the marking of the seized drugs and other related items immediately upon confiscation from the accused. Here, x x x it is manifest that the seized drugs were not immediately marked upon seizure, and the records do not show why it was not done at the earliest possible opportunity. More importantly, there is no clear showing that the marking had been done in the presence of petitioner or his representative. x x x The discrepancies in the markings create doubt as to whether the specimen allegedly seized from petitioner and submitted to the Crime Laboratory was the same one examined by Inspector Arturo, and subsequently presented in court. Furthermore, there was noncompliance with the legal requirements under Section 21 of Republic Act No. 9165. Section 21 defines the procedure to be followed by the apprehending officers to ensure the

integrity of the seized dangerous drugs and drug paraphernalia. x x x The police officers' unjustified noncompliance with the requirements for the marking and inventory of the seized drugs overthrows the presumption of regularity in the performance of their official duty. Their "ostensibly approximate compliance" is not enough, and therefore, tantamount to a failure to establish the *corpus delicti.* This raises reasonable doubt in petitioner's favor. x x x Petitioner Joseph Villasana *y* Cabahug is **ACQUITTED.**

**APPEARANCES OF COUNSEL**

*Public Attorney's Office* for petitioner.
*The Solicitor General* for respondent.

**D E C I S I O N**

**LEONEN, *J.*:**

Evidence seized as a result of an illegal warrantless arrest cannot be used against an accused pursuant to Article III, Section 3(2) of the Constitution. Even if the seizure was reasonable, the arresting officers' unjustified noncompliance with the legal safeguards under Section 21 of Republic Act No. 9165 compromises the integrity of the confiscated drug. This creates reasonable doubt on the conviction of the accused for illegal possession of dangerous drugs.

This Court resolves a Petition for Review on *Certiorari*[1] assailing the Decision[2] of the Court of Appeals, which affirmed the Regional Trial Court Decision[3] convicting Joseph Villasana

---

[1] Filed under Rule 45.

[2] *Rollo,* pp. 34-48. The Decision dated March 11, 2013 in CA-G.R. CR. No. 34596 was penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Michael P. Elbinias and Nina G. Antonio-Valenzuela of the Thirteenth Division of the Court of Appeals, Manila.

[3] *Id.* at 73-83. The Decision dated October 28, 2010 in Criminal Case No. 16-V-05 was penned by Presiding Judge Maria Nena J. Santos of Branch 171, Regional Trial Court, Valenzuela City.

*y* Cabahug (Villasana) of illegal possession of dangerous drugs. The Court of Appeals, in a subsequent Resolution,[4] denied his Motion for Reconsideration.

In an Information filed on January 6, 2005, Villasana was charged with violation of Article II, Section 11 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, for illegal possession of "one (1) self-sealing transparent plastic bag containing 0.15 gram of white crystalline substance Methamphetamine Hydrochloride (*Shabu*)[.]"[5]

On arraignment, Villasana pleaded not guilty to the crime charged.[6]

During pre-trial, the prosecution and defense stipulated on the following:

1. The jurisdiction of the court over the person of the accused and the offense;
2. The identity of the accused;
3. That Police Officer 2 Ronald Sanchez (PO2 Sanchez) is the officer-on-case who received the evidence from PO3 Louie Martinez (PO3 Martinez), the arresting officer;
4. That PO2 Sanchez prepared the letter-request for laboratory examination;
5. That the letter-request, along with the evidence, was turned over to PO3 Martinez for delivery to the Philippine National Police Crime Laboratory;

---

[4] *Id.* at 50-51. The Resolution dated August 28, 2013 was penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Michael P. Elbinias and Nina G. Antonio-Valenzuela of the Thirteenth Division, Court of Appeals, Manila.

[5] *Id.* at 35.

[6] *Id.*

6. That PO3 Martinez delivered the specimen together with the letter-request for laboratory examination to the Crime Laboratory, Sangandaan, Caloocan City;
7. That the January 5, 2005 letter-request for laboratory examination was received by the office of Police Inspector Albert Arturo (Inspector Arturo) from the Station Anti-Illegal Drugs Special Operation Unit, Valenzuela City Police Station, along with a small plastic evidence bag marked as SAID-SOU/VCPS 04-12-05 containing one (1) piece of small plastic sachet containing white crystalline substance marked as "JCV";
8. That after the qualitative examination, Inspector Arturo found that the contents of the plastic sachet yielded positive results for methamphetamine hydrochloride, as stated in Physical Sciences Report No. D-006-05;
9. That Inspector Arturo is a duly qualified forensic chemist of the Northern Police District Crime Laboratory Office, Caloocan City Police Station; and
10. That Inspector Arturo has no personal knowledge of the source of the evidence and the circumstances surrounding the confiscation/custody and safekeeping of the subject evidence.[7]

The prosecution presented PO3 Martinez as its first witness. He alleged the following:

At around 7:00 p.m. on January 4, 2005, while PO3 Martinez was on duty at the Station Anti-Illegal Drugs Special Operation Unit of the Valenzuela City Police Station, a confidential informant arrived and reported that Jojo Villasana and Nida Villasana were rampantly selling drugs along Hustisya Street, Marulas, Valenzuela City. Thus, a team headed by Police Inspector Muammar A. Mukaram (Inspector Mukaram) with SPO1 Arquillo, PO3 Soriano, PO3 Britaña, PO2 Sanchez, PO3

---

[7] *Id.* at 73-74, RTC Decision. The *rollo* at other times indicated that Sanchez was designated as PO3. The cited page mistakenly stated "JVC."

Martinez, PO2 Magno, PO2 Malinao, PO2 Salvidar, and PO1 Pajares as members, was at once formed to conduct surveillance operations.[8]

At about 11:30 p.m. that day, the team proceeded to the target area on board three (3) vehicles: a car, a Revo van, and a motorcycle.[9] PO3 Martinez, PO3 Soriano, and PO2 Magno parked on Hustisya Street and waited inside the van. Around 10 to 15 minutes later, they saw, through the van's tinted front windshield,[10] Villasana coming out of an alley around five (5) to six (6) meters away.[11] He was holding a plastic sachet while talking to a woman.[12] The police officers approached him discreetly.[13]

As he reached Villasana, PO3 Martinez held his hand and introduced himself as a police officer.[14] He told Villasana not to throw the plastic sachet, to which the latter replied, *"panggamit ko lang to."*[15] After verifying that Villasana was indeed holding *shabu*, PO3 Martinez arrested him and confiscated the sachet.[16] The woman, however, was able to escape.[17]

Villasana and the seized drug were brought to the Marulas Barangay Hall, where an inventory was made.[18] The inventory

---

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

[9] TSN dated August 13, 2007, pp. 5-6.

[10] *Id.* at 7 and 22-23. On direct examination, PO3 Martinez testified that PO3 Soriano and PO2 Magno were with him. However, when he was asked on cross-examination who his companions were, he said PO2 Magno and PO2 Sanchez.

[11] *Id.* at 6-7.

[12] *Rollo,* p. 37.

[13] TSN dated August 13, 2007, p. 8.

[14] *Id.*

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

[16] *Id.* at 9.

[17] *Id.* at 25.

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

was signed by Kagawad Jose Mendez (Kagawad Mendez) and a certain Artemus Latoc (Latoc),[19] a former official.[20] PO3 Martinez marked the confiscated item with Villasana's initials, "JCV," in the "office."[21] Then, he brought Villasana and the seized specimen to the Philippine National Police Crime Laboratory in Caloocan City for drug testing and laboratory examination.[22]

After PO3 Martinez's testimony, the prosecution and defense agreed to dispense with the testimonies of prosecution witnesses PO2 Sanchez, Inspector Mukaram, and Police Superintendent Caday.[23]

For the defense,[24] Villasana testified that at around 8:00 p.m. on January 4, 2005, Villasana was having a conversation with Sabel and Diane inside a jeepney, which was then parked in front of his house in Karuhatan, Valenzuela City.[25] Not far from them, a group of police officers arrived and accosted several persons that were playing *cara y cruz.*[26] One (1) of the police officers, PO2 Sanchez, called Villasana to come out.[27] He did as asked, but as he alighted from the jeepney, PO2 Magno grabbed him by the waist and forced him to board a car parked behind the jeepney.[28] He tried to resist, but the arresting officers overpowered him.[29]

---

[19] RTC records, p. 10, Drug Inventory Form.

[20] TSN dated August 13, 2007, p. 13.

[21] *Id.* at 11.

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

[23] *Rollo,* p. 38.

[24] *Id.* at 39. The testimony of Villasana was corroborated by Diana Rose Latiza, one (1) of the two (2) girls he was with inside the jeepney, regarding the circumstances surrounding his arrest.

[25] TSN dated August 4, 2008, pp. 4-5.

[26] *Id.* at 6.

[27] *Id.* at 8 and *rollo,* p. 39.

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

[29] *Id.* at 9.

Villasana was brought to the Narcotics Office on the second floor of the Valenzuela City Hall,[30] where they waited for his brother and sister who were supposed to bring ₱50,000.00 as *"areglo."*[31] His siblings, however, did not show up.[32] At around 10:00 p.m., Villasana was brought to the Marulas Barangay Hall, where he was asked to sign a document.[33] The police officers showed him the alleged evidence against him and told him that he would be charged with a drug-related offense.[34]

On October 28, 2010, the Regional Trial Court rendered a Decision[35] convicting Villasana. The dispositive portion of the Decision read:

> WHEREFORE, accused JOSEPH VILLASANA *y* CABAHUG is hereby found GUILTY beyond reasonable doubt of the crime of violation of Section 11 of Article 2 of R.A. 9165 in Criminal Case No. 16-V-05. Accordingly, the said accused is hereby ordered to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum. Further, the said accused is ordered to pay a FINE in the amount of Three Hundred Thousand Pesos (Php) 300,000.00.
>
> The Branch Clerk of Court of this Court is directed to turn over to PDEA the drugs used as evidence in this case for proper disposition.
>
> SO ORDERED.[36]

Villasana appealed before the Court of Appeals. He argued that the trial court gravely erred: (1) in finding the evidence admissible despite the illegality of his arrest; (2) in finding him guilty despite the police officers' failure to comply with Article II, Section 21 of Republic Act No. 9165; (3) in giving

---

[30] *Id.* at 15.

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

[32] *Id.* at 17.

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

[34] *Id.* at 21.

[35] *Rollo,* pp. 73-83.

[36] *Id.* at 82-83.

full credence to the prosecution witness' testimony; and (4) in convicting him despite the prosecution's failure to prove his guilt beyond reasonable doubt.[37]

In its March 11, 2013 Decision,[38] the Court of Appeals affirmed the Regional Trial Court Decision *in toto:*

> **WHEREFORE**, in view of the foregoing premises, the instant appeal is hereby **DENIED** and the October 28, 2010 Decision of the Regional Trial Court, Branch 171 in Valenzuela City in Criminal Case No. 16-V-05 is hereby **AFFIRMED *in toto***.
>
> **SO ORDERED**.[39] (Emphasis in the original, citation omitted)

The Court of Appeals held that there was a valid warrantless arrest because Villasana "was caught *in flagrante delicto* of having in his possession an illegal drug."[40] It also found that the police officers had probable cause to apprehend Villasana, as he matched the description given by the informant, and was also found at the place specified by the informant. It further noted that when they apprehended him, they found in his possession a sachet containing white crystalline substance, which turned out to be *shabu*.[41]

In any case, the Court of Appeals held that Villasana was already estopped from questioning the legality of his arrest since he failed to move for the quashing of the Information before his arraignment. Neither did he raise the issue of his warrantless arrest prior to or during the proceedings before the trial court.[42]

The Court of Appeals gave no merit to Villasana's claim on noncompliance with the guidelines on custody and disposition

---

[37] *Id.* at 40-41.

[38] *Id.* at 34-48.

[39] *Id.* at 47.

[40] *Id.* at 43.

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

[42] *Id.* at 44.

of the seized items.[43] It gave credence to PO3 Martinez's testimony, in which he stated that after confiscating the sachet containing the illegal drug, he marked it with "JCV,"[44] and along with PO2 Sanchez and PO2 Magno, brought it to the Marulas Barangay Hall where it was inventoried in the presence of Villasana, Kagawad Mendez, and the other barangay *tanods*, and later to the Crime Laboratory for examination. The Court of Appeals held that, absent any showing of ill motive on the part of the police officers, the presumption of regularity in the performance of their official duty applied.[45]

The Court of Appeals further held that procedural infirmities in the custody of dangerous drugs are insufficient to render the seized items inadmissible in court as evidence,[46] so long as their integrity was shown to be preserved, as in this case.[47]

Villasana filed a Motion for Reconsideration, but it was denied in the Court of Appeals' August 28, 2013 Resolution.[48]

Hence, this Petition[49] was filed. Respondent People of the Philippines, through the Office of the Solicitor General, filed its Comment.[50]

Petitioner assails his conviction on the grounds that: (1) his warrantless arrest was invalid and the drug allegedly seized from him was inadmissible in evidence;[51] (2) there were irregularities in the custody and the police officers' handling of the seized *shabu*, such as inconsistent markings and the

---

[43] *Id.*

[44] *Id.* at 45. The CA Decision mistakenly states "JVC."

[45] *Id.*

[46] *Id.*

[47] *Id.* at 46.

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

[49] *Id.* at 11-32.

[50] *Id.* at 133-149.

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

marking itself not done at the place of the arrest;[52] and (3) there was noncompliance with the inventory and photograph requirements under Section 21 of Republic Act No. 9165.[53]

Respondent counters that petitioner purely raises questions of fact that are proscribed in a Rule 45 petition.[54] At any rate, it contends that because petitioner entered his plea without objection, he waived his right to question any irregularity in his arrest. Also, even if there was no waiver of the issue, respondent claims that petitioner's arrest was valid as he was caught *in flagrante delicto* possessing *shabu*.[55]

Respondent adds that noncompliance with the requirements of Section 21[56] did not render the seizure of the dangerous drug void since the integrity and evidentiary value of the seized item were preserved.[57] Finally, it contends that the chain of custody of the seized specimen—from inventory until submission to the Crime Laboratory—was already stipulated upon and is considered a judicial admission on the part of petitioner.[58]

This Court resolves the following issues:

First, whether or not factual issues can be raised in a Rule 45 petition; and

Second, whether or not the guilt of petitioner Joseph Villasana *y* Cabahug was proven beyond reasonable doubt.

This Court grants the Petition. The prosecution failed to prove petitioner's guilt.

---

[52] *Id.* at 22-24.

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

[54] *Id.* at 139.

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

[56] *Id.* at 144.

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

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

**I**

As a rule, only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court.[59] This Court is not a trier of facts.[60] It is not our function to review evidence all over again.[61] Furthermore, the factual findings of the trial court, especially when upheld by the Court of Appeals, are generally given great weight[62] considering the trial court's unique position to directly observe a witness' demeanor on the stand.[63]

A departure from the general rule, however, may be warranted where facts of weight and substance have been overlooked, misconstrued, or misapplied.[64] In *Lapi v. People,*[65] this Court said:

This Court is not precluded from reviewing the factual findings of the lower courts, or even arriving at a different conclusion, "if it is not convinced that [the findings] are conformable to the evidence of

---

[59] *Lapi v. People,* G.R. No. 210731, February 13, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64967> [Per *J.* Leonen, Third Division] and *Dela Cruz v. People,* 776 Phil. 653 (2016) [Per *J.* Leonen, Second Division].

[60] *Id.*

[61] *Concepcion v. People,* G.R. No. 243345, March 11, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65121> [Per *J.* Caguioa, Second Division].

[62] *People v. Morales,* 630 Phil. 215 (2010) [Per *J.* Del Castillo, Second Division].

[63] *Regalado v. People,* G.R. No. 216632, March 13, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65041> [Per *J.* Leonen, Third Division] and *Magno v. People,* 516 Phil. 72 (2006) [per *J.* Garcia, Second Division].

[64] *Sy v. People,* 671 Phil. 164 (2011) [Per *J.* Peralta, Third Division]; *San Juan v. People,* 664 Phil. 547 (2011) [Per *J.* Nachura, Second Division]; and *People v. Kamad,* 624 Phil. 289 (2010) [Per *J.* Brion, Second Division].

[65] G.R. No. 210731, February 13, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64967> [Per *J.* Leonen, Third Division].

record and to its own impressions of the credibility of the witnesses." The lower court[s'] [f]actual findings will not bind this Court if facts that could affect the result of the case "were overlooked and disregarded[.]"[66] (Citations omitted)

As will be discussed later, several circumstances in this case, if properly appreciated, would lead to a conclusion different from what was arrived at by the Regional Trial Court and the Court of Appeals.

**II**

The prosecution failed to establish probable cause to justify the *in flagrante delicto* arrest of petitioner. Thus, the ensuing seizure of the *shabu* purportedly in his possession is unlawful, and the seized drug is, therefore, inadmissible in evidence.

Under the 1987 Constitution, all citizens are protected against unreasonable searches and seizures of their persons, houses, papers, and effects.[67] As a rule, a search and seizure must be carried out with a search warrant validly issued by a judge upon personal determination of probable cause;[68] otherwise, the search becomes unreasonable. It follows that any item or article obtained from such search cannot be used as evidence for any purpose in any proceeding.[69]

---

[66] *Id.*

[67] CONST., Art. III, Sec. 2 provides:

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[68] *People v. Cogaed,* 740 Phil. 212 (2014) [Per *J.* Leonen, Third Division].

[69] CONST., Art. III, Sec. 3(2).

Jurisprudence, however, has recognized several exceptions to the search warrant requirement.[70] Among these exceptions is a search incidental to a lawful arrest.[71] In this instance, the lawful arrest must precede the search; the process cannot be reversed.[72]

A lawful arrest may be effected with or without a warrant. The instances of lawful arrest without warrant are provided in Rule 113, Section 5 of the Revised Rules of Criminal Procedure, which states:

> SECTION 5. *Arrest Without Warrant; When Lawful.* — A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) *When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;*
>
> (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. (Emphasis supplied)

Section 5(a) refers to an *in flagrante delicto* arrest, and requires compliance with the "overt act test," as explained in *People v. Cogaed*:[73]

---

[70] *Sy v. People,* 671 Phil. 164 (2011) [Per *J*. Peralta, Third Division] and *Mallillin, Jr. v. People,* 576 Phil. 576 (2008) [Per *J*. Tinga, Second Division].

[71] RULES OF COURT, Rule 126, Sec. 13 provides:

> SECTION 13. *Search incident to lawful arrest.* — A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

[72] *Sy v. People,* 671 Phil. 164 (2011) [Per *J*. Peralta, Third Division] and *Malacat v. Court of Appeals,* 347 Phil. 462 (1997) [Per *J*. Davide, Jr., *En Banc*].

[73] 740 Phil. 212 (2014) [Per *J*. Leonen, Third Division].

[F]or a warrantless arrest of in flagrante delicto to be affected, "two elements must concur: (1) the person to be arrested must execute an overt act indicating that he [or she] has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer."[74] (Citation omitted)

Section 5(b), on the other hand, requires that at the time of the arrest, an offense had just been committed and the arresting officer had personal knowledge of the facts indicating that the accused had committed it.

In both instances, the police officer must have personal knowledge of the commission of an offense. Under Section 5(a), the officer himself or herself witnesses the crime; in Section 5(b), the officer knows that a crime has just been committed[75] and had witnessed some facts that led him or her to believe that the person about to be arrested committed the offense.[76]

On several occasions, this Court has invalidated[77] warrantless arrests and ensuing searches and seizures for the arresting officers' failure to comply with the overt act test, or for their lack of personal knowledge that a crime has just been committed by the accused.

In *Comerciante v. People,*[78] this Court ruled that the warrantless arrest was not lawful because the arresting officers failed to determine beforehand that a criminal activity was

---

[74] *Id.* at 238.

[75] *Peralta v. People,* G.R. No. 221991, August 30, 2017, 838 SCRA 350 [Per *J.* Perlas-Bernabe, Second Division].

[76] *J.* Leonen, Concurring Opinion in *Macad v. People,* G.R. No. 227366, August 1, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64433> [Per *J.* Gesmundo, Third Division].

[77] *People v. Edaño,* 738 Phil. 463 (2014) [Per *J.* Brion, Second Division]; *Antiquera v. People,* 723 Phil. 425 (2013) [Per *J.* Abad, Third Division]; and *People v. Villareal,* 706 Phil. 511 (2013) [Per *J.* Perlas-Bernabe, Second Division].

[78] 764 Phil. 627 (2015) [Per *J.* Perlas-Bernabe, First Division].

ongoing. It remarked that it was highly implausible that the police officer would be able to identify—especially around 10 meters away and while aboard a motorcycle cruising at a speed of 30 kilometers per hour—minuscule amounts (0.15 gram and 0.28 gram) of white crystalline substance inside two (2) very small plastic sachets held by the accused. This Court further held that merely *"standing around with a companion and handing over something to the latter cannot in any way be considered criminal acts.*"[79]

Similarly, in *Sindac v. People,*[80] this Court held that considering that the arresting officer was five (5) to ten (10) meters away from when a man allegedly handed the accused a plastic sachet containing suspected *shabu*, it was highly doubtful that the officer was able to reasonably ascertain that a crime was being committed. It held:

> Considering that PO3 Peñamora was at a considerable distance away from the alleged criminal transaction (five [5] to ten [10] meters), not to mention the atomity of the object thereof (0.04 gram of white crystalline substance contained in a plastic sachet), the Court finds it highly doubtful that said arresting officer was able to reasonably ascertain that any criminal activity was afoot so as to prompt him to conduct a lawful *in flagrante delicto* arrest and, thereupon, a warrantless search. These similar circumstances were availing in the cases of *Comerciante v. People* and *People v. Villareal* where the Court likewise invalidated the *in flagrante delcito (sic)* arrest and ensuing warrantless search. In this relation, it should also be pointed out that no criminal overt act could be properly attributed to Sindac so as to rouse any reasonable suspicion in the mind of either PO3 Peñamora or PO1 Asis that Sindac had just committed, was committing, or was about to commit a crime. *Sindac's actuations of talking to and later on, receiving an unidentified object from Cañon, without more, should not be considered as ongoing criminal activity* that would render proper an *in flagrante delicto* arrest under Section 5 (a), Rule 113 of the Revised Rules of Criminal Procedure.[81] (Emphasis supplied, citations omitted)

---

[79] *Id.* at 640-641.

[80] 794 Phil. 421 (2016) [Per *J.* Perlas-Bernabe, First Division].

[81] *Id.* at 433.

In this case, PO3 Martinez was about six (6) to ten (10) meters away when he saw petitioner emerge from an alley, talking to a woman while holding a plastic sachet. His testimony fails to state that he had personal knowledge that the sachet contained *shabu*, or that he saw the sachet containing white crystalline substance, to create a reasonable suspicion that the sachet did indeed contain *shabu*. From all indications—the time of the arrest being 11:30 p.m., PO3 Martinez's location, and the tinted front windshield of the van through which he was looking—it was highly doubtful that PO3 Martinez saw, let alone deciphered, the contents of the sachet.[82] For sure, it was only when he held petitioner's hand[83] and confiscated the plastic sachet that he was able to verify its contents.[84]

What appears from PO3 Martinez's narration of facts is that petitioner was arrested: (1) because of the informant's tip that he was selling drugs;[85] and (2) because he was known to PO2 Magno and PO2 Sanchez.[86]

It is settled that "reliable information" provided by police assets alone is not sufficient to justify a warrantless arrest.[87] There must be independent circumstances perceivable by the arresting officers suggesting that a criminal offense is being committed to comply with the exacting requirements of Rule 113, Section 5 of the Rules of Court. An accused must perform some overt act within plain view of the police officers indicating that she or "he has just committed, is actually

---

[82] TSN dated August 13, 2007, pp. 23 and 26.

[83] *Id.* at 8.

[84] *Id.* at 9.

[85] *Id.* at 19.

[86] *Id.* at 24.

[87] *Sindac v. People,* 794 Phil. 421 (2016) [Per *J*. Perlas-Bernabe, First Division] and *People v. Tudtud,* 458 Phil. 752 (2003) [Per *J*. Tinga, Second Division].

committing, or is attempting to commit a crime."[88] None was present in this case.

With petitioner's arrest being illegal, the subsequent seizure of the *shabu* allegedly in his possession becomes "unreasonable." At this point, it must be emphasized that petitioner's failure to question his arrest before he made his plea only affects the jurisdiction of the court over his person[89] and does not bar him from raising the inadmissibility of the illegally seized *shabu*. A waiver of an illegal warrantless arrest does not carry with it a waiver of the inadmissibility of the evidence obtained during the illegal arrest.[90]

Because the dangerous drug was unlawfully seized, it cannot be used as evidence against petitioner. Without the dangerous drug, petitioner's acquittal based on reasonable doubt is inevitable.

**III**

Likewise, petitioner's imputation of irregularities in the custody and the police officers' handling of the seized *shabu* is well taken. From the facts on record, the police officers had compromised the integrity of the *shabu* purportedly seized from him.

The *corpus delicti* in the prosecution for illegal possession of dangerous drugs consists in the dangerous drug itself, without which no conviction of the accused can be obtained.[91] It is

---

[88] *People v. Tudtud,* 458 Phil. 752, 775 (2003) [Per *J*. Tinga, Second Division].

[89] *Dominguez v. People,* G.R. No. 235898, March 13, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65275> [Per *J*. Caguioa, Second Division].

[90] *Antiquera v. People,* 723 Phil. 425 (2013) [Per *J*. Abad, Third Division]; and *People v. Racho,* 640 Phil. 669 (2010) [Per *J*. Nachura, Second Division].

[91] *People v. Jaafar,* 803 Phil. 582 (2017) [Per *J*. Leonen, Third Division]; *People v. Edaño,* 738 Phil. 463 (2014) [Per *J*. Brion, Second Division]; and *Valencia v. People,* 725 Phil. 268 (2014) [Per *J*. Reyes, First Division].

indispensable for the State to establish the identity of the dangerous drugs, the integrity of which must have been preserved.[92] This requires proof beyond reasonable doubt that the drugs seized from the accused and subsequently examined in the laboratory are the same drugs presented in court as evidence.[93]

Toward this end, each link in the chain of custody of the seized drug must be accounted for[94] to show that there was no "tampering, alteration[,] or substitution either by accident or otherwise."[95]

In *Mallillin, Jr. v. People,*[96] this Court expounded on the rationale behind the exacting requirements of Republic Act No. 9165 in prosecutions for illegal possession of dangerous drugs:

> Indeed, *the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar inform to substances familiar to people in their daily lives. Graham vs. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin — was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession — was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the

---

[92] *People v. Saragena,* G.R. No. 210677, August 23, 2017, 837 SCRA 539 [Per *J.* Leonen, Third Division].

[93] *People v. Sipin,* G.R. No. 224290, June 11, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64255> [Per *J.* Peralta, Second Division]; and *People v. Gonzales,* 708 Phil. 121 (2013) [Per *J.* Bersamin, First Division].

[94] *People v. Saragena,* G.R. No. 210677, August 23, 2017, 837 SCRA 539 [Per *J.* Leonen, Third Division].

[95] *Valencia v. People,* 725 Phil. 268, 277 (2014) [Per *J.* Reyes, First Division].

[96] 576 Phil. 576 (2008) [Per *J.* Tinga, Second Division].

state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.

*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.[97] (Emphasis supplied, citations omitted)

The first and crucial stage in the chain of custody is the marking of the seized drugs and other related items immediately upon confiscation from the accused.[98] In *People v. Gonzales,*[99] this Court explained:

The first stage in the chain of custody is the marking of the dangerous drugs or related items. *Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest.* The importance of the prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other

---

[97] *Id.* at 588-589.

[98] *People v. Saragena,* G.R. No. 210677, August 23, 2017, 837 SCRA 529 [Per *J.* Leonen, Third Division].

[99] 708 Phil. 121 (2013) [Per *J.* Bersamin, First Division].

material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting, or contamination of evidence. *In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.*[100] (Emphasis supplied, citation omitted)

Here, PO3 Martinez stated during trial that he marked the seized sachet with accused-appellant's initials "JCV" in the "office." But the office—whether in the Marulas Barangay Hall where Villasana was supposedly first brought, or in the Station Anti-Illegal Drugs Special Operation Unit—remained unclear from his testimony. In any case, it is manifest that the seized drugs were not immediately marked upon seizure, and the records do not show why it was not done at the earliest possible opportunity.

More importantly, there is no clear showing that the marking had been done in the presence of petitioner or his representative. This can be gleaned from PO3 Martinez's testimony both on direct and cross-examination:

Q You said you were able to confiscate from the accused a plastic sachet containing *shabu*, if that small plastic sachet will be shown to you, will you be able to identify the same?

A Yes, sir.

Q Why would you be able to identify that piece of sachet which you were able to recover from the accused?

A I put the initial of the suspect.

Q I am showing to you a small piece of plastic sachet with marking JCV . . . will you please take a look at this and tell us what is the relation of this piece of small plastic sachet with that small plastic sachet which you said you were able to recover from the accused?

A This is the one I recovered from the accused.

Q Now there is a marking here JCV, who put this marking?

---

[100] *Id.* at 130-131.

A I, sir.

Q Where were you at that time when you put this marking JCV?

A In the office.[101]

. . . . . .

Q So where did you bring Jojo Villasana after his apprehension?

A After his arrest, we made an inventory report and requested for drug test and brought him to the barangay.

Q So you brought Jojo Villasana first to your office to prepare the documents for drug test and for the marking of evidence after his arrest?

A We brought him directly to the barangay because the entries were only handwritten.[102]

Moreover, while it was stipulated that PO3 Martinez delivered the specimen together with the letter-request for laboratory examination to the Crime Laboratory in Sangandaan, Caloocan City, it is unclear who actually received the confiscated plastic sachets and had their custody and possession before they were examined by Inspector Arturo.

The identity of the person who received the sachet, the condition in which it was received from PO3 Martinez, and the condition in which it was delivered to Inspector Arturo for analysis are all important. This is due to the variance in what was stated in these documents—the Request for Laboratory Examination referred to *"One small plastic evidence bag marked as SAID-SOU/VCPS 04-12-05 containing one (1) pc small plastic sachet . . . marked as 'JCV'"*;[103] Physical Science Report No. D-006-05 referred to *"One (1) self-sealing transparent plastic bag with markings 'SAID-SOU/VCPS 04-01-05' containing 0.15 gram of white crystalline substance*

---

[101] TSN dated August 13, 2007, pp. 10-11.

[102] *Id.* at 25.

[103] RTC records, p. 3.

*and marked as A-1*."[104] The discrepancies in the markings create doubt as to whether the specimen allegedly seized from petitioner and submitted to the Crime Laboratory was the same one examined by Inspector Arturo, and subsequently presented in court.

Furthermore, there was noncompliance with the legal requirements under Section 21 of Republic Act No. 9165. Section 21 defines the procedure to be followed by the apprehending officers to ensure the integrity of the seized dangerous drugs and drug paraphernalia.[105]

Section 21 relevantly provides:

> SECTION 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment (Comprehensive Dangerous Drugs Act of 2002, Republic Act No. 9165, [June 7, 2002]) — . . .
>
> (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)

Conformably, Section 21(a) of the Implementing Rules and Regulations of Republic Act No. 9165 states:

> SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — . . . .

---

[104] *Id.* at 4.

[105] *People v. Saragena,* G.R. No. 210677, August 23, 2017, 837 SCRA 529 [Per *J.* Leonen, Third Division].

> (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)

This Court mandated a strict adherence to the requirements of Section 21 considering the indistinct nature of illegal drugs that makes it easily susceptible to tampering, alteration, or substitution.[106] The minuscule amount involved here—0.15 gram—makes it even more imperative for the police officers to follow the prescribed procedure.[107] Consequently, noncompliance produces doubt on the origins of the seized items.[108]

---

[106] *People v. Acub,* G.R. No. 220456, June 10, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65228> [Per *J.* Leonen, Third Division] and *Valencia v. People,* 725 Phil. 268 (2014) [Per *J.* Reyes, First Division].

[107] *People v. Bayang,* G.R. No. 234038, March 13, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65011> [Per *J.* Peralta, Third Division]; *People v. Saragena,* G.R. No. 210677, August 23, 2017, 837 SCRA 529 [Per *J.* Leonen. Third Division]; *People v. Casacop,* 755 Phil. 265 (2015) [Per *J.* Leonen, Second Division]; and *People v. Holgado,* 741 Phil. 78 (2014) [Per *J.* Leonen, Second Division].

[108] *People v. Que,* G.R. No. 212994, January 31, 2018, 853 SCRA 487 [Per *J.* Leonen, Third Division]; and *People v. Holgado,* 741 Phil. 78 (2014) [Per *J.* Leonen, Second Division].

Here, the inventory sheet was not signed by representatives from the media and the Department of Justice, and there were no photographs taken. These procedural lapses happened despite the conduct of a briefing[109] prior to the operation and PO3 Martinez's supposed experience in the conduct of drug-related operations.[110] PO3 Martinez neither tendered any justification in court, nor was there any explanation or justification by the apprehending officers in the case records.

In *People v. Jaafar,*[111] this Court held that the exception under Section 21 (a) of the Implementing Rules and Regulations of Republic Act No. 9165 "will only be triggered by the existence of a ground that justifies departure from the general rule."[112] For the proviso to apply, the prosecution must prove that: (a) there is a justifiable ground for the noncompliance; and (2) the integrity and evidentiary value of the seized items were properly preserved.[113]

In *People v. Battung*,[114] this Court stressed:

*The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended.* It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a

---

[109] TSN dated August 13, 2007, p. 20.

[110] *Id.* at 17.

[111] 803 Phil. 582 (2017) [Per *J.* Leonen, Third Division].

[112] *Id.* at 593 citing *People v. Pringas,* 558 Phil. 579 (2007) [Per *J.* Chico-Nazario, Third Division].

[113] *People v. Acub,* G.R. No. 220456, June 10, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65228> [Per *J.* Leonen, Third Division]; and *People v. Pagaduan,* 641 Phil. 432 (2010) [Per *J.* Brion, Third Division].

[114] G.R. No. 230717, June 20, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64220> [Per *J.* Peralta, Second Division].

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 minuscule, since it is highly susceptible to planting, tampering or alteration of evidence.[115] (Emphasis supplied, citations omitted)

The Regional Trial Court and the Court of Appeals, therefore, gravely erred in ruling that there was an unbroken chain of custody despite the arresting officers' failure: (1) to mark the confiscated plastic sachets immediately upon seizure and in the presence of petitioner or his representative; (2) to comply with the inventory and photographing requirements; (3) to identify the individual who received the specimen from PO3 Martinez and took its custody before being given to Inspector Arturo for examination; and (4) to explain the discrepancies in the identification of the specimen as indicated in the Request for Laboratory Examination and Physical Science Report No. D-006-05.

The police officers' unjustified noncompliance with the requirements for the marking and inventory of the seized drugs overthrows the presumption of regularity in the performance of their official duty.[116] Their "ostensibly approximate compliance"[117] is not enough, and therefore, tantamount to a failure to establish the *corpus delicti.* This raises reasonable doubt in petitioner's favor.

**WHEREFORE,** the Petition is **GRANTED**. The March 11, 2013 Decision and August 28, 2013 Resolution of the Court of Appeals in CA-G.R. CR. No. 34596, which affirmed *in toto*

---

[115] *Id.*

[116] See *People v. Sipin,* G.R. No. 224290, June 11, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64255> [Per *J.* Peralta, Second Division].

[117] *People v. Saragena,* G.R. No. 210677, August 23, 2017, 837 SCRA 529 [Per *J.* Leonen, Third Division].

the October 28, 2010 Decision of the Regional Trial Court of Valenzuela City, Branch 171, are **REVERSED AND SET ASIDE.** Petitioner Joseph Villasana *y* Cabahug is **ACQUITTED**.

**SO ORDERED.**

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

---

**SECOND DIVISION**

[G.R. No. 211522. September 4, 2019]

**J' MARKETING CORPORATION, ROGELIO U. SOYAO, EVP-General Manager, PEPITO P. ESTRELLAN, Kalibo Branch Manager,** *petitioners, vs.* **FERNANDO S. IGUIZ,** *respondent.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TWO-FOLD DUE PROCESS REQUIREMENT FOR DISMISSAL OF AN EMPLOYEE, EXPLAINED. ––** Under the Labor Code, the dismissal of an employee has a two-fold due process requirement: one is substantive and the other, procedural. For substantive due process, the dismissal must be for a just and authorized cause as provided under Articles 282, 283, and 284 of the Labor Code; and for procedural due process, the opportunity to be heard and to defend oneself must be observed. x x x It bears stressing that in illegal dismissal cases, the employer bears the burden of showing that the dismissal was for a just or authorized cause. Not only must the reasons for dismissing an employee be substantiated, the manner of his dismissal must be in accordance with governing rules and regulations. Failure by the employer to discharge this burden would necessarily mean

that the dismissal is not justified, and therefore illegal. This means that the requirements of due process must be observed. x x x The law and the rules provide that the employer must furnish the employee with two written notices before dismissal from employment: (1) notice to apprise the employee of the particular acts or omissions for which the dismissal is sought, and (2) subsequent notice to inform him of the employer's decision to dismiss him. In addition to the notices, the employer must set a hearing or conference to give the employee an opportunity to present evidence and rebut the charges against him. The requirement of two notices and a hearing is mandatory; otherwise the order of dismissal is void.

**2. ID.; ID.; ID.; CIRCUMSTANCES IN CASE AT BAR SHOW THAT RESPONDENT'S DISMISSAL WAS DONE WITHOUT JUST CAUSE AND NON-OBSERVANCE OF PROCEDURAL DUE PROCESS; EMPLOYEE'S PREVIOUS ACT OF ALLEGED DISHONESTY CANNOT BE MADE AS A CORROBORATING EVIDENCE FOR ANOTHER INFRACTION ABSENT THE REQUIREMENT OF DUE PROCESS; RESPONDENT IS ENTITLED TO BACKWAGES AND SEPARATION PAY IN LIEU OF REINSTATEMENT. —** We agree with the appellate court that JMC failed to prove by substantial evidence the loss of trust and confidence in Iguiz based on willful breach of trust. x x x Iguiz was not sufficiently apprised of the allegations against him. He was also not given an opportunity to present his side, refute the charges, and confront the witnesses against him. Thus, JMC's justification for willful breach of trust as the basis for the dismissal was not convincingly established. x x x At first glance, it seems that JMC complied with the two notice requirement. However, the succession of events would show that JMC actually railroaded the termination of Iguiz from the start. *First*, JMC, through Estrellan, issued the first written notice – the memorandum dated 8 February 2007 stating "you are instructed by the undersigned to explain within 24 hours why you should not [be] reprimanded for los[s] of trust and confidence." The notice clearly says reprimand and not termination from employment. Also, the 24 hour notice does not give Iguiz ample time to study the accusation against him, consult a union official or lawyer, gather data, and decide on what defenses to raise. x x x *Second*, even before Iguiz could

file an explanation to the first notice, Iguiz received another memorandum dated 9 February 2007 from Estrellan asking him to sign the administrative investigation report conducted on 8 February 2007. The report consists of a two-page transcript of a hearing conducted by Estrellan and witnessed by Nazareta. However, not knowing the basis of the investigation and the charges against him, Iguiz could not have participated in this so-called hearing or conference. The records reveal that Iguiz denied having participated in said administrative investigation. x x x This period of 12 hours given by JMC to Iguiz is again not the "reasonable opportunity" contemplated by the rules. Without any chance for Iguiz to know the basis for the investigation and to defend himself personally, with the assistance of a representative or counsel of his choice, the 12-hour notice is evidently deficient. x x x [I]n the second notice – memorandum dated 7 March 2007 informing Iguiz of his termination from employment – JMC mentioned that Iguiz had another offense previously for shortage in his collection in the amount of ₱5,811. However, while an employer may take into consideration an employee's past offenses as part of his just or valid cause for termination, JMC, in this case, cannot invoke Iguiz's shortage of ₱5,811 pertaining to a past collection, through memorandum dated 11 December 2006, since Iguiz was not censured, reprimanded or even investigated for this shortage after he had explained his side and tendered full payment. Iguiz's previous act of alleged dishonesty cannot be made as a corroborating evidence for another supposed infraction absent the requirement of procedural due process. Accordingly, given the illegality of Iguiz's dismissal without just cause and the non-observance of procedural due process, Iguiz is entitled to reinstatement and backwages as provided in Article 279 of the Labor Code[.] x x x [S]ince reinstatement is no longer feasible, such as in the case of a clearly strained employer-employee relationship (limited to managerial positions and contracts of employment predicated on trust and confidence, such as in this case) or when the work or position formerly held by the dismissed employee simply no longer exists, separation pay can substitute for reinstatement.

**3. ID.; ID.; ID.; ID.; AWARD OF BACKWAGES, SEPARATION PAY, MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES, SUSTAINED. –** [T]he NLRC awarded moral and exemplary damages since JMC acted in bad

faith in terminating Iguiz and the illegal termination violated his right to security of tenure, as well as attorney's fees for engaging the services of counsel to protect his rights and interest. Thus, we sustain the amount of backwages, separation pay, moral damages, exemplary damages and attorney's fees awarded by the NLRC, as affirmed by the CA.

**APPEARANCES OF COUNSEL**

*Valencia Ciocon Dabao Valencia Dionela Pandan Rubica and Garcia Law Office* for petitioners.
*Higino C. Macabales* for respondent.

**D E C I S I O N**

**CARPIO, *J.*:**

**The Case**

This is a petition for review on *certiorari*[1] assailing the Decision[2] dated 16 July 2013 and the Resolution[3] dated 30 January 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 04657.

**The Facts**

Respondent Fernando S. Iguiz (Iguiz) was hired as a driver in September 1995 by petitioner J' Marketing Corporation (JMC). JMC is a company engaged in the business of selling appliances to the general public and has several branches in the Visayas region. After nine months in JMC's Kalibo Branch, Iguiz was promoted as a collector/credit investigator.

---

[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 53-62. Penned by Associate Justice Carmelita Salandanan-Manahan, with Associate Justices Ramon Paul L. Hernando (now a member of this Court) and Ma. Luisa C. Quijano-Padilla concurring.

[3] *Id.* at 64-65.

On 11 December 2006, Iguiz submitted a Daily Cash Collection Report[4] and remitted his collections for the week of 4-9 December 2006. JMC found that Iguiz was short in his remittance collection in the amount of ₱5,811.

Thereafter, through a Memorandum[5] dated 11 December 2006, petitioner Pepito P. Estrellan[6] (Estrellan), JMC's Kalibo Branch Manager, directed Iguiz to explain within 24 hours the reason for the ₱5,811 shortage and suspended Iguiz from his position as collector/credit investigator.

Iguiz sent a notarized letter-reply[7] dated 14 December 2006 and stated that he failed to make a complete remittance since the amount of ₱5,811, representing his collection for 8 December 2006, was lost. He said that this was due to the flood brought about by typhoon "Siniang" which affected his home. Iguiz also attached in his letter-reply the amount of ₱5,811 as tender of payment. JMC, in turn, did not pursue further investigation on the matter.

Thereafter, JMC conducted an audit of Iguiz's customers under his coverage area (Area 7). JMC's credit supervisor, Marlon Sonio (Sonio), issued a memorandum[8] dated 5 February 2007 to Estrellan. As per Sonio's audit report, JMC discovered that Iguiz had an unremitted collection in the amounts of ₱15,300 and $29 from 14 customers, without the corresponding official receipts. The unremitted collection covered different months from April 2005 to December 2006. Sonio attached a summary list[9] of customers who made the payments to Iguiz without any receipts. Later, JMC collected the affidavits,[10] notarized on 28 February 2007, of the 14 customers.

---

[4] *Id.* at 143.

[5] *Id.* at 144.

[6] Also referred to in the records as Pepito Estrella.

[7] *Rollo*, pp. 145-146.

[8] *Id.* at 148.

[9] *Id.* at 149.

[10] *Id.* at 150-163.

On 8 February 2007, Estrellan issued a memorandum[11] to Iguiz asking him to explain within 24 hours why he should not be reprimanded for loss of trust and confidence for receiving payments of ₱15,300 and $29 without issuing official receipts, as per Sonio's audit report. On the same date, Estrellan also conducted an administrative investigation. JMC submitted an Administrative Investigation Report,[12] both signed by Estrellan and JMC's Accounting Supervisor Sianita Nazareta, as witness, but without Iguiz's acknowledgment signature.

The next day, 9 February 2007, Iguiz received the memorandum dated 8 February 2007.

On 12 February 2007, before Iguiz could file an explanation for the memorandum dated 8 February 2007, Iguiz received another memorandum[13] dated 9 February 2007 from Estrellan asking him to sign the administrative investigation report within 12 hours; otherwise it would mean that Iguiz is waiving his right to be heard and JMC would be constrained to evaluate his case based on the evidence on hand.

In his reply-memorandum[14] dated 12 February 2007 addressed to Estrellan, Iguiz denied the allegation against him. Iguiz stated that there is no reason to accuse him of loss of trust and confidence since he never accepted payments from customers without issuing the corresponding official receipts. Iguiz added that there was no basis for the audit report since no formal complaint had been filed against him.

On the same date, in a letter[15] dated 12 February 2007, JMC, through Arty. Immanuel L. Sodusta, wrote Iguiz demanding the remittance of ₱15,300 and $29 within five days from receipt,

---

[11] *Id.* at 185.

[12] *Id.* at 165-166.

[13] *Id.* at 186.

[14] *Id.* at 168. See also p. 187.

[15] *Id.* at 169.

with a reminder that necessary action will be resorted to if Iguiz fails to remit the said amounts.

In a Joint Affidavit[16] dated 13 February 2007, Estrellan and Nazareta attested that Iguiz's remittance on 11 December 2006 was short of ₱5,811 and when asked to explain verbally, Iguiz answered that he used the money as payment for the hospitalization of his wife. They stated that when Iguiz submitted an explanation dated 14 December 2006, what was written was different from his earlier verbal explanation. They also added that the barangay captain where Iguiz lives issued a certification[17] that their place was not affected by typhoon Siniang on 10 or 11 December 2006. Further, Estrellan and Nazareta declared that there had been several instances in the past that Iguiz's remittances were short.

On 27 February 2007, JMC reported the matter of Iguiz's non-issuance of company receipts and non-remittance of collections to the Kalibo Police station for record purposes.[18]

On 7 March 2007, Vangie M. Tionko, JMC's Personnel Manager, issued a memorandum[19] informing Iguiz that because of (1) dishonesty for collecting ₱15,300 and $29 without issuing official receipts, and (2) breach of trust and confidence, he is terminated from employment on the ground of violation of Article 282, paragraph (c)[20] of the Labor Code. The memorandum provides:

---

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

[17] *Id.* at 147.

[18] See Certification dated 12 March 2007 of the PNP Chief of Police of Kalibo; *id.* at 170.

[19] *Id.* at 171-172.

[20] Art. 282. Termination by employer. – An employer may terminate an employment for any of the following causes:

x x x x x x x x x

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

x x x x x x x x x

TO : FERNANDO IGUIZ (CI Collector – Kalibo Branch)
DATE : MARCH 07, 2007

SUBJECT: CONCLUSION ON YOUR CASE

An investigation conducted by the company has indicated beyond any doubt that you collected the amount[s] of ₱15,300.00 and $29.00 from our various customers without issuance of Official Receipts and the non[-]remittance of these collection[s] to our office.

This conclusion on your illegal activity is supported by the copy of the following:

1. Notarized affidavit of customers[.]
2. Administrative investigation report[.]
3. Audit Report from your Credit Supervisor Marlon Sonio[.]
4. Your Branch Manager memo dated February 08, 2007 instructing you to explain your receiving of payment[s] from customer[s] without issuance of Official Receipt[s].
5. Your response memo dated February 12, 2007.

You were given the opportunity to present your side, but it is very obvious that the versions you presented were not the truth. This are itself [sic] consist of dishonesty on your part.

Remember you also have another offense of short collection of ₱5,811.00 covering Dec. 04, 2006 to Dec. 09, 2006 in which case is supported by the following:

1. Your Branch Manager memo to you dated Dec. 11, 2006 with subject: Short Collection.

2. Your response memo dated Dec. 14, 2006 denying such misappropriation but claimed that same amount was washed out during the flood.

3. Certification from the Office of the *Punong Barangay* of Poblacion declaring that Barangay Poblacion, Numancia, Aklan was not affected by flood by typhoon "Siniang."

4. Joint Affidavit of your BM Pepito Estrellan and your AS Sianita Nazareta declaring your contradicting reasons about the short collection.

Be informed, dishonesty is an offense under our Company's Code of Ethics Class D offense with disciplinary measure of termination for the commission of first offense.

Also, your position as Credit Investigator/Collector required trust and confidence relating to the financial interest of the company and your non[-]observance to this procedure with respect to the fund under your control and custody constitutes breach on your part of the trust and confidence reposed to you by the management.

In this connection, be informed that your services as CI Collector of our Kalibo Branch is terminated with cause effective upon receipt of this memo, on the ground that you violated Art. 282. paragraph c of the Labor Code.[21] (Underscoring in the original)

On 12 March 2007, Iguiz received the memorandum of termination. Aggrieved, Iguiz filed a Complaint[22] for illegal dismissal with money claims with the National Labor Relations Commission (NLRC) Sub-Regional Arbitration Branch No. VI in Kalibo, Aklan.

In a Decision[23] dated 15 July 2008, Labor Arbiter Rene G. Enaño dismissed the complaint for lack of merit. The Labor Arbiter stated that Iguiz's bare, unsubstantiated and uncorroborated denial of the charges of unremitted collections and non-issuance of receipts justified his dismissal as a valid exercise of JMC's management prerogative for loss of trust and confidence.

Iguiz filed an appeal with the NLRC.[24] In a Decision[25] dated 27 February 2009, the NLRC, 4th Division of Cebu City reversed the decision of the Labor Arbiter. The dispositive portion of the decision states:

WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby ANNULLED and SET ASIDE. A NEW Decision is entered declaring the illegal dismissal of complainant.

---

[21] *Rollo*, pp. 171-172.

[22] *Id.* at 135-136. Docketed as NLRC SRAB VI Case No. 06-03-026-Aklan-2007.

[23] *Id.* at 193-196.

[24] *Id.* at 197.

[25] *Id.* at 114-130.

Respondents J[']  Marketing Corporation/Rogelio Soyao, EVP-General Manager/Pepito Estrellan, Kalibo Branch Manager are hereby ordered to jointly and severally pay complainant the following:

| | | |
|---|---|---|
| 1. | Backwages | ₱ 131,606.00 |
| 2. | Separation Pay | 69,264.00 |
| 3. | Moral Damages | 20,000.00 |
| 4. | Exemplary Damages | 20,000.00 |
| | | ₱ 240,870.00 |
| 5. | Attorney's Fees | 24,087.00 |
| | TOTAL | ₱ 264,957.00 |

SO ORDERED.[26]

JMC filed a motion for reconsideration which was denied by the NLRC in a Resolution[27] dated 31 July 2009.

JMC then filed an appeal with the CA. In a Decision dated 16 July 2013, the CA affirmed the NLRC. The dispositive portion of the decision states:

WHEREFORE, the petition is DENIED. The February 27, 2009 Decision and July 31, 2009 Resolution of public respondent in NLRC Case No. VAC 09-000592-2008 are hereby AFFIRMED.

SO ORDERED.[28]

JMC filed a motion for reconsideration which was denied by the CA in a Resolution dated 30 January 2014.

Hence, this petition.

## The Issue

Whether or not the appellate court committed reversible error in upholding the finding of the NLRC that Iguiz was illegally dismissed from his employment and is entitled to backwages, separation pay, damages and attorney's fees.

---

[26] *Id.* at 129.

[27] *Id.* at 132-134.

[28] *Id.* at 61.

**The Court's Ruling**

The petition lacks merit.

Petitioner JMC asserts that Iguiz was dismissed for a just and valid cause due to dishonesty and willful breach of trust. JMC submits that the Labor Arbiter gave credence to the audit memorandum dated 8 February 2007 and the affidavits of 14 disinterested persons who attested to Iguiz's guilt that Iguiz collected payments without issuing official receipts.

JMC insists that the company followed procedural due process and complied with the twin requirements of two notices and a hearing. JMC submits that Iguiz was sent two notices – Memorandum to Explain dated 11 December 2006 and Memorandum to Explain dated 8 February 2007 for which Iguiz replied in his two letters-reply dated 14 December 2006 and 12 February 2007. JMC also submitted an Administrative Investigation Report dated 8 February 2007, sent Iguiz a Memorandum to Sign Administrative Investigation dated 9 February 2007, and gave Iguiz a Notice of Termination dated 7 March 2007. Thus, JMC contends that Iguiz was given an opportunity to explain his side and to answer the charges against him.

It must be stressed that this Court only entertains questions of law under Rule 45 of the Rules of Court. However, the Court admits of exceptions when the factual findings of the Labor Arbiter, NLRC or the CA are in conflict with each other, such as in this case.[29]

Under the Labor Code, the dismissal of an employee has a two-fold due process requirement: one is substantive and the other, procedural. For substantive due process, the dismissal must be for a just and authorized cause as provided under Articles 282, 283, and 284 of the Labor Code; and for procedural due process, the opportunity to be heard and to defend oneself must be observed.

---

[29] *Tagud v. BSM Crew Service Center Phils., Inc.*, G.R. No. 219370, 6 December 2017, 848 SCRA 176, 185.

An employer may terminate the services of an employee for just causes under Article 282 of the Labor Code which provides:

> Art. 282. Termination by employer. – An employer may terminate an employment for any of the following causes:
>
> a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
> b. Gross and habitual neglect by the employee of his duties;
> c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
> d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
> e. Other causes analogous to the foregoing.

In the present case, JMC terminated the employment of Iguiz due to dishonesty and fraud or willful breach of the trust reposed in him as provided under Article 282(c). The Labor Arbiter found that Iguiz was validly dismissed for loss of trust and confidence while the NLRC and the CA found that JMC failed to provide the burden of proof necessary to show that the dismissal was for a just cause.

In *Tiu v. NLRC*,[30] we held that the language of Article 282(c) of the Labor Code states that the loss of trust and confidence must be based on willful breach of the trust reposed in the employee by his employer. Ordinary breach will not suffice; it must be willful. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. Stated otherwise, it must be based on substantial evidence.

In administrative and quasi-judicial proceedings, the quantum of evidence required is substantial evidence. Substantial evidence is the relevant evidence a reasonable mind might accept as adequate to support a conclusion.

---

[30] 290 Phil. 15, 24 (1992).

In the present case, both the NLRC and CA found that JMC failed to provide the requisite substantial evidence to terminate Iguiz's employment. In its Decision dated 16 July 2013, the CA declared:

> [T]here is no substantial evidence that private respondent failed to issue official receipts for his collections totaling ₱15,300.00 and $29.00. The memorandum sent to private respondent enumerating supposed collections are bereft of transactional details. Moreover, as pointed out by private respondent who had denied the allegation, none of the supposed affected customers had ever filed any complaint against him for his purported failure to issue official receipts for the payments they made. The affidavits supposedly executed by the customers were belatedly obtained.
>
> While it is true that loss of trust and confidence is one of the just causes for termination, such loss of trust and confidence must have some basis. Proof beyond reasonable doubt is not required. It is sufficient that there must only be some basis for such loss of confidence or that there is reasonable ground to believe, if not to entertain, the moral conviction that the concerned employee is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of trust and confidence demanded by his position.
>
> Aside from the memorandum and the affidavits belatedly executed by supposed complainants, no other evidence had been adduced by petitioners to substantiate their allegation that private respondent committed the act imputed to him.[31]

We agree with the appellate court that JMC failed to prove by substantial evidence the loss of trust and confidence in Iguiz based on willful breach of trust. Aside from the summarized list submitted by JMC's credit supervisor Sonio on the alleged customer collection and incomplete remittance amounts of Iguiz, no other details were provided by JMC. Iguiz was not given an opportunity to question the report of Sonio and to check if there were supporting documents attached to the list. Neither were the customers affected presented nor did they come forward

---

[31] *Rollo*, p. 58.

to personally attest to the collection and non-issuance of receipts. Also, JMC belatedly obtained the affidavits of said customers on 28 February 2007 or more than three weeks after the said report was given by Sonio to Estrellan. By then, the purported administrative investigation conducted by Estrellan on 8 February 2007 had already been concluded. Clearly, Iguiz was not sufficiently apprised of the allegations against him. He was also not given an opportunity to present his side, refute the charges, and confront the witnesses against him. Thus, JMC's justification for willful breach of trust as the basis for the dismissal was not convincingly established.

It bears stressing that in illegal dismissal cases, the employer bears the burden of showing that the dismissal was for a just or authorized cause. Not only must the reasons for dismissing an employee be substantiated, the manner of his dismissal must be in accordance with governing rules and regulations. Failure by the employer to discharge this burden would necessarily mean that the dismissal is not justified, and therefore illegal.[32] This means that the requirements of due process must be observed.

Article 277(b) of the Labor Code contains the procedural due process requirements in the dismissal of an employee:

> Art. 277. Miscellaneous Provisions. — (a) x x x
>
> (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker

---

[32] *Floren Hotel v. National Labor Relations Commission*, 497 Phil. 458, 472 (2005), citing *Gabisay v. National Labor Relations Commission*, 366 Phil. 593, 601 (1999).

to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. x x x.

On the other hand, Section 2, Rule XXIII, Book V of the Implementing Rules and Regulations of the Labor Code states:[33]

> SEC. 2. Standards of due process; requirements of notice. — In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> I. For termination of employment based on just causes as defined in Article 282 of the Code:
>
> (a) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.
> (b) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.
> (c) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

The law and the rules provide that the employer must furnish the employee with two written notices before dismissal from employment: (1) notice to apprise the employee of the particular acts or omissions for which the dismissal is sought, and (2) subsequent notice to inform him of the employer's decision to dismiss him. In addition to the notices, the employer must set a hearing or conference to give the employee an opportunity to present evidence and rebut the charges against him. The requirement of two notices and a hearing is mandatory; otherwise the order of dismissal is void.

---

[33] Cited in *Naranjo v. Biomedica Health Care, Inc.*, 695 Phil. 551, 563 (2012); *Aliling v. Feliciano*, 686 Phil. 889, 912-913 (2012); *Perez v. Phil. Telegraph and Telephone Co.,* 602 Phil. 522, 536-537 (2009); *King of Kings Transport, Inc. v. Mamac*, 553 Phil. 108, 115 (2007).

The case of *King of Kings Transport, Inc. v. Mamac*[34] enumerated the proper steps an employer should take in terminating the services of an employee:

> [T]he following should be considered in terminating the services of employees:
>
> (1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. x x x.
>
> (2) After serving the first notice, the employers should schedule and conduct a **hearing or conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.
>
> (3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment. (Boldfacing in the original)

---

[34] *Supra* note 33, at 115-116. See also *Perez v. Phil. Telegraph and Telephone Co.*, *supra* note 33.

In the present case, JMC sent Iguiz the first notice — a memorandum dated 8 February 2007 asking Iguiz to explain why he should not be reprimanded for loss of trust and confidence for receiving payments of ₱15,300 and $29 without issuing official receipts. Iguiz received this notice on 9 February 2007 and he was able to file a written reply on 12 February 2007 denying the allegation. JMC then sent Iguiz another notice — a memorandum dated 7 March 2007 terminating his employment. Iguiz received the termination notice on 12 March 2007.

At first glance, it seems that JMC complied with the two notice requirement. However, the succession of events would show that JMC actually railroaded the termination of Iguiz from the start.

*First*, JMC, through Estrellan, issued the first written notice — the memorandum dated 8 February 2007 stating "you are instructed by the undersigned to explain within 24 hours why you should not [be] reprimanded for los[s] of trust and confidence."[35] The notice clearly says reprimand and not termination from employment. Also, the 24 hour notice does not give Iguiz ample time to study the accusation against him, consult a union official or lawyer, gather data, and decide on what defenses to raise. In *Naranjo v. Biomedica Health Care, Inc.*,[36] we held that the period of 24 hours allotted to answer the notice was severely insufficient and in violation of the implementing rules of the Labor Code. Under the implementing rule of Article 277, an employee should be given "reasonable opportunity" to file a response to the notice. The case of *King of Kings Transport, Inc*. states that "reasonable opportunity" should be a period of at least five calendar days from receipt of the notice. Iguiz failed to comply with the 24 hour deadline and only filed his reply-memorandum to the first notice on 12 February 2007 denying the allegations against him.

---

[35] *Rollo*, p. 185.

[36] *Supra* note 33, at 565.

*Second*, even before Iguiz could file an explanation to the first notice, Iguiz received another memorandum dated 9 February 2007 from Estrellan asking him to sign the administrative investigation report conducted on 8 February 2007. The report consists of a two-page transcript of a hearing conducted by Estrellan and witnessed by Nazareta. However, not knowing the basis of the investigation and the charges against him, Iguiz could not have participated in this so-called hearing or conference.

The records reveal that Iguiz denied having participated in said administrative investigation. In Iguiz's position paper[37] filed with the NLRC, Iguiz stated that no formal investigation and hearing were conducted by JMC where he could have an opportunity to defend himself, present evidence in support of his defense and confront the witnesses against him. JMC countered this argument by saying that Iguiz refused to sign the administrative investigation report as indicated in the memorandum dated 9 February 2007 where JMC reiterated to Iguiz that failure to sign the administrative investigation conference within 12 hours would mean waiving his right to be heard. This period of 12 hours given by JMC to Iguiz is again not the "reasonable opportunity" contemplated by the rules. Without any chance for Iguiz to know the basis for the investigation and to defend himself personally, with the assistance of a representative or counsel of his choice, the 12-hour notice is evidently deficient. Thus, the administrative investigation purportedly conducted was not in accordance with the hearing or conference contemplated in Section 2, Rule XXIII, Book V of the implementing rules.

*Third*, in the second notice – memorandum dated 7 March 2007 informing Iguiz of his termination from employment – JMC mentioned that Iguiz had another offense previously for shortage in his collection in the amount of ₱5,811. However, while an employer may take into consideration an employee's

---

[37] *Rollo*, p. 173.

past offenses[38] as part of his just or valid cause for termination, JMC, in this case, cannot invoke Iguiz's shortage of ₱5,811 pertaining to a past collection, through memorandum dated 11 December 2006, since Iguiz was not censured, reprimanded or even investigated for this shortage after he had explained his side and tendered full payment. Iguiz's previous act of alleged dishonesty cannot be made as a corroborating evidence for another supposed infraction absent the requirement of procedural due process.

Accordingly, given the illegality of Iguiz's dismissal without just cause and the non-observance of procedural due process, Iguiz is entitled to reinstatement and backwages as provided in Article 279 of the Labor Code, which states:

> x x x. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

However, since reinstatement is no longer feasible, such as in the case of a clearly strained employer-employee relationship (limited to managerial positions and contracts of employment predicated on trust and confidence, such as in this case) or when the work or position formerly held by the dismissed employee simply no longer exists, separation pay can substitute for reinstatement.

Also, the NLRC awarded moral and exemplary damages since JMC acted in bad faith in terminating Iguiz and the illegal termination violated his right to security of tenure, as well as attorney's fees for engaging the services of counsel to protect his rights and interest. Thus, we sustain the amount of backwages, separation pay, moral damages, exemplary damages and attorney's fees awarded by the NLRC, as affirmed by the CA.

---

[38] See *Santos v. Integrated Pharmaceutical, Inc.,* 789 Phil. 477, 493 (2016).

**WHEREFORE,** we **DENY** the petition. We **AFFIRM** the Decision dated 16 July 2013 and the Resolution dated 30 January 2014 of the Court of Appeals in CA-G.R. SP No. 04657.

**SO ORDERED.**

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

---

**THIRD DIVISION**

[G.R. No. 216029. September 4, 2019]

**SHEMBERG MARKETING CORPORATION,** *petitioner, vs.* **CITIBANK, N.A., NEMESIO SOLOMON, EX-OFFICIO SHERIFF AND SHERIFF-IN-CHARGE,** *respondents.*

**SYLLABUS**

**1. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; AGREEMENT OF THE PARTIES AS EMBODIED IN THE REAL ESTATE MORTGAGE, UPHELD; THE FACT THAT PETITIONER'S OUTSTANDING OBLIGATION IS HIGHER THAN THE AMOUNT OF SECURED OBLIGATIONS DOES NOT INVALIDATE THE REAL ESTATE MORTGAGE; RESPONDENT BANK IS WELL WITHIN ITS RIGHTS UNDER THE REAL ESTATE MORTGAGE TO INITIATE FORECLOSURE PROCEEDINGS ON THE MORTGAGED PROPERTIES. ––** A careful perusal of the First Party Real Estate Mortgage shows that the subject real estate mortgage was executed to secure loan accommodations, as well as all past, present, and future obligations, of Shemberg to Citibank to the extent of ₱28,242,000.00[.] x x x Shemberg itself admitted that when the real estate mortgage was executed on December

10, 1996, it had an outstanding obligation totaling ₱58,238,200.00 with Citibank. The fact that Shemberg's outstanding obligation is significantly higher than the amount of secured obligations does *not* invalidate the real estate mortgage. It only means that in case of default, Citibank can enforce the mortgage to the maximum amount of ₱28,242,000.00, which, notably, is simply the total liquidation value of the mortgaged properties. There is thus no question that the subject real estate mortgage covered the US$500,000.00 loan obtained by Shemberg from Citibank on September 13, 1996 under Promissory Note No. 8976267001. Considering Shemberg's failure to pay the balance of US$390,000.00, or its peso-equivalent of ₱19,006,197.00, under this promissory note, Citibank was well within its rights under the real estate mortgage to initiate the foreclosure proceedings on the mortgaged properties.

2. **REMEDIAL LAW; EVIDENCE; PAROL EVIDENCE RULE; TERMS OF THE WRITTEN CONTRACT ARE DEEMED CONCLUSIVE BETWEEN THE PARTIES AND EVIDENCE *ALIUNDE* IS INADMISSIBLE TO CHANGE THE TERMS THEREOF; EXCEPTIONS, ENUMERATED AND EXPLAINED. —** Section 9, or what is commonly known as the Parol Evidence Rule, "forbids any addition to or contradiction of the terms of a written instrument by testimony purporting to show that, at or before the signing of the document, other terms were orally agreed on by the parties." Under the Parol Evidence Rule, the terms of a written contract are deemed *conclusive* between the parties and evidence *aliunde* is *inadmissible* to change the terms embodied in the document. This rule, however, is *not* absolute. Thus, a party may present evidence *aliunde* to modify, explain or add to the terms of a written agreement *if* he puts in issue in his pleading any of the four exceptions to the Parol Evidence Rule: (a) An intrinsic ambiguity, mistake or imperfection in the written agreement; (b) The failure of the written agreement to express the true intent and agreement of the parties thereto; (c) The validity of the written agreement; or (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement. "The *first* exception applies when the ambiguity or uncertainty is readily apparent from reading the contract." The *second* exception pertains to instances where "the contract is so obscure that the contractual intention of the

parties cannot be understood by mere inspection of the instrument." Under the *third* exception, the Parol Evidence Rule does not apply "where the purpose of introducing the evidence is to show the invalidity of the contract." And, the *fourth* exception involves a situation where the parties agreed to other terms *after* the execution of the written agreement.

**3. ID.; ID.; ID.; NONE OF THE EXCEPTIONS APPLIES IN CASE AT BAR. ––** Here, the first and second exceptions obviously do not apply as the real estate mortgage contract clearly and succinctly stated the terms of the mortgage, leaving no doubt as to the contractual intention of the parties by a mere reading of the document. The third exception, too, is inapplicable since Shemberg's purpose for introducing evidence *aliunde* is not to invalidate the contract; rather, it was meant to prove that Citibank had reneged on its alleged commitment to renew and increase its credit line with the bank which was supposedly the consideration for the execution of the real estate mortgage. Finally, the fourth exception likewise does not apply as it was never alleged that the parties had agreed to other terms *after* the execution of the real estate mortgage contract.

**APPEARANCES OF COUNSEL**

*Alvarez Nuez Galang Espina and Lopez Law Firm* for petitioner.

*Sycip Salazar Hernandez & Gatmaitan* for respondents.

**D E C I S I O N**

**INTING, *J.*:**

We resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated October 23, 2012 and the Resolution[2] dated October 27, 2014 of the Court of Appeals (CA) in CA-G.R. CEB-CV No. 00974.

---

[1] *Rollo,* pp. 57-83; penned by Associate Justice Edgardo L. Delos Santos and concurred in by Associate Justices Gabriel T. Ingles and Maria Elisa Sempio Diy.

[2] *Id.* at 87-88.

*The Antecedents*

On December 10, 1996, petitioner Shemberg Marketing Corporation (Shemberg) executed a real estate mortgage over a parcel of land located in Mandaue City (Lot 1524-G-6), including all improvements, machineries, and equipment found thereon,[3] in favor of respondent Citibank, N.A. (Citibank), to secure loan accommodations amounting to ₱28,242,000.00.[4] The real estate mortgage was embodied in a deed, which the parties denominated as "First Party Real Estate Mortgage."[5]

On February 13, 1998, Citibank sent a demand letter to Shemberg wherein it required the latter to pay its outstanding balance in the amount of US$390,000.00 under Promissory Note No. 8976267001;[6] otherwise, it would be forced to initiate foreclosure proceedings on the mortgaged properties.[7]

Unfortunately, Shemberg defaulted in the payment of its outstanding obligation to Citibank.[8] Consequently, Citibank commenced the extra-judicial foreclosure of the mortgaged properties on May 10, 1999.[9] A Notice of Extra-Judicial Sale of Lot 1524-G-6, including all improvements thereon, was thereafter issued with the foreclosure sale scheduled on June 16, 1999.[10]

Upon learning of the foreclosure sale, Shemberg filed a Complaint[11] for rescission or declaration of nullity of the contract

---

[3] *Id.* at 305-306.

[4] *Id.* at 58 and 304.

[5] *Id.* at 304-317.

[6] *Id.* at 58 and 234-235; Promissory Note No. 8976267001 is referred to as Promissory Note No. 8976257001 in some parts of the *rollo*.

[7] *Id.* at 235.

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

[9] *Id.* at 126.

[10] *Id.* at 58.

[11] *Id.* at 89-116.

of real estate mortgage against Citibank before the Regional Trial Court (RTC), Branch 55, Cebu City.

In its Complaint, Shemberg alleged that: (a) in 1996, Citibank required Shemberg to execute a real estate mortgage for and in consideration of the increase and renewal of its credit line with the bank;[12] (b) relying on the representation that its credit line would be renewed, Shemberg executed the subject real estate mortgage in Citibank's favor;[13] (c) however, despite the execution of the mortgage, Citibank refused to renew and increase Shemberg's credit line.[14]

Shemberg asserted that the real estate mortgage was void for lack of consideration,[15] given Citibank's failure to comply with its commitment to renew and increase its credit line with the bank.[16]

For its part, Citibank countered that it required the execution of the real estate mortgage in order to provide additional security/collateral to augment Shemberg's subsisting chattel mortgage due to the latter's dire financial condition at the time.[17] It also made clear to Shemberg that the bank would no longer extend any additional credit unless its financial standing improves.[18]

Citibank pointed out that the real estate mortgage secured the various obligations of Shemberg to the bank up to the extent of ₱28,242,000.00.[19] This included Promissory Note No. 8976267001 in the amount of US$500,000.00, executed by Shemberg on September 13, 1996, with Shemberg defaulting

---

[12] *Id.* at 96-97.

[13] *Id.* at 97.

[14] *Id.*

[15] *Id.* at 100.

[16] *Id.* at 39-40.

[17] *Id.* at 124.

[18] *Id.*

[19] *Id.*

in the payment of the outstanding balance of US$390,000.00 thereof at maturity.[20]

*Ruling of the RTC*

In its Decision[21] dated June 10, 2005, the RTC declared the real estate mortgage *void* for lack of consideration due to Citibank's failure to fulfill its commitment to renew Shemberg's credit line with the bank after it expired in June 1996.[22]

Nevertheless, the RTC found Shemberg liable to pay Citibank the amount of ₱19,006,197.00, or the peso-equivalent of its US$390,000.00 outstanding obligation under Promissory Note No. 8976257-001,[23] payable within one (1) year from the date of finality of the Decision.[24]

Both parties appealed before the CA.

*Ruling of the CA*

In its Decision dated October 23, 2012, the CA reversed and set aside the RTC Decision. It declared the real estate mortgage, as well as the extra-judicial foreclosure proceedings initiated by Citibank, *valid,* and imposed the stipulated interest equivalent to 8.89% per annum on the unpaid balance of Promissory Note No. 8976267001 from the time of filing of the extra-judicial foreclosure until finality of the Decision.[25]

The CA found that the subject real estate mortgage secured Shemberg's present and future obligations with Citibank to the extent of ₱28,242,000.00, or the liquidation value of the mortgaged properties.[26] It noted that at the time of execution

---

[20] *Id.*

[21] *Id.* at 138-173; penned by Judge Ulric R. Cañete.

[22] *Id.* at 156.

[23] *Id.* at 162.

[24] *Id.* at 163.

[25] *Id.* at 82.

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

of the mortgage, Shemberg had an existing loan obligation totaling ₱58,238,200.00.[27] Thus, it concluded that, contrary to the RTC's findings, the real estate mortgage was not without consideration.[28]

The CA likewise ruled that Citibank had rightfully initiated the extra-judicial foreclosure of the mortgaged properties after Shemberg failed to pay its oustanding balance of US$390,000.00[29] under Promissory Note No. 8976267001.

Moreover, the CA held that the RTC erred in granting an additional year for Shemberg to pay its obligation under the promissory note, considering that: *first,* Shemberg never prayed for the fixing of the period for the payment of its outstanding balance with Citibank;[30] and *second,* it was not necessary to fix the period for payment as the promissory note itself stated that the loan obligation was payable on September 8, 1997.[31]

Shemberg moved for reconsideration[32] but the CA denied the motion in its Resolution dated October 27, 2014. As a consequence. Shemberg filed the present Petition for Review on *Certiorari* assailing the CA Decision and Resolution.

*Issue*

The sole issue for the Court's resolution is *whether the real estate mortgage is indeed valid and binding between the parties.*

*The Court's Ruling*

The Petition is unmeritorious.

---

[27] *Id.* at 70.

[28] *Id.*

[29] *Id.* at 71.

[30] *Id.* at 74.

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

[32] *Id.* at 262-291.

A careful perusal of the First Party Real Estate Mortgage shows that the subject real estate mortgage was executed to secure loan accommodations, as well as all past, present, and future obligations, of Shemberg to Citibank to the extent of ₱28,242,000.00,[33] *viz.*:

> This Real Estate Mortgage is hereby constituted to secure the following obligations (hereinafter referred to as the "Obligations"):
>
> 1.01 The Principal Obligations specified in the first premise of this Mortgage and any increase in the credit accommodations which MORTGAGEE may grant to MORTGAGOR;
>
> x x x x x x x x x
>
> 1.03 All obligations, whether past, present or future, whether direct or indirect, principal or secondary; whether or not arising out of or in consequence of this Mortgage, and of the credit accommodations owing the MORTGAGEE by MORTGAGOR as shown in this books and records of MORTGAGEE;[34]

Shemberg itself admitted that when the real estate mortgage was executed on December 10, 1996, it had an outstanding obligation totaling ₱58,238,200.00 with Citibank.[35] The fact that Shemberg's outstanding obligation is significantly higher than the amount of secured obligations does *not* invalidate the real estate mortgage.[36] It only means that in case of default, Citibank can enforce the mortgage to the maximum amount of

---

[33] *Id.* at 304-305.

[34] *Id.* at 305.

[35] *Id.* at 246.

[36] After all, for a mortgage to be valid, the only requisites are: *(a)* it must be constituted to secure the fulfillment of a principal obligation; *(b)* the mortgagor must be the absolute owner of the mortgaged property; and *(c)* the mortgagor has free disposal of the property or has legal authority to do so. All these requisites are present in this case. See *Sofia Tabuada, Novee Yap, Ma. Loreta Nadal, and Gladys Eridente vs. Eleonor Tabuada, Julieta Trabuco, Laureta Redondo and Sps. Bernan Certeza and Eleonor D. Certeza,* G.R. No. 196510, September 12, 2018.

₱28,242,000.00, which, notably, is simply the total liquidation value of the mortgaged properties.[37]

There is thus no question that the subject real estate mortgage covered the US$500,000.00 loan obtained by Shemberg from Citibank on September 13, 1996 under Promissory Note No. 8976267001. Considering Shemberg's failure to pay the balance of US$390,000.00, or its peso-equivalent of ₱19,006,197.00, under this promissory note, Citibank was well within its rights under the real estate mortgage to initiate the foreclosure proceedings on the mortgaged properties.

The Court further finds no merit in Shemberg's contention that the real consideration for the real estate mortgage was the renewal and increase of its credit line with Citibank.

Section 9, Rule 130 of the Rules of Court provides:

> 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.
>
> x x x x x x x x x

Section 9, or what is commonly known as the Parol Evidence Rule, "forbids any addition to or contradiction of the terms of a written instrument by testimony purporting to show that, at or before the signing of the document, other terms were orally agreed on by the parties."[38] Under the Parol Evidence Rule, the terms of a written contract are deemed *conclusive* between the parties and evidence *aliunde* is *inadmissible* to change the terms embodied in the document.[39]

This rule, however, is *not* absolute. Thus, a party may present evidence *aliunde* to modify, explain or add to the terms of a

---

[37] *Rollo,* p. 245.

[38] *Spouses Amoncio vs. Benedicto,* 582 Phil. 217, 227 (2008).

[39] *Id.*

written agreement *if* he puts in issue in his pleading any of the four exceptions to the Parol Evidence Rule:

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;

(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c) The validity of the written agreement; or

(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.[40]

"The *first* exception applies when the ambiguity or uncertainty is readily apparent from reading the contract."[41] The *second* exception pertains to instances where "the contract is so obscure that the contractual intention of the parties cannot be understood by mere inspection of the instrument."[42]

Under the *third* exception, the Parol Evidence Rule does not apply "where the purpose of introducing the evidence is to show the invalidity of the contract."[43] And, the *fourth* exception involves a situation where the parties agreed to other terms *after* the execution of the written agreement.

Here, the first and second exceptions obviously do not apply as the real estate mortgage contract clearly and succinctly stated the terms of the mortgage, leaving no doubt as to the contractual intention of the parties by a mere reading of the document. The third exception, too, is inapplicable since Shemberg's purpose for introducing evidence *aliunde* is not to invalidate the contract; rather, it was meant to prove that Citibank had reneged on its alleged commitment to renew and increase its

---

[40] RULES OF COURT, Rule 130, Section 9.

[41] *Spouses Amoncio vs. Benedicto, supra* note 38 at 227.

[42] *Id.* at 227-228.

[43] *Id.* at 228.

credit line with the bank which was supposedly the consideration for the execution of the real estate mortgage. Finally, the fourth exception likewise does not apply as it was never alleged that the parties had agreed to other terms *after* the execution of the real estate mortgage contract.

Based on these considerations, the Court sees no cogent reason to overturn the CA's factual findings and conclusions. Simply stated, it is clear that the terms agreed upon in the subject real estate mortgage are binding and conclusive between the parties.

**WHEREFORE,** the Petition is **DENIED**. The Decision dated October 23, 2012 and the Resolution dated October 27, 2014 of the Court of Appeals in CA-G.R. CEB-CV No. 00974 are **AFFIRMED**.

**SO ORDERED.**

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

---

**SECOND DIVISION**

[G.R. No. 217837. September 4, 2019]

**MR HOLDINGS, INC. and MARCOPPER MINING CORPORATION,** *petitioners, vs.* **ROLANDO A. DE JESUS, in his official capacity as the OFFICER-IN-CHARGE (OIC)-Regional Director, MINES AND GEOSCIENCES* BUREAU (MGB), Region IV-B (MIMAROPA) and VICENTE S. PARAGAS, CESO III, in his official capacity as the Regional Executive Director, DENR Region IV-B (MIMAROPA),** *respondents.*

---

* Also stated as "Geo-Sciences" in some parts of the records.

**SYLLABUS**

**1. POLITICAL LAW; REPUBLIC ACT NO. 7942 (PHILIPPINE MINING ACT OF 1995); DISPUTES OVER THE CONFERMENT OF MINING RIGHTS WITHIN THE JURISDICTION OF THE PANEL OF ARBITRATORS; CASE AT BAR.—** 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 since 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 In their arguments, petitioners try to make a distinction that what they are questioning is the action of respondents for issuing the Area Clearance. But the material allegations in the Amended Petition belies this posture as they show that petitioners are essentially opposing the Exploration Permit Application of Onephil or any other applicant for mining rights that allegedly overlaps with the SACP. x x x Even as the petition is couched as one for *mandamus* and *prohibition*, what petitioners really seek is the denial of Onephil's application and other application for mining rights insofar as they overlap with the private lands over which petitioners claim they have rights. The hair-splitting distinction they make that what they are questioning is the issuance of respondents of the Area Clearance utterly fails to convince the Court. Once more, the material allegations of their Amended Petition and the character of the reliefs they seek indubitably show that the case involves a dispute over the conferment of mining rights to Onephil — which is within the jurisdiction of the Panel of Arbitrators. x x x Interpreting paragraph (a) of Section 77 of the *Philippine Mining Act*, the Court in *Celestial Nickel Mining Exploration Corp. v. Macroasia Corp.*, held that paragraph (a) of Section 77 of the Mining Act "specifically refer only to those disputes relative to the **applications for a mineral agreement or conferment of mining rights**." The current dispute squarely falls under paragraph (a) of Section 77 of the *Philippine Mining Act* as it involves a dispute relative to the application of Onephil for an exploration permit. In fact, the procedure outlined in the *Philippine Mining Act* and its IRR

as to the process in applying for and the grant of an exploration permit leads to the clear conclusion that it is the Panel of Arbitrators that has jurisdiction over this dispute.

**2. ID.; ID.; OUTLINE OF THE PROCEDURE FOR THE ISSUANCE OF EXPLORATION PERMIT, CITED.—** Upon the filing of the application for an exploration permit, the concerned Regional Office (RO) or the MGB shall check the control maps if the area applied for is free or open for mining applications. If there are specific claims or conflicts or complaints of overlaps from landowners, non-government organizations, local government units, and other concerned stakeholders, the Regional Director is directed to exert all efforts to resolve the same. After resolving any issues, the RO or the MGB shall issue the Area Clearance. Once the Area Clearance is issued, the RO shall issue a Notice of Application for Exploration Permit to the applicant for publication and radio announcement and for posting. The Notice shall be published in two newspapers, one of general circulation published in Metro Manila and another one published in the municipality or province where the proposed permit area is located. The Notice shall also be posted in bulletin boards for one week in the province, municipality and barangay where the proposed permit area is located. Radio announcements of the notice shall also be done every day for one week. Within five working days from the last date of posting and radio announcement, certifications shall be issued by the concerned officers on the compliance with the posting and radio announcement requirement. The affidavit of the publisher will also be submitted as proof of the publication. The *Philippine Mining Act IRR* also specifically states that "[a]ny adverse claim, protest or opposition shall be filed directly, within ten (10) days from the date of publication or from the last date of posting/ radio announcement, with the Regional Office concerned or through any PENRO or CENRO concerned for filing in the Regional Office concerned for purposes of its resolution by the Panel of Arbitrators pursuant to the provisions of the Act and these implementing rules and regulations." x x x The Panel of Arbitrators is mandated to decide on the dispute within 30 days after the case is submitted for decision. The decision of the Panel of Arbitrators is appealable to the Mines Adjudication Board, and in turn, the decision of the Mines Adjudication Board is appealable to the Court. It is only when the dispute is settled

with finality, as certified by the Panel of Arbitrators, will the Regional Director then issue the Exploration Permit. Section 21 of the *Philippine Mining Act IRR* further states that "[u]pon final resolution of any adverse claim, protest or opposition, the Panel of Arbitrators shall issue a Certification to that effect within five (5) working days from the date of finality of resolution thereof. Where no adverse claim, protest or opposition is filed after the lapse of the period for filing the adverse claim, protest or opposition, the Panel of Arbitrators shall likewise issue a Certification to that effect within five (5) working days from receipt of the request of any concerned party. Thereafter, Section 23 of the *Philippine Mining Act IRR* states that after the terms and conditions of the exploration permit have been evaluated and after conflicts have been cleared, the Director of the MGB or the Regional Director concerned shall issue the exploration permit.

**3. REMEDIAL LAW; ACTIONS; JURISDICTION; THE ISSUE OF JURISDICTION MAY BE INTERPOSED AT ANY TIME AND MAY BE RULED UPON EVEN DURING APPEAL OR EVEN AFTER FINALITY OF JUDGMENT; CASE AT BAR.—** In *Machado v. Gatdula*, the Court ruled that "[w]henever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed. This defense may be interposed at any time, during appeal or even after final judgment. Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside. "Further, in *Bilag v. Ay-ay,*, the Court reiterated that "when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action[,] x x x [as] any act that it performs without jurisdiction shall be null and void, and without any binding legal effects." Here, the RTC did not commit an error in dismissing the Amended Petition despite the Order dated May 23, 2008. The issue of jurisdiction may be interposed at any time and may be ruled upon even during appeal or even after finality of judgment. The RTC, CA, or even the Court cannot conveniently set aside the fact that the Philippine Mining Act conferred jurisdiction over the dispute involved in the Amended Petition with the Panel of Arbitrators.

**APPEARANCES OF COUNSEL**

*Quasha Ancheta Peña & Nolasco* for petitioners.
*The Solicitor General* for respondents.

## D E C I S I O N

**CAGUIOA, *J.*:**

Before the Court is a petition for review on *certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated August 14, 2014 and Resolution[3] dated April 16, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 129058, which dismissed petitioners' appeal and affirmed the Decision[4] dated December 21, 2011 of the Regional Trial Court of Manila, Branch 52 (RTC) in SCA Case No. 07-118343 that, in turn, dismissed petitioners' amended petition for prohibition and *mandamus* (Amended Petition).

### Facts

The antecedent facts, as summarized by the CA, are as follows:

On 3 May 2007, Onephil Mineral Resources, Inc., (hereafter Onephil) filed an *Exploration Permit Application* covering a land area of 5,335.0806 hectares in the Municipalities of Sta. Cruz and Boac, Province of Marinduque denominated as EPA-IV-B-177 before the Mines and Geo-Sciences Bureau (hereafter MGB).

On the basis of the said application, the MGB, through its Survey Section, projected the technical description of the land area applied

---

[1] *Rollo*, pp. 40-130, excluding Attachments.

[2] *Id.* at 132-145. Penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Vicente S.E. Veloso and Pedro B. Corales.

[3] *Id.* at 148-149. Penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Japar B. Dimaampao and Pedro B. Corales.

[4] *Id.* at 151-168. Penned by Acting Presiding Judge Ruben Reynaldo G. Roxas.

for in the Mineral Land Survey Map (MLSM) covering the (MIMAROPA) Region. The MLSM is a map consisting of several cardboards with control numbers each corresponding to specified coordinates. Each cardboard contains boxes with a corresponding area of nine (9) hectares and each individually named box represents both existing and previous mining applications and claims.

The Survey Section of the MGB found that the application of Onephil overlaps several other mining applications or claims. The list of mining applications or claims affected by Onephil's application was forwarded to the Mining Services Division to determine the status of the same. The Mine Management Division of the MGB also requested for a final plotting of Onephil's applied area with the Survey Section. Additionally, recommendations of the Protected Areas Wildlife and Coastal Zone Management Service (PAWCZMS) and the Forest Management Service (FMS) of the DENR were sought by the One-Stop Shop Committee (OSSC) of Region IV-B in order to facilitate the issuance of an Area Status and Clearance.

After the OSSC received the recommendations of the concerned government agencies, the MGB apprised Onephil that its application conflicts with an existing mining lease contract, a mining application and a portion of the Marinduque Wildlife Sanctuary. The MGB, thus, required Onephil to amend its application (EPA-IV-B-177) and exclude the affected areas. In compliance thereto, Onephil submitted its amended application removing the protected areas of the Marinduque Wildlife Sanctuary. Unfortunately, the land area covered by the amended application was still in conflict with several mining applications and/or claims.

On the other hand, petitioner-appellant Marcopper Mining Corporation, the operator of the San Antonio Copper Project (SACP) and the owners of private lands, private works and mining infrastructure and facilities therein with an area of about 4,243 hectares located in the Municipalities of Sta. Cruz and Boac, Marinduque, has a pending application for Mineral Production] Sharing Agreement (MPSA) denominated as AMA IV-B 127, filed on 22 March 2001, for a total area of 763.6650 hectares with the MGB. The said application is a renewal of Marcopper's previous Lode Lease Contracts Nos. V-1199 and V-1149.

Aware of Onephil's application, Marcopper sent a letter to respondent-appellee Rolando De Jesus, the Office[r]-In-Charge (OIC) Regional Director, MGB Region IV-B (MIMAROPA) notifying him

that the areas covered by the SACP are closed to mining applications and requested the latter to ensure that said areas should be excluded from any application for Exploration Permit, MPSA or x x x any other type of mining application.

On 30 October 2007, Onephil submitted its amended application (for an Exploration Permit) to MGB and, this time, the same showed no conflict with any existing mining applications or claims. As a result, the OSSC issued an Area Status and Clearance in favor of Onephil with the notations from the Lands Management Services (LMS), FMS, PAWCZMS and the MGB Region IV-MIMAROPA. According to the findings of these agencies, the OSSC found that "the applied area is open to mining application".

Despite the issuance of the Area Status and Clearance, Onephil's *Exploration Permit Application*, to date, is still pending before the MGB.

Meanwhile, on 19 November 2007, Marcopper sought to expand its MPSA AMA IV-B127 and consequently filed an amended sketch plan. On the same date, Marcopper sent another letter to De Jesus calling again his attention to the fact that the area covered by its MPSA Application No. AMA IV-B127 are now included in the amended sketch plan covering the entire SACP with a total area of 4,668.3222 hectares. Marcopper reminded De Jesus that it has valid mining rights over the said land under R.A. No. 7942 and "are under the private works" of the SACP. However, the MIMAROPA Area Status report shows that the additional areas are in conflict with several Exploration Permit Applications, including that of Onephil.

In a letter dated 16 November 2007, the MGB sought Onephil's comment to Marcopper's claim. Onephil replied to MGB, stating that at the time it "applied for the application permit the areas [are] clear and open for mining". Finding merit in Onephil's contentions, the MGB rejected Marcopper's claim that the overlapped areas are closed to mining applications. The MGB likewise denied the amendment of Marcopper's MPSA Application No. AMA IV-B127 as the same conflicts with Onephil's EPA-IV-B-177.

Aggrieved, on 26 November 2007, appellants filed a *Petition for Prohibition and Mandamus with prayer for the Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI)* against De Jesus before the Regional Trial Court of Manila. The case

was docketed as SCA Case No. 07-118343 and raffled by (*sic*) Branch 52 thereof (hereafter court *a quo*). Appellants contended that De Jesus committed grave abuse of discretion when he accepted and acted on Onephil's *Exploration Permit Application* knowing that the land covered by the same overlaps with SACP land.

Appellants likewise filed an *Amended Petition for Prohibition and Mandamus* to include in the case respondent-appellee Vicente S. Paragas, CESO III, in his capacity as the Regional Executive Director of the Department of Environment and Natural Resources (DENR) Region IV-B (MIMAROPA) for approving the OSSC's Area Status and Clearance in favor of Onephil.

On 20 December 2007, the court *a quo*, through Presiding Judge Antonio Rosales issued an *Order* denying appellants' prayer for injunction and set the case for pre-trial.[5]

Subsequent to this, on February 22, 2008, respondents filed a Motion to Dismiss arguing that the RTC had no jurisdiction over the case. They argued that the issues raised are considered mining disputes and thus were under the exclusive and original jurisdiction of the Panel of Arbitrators.[6]

Petitioners opposed this and argued that respondents' act of processing Onephil Mineral Resources, Inc.'s (Onephil) Exploration Permit Application was a violation of their rights since the application covered lands and private works in the San Antonio Copper Project (SACP).[7] They also argued that the Amended Petition did not involve mining rights but involved a violation of petitioners' proprietary rights.[8]

On May 23, 2008, the RTC issued an Order[9] denying the Motion to Dismiss. It ruled that it had primary jurisdiction over the case since it did not involve a mining dispute.[10] It also

---

[5] *Id.* at 133-136.

[6] See *id.* at 136.

[7] *Id.*

[8] *Id.*

[9] *Id.* at 259-262. Penned by Presiding Judge Antonio M. Rosales.

[10] *Id.* at 261.

ruled that the Panel of Arbitrators had no jurisdiction over the case.[11]

On July 23, 2008, respondents filed a petition for *certiorari* before the CA questioning the May 23, 2008 Order of the RTC.[12] This was docketed as CA-G.R. SP No. 104490.[13] But in a Resolution[14] dated November 13, 2008, the CA dismissed the petition for non-compliance with the CA's directives.[15] Respondents' motion for reconsideration was likewise denied.[16]

Respondents then filed a petition for review on *certiorari* under Rule 45 before the Court and docketed as G.R. No. 188229.[17] The Court, in a Resolution dated March 8, 2010, denied the petition for failure to sufficiently show that the CA committed an error in dismissing the petition for *certiorari*.[18]

Subsequently, after trial on the merits, the RTC, through Acting Presiding Judge Ruben Reynaldo G. Roxas, rendered a Decision dismissing petitioners' Amended Petition for lack of jurisdiction.[19] The RTC ruled that the issue raised in the Amended Petition involves a mining dispute and is therefore within the jurisdiction of the Panel of Arbitrators.[20]

The RTC ruled as follows:

---

[11] *Id.*

[12] *Id.* at 137.

[13] *Id.*

[14] *Id.* at 303-305. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Isaias P. Dicdican.

[15] *Id.* at 305.

[16] *Id.* at 137.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

Verily, the instant controversy involves both an application for a mineral agreement by petitioners and the exploration permit application by OMRI. Thus, petitioners pray for the exclusion of the conflicting areas in OMRI's Exploration Permit No. EPA-IVB-177. In the same breadth, they seek to include the claimed area in its own MPSA Application No. AMA-IVB-127. Stated differently, this controversy involves the adjudication of petitioner's rights with respect to their MPSA application *vis-a-vis* OMRI's rights with respect to its EPA.

Similarly, since petitioners invoke their supposed ownership and possessory rights over surface lands to defeat OMRI's application, the instant controversy also falls under Section 7(c) of R.A. 7942 because it refers to surface owners, occupants and concessionaires of the real property affected by the mining activities conducted by the claim-holders/concessionaires (entities which are holding mining rights granted by the government)

x x x x x x x x x

Truth be told, after a thorough evaluation of the records, this Court was convinced of the necessity for technical knowledge on the subject matter before it can competently adjudicate the factual issues in this case. Specifically, during the proceedings, petitioners tried to show that they have mining rights, property and structures over the entirety of the claimed area through their expert witness, Geodetic Engineer Armando E. Quinto. The latter used his specialized knowledge in engineering to determine the metes and bounds of what it (*sic*) claimed to be the SACP area and, in the process, referred extensively to topological maps and Global Positioning System (GPS) coordinates during his testimony. Similarly, respondents presented personnel from the MGB, who used their specialized engineering knowledge and repetitively referred to topological maps and the Mineral Land Survey Map (MLSM) to establish previous and current mining claims. Surely, these circumstances only lead to the conclusion that indeed, a mining dispute exists, and that the Panel of Arbitrators is especially suited to determine the factual issues in this case.[21]

The dispositive portion of the RTC Decision states:

**WHEREFORE**, premised on the foregoing considerations, the Amended Petition is hereby **DISMISSED**.

---

[21] *Id.* at 165-167; see also Records (Vol. IV), pp. 2361-2363.

**SO ORDERED**.[22]

On appeal, the CA affirmed the RTC's dismissal of the Amended Petition. The CA ruled that the issue involved in the Amended Petition is the overlap or conflict between Onephil's EPA-IV-B-177 and petitioner Marcopper Mining Corporation's (petitioner Marcopper) MPSA No. AMA-IV-B127 over the land sought to be covered by the SACP.[23] For the CA, the case pertains to factual matters of whether petitioner Marcopper was able to prove the existence of the overlap or conflict between its claimed area and that covered by Onephil's Exploration Permit Application such that the latter need not be approved or that the land covered by petitioner Marcopper's claim be excluded from the grant of Onephil's application.[24] The CA ruled that to resolve the controversy, it would require the application of technological knowledge and experience of mining authorities.[25] This involves a mining dispute, which the CA defined as follows:

> The jurisdiction of the Panel of Arbitrators is embodied in x x x Section 77 of R.A. No. 7942 (The Philippine Mining Act of 1995), to *wit*:
>
> > "SEC. 77. Panel of Arbitrators. — There shall be a panel of arbitrators in the regional office of the Department composed of three (3) members, two (2) of whom must be members of the Philippine Bar in good standing and one [1] licensed mining engineer or a professional in a related field, and duly designated by the Secretary as recommended by the Mines and Geosciences Bureau Director. Those designated as members of the panel shall serve as such in addition to their work in the Department without receiving any additional compensation. As much as practicable, said members shall come from the different bureaus of the Department in the region. The presiding officer thereof

---

[22] *Id.* at 168.

[23] *Id.* at 140.

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

[25] *Id.* at 141.

shall be selected by the drawing of lots. His tenure as presiding officer shall be on a yearly basis. The members of the panel shall perform their duties and obligations in hearing and deciding cases until their designation is withdrawn or revoked by the Secretary. Within thirty (30) working days, after the submission of the case by the parties for decision, **the panel shall have exclusive and original jurisdiction to hear and decide on the following:**

(a) Disputes involving rights to mining areas;

(b) **Disputes involving mineral agreements or permits;**

(c) Disputes involving surface owners, occupants and claimholders/concessionaires[."] x x x

x x x x x x x x x

Under the above-quoted provision, mining dispute is a dispute involving (a) rights to mining areas, (b) mineral agreements, Financial and Technical Assistance Agreements (FTAA), or permits, and (c) surface owners, occupants and claimholders/concessionaires. In the case of *Celestial Nickel Mining Exploration vs[.] Macrosia*, the Supreme Court explained that the phrase "disputes involving rights to mining areas" in Section 77(a) of R.A. No. 7942 refers to any adverse claim, protest, or opposition to an application for mineral agreement or conferment of mining rights, while Sec[tion] 77(b) thereof refers to disputes involving mineral agreements and **permits**. Parenthetically, the "**permit**" referred to in Section 77(b) of the [Philippine] Mining Act pertains to **exploration permit**, quarry permit, and other mining permits recognized in Chapters IV, VIII, and IX of the [Philippine] Mining Act.

Additionally, in the case of *Gonzales vs[.] Panel of Arbitrators*, the Supreme Court held that the Panel of Arbitrators' jurisdiction is limited only to those mining disputes **which raise questions of fact or matters requiring the application of technological knowledge and experience**.[26] (Emphasis in the original; citations removed)

Further, the CA ruled that petitioners were not entitled to a writ of prohibition and *mandamus* because they have an adequate

---

[26] *Id.* at 139-140.

remedy under Republic Act No. (RA) 7942[27] or the *Philippine Mining Act* by filing a complaint with the Panel of Arbitrators in order to determine whether or not there exists an overlap or conflict in petitioner Marcopper's mining claim or application.[28]

The CA also ruled that the Court's Resolution[29] in G.R. No. 188229, entitled "*The Regional Executive Director, Department of Environment and Natural Resources Region IV-B [MIMAROPA], et al. vs. MR Holdings, Inc. and Marcopper Mining Corporation,*" did not settle the issue of jurisdiction since the Court only affirmed the CA's dismissal of the petition for *certiorari* on procedural grounds.[30] Neither the CA nor the Court delved into the issue of jurisdiction over the Amended Petition.[31] Nonetheless, the CA also ruled that the RTC's May 23, 2008 Order is merely interlocutory and cannot be considered as having finally resolved on the merits the issue of whether the case involves a mining dispute.[32] The CA found that the RTC (albeit with a new judge), after evaluating the records, including the testimonies of the parties, was convinced of the necessity for technical knowledge and expertise in order to determine the metes and bounds of what petitioners are claiming to be part of their mining claims.[33]

The dispositive portion of the CA Decision states:

**WHEREFORE**, the instant appeal is **DISMISSED**. The *Decision* dated 21 December 2011 of the Regional Trial Court of Manila, Branch 52, in SCA Case No. 07-118343 **STANDS**.

---

[27] AN ACT INSTITUTING A NEW SYSTEM OF MINERAL RESOURCES EXPLORATION, DEVELOPMENT, UTILIZATION, AND CONSERVATION, May 3,1995.

[28] *Rollo*, p. 142.

[29] *Id.* at 383-384.

[30] See *id.* at 143.

[31] *Id.*

[32] *Id.*

[33] *Id.* at 144.

**SO ORDERED.**[34]

Petitioners moved for reconsideration, but this was denied. Hence, this Petition.

## Issues

The issues raised in the Petition are as follows:

[I.]

x x x THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN RULING THAT THE ISSUE RAISED IN THE CASE *A QUO* IS A MINING DISPUTE BETWEEN TWO CLAIMANTS. THE ISSUE IS THE REFUSAL BY RESPONDENTS GOVERNMENT OFFICIALS TO COMPLY WITH SECTION 19 OF R.A. NO. 7942, THE MINING LAW OF 1995, THAT CERTAIN MINING AREAS ARE CLOSED TO MINING APPLICATIONS. THIS ISSUE IS PROPERLY THE SUBJECT OF A PETITION FOR PROHIBITION AND *MANDAMUS* UNDER RULE 65 OF THE RULES OF COURT.

[II.]

x x x THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN DEFYING THE RESOLUTION OF THE SUPREME COURT IN G.R. NO. 188229 WHICH UPHELD THE ORDER DATED MAY 23, 2008 OF THEN PRESIDING JUDGE ANTONIO M. ROSALES IN THE CASE *A QUO*. THE RESOLUTION OF THE SUPREME COURT IN G.R. NO. 188229 IS DEEMED TO BE A DECISION ON THE MERIT[S]. THE ORDER DECLARING THAT THE RTC HAS JURISDICTION AND THAT THE CASE DOES NOT INVOLVE A MINING DISPUTE HAS ATTAINED FINALITY. THE RTC'S ACTING PRESIDING JUDGE DECIDED THE CASE *A QUO* STRANGELY UNAWARE OF HIS OWN COURT'S PREVIOUS ORDER, AND THE FINAL AND EXECUTORY RESOLUTION OF THE SUPREME COURT, UPHOLDING THE RTC'S JURISDICTION.

---

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

[III.]

x x x THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN FAILING TO RECOGNIZE THAT ONEPHIL IS NOT A HOLDER OF MINING RIGHTS. BEING A MERE APPLICANT FOR AN EXPLORATION PERMIT, ONEPHIL HAS NOT ACQUIRED MINING RIGHTS.

[IV.]

x x x THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN FAILING TO RECOGNIZE THAT ONEPHIL, BEING A MERE APPLICANT FOR AN EXPLORATION PERMIT, DOES NOT FALL INTO THE CATEGORIES OF A PARTY TO A DISPUTE, THE RESOLUTION OF WHICH IS UNDER THE JURISDICTION OF THE MGB PANEL OF ARBITRATORS.

x x x THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN FAILING TO RECOGNIZE THAT R.A. NO. 7942 PROVIDED PROTECTION TO THE PROPERTY RIGHTS OF PRIVATE LAND OWNERS WITH PRIVATE WORKS. THAT UNLESS SUCH LAND OWNERS GIVE THEIR CONSENT IN WRITING, THEIR PRIVATE LANDS ARE CLOSED TO MINING APPLICATIONS. IT IS THESE RIGHTS THAT THE 1987 CONSTITUTION PROTECTS AND WHICH R.A. NO. 7942 PROVIDED, WHICH RESPONDENTS HAVE VIOLATED BY DECLARING THEIR AREAS OPEN TO MINING APPLICATIONS WITHOUT THEIR CONSENT.[35] (Emphasis omitted)

Distilling the foregoing, there are essentially only two issues for the Court's resolution, and they are: (a) whether the dispute is within the jurisdiction of the Panel of Arbitrators; and, (b) whether the Court, in G.R. No. 188229, already ruled with finality that it is the RTC and not the Panel of Arbitrators that has jurisdiction over the Amended Petition.

**The Court's Ruling**

The Petition is denied.

---

[35] *Id.* at 72-74.

***The Panel of Arbitrators has jurisdiction.***

Petitioners claim that "[w]hat is involved in this case are private lands and private works which are closed to mining applications pursuant to Section 19 of [RA] 7942."[36] Petitioners' theory is that "[u]nless the consent of the private landowners is secured, private land area is closed to mining applications."[37]

Petitioners also argue that the real issue is "whether or not respondents public officials acted illegally and without or in excess of their jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, in declaring [that] the area applied for by Onephil is open to mining application."[38] For petitioners, this is not "a mining dispute, nor does it require the technical expertise of [the] Panel of Arbitrators."[39]

Petitioners' arguments lack basis.

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 since 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.[40]

Here, the following are settled:

(a) Onephil's Exploration Permit Application EPA-IV-B-177 does not include areas covered by petitioner Marcopper's MPSA application AMA-IVB-127;[41]

---

[36] *Id.* at 76.

[37] *Id.* at 78.

[38] *Id.* at 80.

[39] *Id.*

[40] *Malabanan v. Republic*, G.R. No. 201821, September 19, 2018 accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocsfriendly/1/64605>.

[41] See *rollo*, p. 78.

(b) The area covered by Onephil's EPA-IV-B-177 overlaps with the private lands and private works included in the SACP, but are not included in Marcopper's AMA-IVB-127;[42] and,

(c) Marcopper is the owner of the private lands and works which are covered by the area subject of Onephil's EPA-IV-B-177.[43]

In their arguments, petitioners try to make a distinction that what they are questioning is the action of respondents for issuing the Area Clearance. But the material allegations in the Amended Petition belies this posture as they show that petitioners are essentially opposing the Exploration Permit Application of Onephil or any other applicant for mining rights that allegedly overlaps with the SACP. Their Amended Petition alleges the following:

27. That public respondents' unjust and wrongful refusal to block-off and exclude the areas of the San Antonio Copper Project from any EP or MPSA or other mining applications by third parties will open the flood gates to illegal entries and incursions over the said areas in the guise of an (*sic*) illegally issued EP or MPSA applications, and has caused and is causing grave injustice and irreparable injury to petitioners.

28. Public respondents with grave abuse of discretion and/or in excess of jurisdiction, tantamount to lack of jurisdiction, have indiscriminately and unlawfully accepted, processed and published, and **continue to accept, process and publish EPAs of third persons and entities in the areas of the San Antonio Copper Project, and has (*sic*) unlawfully refused to block-off and exclude the said mining areas from any EPA, MPSA OR FTAA applications, contrary to law and in flagrant violation of the mining rights of petitioners**.[44] (Emphasis and underscoring supplied; underscoring in the original omitted)

---

[42] See *id.* at 134-135.

[43] See *id.* at 134.

[44] *Id.* at 182-183.

In fact, in their prayer in their Amended Petition, petitioners state:

3. After due proceedings, the petition be granted and judgment be rendered:

> a) Converting the Writ of Preliminary Injunction into a Permanent Writ of Prohibitory and Mandatory Injunction.
>
> b) The privileged writ of prohibition be issued commanding public respondents OIC Regional Director, and Executive Regional Director, respectively, for MGB, Region IV-B (MIMAROPA), their agents, representatives and persons acting in his behalf to **desist from accenting, processing, publishing and issuing to third persons and entities whomsoever Exploration Permits (EPs), Mineral Production Sharing Agreement (MPSA), or Financial Technical Assistance Agreement (FTAA) within the boundaries of petitioners' San Antonio Copper Project Area at San Antonio, Sta. Cruz, Marinduque, which areas are closed to mining applications**; and,
>
> c) Writ of *Mandamus* be issued commanding said public respondents, their agents, representatives and persons acting in their behalf to block-off and **exclude from any Exploration Permit Application (EPA), or MPSA application, or FTAA applications by third persons or entities the mining areas of the San Antonio Copper Project which are closed to mining applications**.[45] (Emphasis and underscoring supplied; underscoring in original omitted)

Even as the petition is couched as one for *mandamus* and *prohibition*, what petitioners really seek is the denial of Onephil's application and other application for mining rights insofar as they overlap with the private lands over which petitioners claim they have rights. The hair-splitting distinction they make that what they are questioning is the issuance of respondents of the Area Clearance utterly fails to convince the Court. Once more, the material allegations of their Amended Petition and the character of the reliefs they seek indubitably show that the

---

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

case involves a dispute over the conferment of mining rights to Onephil — which is within the jurisdiction of the Panel of Arbitrators.

To reiterate, the jurisdiction of the Panel of Arbitrators is stated in Section 77 of the *Philippine Mining Act* as follows:

> Sec. 77. *Panel of Arbitrators*. — There shall be a panel of arbitrators in the regional office of the Department composed of three (3) members, two (2) of whom must be members of the Philippine Bar in good standing and one a licensed mining engineer or a professional in a related field, and duly designated by the Secretary as recommended by the Mines and Geosciences Bureau Director. Those designated as members of the panel shall serve as such in addition to their work in the Department without receiving any additional compensation. As much as practicable, said members shall come from the different bureaus of the Department in the region. The presiding officer thereof shall be selected by the drawing of lots. His tenure as presiding officer shall be on a yearly basis. The members of the panel shall perform their duties and obligations in hearing and deciding cases until their designation is withdrawn or revoked by the Secretary. Within thirty (30) working days, after the submission of the case by the parties for decision, the panel shall have exclusive and original jurisdiction to hear and decide on the following:
>
> (a) Disputes involving rights to mining areas;
>
> (b) Disputes involving mineral agreements or permits;
>
> (c) Disputes involving surface owners, occupants and claimholders/ concessionaires; and
>
> (d) Disputes pending before the Bureau and the Department at the date of the effectivity of this Act.

The foregoing is reflected in the *Philippine Mining Act Implementing Rules and Regulations* (*Philippine Mining Act IRR*),[46] thus:

---

[46] DENR Administrative Order No. 96-40, REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 7942, OTHERWISE KNOWN AS THE "PHILIPPINE MINING ACT of 1995," December 19, 1996.

**Section 202. Jurisdiction of Panel of Arbitrators**

The Panel of Arbitrators shall have exclusive and original jurisdiction to hear and decide on the following:

a. Disputes involving rights to mining areas;

b. Disputes involving Mineral Agreements, FTAAs or Permits;

c. Disputes involving surface owners, occupants and claimholders/concessionaires[.]

Interpreting paragraph (a) of Section 77 of the *Philippine Mining Act*, the Court in *Celestial Nickel Mining Exploration Corp. v. Macroasia Corp.*,[47] held that paragraph (a) of Section 77 of the Mining Act "specifically refer only to those disputes relative to the **applications for a mineral agreement or conferment of mining rights**."[48]

The current dispute squarely falls under paragraph (a) of Section 77 of the *Philippine Mining Act* as it involves a dispute relative to the application of Onephil for an exploration permit.

In fact, the procedure outlined in the *Philippine Mining Act* and its IRR as to the process in applying for and the grant of an exploration permit leads to the clear conclusion that it is the Panel of Arbitrators that has jurisdiction over this dispute.

Upon the filing of the application for an exploration permit, the concerned Regional Office (RO) or the MGB shall check the control maps if the area applied for is free or open for mining applications. If there are specific claims or conflicts or complaints of overlaps from landowners, non-government organizations, local government units, and other concerned stakeholders, the Regional Director is directed to exert all efforts to resolve the same. After resolving any issues, the RO or the MGB shall issue the Area Clearance.[49]

---

[47] 565 Phil. 466 (2007).

[48] *Id.* at 500; emphasis and underscoring supplied.

[49] See PHILIPPINE MINING ACT IRR, Sec. 20 which provides:

Once the Area Clearance is issued, the RO shall issue a Notice of Application for Exploration Permit to the applicant for publication and radio announcement and for posting. The Notice shall be published in two newspapers, one of general circulation published in Metro Manila and another one published in the municipality or province where the proposed permit area is located. The Notice shall also be posted in bulletin boards for

---

**Section 20. Area Status/Clearance**

Within fifteen (15) working days from receipt of the Exploration Permit application, the Bureau for areas within Mineral Reservations, or the concerned Regional Office(s), for areas outside Mineral Reservations, shall check in the control maps if the area is free/open for mining applications. The Regional Office shall also transmit a copy of the location map/sketch plan of the applied area to the pertinent Department sector(s) affected by the Exploration Permit application for area status, copy furnished the concerned municipality(ies)/city(ies) and other relevant offices or agencies of the Government for their information. Upon notification of the applicant by the Regional Office as to the transmittal of said document to the concerned Department sector(s) and/or Government agency(ies), it shall be the responsibility of the same applicant to secure the necessary area status/ consent/clearance from said Department sector(s) and/or Government agency(ies). The concerned Department sector(s) must submit the area status/ consent/clearance on the proposed permit area within thirty (30) working days from receipt of the notice: *Provided*, That the concerned Department sector(s) can not unreasonably deny area clearance/consent without legal and/or technical basis: *Provided, further*, That if the area applied for falls within the administration of two (2) or more Regional Offices, the concerned Regional Office(s) which has/have jurisdiction over the lesser area(s) of the application shall follow the same procedure.

In reservations/reserves/project areas under the jurisdiction of the Department/Bureau/Regional Office(s) where consent/clearance is denied, the applicant may appeal the same to the Office of the Secretary.

If the proposed permit area is open for mining applications, the Bureau/ concerned Regional Office(s) shall give written notice to the applicant to pay the corresponding Bureau/Regional Office(s) clearance fee (Annex 5-A): *Provided*, That if a portion of the area applied for is not open for mining applications, the concerned Regional Office shall, within fifteen (15) working days from receipt of said written notice, exclude the same from the coverage of Exploration Permit application: *Provided Further*, That in cases of overlapping of claims/conflicts/complaints from landowners, NGOs, LGUs and other concerned stakeholders, the Regional Director shall exert all efforts to resolve the same.

one week in the province, municipality and barangay where the proposed permit area is located. Radio announcements of the notice shall also be done every day for one week.[50]

---

[50] See PHILIPPINE MINING ACT IRR, Sec. 21, as amended by DENR Department Administrative Order No. 2007-15, which provides:

**Section 21. Publication/Posting/Radio Announcement of an Exploration Permit Application**

Within five (5) working days from receipt of the necessary area clearances, the Regional Office(s) concerned shall issue the Notice of Application for Exploration Permit to the applicant for publication and radio announcement, and to the Offices concerned for posting. The Notice must contain, among others, the name and complete address of the applicant, duration of the permit applied for, extent of exploration activities to be undertaken, area location, geographical coordinates/meridional block(s) of the proposed permit area and location map/sketch plan with index map relative to major environmental features and projects and to the nearest municipalities.

Within five (5) working days from receipt of the Notice, the Exploration Permit applicant shall cause the publication thereof once in two (2) newspapers: one of general circulation published in Metro Manila and another published in the municipality or province where the proposed permit area is located, if there be such newspapers; otherwise, in the newspaper published in the nearest municipality or province. The pertinent affidavits of publication shall be submitted by the Exploration Permit applicant to the Regional Office concerned within five (5) days from the date of publication of the Notice.

The Regional Office concerned shall cause the posting of the Notice on its bulletin board, and those of the province(s) and municipality(ies) concerned, or city(ies) concerned, for one (1) week, copy furnished the Bureau and the barangay(s) where the proposed permit area is located. Where necessary, the Notice shall be in a language generally understood in the concerned locality where it is posted.

The radio announcements shall be made daily for one (1) week in a local radio program and shall consist of the name and complete address of the applicant, area location, duration of the permit applied for and instructions that information regarding such application may be obtained at the Regional Office(s) concerned. The publication and radio announcements shall be at the expense of the applicant.

Within five (5) working days from the last date of posting and radio announcement, the authorized officer(s) of the concerned office(s) shall issue a certification(s) that the posting/radio announcement have been complied with. Any adverse claim, protest or opposition shall be filed directly, within ten (10) days from the date of publication or from the last date of posting/ radio announcement, with the Regional Office concerned or through any

Within five working days from the last date of posting and radio announcement, certifications shall be issued by the concerned officers on the compliance with the posting and radio announcement requirement. The affidavit of the publisher will also be submitted as proof of the publication.[51]

The *Philippine Mining Act IRR* also specifically states that "[a]ny adverse claim, protest or opposition shall be filed directly, within ten (10) days from the date of publication or from the last date of posting/radio announcement, with the Regional Office concerned or through any PENRO[52] or CENRO[53] concerned for filing in the Regional Office concerned for purposes of its resolution by the Panel of Arbitrators pursuant to the provisions of the Act and these implementing rules and regulations."[54]

Petitioner Marcopper, claiming that its private lands should be excluded from Onephil's Exploration Permit Application, may file such protest or opposition with the Panel of Arbitrators within 10 days from the date of publication or from the last date of posting/radio announcement. The Panel of Arbitrators is mandated to decide on the dispute within 30 days after the

---

PENRO or CENRO concerned for filing in the Regional Office concerned for purposes of its resolution by the Panel of Arbitrators pursuant to the provisions of the Act and these implementing rules and regulations. Upon final resolution of any adverse claim, protest or opposition, the Panel of Arbitrators shall issue a Certification to that effect within five (5) working days from the date of finality of resolution thereof. Where no adverse claim, protest or opposition is filed after the lapse of the period for filing the adverse claim, protest or opposition, the Panel of Arbitrators shall likewise issue a Certification to that effect within five (5) working days from receipt of the request of any concerned party.

x x x x x x x x x

No Exploration Permit shall be approved unless the requirements under this Section are fully complied with and any adverse claim/protest/opposition thereto is resolved with finality.

[51] *Id.*

[52] Provincial Environment and Natural Resources Office.

[53] Community Environment and Natural Resources Office.

[54] PHILIPPINE MINING ACT IRR, Sec. 21, as amended.

case is submitted for decision.[55] The decision of the Panel of Arbitrators is appealable to the Mines Adjudication Board,[56] and in turn, the decision of the Mines Adjudication Board is appealable to the Court.[57]

It is only when the dispute is settled with finality, as certified by the Panel of Arbitrators, will the Regional Director then issue the Exploration Permit. Section 21 of the *Philippine Mining Act IRR* further states that "[u]pon final resolution of any adverse claim, protest or opposition, the Panel of Arbitrators shall issue a Certification to that effect within five (5) working days from the date of finality of resolution thereof. Where no adverse claim, protest or opposition is filed after the lapse of the period for filing the adverse claim, protest or opposition, the Panel of Arbitrators shall likewise issue a Certification to that effect within five (5) working days from receipt of the request of any concerned party."[58]

Thereafter, Section 23 of the *Philippine Mining Act IRR* states that after the terms and conditions of the exploration permit have been evaluated and after conflicts have been cleared, the Director of the MGB or the Regional Director concerned shall issue the exploration permit, thus:

**Section 23. Registration of Exploration Permit**

Upon evaluation that all the terms and conditions and all pertinent requirements are in order and that the subject area has been cleared from any conflict, the Director in case of Mineral Reservation areas or the Regional Director concerned in case of Non-Mineral Reservation areas and upon clearance by the Director shall approve and issue the Exploration Permit. The Permittee shall cause the registration of the same in the Regional Office concerned within fifteen (15) working days from receipt of the written notice and upon payment of the required fees: *Provided*, That the Permittee shall comply with the required

---

[55] *Id.*, Sec. 205.

[56] *Id.*, Sec. 206.

[57] *Id.*, Sec. 211.

[58] *Id.*, Sec. 21, as amended.

consultation with the Sanggunian concerned pursuant to the pertinent provisions of RA No. 7160, The Local Government Code of 1991, prior to the implementation of the Exploration Work Program.

In filing a petition for *mandamus* and *prohibition* — instead of following the procedure outlined above — petitioners attempted to circumvent and avoid the jurisdiction of the Panel of Arbitrators. The Court cannot allow this legal maneuvering as the material allegations and the relief sought by petitioners show that the dispute clearly falls within the exclusive jurisdiction of the Panel of Arbitrators. The RTC and the CA therefore correctly dismissed the Amended Petition.

***Issue of jurisdiction can be raised at any time.***

Petitioners argue that the Court's dismissal of its petition in G.R. No. 188229 already settled the issue of jurisdiction.[59] Petitioners' arguments lack merit.

To recall, respondents herein filed a Motion to Dismiss based on lack of jurisdiction, which the RTC denied in an Order dated May 23, 2008.[60] Respondents filed a petition for *certiorari* before the CA, which was summarily dismissed.[61] The summary dismissal by the CA was affirmed by the Court in G.R. No. 188229.[62]

In *Machado v. Gatdula*,[63] the Court ruled that "[w]henever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed. This defense may be interposed at any time, during appeal or even after final judgment. Such is understandable, as this kind of jurisdiction is conferred

---

[59] See *rollo*, p. 84.

[60] *Id.* at 136.

[61] *Id.* at 143.

[62] See *id.*

[63] 626 Phil. 457 (2010).

by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside."[64]

Further, in *Bilag v. Ay-ay*,[65] the Court reiterated that "when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action[,] x x x [as] any act that it performs without jurisdiction shall be null and void, and without any binding legal effects."[66]

Here, the RTC did not commit an error in dismissing the Amended Petition despite the Order dated May 23, 2008. The issue of jurisdiction may be interposed at any time and may be ruled upon even during appeal or even after finality of judgment. The RTC, CA, or even the Court cannot conveniently set aside the fact that the Philippine Mining Act conferred jurisdiction over the dispute involved in the Amended Petition with the Panel of Arbitrators.

**WHEREFORE,** premises considered, the Petition is **DENIED**.

**SO ORDERED.**

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

---

[64] *Id.* at 469.

[65] 809 Phil. 236 (2017).

[66] *Id.* at 243.

**FIRST DIVISION**

[G.R. No. 223140. September 4, 2019]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **ROSEMARIE GARDON-MENTOY,** *accused-appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; THERE CAN BE NO VALID ARREST; SEARCH AND SEIZURE WITHOUT A WARRANT ISSUED BY A COMPETENT JUDICIAL AUTHORITY; RATIONALE.—** Generally, there can be no valid arrest, search and seizure without a warrant issued by a competent judicial authority. The warrant, to be issued by a judge, must rest upon probable cause — the existence of facts indicating that the person to be arrested has committed a crime, or is about to do so; or the person whose property is to be searched has used the same to commit crime, and its issuance must not be based on speculation, or surmise, or conjecture, or hearsay. The right to be protected from unreasonable searches and seizures is so sacred that no less than Section 2, Article III of the Constitution declares the right to be *inviolable*, and for that reason expressly prohibits the issuance of any search warrant or warrant of arrest except upon probable cause to be personally determined by a judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized. To enforce such inviolable right, Section 3(2), Article III of the Constitutions enunciates the exclusionary rule by unqualifiedly declaring that "[a]ny evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding." The exclusionary rule is intended to deter the violation of the right to be protected from unreasonable searches and arrest.

**2. ID.; ID.; ID.; ARREST OR SEARCH AND SEIZURE WITHOUT A WARRANT; EXCEPTION TO THE PROHIBITION AGAINST WARRANTLESS ARREST;**

**SITUATIONS WHEN A ROUTINE INSPECTION MADE AT CHECKPOINTS MAY BE REGARDED AS PERMISSIBLE AND VALID, CITED.—** We are mindful that the guarantee against warrantless arrests, and warrantless searches and seizures admit of some exceptions. One such exception relates to arrests, searches and seizures made at a police checkpoint. Indeed, routine inspections made at checkpoints have been regarded as permissible and valid, if the inspections are limited to the following situations: (a) where the officer merely draws aside the curtain of a vacant vehicle parked on the public fair grounds; (b) simply looks inside a vehicle; (c) flashes a light into the vehicle without opening its doors; (d) where the occupants of the vehicle are not subjected to a physical or body search; (e) where the inspection of the vehicle is limited to a visual search or visual inspection; and (f) where the routine check is conducted in a fixed area. In short, inspections at checkpoints are confined to visual searches. An extensive search of the vehicle is permissible only when the officer conducting the search had probable cause to believe *prior to the search* that he will find inside the vehicle to be searched the instrumentality or evidence pertaining to the commission of a crime.

**3. ID.; ID.; ID.; ID.; A LAWFUL WARRANTLESS ARREST MAY BE EFFECTED BY A PEACE OFFICER OR PRIVATE PERSON BUT ONLY WHEN ANY OF THE EXCEPTIONS LISTED IN SECTION 5, RULE 113 OF THE RULES OF COURT IS APPLICABLE; EXPLAINED.—** The general rule is that an arrest or search and seizure should be effected upon a judicial warrant. A lawful warrantless arrest may be effected by a peace officer or private person but only when any of the exceptions listed in Section 5, Rule 113 of the *Rules of Court* to the rule requiring a warrant of arrest to be issued is applicable. x x x In the warrantless arrest made pursuant to Section 5(a), *supra*, the concurrence of two circumstances is necessary, namely: (a) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is done *in the presence* or *within the view* of the arresting officer. On the other hand, Section 5(b), *supra*, requires that at the time of the warrantless arrest, an offense has just been committed and the arresting officer has personal knowledge of facts indicating that the accused had

committed it. In both instances, the essential basis for. the warrantless arrest is the arresting officer's *personal knowledge* of the fact of the commission of an offense. Under Section 5(a), the officer himself witnesses the commission of the crime; under Section 5(b), the officer actually knows that a crime has just been committed.

**4. ID.; ID.; ID.; ID.; ARREST MADE *IN FLAGRANTE DELICTO*; WHEN THE ARRESTEE IS CAUGHT IN THE VERY ACT OF COMMITTING A CRIME, THE PHRASE NECESSARILY IMPLIES THAT THE POSITIVE IDENTIFICATION OF THE CULPRIT HAS ALREADY BEEN DONE BY AN EYEWITNESS OR EYEWITNESSES; NOT ESTABLISHED IN CASE AT BAR.—** On its part, the CA upheld the warrantless arrest on the basis of the accused-appellant having been caught *in flagrante delicto*, the situation covered by Section 5(a). An arrest made *in flagrante delicto* means that the arrestee is caught in the very act of committing the crime, and the phrase necessarily implies that the positive identification of the culprit has already been done by an eyewitness or eyewitnesses. Such identification constitutes direct evidence of culpability because it "proves the fact in dispute without the aid of any inference or presumption." But we find otherwise, because there was no direct evidence on the identity of the culprit as of the time of the search simply because the officers still had to know who Rose was from among the passengers.

**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.*:**

A lawful arrest must precede a warrantless search conducted upon the personal effects of an individual. The process cannot be reversed. Hence, the search must rest on probable cause existing independently of the arrest.

## The Case

This appeal challenges the decision promulgated on April 28, 2015,[1] whereby the Court of Appeals (CA) affirmed the conviction of the accused-appellant for the crime of illegal transportation of dangerous drugs defined and penalized under Section 5 of Republic Act. No. 9165 (C*omprehensive Dangerous Act of 2002*). She had been incriminated following the warrantless search of her personal effects as a passenger of a shuttle van.

## Antecedents

The information filed on June 1, 2008 charged the accused-appellant with the violation of Section 5 of R.A. No. 9165, as follows:

> That on or about the 31st day of May 2008, at more or less 4:45 o'clock in the afternoon, at Barangay Malatgao, Municipality of Narra, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously transport and have in her possession, custody and control of 1,400 grams of Cannavis (*sic*) Sativa otherwise known as "MARIJUANA", a dangerous drug contained in three (3) packages which are intended to be sold to prospective buyers with whom the accused had actually been engaged in selling, giving away and dispatching said prohibited dugs without the necessary permit and/or license from the proper authorities to possess and sell the same, and where (*sic*) the said 1,400 grams of marijuana amounting to FORTY THOUSAND PESOS (Php40,000.00), Philippine Currency.
>
> CONTRARY TO LAW.[2]

The CA summarized the factual antecedents of the case in this wise:

---

[1] *Rollo*, pp. 2-12; penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justice Jose C. Reyes, Jr. (now a Member of this Court) and Associate Justice Eduardo B. Peralta, Jr.

[2] *Id.* at 3.

On May 30, 2008, an informant relayed to SPO2 Renato Felizarte (SPO2 Felizarte) of the Narra Municipal Police Station (police station) in Palawan that a couple named @ Poks and @ Rose (later identified as accused-appellant), were transporting and selling marijuana in Barangay Malatgao, Narra, Palawan. SPO2 Felizarte relayed the infonnation to Police Senior Inspector Yolanda Socrates (PSI Socrates) who instructed SPO2 Felizarte and PO1 Abdulito Rosales (PO1 Rosales) to conduct surveillance on said suspects. At about 1:43 p.m. of said date, SPO2 Felizarte submitted to the Philippine Drug Enforcement Agency (PDEA) a pre-operation report dated May 30, 2008 with control number PDEA R0-0508-00006, which the PDEA confirmed.

On May 31, 2008, at about 8 a.m., PSI Socrates briefed the operation team (team). At about 4:30 p.m., the informant relayed to the team that accused-appellant will be boarding a Charing 19 shuttle van (van) with plate number VRA 698. Thus, the team proceeded to the National Highway, Barangay Malatgao, Narra, Palawan. At a distance of one (1) to two (2) meters, PO1 Rosales, while on board his motorcycle, saw accused-appellant board the van. PO1 Rosales flagged down the van as it approached them. The team introduced themselves as police officers. They declared that they were conducting a checkpoint because of information about persons transporting illegal drugs. PO1 Rosales told the driver that they will check the van passengers. The driver then opened the van's side door. PO1 Rosales asked the van passengers who among them was Rose. Accused-appellant replied, "*Ako po*" (I am). PO1 Rosales asked accused-appellant where her baggage was. Accused-appellant apprehensively requested the driver to hand her the pink bag placed at the rear portion of the van. SPO2 Felizarte and PO1 Rosales, however, noticed that accused-appellant transferred a block-shaped bundle, wrapped in yellow cellophane and brown tape, from the pink bag to a black one. SPO2 Felizarte and PO1 Rosales suspected this bundle to contain marijuana leaves. Accused-appellant then placed the black bag on a vacant seat beside her. SPO2 Felizarte also noticed that accused-appellant panicked and tried to get down from the van, but he and PO1 Rosales restrained her. Afterwards, PO1 Rosales called Barangay Captain Ernesto Maiguez (Brgy. Captain Maiguez) to proceed to the area.

When Brgy. Captain Maiguez arrived, SPO2 Felizarte and PO1 Rosales asked him if he knew accused-appellant. Brgy. Captain Maiguez said he knew accused-appellant as a rice seller who resided in Barangay Malatgao where he was chairman. The police officers asked Brgy.

Captain Maiguez to pick up the black bag, which accused-appellant held beside her. Brgy. Captain Maiguez got (the) said bag and placed it by the road. SPO2 Felizarte requested him to open it. Brgy. Captain Maiguez opened said bag in the presence of accused-appellant and the other van passengers. PO1 Rosales took photographs while said bag was being opened. The black bag contained, *inter alia*: (a) one (1) L-shaped bundle wrapped in yellow cellophane and brown tape; (b) one (1) block-shaped bundle wrapped in newspaper; and (c) one (1) sachet (covered with tissue paper), all suspected to contain marijuana leaves. The police officers smelled the bundles and sachet and confirmed that these contained marijuana leaves. The police officers returned the items inside the black bag. They arrested and informed accused-appellant that she violated Republic Act (R.A.) No. 9165 and apprised the latter of her constitutional rights. Since accused-appellant lived near the crime scene, the police officers brought her and the seized items immediately to the police station to avoid any untoward incident.

PO1 Rosales carried the black bag from the crime scene to the police station. Thereat, PO1 Rosales prepared an inventory of the seized items in the presence of a media representative and Brgy. Captain Maiguez. PO1 Rosales also marked the L-shaped bundle as "ADR-1", blocked-shaped bundle as "ADR-2", and sachet as "ADR-3", respectively, in the presence of accused-appellant. PO1 Rosales brought the bundles and sachet to the Palawan Crime Laboratory (crime laboratory) where Forensic Chemist and Police Chief Inspector Mary Jane Cordero (PCI Cordero) examined the seized items. She found the contents of the bundles and sachet positive for marijuana and prepared Chemistry Report No. D-005-08 stating her findings.

During trial, PO1 Rosales identified the seized items in open court as the same ones he marked at the police station. He also identified in open court the inventory he prepared at the police station. The defense admitted the documents presented by the prosecution, namely: the Request for Laboratory Examination; PCI Cordero's Chemistry Report No. D-005-08; dried marijuana leaves; L-shaped bundle marked "ADR-1"; dried marijuana leaves; blocked-shaped bundle marked "ADR-2", dried marijuana leaves; and sachet marked "ADR-3". PCI Cordero's testimony was concluded without cross-examination by the defense.

For the defense, accused-appellant testified that on May 11, 2008, at about 4:00 p.m., she was onboard a van bound for Puerto Princesa City for a medical consultation and to canvass the price of rice. Shortly

after, a man aboard a motorcycle flagged down the van. Another man, later identified as SPO2 Felizarte, asked the passengers who among them was Rose. After accused-appellant answered that she was Rose, SPO2 Felizarte handcuffed her. The other passengers were told to alight from the van, while accused-appellant remained inside. The police officers searched the baggage of the other passengers and placed these outside the van. The police officers called the passengers to look at a certain bag while they took photographs. Thereafter, accused-appellant was ordered to alight from the van while the other passengers returned inside. The bags of the passengers were returned inside the van, except for one (1) bag, which was held by the police officers. Accused-appellant did not see Brgy. Captain Maiguez open her black bag. The police officers brought her to the police station where she was asked to sign some documents, which she refused to do.[3]

## Judgment of the RTC

On June 4, 2013, the RTC convicted the accused-appellant as charged, disposing thusly:

**WHEREFORE**, in view of the foregoing, the prosecution having satisfactorily proven the guilt of accused **ROSEMARIE GARDON-MENTOY**, the Court hereby found her **GUILTY** beyond reasonable doubt for the crime of Violation of **Section 5, Article II of R.A. 9165** for transportation of dangerous drug and to suffer the penalty of life imprisonment and a fine of five hundred thousand pesos (₱500,000.00).

The confiscated marijuana used in prosecuting this case is hereby ordered to be turned over to the local office of the Philippine Drug. Enforcement Agency (PDEA) for proper disposition.

**SO ORDERED**.[4]

The RTC regarded the warrantless arrest of the accused-appellant as validly made upon probable cause in the context of Section 5(b), Rule 113 of the *Rules of Court*;[5] and concluded

---

[3] *Id.* at pp. 3-5.

[4] CA *rollo*, pp. 76-77.

[5] SEC. 5. *Arrest without warrant; when lawful.* – A peace officer or a private person may, without a warrant, arrest a person:

that the State had established the *corpus delicti* of the crime by the testimonies of its witnesses.[6]

**Decision of the CA**

On April 28, 2015, the CA rendered the assailed decision affirming the conviction of the accused-appellant.[7] It opined that a search could precede an arrest if the police officers had probable cause to effect the arrest; that the warrantless search conducted on the personal effects of the accused-appellant had been an incident of her lawful arrest; and that the Prosecution had adequately established the crucial links in the chain of custody.[8] It explained that a search substantially contemporaneous with an arrest could still be said to precede the arrest if the police officers had probable cause to effect the arrest at the outset of the search; and that based on the circumstances showing the existence of probable cause, the warrantless search, being an incident to the lawful arrest of the accused-appellant, was valid.[9]

**Issue**

In this appeal, the accused-appellant insists on the illegality of her warrantless arrest. She asserts that the *marijuana* leaves supposedly taken from her bag were inadmissible in evidence pursuant to the exclusionary rule; and that the apprehending officers did not comply with the procedure laid out in Section 21 of R.A. No. 9165.[10]

---

x x x x x x x x x

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts and circumstances that the person to be attested has committed it; and

x x x x x x x x x

[6] CA *rollo*, pp. 75-76.

[7] *Supra* note 1.

[8] *Rollo*, pp. 7-11.

[9] *Id.*

[10] CA *rollo*, pp. 48-62.

The Office of the Solicitor General (OSG) counters that the concurrence of the elements of the crime of illegal possession of dangerous drugs had been proved beyond reasonable doubt; and that the arrest had been legally conducted pursuant to Rule 113, Section 5(b) of the *Rules of Court*.[11]

**Ruling of the Court**

The appeal has merit.

**I**

**The right against unreasonable searches and seizures is inviolable**

Generally, there can be no valid arrest, search and seizure without a warrant issued by a competent judicial authority. The warrant, to be issued by a judge, must rest upon probable cause – the existence of facts indicating that the person to be arrested has committed a crime, or is about to do so; or the person whose property is to be searched has used the same to commit crime, and its issuance must not be based on speculation, or surmise, or conjecture, or hearsay. The right to be protected from unreasonable searches and seizures is so sacred that no less than Section 2, Article III of the Constitution declares the right to be *inviolable*, and for that reason expressly prohibits the issuance of any search warrant or warrant of arrest except upon probable cause to be personally determined by a judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.

To enforce such inviolable right, Section 3(2), Article III of the Constitutions enunciates the exclusionary rule by unqualifiedly declaring that "[a]ny evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding." The exclusionary rule is intended to deter the violation of the right to be protected from unreasonable searches and arrest.

---

[11] *Id.* at 95-103.

We are mindful that the guarantee against warrantless arrests, and warrantless searches and seizures admit of some exceptions. One such exception relates to arrests, searches and seizures made at a police checkpoint. Indeed, routine inspections made at checkpoints have been regarded as permissible and valid, if the inspections are limited to the following situations: (a) where the officer merely draws aside the curtain of a vacant vehicle parked on the public fair grounds; (b) simply looks inside a vehicle; (c) flashes a light into the vehicle without opening its doors; (d) where the occupants of the vehicle are not subjected to a physical or body search; (e) where the inspection of the vehicle is limited to a visual search or visual inspection; and (f) where the routine check is conducted in a fixed area.[12]

In short, inspections at checkpoints are confined to visual searches. An extensive search of the vehicle is permissible only when the officer conducting the search had probable cause to believe *prior to the search* that he will find inside the vehicle to be searched the instrumentality or evidence pertaining to the commission of a crime.[13]

**II**

**Warrantless search of the accused-appellant's personal belongings was not based on probable cause**

Based on the alleged tip from the unidentified informant to the effect that the accused-appellant would be transporting dangerous drugs on board a Charing 19 shuttle van with plate number VRA 698, the police officers had set up a checkpoint on the National Highway in Barangay Malatgao in Narra, Palawan. There, PO1 Abdulito Rosales later flagged down the approaching shuttle van. The officers at the checkpoint introduced themselves as policemen. But even at that time none of the officers knew who would be transporting dangerous drugs to. They were only told that the suspect was a person named

---

[12] *People v. Manago*, G.R. No. 212340, August 17, 2016, 801 SCRA 103, 117-118.

[13] *Id.* at 118.

Rose, but they had no independent knowledge of who she was other than her name being Rose. Upon the driver opening the door of the vehicle, PO1 Rosales nonetheless singled her out by immediately asking who of the passengers was *Rose*. The accused-appellant naturally answered the query by identifying herself as *Rose* without hesitation. The police officers also did not yet know how or where Rose was transporting the dangerous drugs. So, PO1 Rosales immediately inquired about her baggage, and, in response, she requested the driver to hand her the pink bag resting at the rear portion of the van.

Meanwhile, SPO2 Renato Felizarte and PO1 Rosales noticed that the accused-appellant transferred a block-shaped bundle wrapped in yellow cellophane and brown tape from the pink bag to a black one, and then placed the black bag on a vacant seat beside her. At what precise moment this took place was not indicated in the records, but the officers' mere say-so was entirely subjective on their part. Without objective facts being presented here by which we can test the basis for the officers' suspicion about the block-shaped bundle contained *marijuana*, we should not give unquestioned acceptance and belief to such testimony. The mere subjective conclusions of the officers concerning the existence of probable cause is never binding on the court whose duty remains to "independently scrutinize the objective facts to determine the existence of probable cause," for, indeed, "the courts have never hesitated to overrule an officer's determination of probable cause when none exists."[14]

But SPO2 Felizarte also claimed that it was about then when the accused-appellant panicked and tried to get down from the van, impelling him and PO1 Rosales to restrain her. Did such conduct on her part, assuming it did occur, give sufficient cause to search and to arrest?

For sure, the transfer made by the accused-appellant of the block-shaped bundle from one bag to another should not be cited to justify the search if the search had earlier commenced

---

[14] *United States ex rel. Senk v. Brierly*, 381 F. Supp. 447 (M.D. Pa. 1974).

at the moment PO1 Rosales required her to produce her baggage. Neither should the officers rely on the still-unverified tip from the unidentified informant, without more, as basis to initiate the search of the personal effects. The officers were themselves well aware that the tip, being actually double hearsay as to them, called for independent verification as its substance and reliability, and removed the foundation for them to rely on it even under the circumstances then obtaining. In short, the tip, in the absence of other circumstances that would confirm their suspicion coming to the knowledge of the searching or arresting officer, was not yet actionable for purposes of effecting an arrest or conducting a search.[15]

The general rule is that an arrest or search and seizure should be effected upon a judicial warrant. A lawful warrantless arrest may be effected by a peace officer or private person but only when any of the exceptions listed in Section 5, Rule 113 of the *Rules of Court* to the rule requiring a warrant of arrest to be issued is applicable. Section 5 specifically provides:

> Section 5. *Arrest without warrant; when lawful.* – A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.
>
> In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112. (5a)

---

[15] *Veridiano v. People*, G.R. No. 200370, June 7, 2017, 826 SCRA 382, 411.

In the warrantless arrest made pursuant to Section 5(a), *supra*, the concurrence of two circumstances is necessary, namely: (a) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is done *in the presence* or *within the view* of the arresting officer. On the other hand, Section 5(b), *supra*, requires that at the time of the warrantless arrest, an offense has just been committed and the arresting officer has personal knowledge of facts indicating that the accused had committed it. In both instances, the essential basis for. the warrantless arrest is the arresting officer's *personal knowledge* of the fact of the commission of an offense. Under Section 5(a), the officer himself witnesses the commission of the crime; under Section 5(b), the officer actually knows that a crime has just been committed.[16]

Both the RTC and the OSG submit that the case of the accused-appellant came under Section 5(b), *supra*. However, their submission is factually unfounded because PO1 Rosales and SPO2 Felizarte concededly did not have *personal knowledge* that the crime had been committed inasmuch as at that point they did not yet know where the dangerous drug had been hidden. In fact, as the records bear out, they were only able to find and seize the *marijuana after* the barangay captain had opened her bag.

On its part, the CA upheld the warrantless arrest on the basis of the accused-appellant having been caught *in flagrante delicto*, the situation covered by Section 5(a), *supra*. An arrest made *in flagrante delicto* means that the arrestee is caught in the very act of committing the crime, and the phrase necessarily implies that the positive identification of the culprit has already been done by an eyewitness or eyewitnesses. Such identification constitutes direct evidence of culpability because it "proves the fact in dispute without the aid of any inference or presumption."[17] But we find otherwise, because there was no

---

[16] *Macad v. People*, G.R. No. 227366, August 1, 2018.

[17] *People v. Belocura*, G.R. No. 173474, August 29, 2012, 679 SCRA 318, 330-331.

direct evidence on the identity of the culprit as of the time of the search simply because the officers still had to know who Rose was from among the passengers.

Also, the officers did not immediately effect the arrest of the accused-appellant once she had identified herself as Rose, and the only explanation for this was that they still had to check if her bag had really contained *marijuana*. As earlier noted, they claimed seeing her transferring from one bag to another the block-shaped bundle, wrapped in yellow cellophane and brown tape, but their vaunted suspicion of the contents being *marijuana* was SPO2 Felizarte's *afterthought* justification considering that the contents of the bundle were not then visible on plain sight. It is noteworthy in this regard that the contents would be revealed as *marijuana* only after the barangay captain had opened the bag.[18]

The arrest of the accused-appellant did not justify the search of the personal belongings because the arrest did not precede the search. Section 13, Rule 126 of the *Rules of Court*, clearly states that "[a] person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant." Accordingly, there should first be a lawful arrest before the warrantless search can be made; the process cannot be reversed.[19] As such, the search made against the accused-appellant would be valid only if sufficient probable cause to support it existed independently of the arrest.

What the foregoing disquisition indicates is that the arresting officers plainly ignored the constitutional and statutory limitations prescribed for a valid search at a checkpoint. They effected the warrantless search of the personal effects of the accused-appellant without sufficient probable cause, and on that basis arrested her. If the arrest did not precede the search, where was the probable cause that justified her warrantless arrest?

---

[18] CA *rollo*, pp. 69-70.

[19] *People v. Manago*, *supra*, note 12, at 112.

The conclusion is inevitable that both the warrantless arrest of the accused-appellant and the warrantless search of her personal effects were unreasonable. The consequence is to invalidate the search. The *marijuana* seized from her should be deemed inadmissible in evidence pursuant to the exclusionary rule enunciated under Section 3(2), Article III of the Constitution. With the confiscated *marijuana* being the very *corpus delicti* of the crime charged, the accused-appellant should be acquitted because the evidence adduced against her was entirely inadmissible.

**WHEREFORE,** the Court **REVERSES** and **SETS ASIDE** the decision promulgated on April 28, 2015 by the Court of Appeals in CA-G.R. CR-HC No. 06339; **ACQUITS** accused-appellant **ROSEMARIE GARDON MENTOY** of the crime of violation of Section 5, Article II of Republic Act No. 9165; and **ORDERS** her **IMMEDIATE RELEASE** from confinement at the Correctional Institution for Women, Bureau of Corrections, in Mandaluyong City, unless she is confined thereat for some other lawful cause.

Let a copy of this decision be forthwith furnished to the Director of the Bureau of Corrections in Muntinlupa City for immediate implementation.

The Director of the Bureau of Corrections is directed to report the action taken conformably with this decision within five days from receipt.

**SO ORDERED.**

*Perlas-Bernabe, Caguioa,*[*] *Gesmundo*, and *Carandang, JJ.,* concur.

---

[*] Designated as additional member vice Justice Francis H. Jardeleza per Raffle dated February 27, 2019.

**SECOND DIVISION**

[G.R. No. 223562. September 4, 2019]

**PEOPLE OF THE PHILIPINES,** *plaintiff-appellee, vs.* **LEAN NOEL DIZON @ "JINGLE,"** *accused-appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANTLESS ARREST; APPELLANT'S WARRANTLESS ARREST DURING BUY-BUST OPERATION INCLUDING THE INCIDENTAL SEARCH WAS VALID; BUY-BUST OPERATION IS A VALID FORM OF ENTRAPMENT. —** Appellant was caught *in flagrante delicto* selling *shabu* during a buy bust operation. **People *v.* Rivera** reiterated the rule that warrantless arrest made during an entrapment operation including the search done incidental thereto was valid pursuant to Section 5(a) of Rule 113 of the Rules on Criminal Procedure. A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. In a buy-bust operation, the idea to commit a crime originates from the offender, without anyone inducing or prodding him to commit the offense. If carried out with due regard for constitutional and legal safeguards, a buy-bust operation deserves judicial sanction. So must it be.

**2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; TESTIMONY OF THE INFORMANT IS NOT NECESSARY FOR A SUCCESSFUL PROSECUTION THEREOF. —** In *People v. Tripoli*, the Court found that the informant in that case was not presented in court for security reasons, as there was a compelling need to protect the informant from possible retaliation of the accused who got arrested through the informant's efforts. The informant's identity should be kept in confidence in deference to his invaluable service to law enforcement. Only when the testimony of the informant is considered absolutely essential in obtaining the conviction

of the accused should the need to protect his security be disregarded. The prosecution here did not find the need to expose the informant's identity for the purpose of proving the case of the People.

**3. ID.; ID.; CHAIN OF CUSTODY RULE; THE COURT REVIEWS THE ARRESTING TEAM'S COMPLIANCE WITH THE CHAIN OF CUSTODY RULE ALTHOUGH APPELLANT HAS NOT RAISED IT AS AN ISSUE. —** The Court now reckons with the core issue in every indictment for illegal sale or possession of dangerous drugs: Was the chain of custody rule duly complied with? Indeed, compliance with the chain of custody rule determines the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of appellant's liberty. Although appellant himself has not raised this issue here or even below, the Court is not deterred from taking cognizance thereof. The Court can even examine the case records if only to ascertain whether the procedure had been completely complied with, and if not, whether good reasons exist to excuse any deviation therefrom. This conforms with the rule that appeal in a criminal case throws the entire case open for review.

**4. ID.; ID.; ID.; LINKS IN THE CHAIN OF CUSTODY THAT MUST BE ESTABLISHED TO ENSURE THE INTEGRITY OF THE SEIZED DRUGS; RATIONALE. —** 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 or sold by the accused is the same substance presented in court. To ensure the integrity of the seized drugs, 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 emerged as a potent safeguard against any possible tampering, alteration, or substitution either by accident or otherwise the usually indistinct and not readily identifiable form of illegal drugs.

**5. ID.; ID.; ID.; WHERE THE CHAIN OF CUSTODY HAD BEEN SERIOUSLY VIOLATED AND THE PROSECUTION OFFERED NO EXPLANATION WHY THE MEDIA REPRESENTATIVE WAS ABSENT, THE COURT CANNOT CONSIDER THE IDENTITY AND INTEGRITY OF THE SEIZED ITEMS TO HAVE BEEN PRESERVED; APPELLANT MUST BE ACQUITTED. ––** Both witnesses confirmed that the required inventory and photograph were done at the place of arrest and in the presence of elected officials Reynaldo Sumagaysay and Santiago Saberon, Jr. and DOJ representative Agent Ernesto Tagle. One (1) required witness though was missing: a representative from media. Absence of one of the required witnesses is already a breach of the chain of custody rule. x x x We have clarified, that a perfect chain may be impossible to obtain at all times because of varying field conditions. In fact, the Implementing Rules and Regulations of RA 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved. The prosecution, however, offered no explanation why media representative Rio did not witness the first part or the second part of the inventory. He was only asked to affix his signature to the inventory itself. In fine, the condition for the saving clause to become operational was not complied with. For the same reason, the provison "so long as the integrity and evidentiary value of the seized items are properly preserved," will not come into play. x x x As heretofore shown, the chain of custody here had been seriously violated. We cannot therefore consider the identity and integrity of the seized drug items to have been preserved. Hence, appellant must be acquitted as a matter of right.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for plaintiff-appellee.
*Allan C. Martinez* for accused-appellant.

## D E C I S I O N

**LAZARO-JAVIER, *J.*:**

### The Case

This appeal seeks to reverse the Decision[1] dated June 10, 2015 of the Court of Appeals in CA-G.R. CR H.C. No. 01728 affirming the trial court's verdict of conviction against appellant Lean Noel Dizon @ Jingle for violation of Sections 5 and 11 of Art. II of Republic Act No. 9165 (RA 9165)[2] and imposing appropriate penalties.

The Proceedings Before the Trial Court

Appellant Lean Noel Dizon "Jingle" was charged under two (2) separate Informations, *viz*:

**Criminal Case No. 20259**[3]
(*Violation of Section 5, Article II of R.A. 9165*)

That at around 9:00 o'clock in the morning of December 5, 2010, at Barangay Poblacion, Siaton, Negros Oriental, Philippines, and within the jurisdiction of the Honorable Court, the herein accused, did, then and there willfully, unlawfully and feloniously sell crystalline substance containing methamphetamine Hydrochloride, locally known as "*shabu*", weighing zero point fifteen (0.15) grams (sic) to a police poseur buyer, without authority of law.

CONTRARY TO LAW.

**Criminal Case No. 20260**[4]
(*Violation of Section 11, Article II of R.A. 9165*)

That at around 9:00 o'clock in the morning of December 5, 2010, at Barangay Poblacion, Siaton, Negros Oriental, Philippines, and within

---

[1] *Rollo*, pp. 4-31, penned by Justice Jhosep Y. Lopez, and concurred in by Associate Justices, Gabriel T. Ingles and Marilyn B. Lagura-Yap.

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

[3] Record, p. 38.

[4] *Id.* at 50.

the jurisdiction of the Honorable Court, the herein accused, did, then and there willfully, unlawfully and feloniously possess and have in his control crystalline substance containing methamphetamine Hydrochloride, locally known as "*shabu*", weighing zero point thirteen (0.13) grams without authority of law.

CONTRARY TO LAW.

On arraignment, appellant pleaded not guilty to both charges.[5]

During the pre-trial, both the prosecution and the defense stipulated on the trial court's jurisdiction over the case, the identity of the accused, the lack of authority of the accused to possess subject dangerous drugs, and the expert qualifications of Forensic Chemist Josephine S. Llena.[6]

During the trial, the Philippine Drug Enforcement Agency (PDEA) Special Investigator 1 Claire Oledan, Police Officer 3 Jerry Magsayo and Police Officer 3 Ramon Bernard Pedeglorio testified for the prosecution. On the other hand, Lean Noel Dizon @ *Jingle* and Shiela Mae Dizon testified for the defense.

The Prosecution's Version

Sometime in late November 2010, Task Force *Kasaligan* (TFK) of Negros Oriental received information about the nefarious activities of a certain *Jingle*.[7] According to TFK's informant, *Jingle* had a reputation of peddling illegal drugs in Barangay Dos, Siaton, Negros Oriental and was expected to sell illegal drugs during the forthcoming town fiesta.[8]

In the late afternoon of December 4, 2010, a buy bust team was formed consisting of PDEA Special Investigator 1 Claire Oledan, PDEA Information Officer 1 Julieta Amatong, NBI Special Agent Miguel Dungog, Police Officer 3 Jerry Magsayo,

---

[5] Crim Case Nos. 2010-20260 & 2010-20259, Folder, Record, pp. 69-70.

[6] Record, p. 87.

[7] Court of Appeals Decision dated June 10, 2015, Records, p. 182 and p. 25.

[8] *Id.*

Police Officer 3 Ramon Bernard Pedeglorio, and Police Officer 2 Glenn Corsame. The team immediately held a briefing at the house of Agent Dungog in Siaton, Negros Oriental. There, Agent Dungog was designated as team leader, Agent Oledan as poseur-buyer, PO3 Magsayo and PO3 Pedeglorio as immediate back up, and the rest of the team as perimeter security. They marked the buy bust money of ₱500.00 bill with serial number CG519652 "TFK" or Task Force *Kasaligan*.[9]

Around 9 o'clock the following morning, December 5, 2010, Agent Oledan and the informant went to the place where *Jingle* lived. Agent Oledan positioned herself outside the gate of the residence of *Jingle* while the informant went inside. After a while, Agent Oledan saw the informant and *Jingle* coming out from the house. *Jingle* walked up to her and asked for the payment. She immediately handed the marked ₱500.00 bill to *Jingle* which the latter slid in his pocket. *Jingle* showed her two (2) sachets of suspected *shabu*, lying on his palm. He asked Agent Oledan to choose one sachet. *Jingle* readily handed her the sachet she chose, Agent Oledan slid it in her pocket and discreetly dialled the number of PO3 Magsayo to signal the consummated sale.

As soon as they heard the ringtone, PO3 Magsayo and PO3 Pedeglorio immediately closed in and pursued *Jingle* who ran toward his house. *Jingle* eventually got arrested. Agent Oledan recovered another sachet of *shabu* from *Jingle* when the latter tried to wiggle away from PO3 Pedeglorio and PO3 Magsayo.[10] PO3 Pedeglorio arrested *Jingle* and informed him of his constitutional rights. PO3 Magsayo also frisked him and retrieved from his pocket the marked ₱500 bill and two (2) other ₱500 bills.[11]

PO3 Pedeglorio marked the seized items in the makeshift nipa hut right outside *Jingle*'s house. He also initiated a partial

---

[9] TSN dated April 16, 2013, pp. 3-7; TSN dated June 11, 2013, pp. 4-5.

[10] TSN dated April 16, 2013, pp. 3-11.

[11] TSN dated May 21, 2013, p. 12.

inventory of the items. The marking and partial inventory were done in the presence of *Jingle*, two (2) Barangay Dos officials namely: Kagawad Reynaldo Sumagaysay and Santiago Saberon, Jr., and DOJ reperesentative Nicanor Ernesto Tagle.[12] Agent Amatong took photographs of the seized items during the inventory.[13]

The buy bust team then took "*Jingle*" to the Dumaguete NBI Office where his arrest was entered in the blotter. *Jingle* identified himself as Lean Noel Dizon (appellant).

Meantime, PO3 Pedeglorio resumed the inventory at the NBI Office and asked media representative Neil Rio to sign it. PO3 Pedeglorio further prepared the request for the laboratory examination of the seized items. Agent Oledan signed for the requesting party. Agent Oledan had been in possession of the seized items the whole time. She, too, delivered them to Forensic Chemist Josephine Llena for laboratory examination.[14]

Per Chemistry Report No. D-155-10, Forensic Chemist Llena found the (a) heat sealed transparent plastic sachet with markings LND-BB-12-05-2010 containing 0.15 gram of white crystalline substance; and b) heat sealed transparent plastic sachet with markings LND-P-12-05-2010 containing 0.13 gram of white crystalline substance both positive for methamphetamine hydrochloride (*shabu*), a dangerous drug.[15]

The prosecution offered the following documentary evidence:

1. Exhibit A – Request for Laboratory Examination dated December 5, 2010;
2. Exhibit B – Chemistry Report No. D-155-10;

---

[12] TSN dated June 11, 2013, pp. 11-13.

[13] Record, p. 141.

[14] TSN dated April 16, 2013, pp. 22-25; TSN dated June 11, 2013, pp. 12-15.

[15] Crim. Case Nos. 20259 & 20260 Folder, Records, p. 9.

3. Exhibit C – (CC 20259) One heat sealed transparent plastic sachet with markings LND-BB-12-05-2010 containing 0.15 gram of white crystalline substance;
4. Exhibit D – (CC 20260) One heat sealed transparent plastic sachet with markings LND-P-12-05-2010 containing 0.13 gram of white crystalline substance;
5. Exhibit E – Receipt of Property Seized dated December 5, 2010;
6. Exhibit F – Marked money, Php500.00 bill, with serial number CG519652;
7. Exhibit G – One piece ₱500 bill with serial number AJ726044;

7.1. Exhibit G-1 – One piece ₱500 bill with serial number TV251560

8. Exhibit H – Joint Affidavit of SI2 Ivy Claire Oledan, PO2 Ramon Pedeglorio and PO2 Jerry Magsayo;
9. Exhibit "I, I-1, I-2, I-3, I-4, I-5, I-5-a and I-6-a – Six Photographs;
10. Exhibit J – Chemistry Report No. CDT-099-10; and
11. Exhibit K – PDEA Certification dated December 6, 2010.[16]

The Defense's Version

Appellant and his sister Sheila Mae Dizon testified that on December 5, 2010, around 9 o'clock in the morning, while he was standing by the gate; and Sheila, lounging at the makeshift nipa hut just outside their house, a vehicle suddenly stopped in front of them. The driver asked appellant where they could find Mark Badon. Appellant replied he did not know the person. As he turned to walk back into the house, the driver and another man rushed toward him, held his hands, and elbowed him. As a result, he fell on the ground. When he and his sister asked what was wrong, the men introduced themselves as police

[16] Crim. Case Nos. 20259 & 20260 Folder, Record, pp. 156-158.

officers. They instructed him and his sister not to ask questions. They handcuffed and brought him to the makeshift nipa hut.[17]

There, PO3 Pedeglorio pulled out from his pocket two (2) sachets of *shabu* and a piece of paper. The officers warned appellant and his sister that the evidence will be used against appellant if he refused to help them. The officers then called for barangay officials and others to join them. Meantime, appellant was made to sign the piece of paper. The police officers placed money over the piece of paper beside the two (2) sachets of *shabu*. When the barangay officials, the Mayor of Siaton, Agent Dungog and his two (2) female companions arrived, they affixed their signatures to the piece of paper. While signing it, their photographs were taken.[18]

Thereafter, the police officers boarded appellant into the vehicle and took him to the Dumaguete NBI office. Inside the vehicle, PO3 Pedeglorio asked appellant if he would like to become their asset and buy *shabu* from a certain Brian. They assured him that if he agreed, they will no longer bring him to Dumaguete. But appellant did not agree. They then took him to the house of Agent Dungog, where he was made to eat breakfast. Agent Dungog repeated his offer which appellant again refused. Consequently, Agent Dungog instructed the team to bring him to Dumaguete.[19]

The team took him first to the Dumaguete NBI office, then, to the police station where his urine samples were collected. By that time, he already knew the identities of the arresting agents. Around two (2) weeks earlier, Agent Dungog already offered to utilize him as police asset. He did not file a case against the police because he did not have money.[20]

The defense did not offer any documentary evidence.

---

[17] *Rollo*, pp. 10-11; TSN dated July 24, 2013, pp. 3-6.

[18] TSN dated July 24, 2013, pp. 6-8.

[19] *Rollo*, pp. 11-12; TSN dated July 24, 2013, pp. 8-15.

[20] *Id.*

The Trial Court's Ruling

By Joint Judgment[21] dated August 23, 2013, the trial court found appellant guilty of both cases, *viz*:

WHEREFORE, in the light of the foregoing, the Court hereby renders judgment as follows:

1. In Criminal Case No. 20259, the accused Lean Noel Dizon @ "Jingle" is hereby found GUILTY beyond reasonable doubt of the offense of illegal sale of 0.15 gram of *shabu* in violation of Section 5, Article II of RA 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

   The one (1) heat-sealed transparent plastic sachet with markings "LND-BB 12-05-2010" containing 0.15 gram of *shabu* is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

2. In Criminal Case No. 20260, the accused Lean Noel Dizon @ "Jingle" is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 0.13 gram of *shabu* in violation of Section 11, Article II of R.A. No. 9165 and is hereby sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day as a minimum term to fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (₱400,000.00).

x x x x x x x x x

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for allegedly disregarding the infirmities which attended the supposed buy bust operation, *viz*: a) his warrantless arrest was invalid because he was not doing anything unlawful when he got arrested; b) there were discrepancies in the markings appearing on the seized items; c) the Receipt of Property Seized did not bear any certification; d) he was made to sign the Receipt of

---

[21] Crim. Case Nos. 20259 & 20260, Folder, Record, pp. 181-195.

Property Seized, without assistance of counsel; e) NBI Special Agent Tagle who signed as DOJ representative was a biased witness because he was part of the buy bust team; f) the identity of the buyer was not established because Agent Oledan who purportedly acted as poseur-buyer was not a police officer; and g) the informant did not testify in court.[22]

Appellant also faulted the trial court for finding him guilty of alleged sale and possession of illegal drugs, albeit, the prosecution failed to establish the identity of the buyer and the identity of the prohibited drugs or the *corpus delicti*.[23]

On the other hand, the Office of the Solicitor General (OSG), through Assistant Solicitor Sarah Jane Fernandez[24] and Associate Solicitor Giancarlo Yuson, countered, in the main: a) appellant was validly arrested in *flagrante delicto* during a buy-bust operation; and b) the integrity and evidentiary value of the seized drugs from appellant had been preserved.[25]

The Court of Appeals' Ruling

By Decision[26] dated June 10, 2015, the Court of Appeals affirmed. It found that the prosecution had adequately and satisfactorily proved the elements of illegal sale of *shabu* and illegal possession of *shabu*. It also found that the chain of custody of the seized items was not broken. There was proof of the continuous whereabouts of the exhibits from the time it came into possession of the arresting officers, until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.[27]

---

[22] CA *rollo*, pp. 59-60.

[23] *Id.*

[24] Now Associate Justice of the Sandiganbayan.

[25] CA *rollo*, pp. 108-125.

[26] *Rollo*, pp. 4-31, See also CA *rollo*, pp. 169-196.

[27] *Rollo*, pp. 17-30.

The Present Appeal

Appellant now seeks affirmative relief from the Court and pleads anew for his acquittal. In compliance with Resolution dated December 7, 2016, the OSG manifested that, in lieu of supplemental brief, it was adopting its appellee's brief before the Court of Appeals.[28] As for appellant, he failed to file his supplemental brief within the thirty (30) day period granted for the purpose, hence, the Court deemed that in lieu of supplemental and appeal brief, he too, was adopting its appeal brief before the Court of Appeals.

Issues

First. Was appellant's warrantless arrest, including the incidental search of his person valid?

Second. Is the informant's testimony indispensable to a successful prosecution for illegal sale of drugs?

Third. Was Agent Tagle who witnessed the inventory, a member of the buy bust team, hence, considered a biased witness?

Fourth. Was the chain of custody rule complied with?

Ruling

***Appellant's warrantless arrest including the incidental search was valid.***

Appellant first assails his warrantless arrest including the incidental search made on his person. On this score, Section 5 of Rule 113 of the Rules on Criminal Procedure states:

> Sec. 5 *Arrest without warrant; when lawful.* – A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

---

[28] *Id.* at 47.

x x x x x x x x x

Appellant was caught *in flagrante delicto* selling *shabu* during a buy bust operation. **People *v.* Rivera**[29] reiterated the rule that warrantless arrest made during an entrapment operation including the search done incidental thereto was valid pursuant to Section 5(a) of Rule 113 of the Rules on Criminal Procedure.

A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. In a buy-bust operation, the idea to commit a crime originates from the offender, without anyone inducing or prodding him to commit the offense. If carried out with due regard for constitutional and legal safeguards, a buy-bust operation deserves judicial sanction.[30] So must it be.

***The testimony of the informant is not necessary to a successful prosecution for illegal sale of dangerous drugs.***

Appellant further asserts that for not presenting the informant's testimony, the prosecution may not be deemed to have proved his guilt of the offense charged.

The argument must fail. In **People *v.* Tripoli**,[31] the Court found that the informant in that case was not presented in court for security reasons, as there was a compelling need to protect the informant from possible retaliation of the accused who got arrested through the informant's efforts. The informant's identity should be kept in confidence in deference to his invaluable service to law enforcement. Only when the testimony of the informant is considered absolutely essential in obtaining the conviction of the accused should the need to protect his security be disregarded.[32]

---

[29] 790 Phil. 770, 779-780 (2016).

[30] *Id.*

[31] 810 Phil. 788, 796 (2017).

[32] *Id.*

The prosecution here did not find the need to expose the informant's identity for the purpose of proving the case of the People.

***There was no proof that DOJ representative Agent Tagle was a member of the buy bust team.***

As for the alleged bias of DOJ representative Agent Tagle who witnessed the inventory of the seized items, appellant's bare allegation that the former was a member of the buy bust team, hence, should be deemed a biased witness is devoid of probative weight. A bare allegation is not evidence.

***The Court may review the arresting team's compliance with the chain of custody rule although appellant has not raised it here as an issue.***

The Court now reckons with the core issue in every indictment for illegal sale or possession of dangerous drugs: Was the chain of custody rule duly complied with? Indeed, compliance with the chain of custody rule determines the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of appellant's liberty. Although appellant himself has not raised this issue here or even below, the Court is not deterred from taking cognizance thereof. The Court can even examine the case records if only to ascertain whether the procedure had been completely complied with, and if not, whether good reasons exist to excuse any deviation therefrom. This conforms with the rule that appeal in a criminal case throws the entire case open for review.

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 or sold by the accused is the same substance presented in court.[33]

---

[33] *People vs. Barte*, 806 Phil. 533, 542 (2017).

To ensure the integrity of the seized drugs, the prosecution must account for each link in its chain of custody:[34] ***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.[35]

This is the chain of custody rule. It emerged as a potent safeguard against any possible tampering, alteration, or substitution either by accident or otherwise the usually indistinct and not readily identifiable form of illegal drugs.[36]

The Information here alleged that appellant committed the offenses on December 5, 2010. The applicable law, therefore, is RA 9165 before its amendment under RA 10640.

Section 21 of RA 9165 bears the prescribed procedure in preserving the *corpus delicti* in illegal drugs cases, *viz*:

> SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> 1. The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence

---

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

[35] *People v. Dahil*, 750 Phil. 212, 231 (2015).

[36] *People vs. Hementiza*, 807 Phil. 1017, 1026 (2017).

of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof. (Emphasis supplied)

The Implementing Rules and Regulations of RA 9165 supplements the aforequoted provision:

(a) 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: 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)

We now focus on the physical inventory and photograph of the seized drugs. The law and the rules require the same to be immediately done after seizure, in the presence of the accused, a media representative, a representative from the Department of Justice (DOJ), and any elected local official. Agent Oledan testified:

Q : After the marking of these two exhibits, Ms. Witness, what happened next?
A : After that, we waited for the witnesses to arrive to witness the inventory, ma'am.
Q : Where did you wait?
A : In the house of Jingle, ma'am.
x x x x x x x x x
Q : And did these witnesses arrive?
A : Yes, ma'am.
Q : What happened when they arrived?

A : The elected officials arrived and witnessed the inventory, ma'am.
Q : Okay, this inventory that you mentioned, was this in writing?
A : Yes, ma'am.
Q : Who wrote this inventory?
A : It was Police Officer Pedeglorio, ma'am.
Q : Did you also sign this inventory that you mentioned, Ms. Witness?
A : Yes, ma'am.
x x x x x x x x x
Q : Who else signed this inventory, as you said, the open hut in front of the house (*sic*) of this certain Jingle, Ms. Witness?
A : The team leader, former Agent Miguel Dungog, the two (2) *barangay kagawads* who arrived, ma'am, and Agent Tagle.
Q : Where were you when these witnesses arrived?
A : I was there, ma'am, right in the hut.[37]

PO3 Pedeglorio likewise testified:

Q : Who were present during the conduct of the inventory, Mr. Witness?
A : During the inventory, ma'am, two (2) barangay officials arrived then the accused was also present during the inventory, ma'am.
Q : Aside from the barangay officials, who else arrived, Mr.Witness?
A : Later, ma'am, Ernesto Tagle from the NBI also arrived.
Q : Where was the inventory conducted?
A : Outside the residence of the accused, ah, the suspect, ma'am.[38]
x x x x x x x x x
Q : You also mentioned that one person, the media man, did not sign at that instance, Mr. witness, where did he sign?
A : He signed at the NBI office, ma'am.

---

[37] TSN dated April 16, 2013, pp. 18-20.

[38] TSN dated June 11, 2013, p. 11.

Q : Who was this media personnel?
A : Mr. Neil Rio, ma'am.
Q : Who assisted him in the continuation of the inventory at the NBI Office?
A : Me, ma'am, I was the one.[39]

Both witnesses confirmed that the required inventory and photograph were done at the place of arrest and in the presence of elected officials Reynaldo Sumagaysay and Santiago Saberon, Jr. and DOJ representative Agent Ernesto Tagle. One (1) required witness though was missing: a representative from media. Absence of one of the required witnesses is already a breach of the chain of custody rule.

In **People *v.* Seguiente**,[40] the Court acquitted the accused because the prosecution's evidence was bereft of any showing that a representative from the DOJ was present during the inventory and photograph. The Court keenly noted, as in this case, that the prosecution failed to recognize this particular deficiency. The Court, thus, concluded that this lapse, among others, effectively produced serious doubts on the integrity and identity of the *corpus delicti* especially in the face of allegations of frame up.

Although PO3 Pedeglorio testified that media representative Neil Rio came later to the NBI Dumaguete Office and affixed his signature to the inventory, the same, however, did not cure the incipient breach. He was not mentioned as one of those present at the place of arrest who actually witnessed the inventory. In ***People vs. Acabo***[41] the Court acquitted the accused because there was a deviation from the witness requirement as the conduct of the inventory and photograph was not witnessed by the DOJ while the media representative merely signed the certificate of inventory but did not actually witness the inventory

---

[39] TSN dated June 11, 2013, p. 14.

[40] G.R. No. 218253, June 20, 2018.

[41] G.R. No. 241081, February 11, 2019 citing *People v. Bangalan*, G.R. No. 232249, September 3, 2018.

and photograph of the seized items. The Court reiterated that the law requires the presence of these witnesses primarily to ensure that the chain of custody has been duly established, and thus remove any suspicion of switching, planting, or contamination of evidence.

We have clarified, that a perfect chain may be impossible to obtain at all times because of varying field conditions.[42] In fact, the Implementing Rules and Regulations of RA 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved.[43] The prosecution, however, offered no explanation why media representative Rio did not witness the first part or the second part of the inventory. He was only asked to affix his signature to the inventory itself. In fine, the condition for the saving clause to become operational was not complied with. For the same reason, the provison "so long as the integrity and evidentiary value of the seized items are properly preserved", will not come into play. ***People vs. Año***[44] is instructive:

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible.[45] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 1064030 – provide that non-compliance with the requirements of Section 21, Article II of RA 9165 – under justifiable grounds – will not automatically render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.[46] In other words, the failure of the apprehending team to strictly comply with

---

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

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

[44] G.R. No. 230070, March 14, 2018.

[45] See P*eople v. Sanchez*, 590 Phil. 214, 234 (2008).

[46] Section 21 (a), Article II, of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 07, 2017, 834 SCRA 613, 624-625.

the procedure laid out in Section 21 of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved.[47] In *People v. Almorfe*,[48] the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved. Also, in *People v. De Guzman*,[49] it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

As heretofore shown, the chain of custody here had been seriously violated. We cannot therefore consider the identity and integrity of the seized drug items to have been preserved. Hence, appellant must be acquitted as a matter of right.

*Finally*, prosecution witness Agent Oledan confirmed that appellant signed the Certificate of Inventory of the seized items. There was no showing, however, that appellant was even notified of his right to counsel or the right not at all to sign the Certificate of Inventory, thus:

Q : Madam Witness, in the Certification of Inventory, I am just curious of a signature on a blank, (*sic*) the space provided for counsel/representative of accused, since you said that you were there, whose signature is this, Madam Witness?
A : I cannot recall the person who signed for the blank portion, sir.
Q : You also said, Madam Witness, that in the Certificate of Inventory, you also said that the accused signed the Certificate of Inventory, am I correct?
A : Yes, sir.

---

[47] See *People v. Goco*, 797 Phil. 433, 443 (2016).

[48] 631 Phil. 51, 59 (2010).

[49] 630 Phil. 637, 649 (2010).

Q : And this is the signature of the accused, am I correct?
A : Yes, the received (*sic*) copy marked as Exhibit "E-8".
Q : The one who wrote the received copy is not the accused but a member of your arresting team, am I correct?
A : I cannot recall, sir.[50]

**People *v.* Del Castillo**[51] is apropos, *viz*:

The Inventory Receipt signed by appellant is thus not only inadmissible for being violative of appellant's custodial right to remain silent; it is also an *indicium* of the irregularity in the manner by which the raiding team conducted the search of appellant's residence.

Assuming *arguendo* that appellant did waive her right to counsel, such waiver must be voluntary, knowing and intelligent. To insure that a waiver is voluntary and intelligent, the Constitution, requires that for the right to counsel to be waived, the waiver must be in writing and in the presence of the counsel of the accused. There is no such written waiver in this case, much less was any waiver made in the presence of the counsel since there was no counsel at the time appellant signed the receipt. Clearly, appellant affixed her signature in the inventory receipt without the assistance of counsel which is a violation of her right under the Constitution.[52]

Here, appellant was not apprised of his right to counsel nor his right not to sign at all the certificate of inventory of the seized items. Neither was he shown that to have waived his right to counsel in writing. On the strength of ***Del Castillo*** *vis-a-vis* the flagrant violation of appellant's right to counsel, appellant should be acquitted.

For perspective, in cases involving illegal possession of dangerous drug, even for the most miniscule amount, imprisonment of at least twelve years and one day awaits violators. It is thus of utmost importance that the safeguards

---

[50] TSN dated April 16, 2013, p. 32.

[51] 482 Phil. 828, 851 (2004).

[52] *Id.*

against abuses of power in the conduct of drug-related arrests be strictly implemented. The purpose is to eradicate wrongful arrests and, worse, convictions. The pernicious practice of switching, planting or contamination of the *corpus delicti* under the regime of RA 6425, otherwise known as the "Dangerous Drugs Act of 1972," could again be resurrected if the lawful requirements were otherwise lightly brushed aside.[53]

**ACCORDINGLY,** the appeal is **GRANTED**. The Decision dated June 10, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 01728, is **REVERSED AND SET ASIDE**. "Jingle" Lean Noel Dizon is **ACQUITTED** of violations of Section 5 and Section 11, Article II of Republic Act 9165.

The Court further **DIRECTS** the Director of the Bureau of Corrections, a) to cause the immediate release of Lean Noel Dizon from custody unless he is being held for some other lawful cause; and b) to inform the Court of the action taken within five days (5) from notice.

Let entry of judgment be issued immediately.

**SO ORDERED.**

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

---

**SECOND DIVISION**

[G.R. No. 224584. September 4, 2019]

**THE PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **ZZZ,** *accused-appellant.*

---

[53] *Largo v. People*, G.R. No. 201293, June 19, 2019 citing *People v. Luna*, G.R. No. 219164, March 21, 2018.

## SYLLABUS

**1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE SPONTANEITY AND CONSISTENCY BY WHICH COMPLAINANT HAD DETAILED OUT THE INCIDENT DISPEL ANY INSINUATION OF A REHEARSED TESTIMONY; CASE AT BAR.—** The spontaneity and consistency by which complainant had detailed out the incident dispel any insinuation of a rehearsed testimony. Her eloquent testimony should be enough to confirm the veracity of the charge. After all, the nature of the crime of rape entails reliance on the lone, yet clear, convincing and consistent testimony of the victim herself. Appellant primarily assails complainant's credibility because of the alleged discrepancies in her testimony pertaining to the exact time she got back to the bunk house and went to sleep in the early morning of October 26, 2007 and November 3, 2007, respectively. Surely, these are very trivial matters which do not affect complainant's testimony on the existence of the material elements of rape. If at all, these inconsistencies even indicate that the witness was not rehearsed. Besides, the essence of rape is carnal knowledge of a female through force or intimidation against her will. Precision as to the time when the rape is committed has no bearing on its commission. We find no reason to doubt complainant's credibility and hold that her testimony is sufficient to convict appellant of the crime charged and proved here. x x x Errorless recollection of a harrowing incident cannot be expected of a witness, especially when she is recounting details of an experience so humiliating and so painful as rape. What is important is that the victim's declarations are consistent on basic matters constituting the elements of rape and her positive identification of the person who did it to her. x x x Where there is no evidence and nothing to indicate that the principal witness for the prosecution was actuated by improper motive, the presumption is that she was not so actuated and her testimony is entitled to full faith and credit. Further, a daughter would not accuse her own father of a serious offense like rape, had she really not been aggrieved. Her testimony against him is entitled to greater weight, since reverence and respect for elders is too deeply ingrained in Filipino children and is even recognized by law.

**2. ID.; ID.; DENIAL AND ALIBI; WEAK DEFENSES; RATIONALE.—** Denial is the weakest of all defenses. It easily crumbles in the face of positive identification by accused as the perpetrator of the crime. More, for alibi to prosper, it is not enough for the accused to prove that he was in another place when the crime was committed as he must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission. As it was, appellant here failed to substantiate his alibi.

**3. CRIMINAL LAW; REVISED PENAL CODE; RAPE, WHEN QUALIFIED; ELEMENTS.—** The crime of rape is defined and penalized under Article 266-A of the Revised Penal Code (RPC), x x x For purposes of imposing the death penalty in cases of qualified rape, Article 266-B of the RPC provides: x x x The elements of qualified rape are: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under eighteen (18) years of age at the time of the rape; (5) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. Based on complainant's testimony about her sexual ravishment in the morning of October 26, 2007, the prosecution has established all the elements of qualified rape in this case. Appellant had sexual congress with his daughter who was thirteen (13) years old at the time, as proved by her certificate of live birth. And contrary to his claim, he did employ force and threats so that she would submit to his bestial lust. He held private complainant's hands, thus, ensuring that she could not fight back or fend him off. He later on moved her hands to her mouth so that he could prevent her from making a sound and at the same time render her immobile. More, he threatened to kill her, her siblings, and her mother if she even told anyone what he had done to her. He also intimidated her when he placed two (2) knives near her head. Intimidation consists in causing or creating fear in the mind of a person or in bringing in a sense of mental distress in view of a risk or evil that may be impending, real or imagined.

**4. ID.; ID.; ID.; IMPOSABLE PENALTY AND DAMAGES.—** Under Article 266-B of the Revised Penal Code (RPC), the imposable penalty is death where the victim is below eighteen (18) years of age and the violator is the victim's own biological

father. By virtue of Republic Act No. 9346 (RA 9346), however, the death penalty is reduced to *reclusion perpetua* but without eligibility for parole. Section 3 of RA 9346 states: x x x Additionally, appellant is liable for ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages for each count of qualified rape in conformity with prevailing jurisprudence. Correspondingly, the monetary awards granted by the trial court and affirmed by the Court of Appeals should be modified.

**5. ID.; REPUBLIC ACT 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT); ACT OF LASCIVIOUSNESS; ELEMENTS.—** ***People v. Caoili*** ordains that an accused charged in the Information with rape by sexual intercourse cannot be found guilty of rape by sexual assault, even though the latter crime was proven during trial, x x x Applying *Caoili* here, although appellant cannot be convicted of rape by sexual assault in this case, he can still be convicted of lascivious conduct under Section 5(b) of Republic Act No. 7610 (RA 7610). The elements of sexual abuse under Section 5(b) of RA 7610 are as follows: 1) the accused commits the act of sexual intercourse or lascivious conduct; 2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and 3) the child, whether male or female, is below 18 years of age. "Lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person. Meanwhile, "Sexual abuse" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.

**6. ID.; ID.; ID.; IMPOSABLE PENALTY AND DAMAGES.—** In Criminal Case No. 3000 for lascivious conduct, the alternative circumstance of relationship should be appreciated against appellant since he is complainant's biological father, per complainant's birth certificate and his very own admission on

the witness stand that complainant is his daughter. Consequently, appellant should suffer *reclusion perpetua* and fine of ₱15,000.00. x x x All told, appellant should be ordered to pay private complainant ₱75,000.00 as civil indemnity, ₱75,000.00 as exemplary damages, and ₱75,000.00 as moral damages.

**APPEARANCES OF COUNSEL**

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

## D E C I S I O N

**LAZARO-JAVIER, *J.*:**

### The Case

This appeal assails the Decision[1] dated October 30, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 01091-MIN entitled "*People of the Philippines v. ZZZ*" affirming appellant's conviction for one (1) count of rape by sexual intercourse and one (1) count of rape by sexual assault.

### Antecedents

#### *The Charges*

Appellant ZZZ was separately charged with two (2) counts of rape of his thirteen-year-old daughter AAA in Criminal Case Nos. 2999 and 3000, respectively, *viz*:

**Information[2] dated December 17, 2007 in Criminal Case No. 2999:**

That on or about 1:00 o'clock in the early morning of October 26, 2007 at [redacted], [redacted], Province of Sultan Kudarat, Philippines and within the jurisdiction of this Honorable Court, the

---

[1] Penned by Associate Justice Oscar V. Badelles with the concurrence of Associate Justices Romulo V. Borja and Pablito A. Perez, all members of the Twenty-First Division, *rollo*, pp. 3-13.

[2] CA *rollo*, pp. 30-31.

said accused, with lewd and unchaste designs and through force and intimidation did then and there, willfully, unlawfully and feloniously succeed in having carnal knowledge of one AAA, his thirteen (13) years old daughter against her will and consent.

CONTRARY TO LAW, particularly Article 266-A, paragraph l(a) of the Revised Penal Code, in relation to Republic Act 7610.

x x x x x x x x x

**Information[3] dated December 17, 2007 in Criminal Case No. 3000:**

That on or about 10:00 o'clock in the evening of November 3, 2007 at [redacted], [redacted], Province of Sultan Kudarat, Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste designs and through force and intimidation, did then and there, willfully, unlawfully and feloniously succeed in having carnal knowledge of one AAA, his thirteen (13) years old daughter, against her will and consent.

CONTRARY TO LAW, particularly Article 266-A, paragraph 2 of the Revised Penal Code, in relation to Republic Act 7610.

x x x x x x x x x

The cases were consolidated with the Regional Trial Court, Branch 20, Tacurong City. On arraignment, appellant pleaded not guilty to both charges.[4] Trial on the merits ensued.

## Proceedings before the Trial Court

### *The Prosecution's Evidence*

Complainant AAA testified: she was the eldest of the four (4) children of appellant and BBB. She was born on April 29, 1994 as evidenced by her birth certificate. As of October 26, 2007, she was just thirteen (13) years old She was then studying at [redacted]. To save on transportation costs and time, she moved in and stayed with

---

[3] *Id*. at 31.

[4] *Id*. at 32.

her father at the bunk house he rented in the area. Appellant was working as a helper assigned to a ten-wheeler truck owned by a certain Ronnie Dayon.[5]

On October 25, 2007, about 10 o'clock in the evening, she was sleeping alone in her father's bunk house. A few hours later, she noticed that her mosquito net had been raised and appellant was removing his short pants. After taking off his short pants, he also removed her shorts and panty. He held her hands with one hand and covered her mouth with the other. Using his knee he spread her legs, spat saliva on his palm and wiped it on his penis.[6]

He inserted his penis into her vagina and mounted her for twenty (20) minutes. She did not shout out of fear. He had placed two (2) knives near her head and threatened to kill her, her siblings, and her mother if she did not submit to him. He dismounted when someone switched on the light at the back of the bunk house. She felt pain in her vagina and there was blood on the blanket. She moved to the sofa near the bed and cried herself to sleep. She woke up at 4 o'clock in the morning of October 26, 2007 and cried again. She kept the incident to herself.[7]

On November 3, 2007, around 1 o'clock in the morning, she arrived at the bunk house after spending the day with friends watching television. While she was sleeping, she felt appellant remove her blanket, put her head on his arm, and spread her legs with his leg. He inserted his finger into her vagina for five (5) minutes and she felt pain. When she asked him to stop, he heeded and went to sleep.[8]

On November 5, 2007, her mother visited her. On that day, appellant had gone to Davao City. Her mother scolded her for

---

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

[6] *Id.* at 34.

[7] *Id.* at 35-36.

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

not staying in the bunk house during the day and coming home late at night. She then confided to her mother what appellant had done to her. Her mother cried. In the morning of November 7, 2007, she went to see her Uncle CCC, appellant's older brother, in Makilala, Cotabato. She also confided to him about the twin rape incidents with her father. On November 11, 2007, together with her mother and a certain Jane Diaz, she went to the Tacurong City Police Station, where she got investigated. After the cases were filed, appellant sent her a handwritten letter, asking for forgiveness.[9]

BBB, appellant's wife and complainant's mother, testified: on November 6, 2007, she went to the bunk house to visit her daughter, AAA. The latter confided to her what appellant did to her. When she asked her daughter why she (AAA) did not tell her right away, her daughter said appellant threatened to kill her (BBB), her daughter (herself), and her three (3) other children. On November 9, 2007, she and her brother-in-law MMM reported the incident to the Tacurong City Police Station.[10]

Dr. Efraim Collado, Assistant City Health Officer confirmed that he examined complainant on November 12, 2007. He found healed lacerations at 3 o'clock and 10 o'clock positions in complainant's vagina. He issued the corresponding medical certificate.[11]

***The Defense's Evidence***

Invoking alibi and denial, appellant testified: complainant is his daughter. By 1 o'clock in the morning of October 26, 2007, he was in Davao City. As a helper, he was on board a ten-wheeler truck to deliver sacks of rice to Davao City. On November 3, 2007, he was also on board the same truck to deliver rice bran to William Enterprises in General Santos City. He stayed in General Santos City until the evening of the same

---

[9] *Id*. at 37-38.

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

[11] *Id*. at 40.

day.[12] He could not have sexually ravished complainant on those dates precisely because he was far away and was not then in the *locus criminis* on those days. Besides, he would not molest complainant because she is his daughter. On cross, he admitted to have sent complainant a handwritten letter.[13]

**The Trial Court's Ruling**

As stated, by its Joint Judgment[14] dated January 14, 2009, the trial court convicted appellant of one (1) count of rape by sexual intercourse (Criminal Case No. 2999) and one (1) count of rape by sexual assault (Criminal Case No. 3000), thus:

> WHEREFORE, upon all the foregoing considerations, the court finds the guilt of ZZZ to the crimes of rape by sexual intercourse qualified by the minority of the victim and her relationship with the perpetrator thereof and rape by sexual assault qualified by the just cited circumstances beyond reasonable doubt and hereby sentences him as follows:
>
> **In Criminal Case No. 2999**
>
> To suffer the penalty of *reclusion perpetua* and to pay AAA the following:
>
> a. The amount of ₱75,000.00 as Civil Indemnity;
> b. The amount of ₱75,000.00 as Moral Damages; and
> c. The amount of ₱25,000.00 as Exemplary Damages.
>
> To pay the costs.
>
> For being a detention prisoner, his preventive imprisonment shall be credited in the service of sentence imposed upon him provided that he will abide in writing with the same disciplinary rules imposed upon convicted prisoners, otherwise, with only four-fifths (4/5) thereof.
>
> Pursuant to applicable circulars of the Supreme Court, the accused shall immediately be transferred to the National Bilibid Prisons in Muntinlupa City.

---

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

[13] *Id*. at 41.

[14] *Id*. at 30-51.

Given in open court this 14th day of January 2009, at Tacurong City, Sultan Kudarat, Philippines.

**In Criminal Case No. 3000**

To suffer the indeterminate penalty of imprisonment ranging from twelve (12) years of *prision mayor*, as minimum, to eighteen (18) years of *reclusion temporal* as maximum and to pay AAA the following:

a. The amount of ₱50,000.00 as Civil Indemnity;
b. The amount of ₱50,000.00 as Moral Damages; and
c. The amount of ₱25,000.00 as Exemplary Damages.

To pay the costs.

For being a detention prisoner, his entire preventive imprisonment shall be credited in the service of sentence imposed on him provided that he shall abide in writing with the same disciplinary rules imposed upon convicted prisoners, otherwise, only four-fifths (4/5) thereof.

IT IS SO ORDERED.[15]

## Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for rendering the verdict of conviction. He argued that complainant was an unreliable witness because of the inconsistencies in her testimony pertaining to what time exactly she arrived at the bunk house and the exact time she went to sleep on October 26, 2007 and November 3, 2007, respectively. There was no showing that he employed force, threat, or intimidation when he allegedly sexually ravished complainant on two (2) separate occasions. Also, since complainant herself claimed not to have felt anything when he allegedly inserted his penis into her vagina, the fact of penile penetration became doubtful.[16]

On the other hand, the Office of the Solicitor General (OSG), through Assistant Solicitor General Anna Esperanza Solomon and Senior State Solicitor Arleen Reyes, submitted that complainant's testimony was corroborated by medical findings

---

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

[16] *Id*. at 22-27.

that she sustained lacerations in her vagina. The alleged inconsistencies in complainant's testimonies pertaining to the exact time she got home and slept on the dates she was sexually ravished — refer to minor matters and do not detract from her credibility. Lastly, appellant's moral ascendancy or influence, as complainant's father, substituted the element of force, threat, or intimidation.[17]

### The Ruling of the Court of Appeals

By its assailed Decision[18] dated October 30, 2015, the Court of Appeals affirmed, *viz*:

> **WHEREFORE**, premises considered, the instant appeal is **DENIED**. The January 14, 2009 Joint Judgment of the Regional Trial Court, Branch 20, Tacurong City, in Criminal Cases (*sic*) No. 2999 and 3000, finding accused-appellant guilty beyond reasonable doubt of violation of Article 266-A, paragraph l(a) of the Revised Penal Code, in relation to Republic Act 7610 and Article 266-A, paragraph 2 of the Revised Penal Code is hereby **AFFIRMED**.
>
> SO ORDERED.[19]

### The Present Appeal

Appellant now seeks a verdict of acquittal from the Court. Both appellant[20] and the OSG[21] manifested that, in lieu of their supplemental briefs, they were adopting their respective briefs in the Court of Appeals.

### Issues

1) Is appellant guilty of qualified rape by sexual intercourse in Criminal Case No. 2999?

---

[17] *Id*. at 93-109.

[18] *Rollo*, pp. 3-13.

[19] *Id*. at 12.

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

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

2) Is appellant guilty of qualified rape by sexual assault in Criminal Case No. 3000?

**Ruling**

***Criminal Case No. 2999***

In Criminal Case No. 2999, complainant testified on how appellant sexually ravished her on October 26, 2007, thus:

PROSECUTOR:

Q: While you were sleeping that evening of October 25, 2007, what happened?
A: Nothing happened that night, sir.

Q: How about the early morning?
A: I noticed that the mosquito net was raised and I saw my father was removing his shorts sir.

Q: How did you know that it was your father whom you saw removing his short pants?
A: I saw my father removed his short pants and he went near me and removed my short pants, sir.

Q: Of course, it was still dark at that time?
A: Yes, sir.

Q: How did you recognize the person to be your father?
A: Because there was a light at the other house that illuminated the bunk house and if my father is standing I could actually see his face, sir.

Q: So what did he do after you saw him remove his short pants?
A: My father took hold of my two hands with his one hand and he placed his hand to cover my mouth and he spread my legs with his knee and removed his hand covering my mouth, sir.

x x x x x x x x x

Q: Did you not shout when your father removed your shortpants and panty?
A: I did not shout because at that time I was afraid because there were two knives placed on my head and he threatened me that he will kill my mother and my siblings (if) I will not give in, sir.

Q: After your father wiped his penis with saliva, what happened next?
A: He inserted his penis inside my vagina, sir.

Q: What did you feel?
A: I did not feel anything, I do not know that I felt, I could not do anything because he was so strong and I could not believe that he could do that to me, sir.

Q: After inserting his penis into your vagina, what did he do next?
A: He stayed on top of me for 20 minutes and after that he removed his body because he felt that the light at the back of the bunk house was switched on, sir.[22]

The spontaneity and consistency by which complainant had detailed out the incident dispel any insinuation of a rehearsed testimony. Her eloquent testimony should be enough to confirm the veracity of the charge.[23] After all, the nature of the crime of rape entails reliance on the lone, yet clear, convincing and consistent testimony[24] of the victim herself.

Appellant primarily assails complainant's credibility because of the alleged discrepancies in her testimony pertaining to the exact time she got back to the bunk house and went to sleep in the early morning of October 26, 2007 and November 3, 2007, respectively. Surely, these are very trivial matters which do not affect complainant's testimony on the existence of the material elements of rape. If at all, these inconsistencies even indicate that the witness was not rehearsed.[25] Besides, the essence of rape is carnal knowledge of a female through force or intimidation against her will. Precision as to the time when the rape is committed has no bearing on its commission.[26]

---

[22] *Id*. at 9-11.

[23] *People v. Padilla*, 666 Phil. 565, 588-589 (2011).

[24] See *People v. Ronquillo*, G.R. No. 214762, September 20, 2017, 840 SCRA 405, 414.

[25] *People v. Gonzales, Jr.,* 781 Phil. 149, 156 (2016).

[26] *People v. Nuyok*, 759 Phil. 437, 448 (2015).

We find no reason to doubt complainant's credibility and hold that her testimony is sufficient to convict appellant of the crime charged and proved here.

***First.*** Complainant was only thirteen (13) years old when appellant, her own father, sexually ravished her. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity.[27] Errorless recollection of a harrowing incident cannot be expected of a witness, especially when she is recounting details of an experience so humiliating and so painful as rape. What is important is that the victim's declarations are consistent on basic matters constituting the elements of rape and her positive identification of the person who did it to her.[28]

***Second.*** Appellant has not even alluded to any ulterior motive which could have impelled his daughter, herein complainant, to falsely charge him with such serious crime of rape. Where there is no evidence and nothing to indicate that the principal witness for the prosecution was actuated by improper motive, the presumption is that she was not so actuated and her testimony is entitled to full faith and credit.[29] Further, a daughter would not accuse her own father of a serious offense like rape, had she really not been aggrieved. Her testimony against him is entitled to greater weight, since reverence and respect for elders is too deeply ingrained in Filipino children and is even recognized by law.[30]

***Third.*** Dr. Efraim Collado confirmed that private complainant had healed vaginal lacerations at 3:00 o'clock and 10:00 o'clock

---

[27] *People v. Araojo*, 616 Phil. 275, 287 (2009), citing *Llave v. People*, 522 Phil. 340 (2006) and *People v. Guambor*, 465 Phil. 671, 678 (2004).

[28] *People v. Daco*, 589 Phil. 335, 348 (2008).

[29] *People v. Delfin*, 749 Phil. 732, 744 (2014).

[30] *People v. Briones*, 439 Phil. 675, 685 (2002).

positions in her vagina. He also issued a medical certificate containing his findings. Where the victim's testimony is corroborated by physical findings of penetration, there is sufficient basis for concluding that sexual intercourse did take place.[31]

***Fourth.*** The trial court's assessment of the credibility of the witnesses, the probative weight of their testimonies and the conclusions drawn from these factual findings are accorded the highest respect by the appellate court, whose review power is limited to the records of the case. This explains why this Court, which is not a trial court, is loathe to re-examine and re-evaluate the evidence that had been analyzed and dissected by the trial court, and sustained and affirmed by the appellate court.[32]

Against such damning evidence, appellant merely interposed alibi and denial. Denial is the weakest of all defenses. It easily crumbles in the face of positive identification by accused as the perpetrator of the crime.[33] More, for alibi to prosper, it is not enough for the accused to prove that he was in another place when the crime was committed as he must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.[34] As it was, appellant here failed to substantiate his alibi.

More, appellant had fallen on his own sword when he admitted to have written to complainant, asking for forgiveness. Evidently, no one would ask for forgiveness unless he had committed some wrong and a plea for forgiveness may be considered as analogous to an attempt to compromise. Appellant's plea

---

[31] *People v. Lumaho*, 744 Phil. 233, 243 (2002).

[32] *People v. Soriano*, 810 Phil. 239, 251 (2017).

[33] *People v. Glino*, 564 Phil. 396, 419-420 (2007).

[34] *People v. Apattad*, 671 Phil. 95, 108 (2011).

of forgiveness should be received as an implied admission of guilt.[35] On this score, the trial court keenly noted:

> Actually, the accused admitted to have committed the crimes of rape when he wrote AAA a letter, Exhibit "E" and asked her to forgive her and to withdraw the cases she filed against him. He promised her of a cell phone should she accede thereto. Evidently, no one would ask for forgiveness unless he committed and, a plea for forgiveness may be considered as analogous to an attempt to compromise.[36] x x x

So must it be.

The crime of rape is defined and penalized under Article 266-A of the Revised Penal Code (RPC), *viz*:

> Article 266-A. Rape: When And How Committed. – Rape is committed:
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority; and
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> x x x x x x x x x

For purposes of imposing the death penalty in cases of qualified rape, Article 266-B of the RPC provides:

> Article 266-B Penalty – x x x
>
> x x x x x x x x x

---

[35] *People v. Abadies*, 433 Phil. 814, 821 (2002).

[36] CA *rollo*, pp. 46-47.

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

x x x x x x x x x

The elements of qualified rape are: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under eighteen (18) years of age at the time of the rape; (5) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

Based on complainant's testimony about her sexual ravishment in the morning of October 26, 2007, the prosecution has established all the elements of qualified rape in this case. Appellant had sexual congress with his daughter who was thirteen (13) years old at the time, as proved by her certificate of live birth. And contrary to his claim, he did employ force and threats so that she would submit to his bestial lust. He held private complainant's hands, thus, ensuring that she could not fight back or fend him off. He later on moved her hands to her mouth so that he could prevent her from making a sound and at the same time render her immobile. More, he threatened to kill her, her siblings, and her mother if she even told anyone what he had done to her. He also intimidated her when he placed two (2) knives near her head. Intimidation consists in causing or creating fear in the mind of a person or in bringing in a sense of mental distress in view of a risk or evil that may be impending, real or imagined.[37]

In any event, even assuming there was no actual threat, violence or intimidation, the same can be substituted by appellant's moral ascendancy and influence. In incestuous rape

---

[37] *Sazon v. Sandiganbayan*, 598 Phil. 35, 47 (2009).

cases, the father's abuse of the moral ascendancy and influence over his daughter can subjugate the latter's will thereby forcing her to do whatever he wants. Otherwise stated, the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires.[38]

***Criminal Case No. 3000***

In Criminal Case No. 3000, complainant testified on how appellant sexually ravished her on November 3, 2007, *viz*:

Q: On November 3, 2007, do you remember where you slept?
A: In the bunk house, sir.

Q: What time [did] you go to sleep?
A: 1:00 o'clock in the morning sir.

Q: Why was it already 1:00 o'clock in the morning that you went to sleep at that time?
A: Because I just came [home] from watching t.v., sir.

x x x x x x x x x

Q: After sleeping, what happened after that?
A: When I went home, I noticed my father holding my blanket and he placed my head on his arm and he spread my legs with his leg, sir.

Q: After spreading your legs with his leg, what happened next?
A: My other foot he placed his foot there and my other foot on top leg and he inserted his finger, sir.

Q: Where did he insert his finger?
A: Inside my vagina, sir.

Q: And what did you feel?
A: Painful, sir.

Q: For how long did he insert his finger to your vagina?
A: He placed his finger for five minutes, and I was crying I said "Pa, please stop" and he stopped and my father went to sleep.[39]

---

[38] *People v. Dominguez, Jr.,* 650 Phil. 492, 519 (2010).

[39] *Rollo*, pp. 11-12.

As stated, complainant's testimony on her sexual ravishment is spontaneous and consistent, dispelling any notion that her testimony was rehearsed. Her tale of sexual ravishment was corroborated by medical findings that she sustained lacerations inside her vagina. She was not shown to have been impelled by ill-motive in pointing to her father as her ravisher. More, the trial court, as well as the Court of Appeals, had found her testimony credible, thus, such assessment is binding on this Court. Lastly, appellant had sought her forgiveness for what he had done to her, in effect admitting that he indeed sexually molested her.

Based on complainant's testimony on her sexual molestation in the morning of November 3, 2007, appellant had raped her by sexual assault, *i.e.* appellant inserted his finger into her vagina and she was unable to resist by reason of his moral ascendancy as her biological father and because she was only thirteen (13) years old at the time.

The problem, however, is that the Information dated December 17, 2007 in Criminal Case No. 3000 did not charge appellant with rape by sexual assault but with rape by sexual intercourse. We refer back to the original Information, *viz*:

> That on or about 10:00 o'clock in the evening of November 3, 2007 at [redacted], [redacted], Province of Sultan Kudarat, Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste designs and through force and intimidation, did then and there, willfully, unlawfully, and feloniously succeed in having carnal knowledge of one AAA, his thirteen (13) years old daughter, against her will and consent.
>
> CONTRARY TO LAW, particularly Article 266-A, paragraph 2 of the Revised Penal Code, in relation to Republic Act 7610.
>
> x x x x x x x x x

***People v. Caoili***[40] ordains that an accused charged in the Information with rape by sexual intercourse cannot be found

---

[40] G.R. No. 196342, August 8, 2017, 835 SCRA 107, 141-142.

guilty of rape by sexual assault, even though the latter crime was proven during trial, thus:

By jurisprudence, however, an accused charged in the Information with rape by sexual intercourse cannot be found guilty of rape by sexual assault, even though the latter crime was proven during trial. This is due to the substantial distinctions between these two modes of rape.

The elements of rape through sexual intercourse are: (1) that the offender is a man; (2) that the offender had carnal knowledge of a woman; and (3) that such act is accomplished by using force or intimidation. Rape by sexual intercourse is a crime committed by a man against a woman, and the central element is carnal knowledge.

On the other hand, the elements of rape by sexual assault are: (1) that the offender commits an act of sexual assault; (2) that the act of sexual assault is committed by inserting his penis into another person's mouth or anal orifice or by inserting any instrument or object into the genital or anal orifice of another person; and that the act of sexual assault is accomplished by using force or intimidation, among others.

In the first mode (rape by sexual intercourse): (1) the offender is always a man; (2) the offended party is always a woman; (3) rape is committed through penile penetration of the vagina; and (4) the penalty is *reclusion perpetua.*

In the second mode (rape by sexual assault): (1) the offender may be a man or a woman; (2) the offended party may be a man or a woman; (3) rape is committed by inserting the penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person; and (4) the penalty is *prision mayor*.[55]

The Court *en banc*'s categorical pronouncement in *People v. Abulon*, thus, finds application:

> In view of the material differences between the two modes of rape, the first mode is not necessarily included in the second, and vice-versa. Thus, since the charge in the Information in Criminal Case No. SC-7424 is rape through carnal knowledge, appellant cannot be found guilty of rape by sexual assault although it was proven, without violating his constitutional right to be informed of the nature and cause of the accusation against him.

x x x x x x x x x

In fine, given the material distinctions between the two modes of rape introduced in R.A. No. 8353, the variance doctrine cannot be applied to convict an accused of rape by sexual assault if the crime charged is rape through sexual intercourse, since the former offense cannot be considered subsumed in the latter.

Applying *Caoili* here, although appellant cannot be convicted of rape by sexual assault in this case, he can still be convicted of lascivious conduct under Section 5(b)[41] of Republic Act No. 7610 (RA 7610). The elements of sexual abuse under Section 5(b) of RA 7610 are as follows: 1) the accused commits the act of sexual intercourse or lascivious conduct; 2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and 3) the child, whether male or female, is below 18 years of age.[42]

"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

---

[41] ARTICLE III Child Prostitution and Other Sexual Abuse. Sec. 5. Child Prostitution and Other Sexual Abuse. – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

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 victims 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; and

x x x x x x x x x

[42] *Roallos v. People*, 723 Phil. 655, 667-668 (2013).

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.[43] Meanwhile, "Sexual abuse" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.[44]

Here, appellant committed lascivious conduct on his thirteen-year-old daughter by inserting his finger into her vagina for five (5) minutes. Appellant used his moral influence and ascendancy as a father to perpetrate lascivious conduct on his daughter, who was only a minor. Though there is no showing that he employed persuasion, inducement, enticement or coercion to make complainant engage in lascivious conduct, his moral influence or ascendancy as her biological father takes the place of violence or intimidation.[45]

***Imposable Penalties and Damages***

In Criminal Case No. 2999 for qualified rape, appellant was correctly sentenced to *reclusion perpetua*. Under Article 266-B of the Revised Penal Code (RPC), the imposable penalty is death where the victim is below eighteen (18) years of age and the violator is the victim's own biological father. By virtue of Republic Act No. 9346 (RA 9346), however, the death penalty is reduced to *reclusion perpetua* but without eligibility for parole. Section 3 of RA 9346 states:

> SEC. 3. Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

---

[43] Section 2(h), RA 7610.

[44] Section 2(g), RA 7610.

[45] *People v. Padua*, 661 Phil. 366 (2011).

Additionally, appellant is liable for ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages for each count of qualified rape in conformity with prevailing jurisprudence.[46] Correspondingly, the monetary awards granted by the trial court and affirmed by the Court of Appeals should be modified.

In Criminal Case No. 3000 for lascivious conduct, the alternative circumstance of relationship should be appreciated against appellant since he is complainant's biological father, per complainant's birth certificate and his very own admission on the witness stand that complainant is his daughter. Consequently, appellant should suffer *reclusion perpetua* and fine of ₱15,000.00. Section 5(b) and Section 31 (f) of RA7610 provide:

> SEC. 5. Child Prostitution and Other Sexual Abuse. Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
>
> 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,

---

[46] *People v. Jugueta*, 783 Phil. 806, 848 (2016):

> x x x x x x x x x
>
> II. For Simple Rape/Qualified Rape:
>
> 1.1 Where the penalty imposed is Death but reduced to *reclusion perpetua* because of RA 9346:
>
> Private parts
>
> Civil indemnity- ₱100,000.00
> Moral damages - ₱100,000.00
> Exemplary damages - ₱100,000.00.

paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period.

x x x x x x x x x

Sec. 31. Common Penal Provisions. –

x x x x x x x x x

(f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

***Caoili***[47] applies these provisions in this wise:

Considering that AAA was over 12 but under 18 years of age at the time of the commission of the lascivious act, the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua.*

Since the crime was committed by the father of the offended party, the alternative circumstance of relationship should be appreciated. In crimes against chastity, such as acts of lasciviousness, relationship is always aggravating. With the presence of this aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period, *i.e.*, *reclusion perpetua*, without eligibility of parole. This is in consonance with Section 31(c) of R.A. No. 7610 which expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is, *inter alia*, the parent of the victim.

Likewise, Section 31(f) of R.A. No. 7610 imposes a fine upon the perpetrator, which jurisprudence pegs in the amount of Php 15,000.00.

As for the appropriate monetary awards, ***Caoili***[48] decrees:

---

[47] *Supra* note 40.

[48] *Id*.

Parenthetically, considering the gravity and seriousness of the offense, taken together with the evidence presented against Caoili, this Court finds it proper to award damages.

In light of recent jurisprudential rules, when the circumstances surrounding the crime call for the imposition of *reclusion perpetua*, the victim is entitled to civil indemnity, moral damages and exemplary damages each in the amount of Php 75,000.00, regardless of the number of qualifying aggravating circumstances present.

The fine, civil indemnity and all damages thus imposed shall be subject to interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

All told, appellant should be ordered to pay private complainant ₱75,000.00 as civil indemnity, ₱75,000.00 as exemplary damages, and ₱75,000.00 as moral damages.

**ACCORDINGLY,** the appeal is **DENIED**. The assailed Decision dated October 30, 2015 of the Court of Appeals in CA-G.R. CR HC No. 01091-MIN is **AFFIRMED** with **MODIFICATION**.

In Criminal Case No. 2999, appellant ZZZ is found **GUILTY** of **QUALIFIED RAPE** and sentenced to ***RECLUSION PERPETUA*** without eligibility of parole. He is directed to pay AAA ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.

In Criminal Case No. 3000, appellant ZZZ is found **GUILTY** of **LASCIVIOUS CONDUCT** and sentenced to ***RECLUSION PERPETUA*** and to pay a **FINE** of ₱15,000.00. He is directed to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as exemplary damages, and ₱75,000.00 as moral damages.

All monetary awards are subject to six percent (6%) interest *per annum* from finality of this decision until fully paid.

**SO ORDERED.**

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

**SECOND DIVISION**

[G.R. No. 224936. September 4, 2019]

**PNOC ALTERNATIVE FUELS CORPORATION,** *petitioner, vs.* **NATIONAL GRID CORPORATION OF THE PHILIPPINES,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; ORDER OF EXPROPRIATION; MAY BE APPEALED BY ANY AGGRIEVED PARTY THEREBY BY FILING AN APPEAL OF THE ORDER OF EXPROPRIATION, NOT A *CERTIORARI* PETITION; CASE AT BAR.—** According to Section 4, Rule 67 of the Rules of Court, if the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first. x x x Section 4 of Rule 67 further states that a final order sustaining the right to expropriate the property, such as the assailed Order of Expropriation, may be appealed by any party aggrieved thereby. Such appeal, however, shall not prevent the court from determining the just compensation to be paid. It is clear from the foregoing that the proper remedy of a defendant in an expropriation case who wishes to contest an order of expropriation is **not to file a *certiorari* petition** and allege that the RTC committed grave abuse of discretion in issuing the order of expropriation. **The remedy is to file an appeal of the order of expropriation.** Hence, under the aforementioned provision of the Rules of Court, petitioner PAFC had the right to appeal the assailed Order of Expropriation. The Court holds that the instant appeal, although mistakenly worded by petitioner PAFC as a "Petition for *Certiorari*," is for all intents and purposes a petition for review on *certiorari* under Rule 45. It must be noted that petitioner PAFC repeatedly invoked Rule 45 in filing the

instant appeal, alleging that the instant appeal is "pursuant to Rule 45 of the Rules of Court raising a pure question of law to set aside or nullify the [assailed Order of Expropriation]."

**2. ID.; APPEALS; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT; CASE AT BAR.—** Contrary to the view of respondent NGCP, the Court holds that the instant Petition may be decided by dealing purely with questions of law. The Court has previously held that "a question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts." The Court further explained that for a question to be one of law, "the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact." Here, petitioner PAFC raises the argument that the expropriation of the subject property by respondent NGCP is invalid because such exercise of eminent domain was neither done directly by Congress nor pursuant to a specific grant of authority. It is readily apparent that this primary argument is legal in nature. To be sure, the Court will be able to decide on the validity of the assailed Order of Expropriation by merely looking at the applicable law and jurisprudence on eminent domain, as well as the law granting respondent NGCP the right of eminent domain, *i.e.*, R.A. No. 9511. The Court need not review the evidence on record to assess the correctness of the assailed Order of Expropriation. In fine, the Court rules that petitioner PAFC did not commit a procedural error in filing the instant appeal via a Rule 45 petition directly before the Court.

**3. POLITICAL LAW; STATE; POWER OF EMINENT DOMAIN; ALSO CALLED THE POWER OF EXPROPRIATION, IT IS THE INHERENT RIGHT OF THE STATE TO CONDEMN PRIVATE PROPERTY FOR PUBLIC USE UPON PAYMENT OF JUST COMPENSATION.—** The power of eminent domain, which is also called the power of expropriation, is the inherent right of the State to condemn private property for public use upon payment of just compensation. The right of eminent domain has been described as '"the highest and most exact idea of property

remaining in the government' that may be acquired for some public purpose through a method 'in nature of a compulsory sale to the State.'" The right of eminent domain is an ultimate right of the sovereign power to appropriate any property within its territorial sovereignty for a public purpose. The exercise of this power, whether directly by the State or by its authorized agents, is necessarily in derogation of private rights. Hence, it is considered to be one of the harshest proceedings known to the law. Because the right of eminent domain is a power inherent in sovereignty, it is a power which need not be granted by any fundamental law. Hence, Article III, Section 9 of the 1987 Constitution, which states that "private property shall not be taken for public use without just compensation" is not a grant, but only a limitation of the State's power to expropriate.

**4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; TWO (2) STAGES.—** The expropriation of property consists of two stages. The first stage is concerned with "the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit." The second stage is concerned with "the determination by the court of 'the just compensation for the property sought to be taken'. This is done by the court with the assistance of not more than three (3) commissioners."

**5. POLITICAL LAW; STATE; POWER OF EMINENT DOMAIN; POWER TO EXPROPRIATE PERTAINS PRIMARILY TO THE LEGISLATURE; WHEN DELEGATED TO GOVERNMENT AGENCIES, LOCAL GOVERNMENTS, PUBLIC UTILITIES, AND OTHER PERSONS AND ENTITIES, THE RIGHT TO EXPROPRIATE MAY ONLY BE EXERCISED IN STRICT COMPLIANCE WITH THE TERMS OF THE DELEGATING LAW.—** It has been held that, as an inherent sovereign prerogative, the power to expropriate pertains primarily to the legislature. The power of eminent domain is lodged in the legislative branch of government. However, the power to expropriate is not exclusive to Congress. The latter may delegate the exercise of the power to government agencies, public officials and quasi-public entities. According to eminent constitutionalist and one of the framers of the 1987 Constitution, Fr. Joaquin G. Bernas, S.J., "[t]he authority of the legislature to delegate the

right of eminent domain to private entities operating public utilities has never been questioned." In the hands of government agencies, local governments, public utilities, and other persons and entities, the right to expropriate is not inherent and is only a *delegated power*. In fact, even as to municipal corporations, it has been held that they can exercise the right of eminent domain only if some law exists conferring the power upon them. Hence, with the right of eminent domain not being an inherent power for private corporations, whose right to expropriate is granted by mere legislative fiat, the delegate's exercise of the right of eminent domain is restrictively limited to the confines of the delegating law. The scope of this delegated legislative power is necessarily narrower than that of the delegating authority and may only be exercised in strict compliance with the terms of the delegating law.

**6. ID.; REPUBLIC ACT NO. 9511 (LAW GRANTING FRANCHISE TO THE NATIONAL GRID CORPORATION OF THE PHILIPPINES); RIGHT OF EMINENT DOMAIN; MAY BE EXERCISED BY THE NATIONAL GRID CORPORATION OF THE PHILIPPINES (NGCP) ONLY WITH RESPECT TO PRIVATE PROPERTY.—** Upon a simple perusal of Section 4 of R.A. No. 9511, it states in no equivocal terms that "[t]he Grantee (referring to respondent NGCP) may acquire such ***private property*** as is actually necessary for the realization of the purposes for which this franchise is granted[.]" x x x **Section 4 of R.A. No. 9511 is clear, plain, and free from any ambiguity. Respondent NGCP is allowed to exercise the right of eminent domain *only with respect to private property***. Therefore, this unequivocal provision of the law must be given its literal meaning and applied without any other interpretation.

**7. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; IF A STATUTE IS CLEAR, PLAIN AND FREE FROM AMBIGUITY, IT MUST BE GIVEN ITS LITERAL MEANING AND APPLIED WITHOUT ATTEMPTED INTERPRETATION.—** The Court has previously held that under the principles of statutory construction, if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This plain-meaning rule or *verba legis* derived from the *maxim, index animi sermo est* (speech is the index of intention) "rests on the valid

presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently."

**8. CIVIL LAW; PROPERTY; CLASSIFICATION OF PROPERTY; LAND OF PUBLIC DOMINION; THREE (3) KINDS OF PROPERTY OF PUBLIC DOMINION.—** Article 419 of the Civil Code classifies property as either of (1) **public dominion** (*dominio publico*) or (2) of **private ownership** (*propiedad privado*). Article 420, in turn, identifies lands of public dominion as either (1) those intended for **public use**, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character; or (2) those which belong to the State, without being for public use, and are intended for some **public service** or **for the development of the national wealth**. Hence, based on Article 420 of the Civil Code, there are three kinds of property of public dominion: (1) those for public use, which may be used by anybody, such as roads and canals; (2) those for public service, which may be used only by certain duly authorized persons, although used for the benefit of the public; and (3) those used for the development of national wealth, such as our natural resources.

**9. ID.; ID.; ID.; ID.; CHARACTERISTICS OF LAND OF PUBLIC DOMAIN.—** There are certain *defining characteristics* of properties of the public dominion that distinguish them from private property. Land of the public domain is **outside the commerce of man** and, thus, **cannot be leased, donated, sold, or be the object of any contract**, except insofar as they may be the object of repairs or improvements and other incidental things of similar character. Hence, they cannot be appropriated or alienated. ***Inalienability* is an inherent characteristic of property of the public dominion**. This characteristic necessarily clashes with an express declaration of alienability and disposability, in that when public land is explicitly declared by the State to be subject to disposition, it ceases to be land of the public dominion. Necessarily, as lands of public dominion are inalienable, they cannot be acquired through prescription and cannot be registered under the Land Registration Law and be the subject of a Torrens Title.

**10. ID.; ID.; ID.; PROPERTY OF PRIVATE OWNERSHIP; PATRIMONIAL PROPERTIES; PROPERTIES OWNED**

**BY THE STATE IN ITS PRIVATE OR PROPRIETARY CAPACITY.—** Properties owned by the State which do not have the aforementioned characteristics of a land of public dominion are **patrimonial properties of the State**. Patrimonial properties are properties owned by the State in its ***private or proprietary capacity***. As explained by recognized Civil Law Commentator, former CA Justice Eduardo P. Caguioa, "[o]ver this kind of property[,] the State has the same rights and has the same power of disposition as private individuals in relation to their own property, but of course, subject to rules and regulations. The purpose of this property is in order that the State may attain its economic ends, to serve as a means for its subsistence and preservation and in that way to be able to better fulfill its primary mission." Examples of patrimonial property of the State are those properties acquired by the government in execution or tax sales and mangrove lands and mangrove swamps. Even public agricultural lands that are made alienable and disposable by the State are considered patrimonial properties. In fact, in our jurisprudence, despite dealing with the management of water, which is a natural resource and an essential public utility, waterworks have been categorized as property owned by municipal corporations in their proprietary character. Even if patrimonial property refers to land owned by the State or any of its instrumentalities, such is still deemed private property as *it is property held by the State in its private and proprietary capacity, and not in its public capacity, in order to attain economic ends*. As recently explained by the Court in *Republic v. Spouses Alejandre* the Civil Code classifies property of private ownership into three categories: (1) patrimonial property of the State under Articles 421 and 422 of the Civil Code; (2) patrimonial property of Local Government Units under Article 424; and (3) property belonging to private individuals under Article 425. Hence, the mere fact that a parcel of land is owned by the State or any of its instrumentalities does not necessarily mean that such land is of public dominion and not private property. *If land owned by the State is considered patrimonial property, then such land assumes the nature of private property.* As further held in *Republic v. Spouses Alejandre*, patrimonial property are either: (1) "by nature or use" or those covered by Article 421, which are *not* property of public dominion or imbued with public purpose based on the State's current or intended use; or (2) "by conversion" or those covered by Article 422,

which previously assumed the nature of property of public dominion by virtue of the State's use, but which are no longer being used or intended for said purpose. Furthermore, the aforesaid case holds that **"upon the declaration of alienability and disposability** x x x **the land ceases to possess the characteristics inherent in properties of public dominion** that they are outside the commerce of man, cannot be acquired by prescription, and cannot be registered under the land registration law, **and accordingly assume the nature of patrimonial property of the State that is property owned by the State in its private capacity**."

**11. ID.; ID.; ID.; ID.; INDUSTRIAL ESTATE IS BEING OWNED, MANAGED AND OPERATED BY THE STATE, NOT IN ITS SOVEREIGN CAPACITY, BUT RATHER IN ITS PRIVATE CAPACITY; CASE AT BAR.—** The Court disagrees with petitioner PAFC. The subject property, though owned by a State instrumentality, is considered patrimonial property that assumes the nature of private property. First and foremost, it is admitted by all parties that the subject property, sitting within the Petrochemical Industrial Park, is an **industrial zone**. In fact, the crux of petitioner PAFC's Petition is the argument that since the Petrochemical Industrial Park has been declared by law as an industrial zone dedicated to the development of the petrochemical industry, it should be deemed a land dedicated to public use, *i.e.*, a land of public dominion. However, in *Republic v. East Silverlane Realty Development Corp.,* the Court held that **when the subject property therein was classified by the government as an industrial zone, the subject property therein "had been declared *patrimonial* and it is only then that the prescriptive period began to run."** Further, it is apparent from R.A. No. 10516 and its IRR that the industrial estate is being owned, managed, and operated by the State, not in its sovereign capacity, but rather in its private capacity. Simply stated, the management and operation of the industrial estate is proprietary in character, serving the economic ends of the State. P.D. No. 949, as amended by R.A. No. 10516, calls for the development of the industrial estate by introducing "**business activities that will promote its best economic use**." In addition, in the IRR of the said law, the Petrochemical Industrial Park was described as **an industrial and commercial estate**, wherein private sector investment is encouraged in the development of

"**industrial and commercial activities/enterprises in said Industrial Estate**." According to the IRR, the industrial estate may be used in any manner to achieve its best economic use, allowing "any activity or series of activities regularly engaged in as a means of livelihood or with a view to profit." Hence, it is crystal clear that the management of the land where the subject property is located is commercial in nature and that the State, through petitioner PAFC, is operating the said property in its proprietary capacity, in order to serve economic, and not sovereign, ends.

**APPEARANCES OF COUNSEL**

*PNOC Legal Department* for petitioner.
*NGCP Office of the General Counsel* for respondent.

**D E C I S I O N**

**CAGUIOA, *J.*:**

Before the Court is an appeal *via* a Petition for *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioner PNOC Alternative Fuels Corporation (petitioner PAFC), assailing the Order[2] dated February 11, 2016 (assailed Order of Expropriation) of the Regional Trial Court (RTC) of Mariveles, Bataan, Branch 4 in SCA Case No. 104-ML entitled *National Grid Corporation of the Philippines v. PNOC Alternative Fuels Corporation, et al.*

***The Facts and Antecedent Proceedings***

The instant case stems from a Complaint[3] for Expropriation (Complaint) filed by respondent National Grid Corporation of the Philippines (respondent NGCP) on February 9, 2011 against petitioner PAFC, Orica Philippines, Inc. (Orica), Edgardo P.

---

[1] *Rollo*, pp. 12-27.

[2] *Id.* at 33-35. Issued by Presiding Judge Emmanuel A. Silva.

[3] Records (Vol. 1), pp. 1-9.

Manieda, Winy P. Manieda, Mercedes P. Manieda, Nemy Manieda Amado, Danilo P. Manieda, the Heirs of Leonardo Serios,[4] and Cresencia Toribio Soriano, represented by Imelda S. Villareal.

In the Complaint, respondent NGCP claims that it is a private corporation engaged in the business of transmitting electric power from generating plants of power producers to distributors.[5] Respondent NGCP was granted a "franchise to operate, manage and maintain, and in connection therewith, to engage in the business of conveying or transmitting electricity through high voltage back-bone system of interconnected transmission lines, substations and related facilities, system operations, and other activities that are necessary to support the safe and reliable operation of the transmission system and to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair and refurbish the present nationwide transmission system of the Republic of the Philippines"[6] under Republic Act (R.A.)No. 9511.

Respondent NGCP likewise alleged that, in order for it to construct and maintain the Mariveles-Limay 230 kV Transmission Line Project, it sought to expropriate, upon payment of just compensation, a certain area of a parcel of land situated at Barangay Batangas II, Mariveles, Bataan and Barangay Lamao, Limay, Bataan, having a total area of 101,290.42 square meters, more or less (the subject property). The subject property is part of the Petrochemical Industrial Park.[7]

---

[4] Leonarda S. *vda.de* Serios, Rolando S. Serios, Maximo S. Serios, Herlina S. Francisco, Solita S. Serios, Rosemarie S. Cotejar, Danilo S. Serios, and Luzviminda S. Fernandez.

[5] *Rollo*, pp. 14-15.

[6] Records (Vol. I), pp. 1-2.

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

The Petrochemical Industrial Park was originally part of a parcel of land of the public domain having an approximate area of 621 hectares reserved by the government for the Lamao Horticultural Experiment Station through Executive Order (E.O.) No. 48, series of 1919.[8]

Subsequently, in 1968, Presidential Proclamation (P.P.) No. 361 was issued, withdrawing 418 out of the 621 hectares of land of the public domain from the coverage of E.O. No. 48, and declaring the same as an industrial reservation to be administered by the National Power Corporation (NPC).[9]

In 1969, P.P. No. 630 was issued amending P.P. No. 361. P.P. No. 630 enlarged the area covered by P.P. No. 361 and reserved the same for industrial purposes, including the establishment of an industrial estate under the administration of the National Development Company (NDC) or a subsidiary thereof organized for such purposes.[10]

In 1976, Presidential Decree (P.D.) No. 949 was issued, which transferred the administration, management, and ownership of the parcel of land of the public domain located at Lamao, Limay, Bataan covered by P.P. No. 361, as amended by P.P. No. 630, to the Philippine National Oil Company (PNOC).

According to P.D. No. 949, the PNOC shall manage, operate and develop the parcel of land as a petrochemical industrial zone and will establish, develop and operate or cause the establishment, development and operation thereat of petrochemical and related industries by itself or its subsidiaries or by any other entity or person it may deem competent alone or in joint venture.[11]

---

[8] *Rollo*, p. 15.

[9] *Id.*

[10] *Id.*

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

Subsequently, in 1981, P.D. No. 1803 was issued, enlarging the area reserved for the Petrochemical Industrial Zone established under P.D. No. 949.[12]

In 1993, petitioner PAFC, which originally had the name PNOC Petrochemicals Development Corporation (PPDC), was incorporated as a subsidiary of PNOC for the primary purpose of administering and operating the Petrochemical Industrial Zone. In 2006, the articles of incorporation of PPDC were amended, changing the name of PPDC to PNOC Alternative Fuels Corporation.[13]

Subsequently, in 2011, respondent NGCP filed its Complaint seeking to expropriate the subject property from petitioner PAFC. According to respondent NGCP, it sought to exercise its right of eminent domain over the subject property because negotiations conducted between petitioner PAFC and respondent NGCP on the establishment of transmission lines on the subject property were unsuccessful. Respondent NGCP invoked its general authority to exercise the right of eminent domain under Section 4 of R.A. No. 9511, which reads:

> Section 4. *Right of Eminent Domain*. – Subject to the limitations and procedures prescribed by law, the Grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the construction, expansion, and efficient maintenance and operation of the transmission system and grid and the efficient operation and maintenance of the subtransmission systems which have not yet been disposed by TRANSCO. The Grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted: *Provided*, That the applicable law on eminent domain shall be observed, particularly, the prerequisites of taking of possession and the determination and payment of just compensation.

Orica filed its Answer[14] on April 25,2011, alleging that it is a lessee of a portion of the Petrochemical Industrial Park, where

---

[12] *Id.* at 16.

[13] *Id.*

[14] Records (Vol. I), pp. 54-65.

it put up a manufacturing plant that produces commercial blasting explosives and initiating systems products. In its Answer, Orica raised several special affirmative defenses to oppose respondent NGCP's Complaint. For its part, petitioner PAFC filed its Answer[15] on May 3, 2011, alleging, in sum, that several statutes and issuances limit respondent NGCP's right to expropriate and that "the land sought to be appropriated is already devoted to a public purpose, specifically to petrochemical and petrochemical related industries which is considered as essential to the national interest"[16] and that "[i]t is only the Congress of the Philippines which has the power to exercise the right of eminent domain over the subject property as it is already devoted for a public purpose."[17] Respondent NGCP filed its Reply[18] on May 12, 2011, defending its authority to exercise the right of eminent domain over the subject property.

During the pendency of the expropriation case, in 2013, R.A. No. 10516 was passed by Congress. The said law expanded the use of the Petrochemical Industrial Park to include businesses engaged in energy and energy-allied activities or energy-related infrastructure projects, or of such other business activities that will promote its best economic use.

On June 6, 2013, the Department of Energy (DOE) issued Department Circular No. DC2013-06-0011 or the Implementing Rules and Regulations (IRR) of R.A. No. 10516. The said IRR stated that the PNOC, pursuant to its duty to manage, operate and develop the subject parcel of land as an industrial zone, had organized petitioner PAFC and assigned ownership of the property to petitioner PAFC *via* Deed of Assignment dated August 11, 1994. Further, petitioner PAFC, as owner of the property, was mandated to manage, operate and develop the property in accordance with R.A. No. 10516 and its IRR.

---

[15] *Id.* at 201-212.

[16] *Id.* at 207.

[17] *Id.* at 208.

[18] *Id.* at 222-234.

Subsequently, the RTC issued the assailed Order of Expropriation and ruled that respondent NGCP has a lawful right to expropriate the subject property upon payment of just compensation. The dispositive portion of the assailed Order of Expropriation reads:

> **WHEREFORE**, the affirmative defense of defendants PNOC-AFC and Orica Philippines, Inc. are hereby denied for lack of merit. Parties are hereby directed to submit the names of the three (3) Commissioners to be appointed by the Court. Set this case for the reception of evidence to establish defendants' valid claim of ownership to be entitled for the payment of just compensation.
>
> SO ORDERED.[19]

In issuing the assailed Order of Expropriation, the RTC held that "[n]owhere in the annals of legislation and jurisprudence is it stated that a property already devoted to public use or purpose is invulnerable to expropriation. Neither has it once been held by the Constitution (*sic*) any law or particular jurisprudence that a property already expropriated, (*sic*) may no longer be subject to another expropriation. Justice Isagani Cruz, one of the foremost constitutionalists in the country holds that property already devoted to public use is still be (*sic*) subject to expropriation provided that it is done directly by the national legislature or under a specific grant of authority to the delegate."[20]

In relation to the foregoing, the RTC stressed that under R. A. No. 9511, respondent NGCP "has a legislative franchise to engage in the business of conveying or transmitting electricity throughout the country. Under this law, [respondent NGCP] was given the authority to exercise the power of eminent domain. Hence, and pursuant to Sec[.] 4[,] Rule 67 of the Revised Rules of Court, the Court believes that [respondent NGCP] has a lawful right to take the property sought to be expropriated for the public use or purpose described in the complaint, upon payment of just compensation."[21]

---

[19] *Rollo*, pp. 34-35.

[20] *Id.* at 34.

[21] *Id.*

Petitioner PAFC filed its Motion for Reconsideration[22] of the RTC's assailed Order of Expropriation, which was denied by the RTC in its Order[23] dated April 18, 2016.

Hence, the instant appeal before the Court under Rule 45 of the Rules of Court. Petitioner PAFC prays that the Court set aside the RTC's Orders dated February 11, 2016 and April 18, 2016 and "hold that [respondent] NGCP's expropriation of [petitioner] PAFC's property is improper and without legal basis."[24]

Respondent NGCP filed its Comment[25] dated January 26, 2017, alleging, in sum, that the issues raised in the Petition are not considered legal questions because their determination requires the findings of facts, that petitioner PAFC's direct recourse before the Court is improper, and that land already devoted to public use can still be expropriated for another public purpose.

In response, petitioner PAFC filed its Reply[26] dated July 14, 2017, reiterating its argument that R.A. No. 9511 clearly limits respondent NGCP's right of eminent domain to private property.

## Issue

Stripped to its core, the instant Petition presents two main issues for the Court's disposition: (1) whether petitioner PAFC was correct in filing its Rule 45 Petition directly before the Court, and (2) whether the RTC was correct in issuing the assailed Order of Expropriation, which held that respondent NGCP is empowered to expropriate the subject property under R.A. No. 9511.

---

[22] *Id.* at 36-42.

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

[24] *Id.* at 23.

[25] *Id.* at 47-58.

[26] *Id.* at 63-68.

## The Court's Ruling

In deciding the merits of the instant Petition, the Court resolves the aforementioned issues *ad seriatim.*

### I. The Appeal Of An Order Of Expropriation

According to Section 4, Rule 67 of the Rules of Court, if the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.

In the assailed Order of Expropriation, the RTC denied the objections and defenses raised by petitioner PAFC and Orica for lack of merit. The RTC held that respondent NGCP "has a lawful right to take the property sought to be expropriated for the public use or purpose described in the complaint, upon payment of just compensation."[27] The RTC also ordered the parties to submit the names of three Commissioners to be appointed by the RTC, and set the case for reception of evidence with respect to payment of just compensation.

Section 4 of Rule 67 further states that a final order sustaining the right to expropriate the property, such as the assailed Order of Expropriation, may be appealed by any party aggrieved thereby. Such appeal, however, shall not prevent the court from determining the just compensation to be paid. It is clear from the foregoing that the proper remedy of a defendant in an expropriation case who wishes to contest an order of expropriation is **not to file a *certiorari* petition** and allege that the RTC committed grave abuse of discretion in issuing the order of expropriation. **The remedy is to file an appeal of the order of expropriation.**

---

[27] *Id.* at 34.

Hence, under the aforementioned provision of the Rules of Court, petitioner PAFC had the right to appeal the assailed Order of Expropriation. The Court holds that the instant appeal, although mistakenly worded by petitioner PAFC as a "Petition for *Certiorari*," is for all intents and purposes a petition for review on *certiorari* under Rule 45. It must be noted that petitioner PAFC repeatedly invoked Rule 45 in filing the instant appeal, alleging that the instant appeal is "pursuant to Rule 45 of the Rules of Court raising a pure question of law to set aside or nullify the [assailed Order of Expropriation]."[28]

It can be surmised from the instant Petition that petitioner PAFC resorted to filing its appeal directly before the Court instead of the Court of Appeals (CA) because it believed that the instant Petition only involved pure questions of law. Under Rule 41 of the Rules of Court, in all cases where only questions of law are raised or involved, the appeal shall be filed directly before the Court, not *via* a notice of appeal or record on appeal, but through a petition for review on *certiorari* in accordance with Rule 45.

The critical question, therefore, is whether the instant Petition raises pure questions of law, which warrants the direct filing of the appeal before the Court.

Contrary to the view of respondent NGCP, the Court holds that the instant Petition may be decided by dealing purely with questions of law.

The Court has previously held that "a question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts."[29] The Court further explained that for a question to be one of law, "the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the

---

[28] *Id.* at 13.

[29] *Briones v. People*, 715 Phil. 638, 647 (2013).

given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact."[30]

Here, petitioner PAFC raises the argument that the expropriation of the subject property by respondent NGCP is invalid because such exercise of eminent domain was neither done directly by Congress nor pursuant to a specific grant of authority. It is readily apparent that this primary argument is legal in nature. To be sure, the Court will be able to decide on the validity of the assailed Order of Expropriation by merely looking at the applicable law and jurisprudence on eminent domain, as well as the law granting respondent NGCP the right of eminent domain, *i.e.*, R.A. No. 9511. The Court need not review the evidence on record to assess the correctness of the assailed Order of Expropriation.

In fine, the Court rules that petitioner PAFC did not commit a procedural error in filing the instant appeal *via* a Rule 45 petition directly before the Court.

## II. The Validity Of The RTC's Assailed Order Of Expropriation

Having disposed of the procedural issue, the Court now resolves the substantive merits of the instant Petition.

### *The Concept Of The Right Of Eminent Domain*

The power of eminent domain, which is also called the power of expropriation, is the inherent right of the State to condemn private property for public use upon payment of just compensation.[31]

---

[30] *Id.* at 647.

[31] *Asia's Emerging Dragon Corp. v. Department of Transportation and Communications*, 575 Phil. 59, 187 (2008).

The right of eminent domain has been described as '"the highest and most exact idea of property remaining in the government' that may be acquired for some public purpose through a method 'in nature of a compulsory sale to the State.'"[32] The right of eminent domain is an ultimate right of the sovereign power to appropriate any property within its territorial sovereignty for a public purpose. The exercise of this power, whether directly by the State or by its authorized agents, is necessarily in derogation of private rights. Hence, it is considered to be one of the harshest proceedings known to the law.[33]

Because the right of eminent domain is a power inherent in sovereignty, it is a power which need not be granted by any fundamental law.[34] Hence, Article III, Section 9 of the 1987 Constitution, which states that "private property shall not be taken for public use without just compensation" is not a grant, but only a limitation of the State's power to expropriate.[35]

The expropriation of property consists of two stages. The first stage is concerned with "the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit."[36] The second stage is concerned with "the determination by the court of 'the just compensation for the property sought to be taken'. This is done by the court with the assistance of not more than three (3) commissioners."[37]

---

[32] Isagani A. Cruz, *CONSTITUTIONAL LAW*, 2015 ed., p. 129, citing *Black's Law Dictionary*, 4th ed., 616.

[33] *Jesus is Lord Christian School Foundation Inc. v. Municipality (now City) of Pasig,* 503 Phil. 845, 862 (2006).

[34] Joaquin G. Bernas, S.J., *The 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES*: A *Commentary*, 2009 ed., p. 397.

[35] *Supra* note 32 at 130.

[36] *Spouses Arrastia v. National Power Corp.*, 555 Phil. 263, 273 (2007).

[37] *Id.* at 273.

*Who Wields The Power To Expropriate*

Considering that the right of eminent domain has been described as one of the great, inherent powers of the State, is the exercise of this right exclusive to the State?

It has been held that, as an inherent sovereign prerogative, the power to expropriate pertains primarily to the legislature. The power of eminent domain is lodged in the legislative branch of government.[38]

However, the power to expropriate is not exclusive to Congress. The latter may delegate the exercise of the power to government agencies, public officials and quasi-public entities.[39] According to eminent constitutionalist and one of the framers of the 1987 Constitution, Fr. Joaquin G. Bernas, S.J., "[t]he authority of the legislature to delegate the right of eminent domain to private entities operating public utilities has never been questioned."[40]

In the hands of government agencies, local governments, public utilities, and other persons and entities, the right to expropriate is not inherent and is only a *delegated power*. In fact, even as to municipal corporations, it has been held that they can exercise the right of eminent domain only if some law exists conferring the power upon them.[41]

Hence, with the right of eminent domain not being an inherent power for private corporations, whose right to expropriate is granted by mere legislative *fiat*, the delegate's exercise of the right of eminent domain is restrictively limited to the confines

---

[38] *Municipality of Parañaque v. V.M. Realty Corp.,* 354 Phil. 684, 691 (1998).

[39] *Metropolitan Cebu Water District v. J. King and Sons Co., Inc.,* 603 Phil. 471, 480 (2007).

[40] *Supra* note 34 at 398.

[41] *City of Manila v. Chinese Community of Manila*, 40 Phil. 349, 358, (1919).

of the delegating law. The scope of this delegated legislative power is necessarily narrower than that of the delegating authority and may only be exercised in strict compliance with the terms of the delegating law.[42]

*Respondent NGCP May Only Expropriate Private Property.*

Therefore, with respondent NGCP's power to expropriate being a mere delegated power from Congress by virtue of R.A. No. 9511, respondent NGCP's exercise of the right of eminent domain over the subject property must conform to the limits set under the said law. What then is the type of property that may be expropriated by respondent NGCP under R.A. No. 9511?

Upon a simple perusal of Section 4 of R.A. No. 9511, it states in no equivocal terms that "[t]he Grantee (referring to respondent NGCP) may acquire such ***private property*** as is actually necessary for the realization of the purposes for which this franchise is granted[.]"

The Court has previously held that under the principles of statutory construction, if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This plain-meaning rule or *verba legis* derived from the *maxim, index animi sermo est* (speech is the index of intention) "rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently."[43]

**Section 4 of R.A. No. 9511 is clear, plain, and free from any ambiguity. Respondent NGCP is allowed to exercise the right of eminent domain *only with respect to private property***. Therefore, this unequivocal provision of the law must be given its literal meaning and applied without any other interpretation.

---

[42] *Heirs of Suguitan v. City of Mandaluyong*, 384 Phil. 676, 689 (2000).

[43] *Victoria v. Commission on Elections*, 299 Phil. 263, 268 (1994).

*Land of Public Dominion v. Private Property*

Considering that respondent NGCP is empowered to expropriate private properties exclusively, the concept of private property *vis-a-vis* land of the public dominion must be distinguished.

Article 419 of the Civil Code classifies property as either of (1) **public dominion** (*dominio publico*) or (2) of **private ownership** (*propiedad privado*).[44]

Article 420, in turn, identifies lands of public dominion as either (1) those intended for **public use**, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character; or (2) those which belong to the State, without being for public use, and are intended for some **public service** or **for the development of the national wealth**.

Hence, based on Article 420 of the Civil Code, there are three kinds of property of public dominion: (1) those for public use, which may be used by anybody, such as roads and canals; (2) those for public service, which may be used only by certain duly authorized persons, although used for the benefit of the public; and (3) those used for the development of national wealth, such as our natural resources.[45]

There are certain *defining characteristics* of properties of the public dominion that distinguish them from private property.

Land of the public domain is **outside the commerce of man** and, thus, **cannot be leased, donated, sold, or be the object of any contract**, except insofar as they may be the object of repairs or improvements and other incidental things of

---

[44] Edgardo L. Paras, *CIVIL CODE OF THE PHILIPPINES ANNOTATED*, 17th ed., 2013, Vol. II, p. 40.

[45] *Id.* at 41.

similar character.[46] Hence, *they cannot be appropriated or alienated*.[47] ***Inalienability*** **is an inherent characteristic of property of the public dominion**. This characteristic necessarily clashes with an express declaration of alienability and disposability, in that when public land is explicitly declared by the State to be subject to disposition, it ceases to be land of the public dominion. Necessarily, as lands of public dominion are inalienable, they cannot be acquired through prescription and cannot be registered under the Land Registration Law and be the subject of a Torrens Title.[48]

Properties owned by the State which do not have the aforementioned characteristics of a land of public dominion are **patrimonial properties of the State**.[49] Patrimonial properties are properties owned by the State in its ***private or proprietary capacity***.[50]

As explained by recognized Civil Law Commentator, former CA Justice Eduardo P. Caguioa, "[o]ver this kind of property[,] the State has the same rights and has the same power of disposition as private individuals in relation to their own property, but of course, subject to rules and regulations. The purpose of this property is in order that the State may attain its economic ends, to serve as a means for its subsistence and preservation and in that way to be able to better fulfill its primary mission."[51] Examples of patrimonial property of the State are those properties acquired by the government in execution or tax sales and mangrove lands and mangrove swamps. Even public agricultural lands that are made alienable and disposable by the State are

---

[46] *Id.* at 47, citing *Municipality of Cavite v. Rojas*, 30 Phil. 602 (1915).

[47] Eduardo P. Caguioa, *COMMENTS AND CASES ON CIVIL LAW*, CIVIL CODE OF THE PHILIPPINES, 3rd ed., 1966, Vol. II, pp. 31-32, citing *Meneses v. El Commonwealth de Filipinas*, 69 Phil. 647 (1940).

[48] *Supra* note 44 at 47-48.

[49] CIVIL CODE, Art. 421.

[50] *Supra* note 44 at 61.

[51] *Supra* note 47 at 36.

considered patrimonial properties.[52] In fact, in our jurisprudence, despite dealing with the management of water, which is a natural resource and an essential public utility, waterworks have been categorized as property owned by municipal corporations in their proprietary character.[53]

Even if patrimonial property refers to land owned by the State or any of its instrumentalities, such is still deemed private property as *it is property held by the State in its private and proprietary capacity, and not in its public capacity, in order to attain economic ends*. As recently explained by the Court in *Republic v. Spouses Alejandre*,[54] the Civil Code classifies property of private ownership into three categories: (1) patrimonial property of the State under Articles 421 and 422 of the Civil Code; (2) patrimonial property of Local Government Units under Article 424; and (3) property belonging to private individuals under Article 425.[55]

Hence, the mere fact that a parcel of land is owned by the State or any of its instrumentalities does not necessarily mean that such land is of public dominion and not private property. *If land owned by the State is considered patrimonial property, then such land assumes the nature of private property.*

As further held in *Republic v. Spouses Alejandre*,[56] patrimonial property are either: (1) "by nature or use" or those covered by Article 421, which are *not* property of public dominion or imbued with public purpose based on the State's current or intended use; or (2) "by conversion" or those covered by Article 422, which previously assumed the nature of property of public dominion by virtue of the State's use, but which are no longer being used or intended for said purpose.

---

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

[53] *City of Baguio v. National Waterworks and Sewerage Authority*, 106 Phil. 144, 153 (1959).

[54] G.R. No. 217336, October 17, 2018.

[55] *Id.*

[56] *Id.*

Furthermore, the aforesaid case holds that "**upon the declaration of alienability and disposability** x x x **the land ceases to possess the characteristics inherent in properties of public dominion** that they are outside the commerce of man, cannot be acquired by prescription, and cannot be registered under the land registration law, **and accordingly assume the nature of patrimonial property of the State that is property owned by the State in its private capacity**."[57] Simply stated, land of the public dominion expressly deemed by the State to be alienable and disposable, susceptible to the commerce of man through sale, lease, or any other mode of disposition, assumes the nature of patrimonial property.

In *Sps. Modesto v. Urbina*,[58] the Court held that private persons can claim possessory rights over a particular property once it is declared alienable and disposable. This illustrates that once property of public dominion is declared by the State as alienable and disposable, it becomes subject of private rights, such as possessory claims, since such declaration operates to convert property of public dominion, which is inalienable property, to patrimonial property held by the State in its private capacity.

*The Subject Property Is Patrimonial Property That Assumes The Nature of Private Property.*

The next issue that must be resolved is the characterization of the subject property.

Petitioner PAFC posits the argument that the subject property is a land of die public domain as it is devoted to public use or purpose, *i.e.,* the development of the petrochemical industry which, it argues is a matter of national inteest Thus, according to petitioner PAFC, the subject property is not private property. Hence, since respondent NGCP is only allowed to expropriate private property, necessarily, it has no authority to expropriate the subject property.

---

[57] *Id.*, emphasis and underscoring supplied.

[58] 647 Phil. 706 (2010).

The Court disagrees with petitioner PAFC. The subject property, though owned by a State instrumentality, is considered patrimonial property that assumes the nature of private property.

First and foremost, it is admitted by all parties that the subject property, sitting within the Petrochemical Industrial Park, is an **industrial zone**. In fact, the crux of petitioner PAFC's Petition is the argument that since the Petrochemical Industrial Park has been declared by law as an industrial zone dedicated to the development of the petrochemical industry, it should be deemed a land dedicated to public use, *i.e.*, a land of public dominion.

However, in *Republic v. East Silverlane Realty Development Corp.,*[59] the Court held that **when the subject property therein was classified by the government as an industrial zone, the subject property therein "had been declared *patrimonial* and it is only then that the prescriptive period began to run**."[60]

Further, it is apparent from R.A. No. 10516 and its IRR that the industrial estate is being owned, managed, and operated by the State, not in its sovereign capacity, but rather in its private capacity. Simply stated, the management and operation of the industrial estate is proprietary in character, serving the economic ends of the State.

P.D. No. 949, as amended by R.A. No. 10516, calls for the development of the industrial estate by introducing "**business activities that will promote its best economic use**."[61] In addition, in the IRR of the said law, the Petrochemical Industrial Park was described as **an industrial and commercial estate**, wherein private sector investment is encouraged in the development of "**industrial and commercial activities/ enterprises in said Industrial Estate**."[62] According to the IRR,

---

[59] 682 Phil. 376, 391 (2012).

[60] *Id.* at 391; emphasis and underscoring supplied.

[61] Section 2, P.D. No. 949, as amended by R.A. No. 10516; emphasis supplied.

[62] Sections 2.1 and 2.2, Department Circular No. DC2013-06-0011; emphasis supplied.

the industrial estate may be used in any manner to achieve its best economic use, allowing "any activity or series of activities regularly engaged in as a means of livelihood or with a view to profit."[63] Hence, it is crystal clear that the management of the land where the subject property is located is commercial in nature and that the State, through petitioner PAFC, is operating the said property in its proprietary capacity in order to serve economic, and not sovereign, ends.

Petitioner PAFC's insistence that the petrochemical industry is an industry endowed with national interest is unconvincing. The sheer fact that one of the allowable activities inside the industrial estate pertains to the development of the petrochemical industry is not enough to characterize the subject property as land of the public domain. To reiterate, the Court has previously characterized waterworks as patrimonial property despite the fact that such properties deal with the management of an important natural resource and an essential public utility, for the reason that the operations of waterworks by municipal corporations are often in the nature of a business venture.[64] In the instant case, it is apparent from P.D. No. 949, as amended by R.A. No. 10516, that the Petrochemical Industrial Park is intended and accordingly devoted by law as a commercial and business venture.

Furthermore, as already discussed at length, the defining characteristic of land of public domain is *inalienability*. To reiterate, upon the explicit declaration of alienability and disposability, the land ceases to possess the characteristics inherent in properties of public dominion, namely, that they are outside the commerce of man, cannot be acquired by prescription, and cannot be registered under the land registration law, and accordingly assume the nature of patrimonial property of the State, that is property owned by the State in its private capacity. Hence, an express declaration of alienability and

---

[63] *Id.* at Section 3.4.

[64] *National Waterworks & Sewerage Authority v. Dator,* 128 Phil. 338, 342 (1967).

disposability by the State negates the characterization of property as land of public dominion.

Applying the foregoing in the instant case, the laws governing the subject property have unequivocally declared that **the subject property is alienable, disposable, appropriable, may be conveyed to private persons or entities, and is subject to private rights.**

Under P.D. No. 949, **the Petrochemical Industrial Park was explicitly made alienable and disposable for lease, sale, and conveyance to private entities or persons for the conduct of related industrial activities:**

Section 2. The Philippine National Oil Company shall manage, operate and develop the said parcel of land as a petrochemical industrial zone and will establish, develop and operate or cause the establishment, development and operation thereat of petrochemical and related industries by itself or its subsidiaries or by any other entity or person it may deem competent alone or in joint venture; Provided, that, where any petrochemical industry is operated by private entities or persons, whether or not in joint venture with the Philippine National Oil Company or its subsidiaries, **the Philippine National Oil Company mav lease, sell and/or convey such portions of the petrochemical industrial zone to such private entities or persons**.[65]

The alienable and disposable nature of the Petrochemical Industrial Park was further expanded when P.D. No. 949 was subsequently amended by R.A. No. 10516. The said law allowed **the lease, sale, and conveyance of the Petrochemical Industrial Park for purposes of *commercial utilization* by private sector investors:**

SECTION 2. *Purpose of Land Use*. – The PNOC shall manage, operate and develop the said parcel of land as an industrial zone and will establish, develop and operate or cause the establishment, development and operation thereat of petrochemical and related industries, as well as of businesses engaged in energy and energy-allied activities or energy-related infrastructure projects, or **of such**

---

[65] Section 2, P.D. No. 949; emphasis and underscoring supplied.

**other business activities that will promote its best economic use**, as determined by the PNOC Board of Directors, by itself or its subsidiaries or by any other entity or person it may deem competent alone or in joint venture: *Provided*, **That, where any petrochemical or energy-related industry or any such other business as determined by the PNOC is operated by private entities or persons, whether or not in joint venture with the PNOC or its subsidiaries, the PNOC may lease, sell and/or convey such portions of the industrial zone to such private entities or persons.**[66]

Petitioner PAFC's argument that the subject property is strictly confined and restricted to the development of the petrochemical industry is manifestly erroneous. The law itself unequivocally allows the establishment of businesses engaged in energy and energy-allied activities or energy-related infrastructure projects, which obviously includes the establishment of transmission towers. The law permits, and even highly encourages, the conduct of commercial activities in the industrial estate by allowing the transfer of the subject property to private investors.

Hence, with the subject property expressly declared by law, *i.e.*, P.D. No. 949, as amended by R.A. No. 10516, to be an industrial and commercial estate **that may be transferred or conveyed to private persons** so that business activities may be conducted therein, there is no doubt in the mind of the Court that the subject property is patrimonial property. In other words respondent NGCP has the authority under Section 4 of R.A. No. 9511 to expropriate the subject property.

*Reasonableness And Necessity Of The Expropriation*

The determination of the validity of the assailed Order of Expropriation does not stop with the identification of the subject property as patrimonial property. As previously discussed at length, the delegated power to exercise the right of eminent domain may only be exercised in strict compliance within the terms of the delegating law.

---

[66] Section 2, P.D. No. 949, as amended by R.A. No. 10516; emphasis and underscoring supplied.

Under Section 4 of R.A. No. 9511, respondent NGCP's right to expropriate must be "reasonably necessary for the construction, expansion, and efficient maintenance and operation of the transmission system and grid and the efficient operation and maintenance of the subtransmission systems."[67] The said provision likewise states that "[respondent NGCP] may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted[.]"[68]

Even without the foregoing provision of the law, considering that the expropriation is done, not directly, but by another government agency or a municipal corporation, and by virtue of an authorizing statute which does not specify the property to be taken, jurisprudence holds that the courts may look into the necessity of the taking.[69]

In its Amended Complaint, respondent NGCP alleged that "[t]o enable plaintiff to construct and maintain the Mariveles-Limay 230 kV Transmission Line Project, it is both necessary and urgent to acquire, upon payment of just compensation, the above-described portions of the subject property to ensure stability and reliability of power supply in the provinces of Bataan and Zambales, and in the future, in other parts of the country."[70] Respondent NGCP also alleged that during the negotiations conducted between the parties, petitioner PAFC proposed another route (at the back portion of the subject property), which was found to be not technically sound.[71]

It must be stressed that in the instant Petition, petitioner PAFC does not allege that the Mariveles-Limay 230 kV Transmission Line Project is unnecessary and unreasonable.

---

[67] Section 4, R.A. No. 9511.

[68] *Id.*

[69] *Supra* note 34 at 427-428, citing *City of Manila v. Chinese Community of Manila*, 40 Phil. 349 (1919) and *Republic v. La Orden de PP. Benedictinos de Filipinas*, 111 Phil. 230 (1961).

[70] Records (Vol. II), p. 280.

[71] *Id.*

It only alleges that the subject property is already devoted by law for a specific purpose and that it is a property devoted to public use.

The Court also observes that petitioner PAFC, in its Answer to Amended Complaint,[72] did not make any specific denial as to the allegations made by respondent NGCP in its Amended Complaint that the Mariveles-Limay 230 kV Transmission Line Project is necessary and urgent to ensure the stability and reliability of power supply in the provinces of Bataan and Zambales, and that the alternative route proposed by petitioner PAFC to respondent NGCP was not found to be technically feasible.

It is an elementary rule in remedial law that material averments in the complaint, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied.[73]

It is also telling that after the Complaint was filed in 2011, the parties entered into a Tripartite Agreement[74] on August 17, 2012, whereby the parties, including petitioner PAFC, acknowledged that it was necessary for respondent NGCP to establish the Mariveles-Limay 230 kV Transmission Line Project due to the increased demand for electricity in the provinces of Bataan and Zambales, and that the technical teams of the parties already agreed on a revised route that provided for a safe and viable route for the transmission lines, taking into consideration the safety and security concerns of Orica.[75]

Therefore, the Court is sufficiently convinced that respondent NGCP's act of expropriating the subject property was reasonably necessary for the realization of the purposes for which its franchise is granted.

---

[72] *Id.* at 338-348.

[73] RULES OF COURT, Rule 8, Sec. 11.

[74] Records (Vol. V), pp. 75-88.

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

Premises considered, the Court upholds the assailed Order of Expropriation issued by the RTC, considering that respondent NGCP validly expropriated the subject property.

**WHEREFORE,** the instant appeal is **DENIED**. The Order dated February 11, 2016 of the Regional Trial Court of Mariveles, Bataan, Branch 4 issued in SCA Case No. 104-ML is **AFFIRMED**.

**SO ORDERED.**

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

---

**SECOND DIVISION**

[G.R. No. 227934. September 4, 2019]

**JERRY BERING TALAUGON,** *petitioner, vs.* **BSM CREW SERVICE CENTRE PHILS., INC., BERNARD[*] SCHULTE SHIPMANAGEMENT LTD. and DANILO MENDOZA,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; RULE 45 PETITION; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTION, APPLIED. —** As a rule, only questions of law may be raised *via* a petition for review under Rule 45 of the Rules of Court. This rule, however, is not absolute and admits certain exceptions, *e.g.* where the factual findings of the Court of Appeals are contrary to those of the labor arbiter and the NLRC, as in this

---

[*] Also spelled as "Bernhard" in some parts of the *Rollo*.

case. The Court, therefore, may look into such conflicting views and make its own factual determination of the real extent and character of petitioner's ailments.

**2. LABOR AND SOCIAL LEGISLATION; SEAFARER; DISABILITY BENEFITS; TWO REQUISITES THAT MUST CONCUR FOR DETERMINATION OF SEAFARER'S CONDITION; THE MEDICAL REPORT IN CASE AT BAR IS HARDLY THE "DEFINITE AND CONCLUSIVE ASSESSMENT OF SEAFARER'S DISABILITY OR FITNESS TO RETURN TO WORK" REQUIRED BY LAW; HENCE PETITIONER'S DISABILITY IS DEEMED PERMANENT AND TOTAL BY OPERATION OF LAW. —** [T]wo (2) requisites must concur for a determination of a seafarer's condition: 1) an assessment must be issued within the 120/240 window, and 2) the assessment must be final and definitive. Here, we agree with the Court of Appeals that the company-designated physician made an assessment on petitioner's illness within the 120-day period. Records show that Dr. Chuasuan, Jr. declared petitioner's disability rating as Grade 11 on May 15, 2014 or 117th day since he was evaluated and had been undergoing continuous medical treatment. The next question: was the assessment final and definitive? Section 20(B) of POEA-SEC provides that it is the primary responsibility of a company-designated physician to determine the disability grading or fitness to work of seafarers. To be conclusive, however, company-designated physicians' medical assessments or reports must be complete and definite. A final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered. Here, Medical Report dated May 15, 2014 contained the following observations: "the prognosis of returning to (his) sea duties is guarded" and "If patient is entitled to a disability, his suggested disability grading is Grade 11 — slight rigidity or 1/3 loss of motion of lifting power of the trunk." This is hardly the "definite and conclusive assessment of the seafarer's disability or fitness to return to work" required by law from the company-designated physician. For there was nothing on record showing that the company-designated physician explained in detail the progress of petitioner's treatment and the approximate period needed for him to fully recover. x x x

Consequently, without a final and definitive assessment from the company-designated physician on petitioner's disability, the same is deemed permanent and total by operation of law.

**3. ID.; ID.; IN DISABILITY COMPENSATION, IT IS NOT THE DISABILITY THAT IS COMPENSATED BUT THE INCAPACITY TO WORK RESULTING IN THE IMPAIRMENT OF ONE'S EARNING CAPACITY; TOTAL AND PERMANENT DISABILITY, DEFINED AND DISTINGUISHED. —** [I]n disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity. Total disability refers to an employee's inability to perform his or her usual work. It does not require total paralysis or complete helplessness. Permanent disability, on the other hand, is a worker's inability to perform his or her job for more than 120 days, or 240 days if the seafarer required further medical attention justifying the extension of the temporary total disability period, regardless of whether or not he loses the use of any part of his body.

**APPEARANCES OF COUNSEL**

*Bantog and Andaya Law Offices* for petitioner.
*Del Rosario & Del Rosario Law Offices* for respondents.

## D E C I S I O N

**LAZARO-JAVIER, *J.*:**

### The Case

This petition for review[1] seeks to set aside the following issuances of the Court of Appeals in CA-G.R. SP No. 144155:

1. Decision[2] dated August 31, 2016, finding petitioner entitled to partial permanent disability benefits; and

---

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

[2] Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justice Priscilla J. Baltazar-Padilla and Associate Justice Socorro B. Inting, *rollo*, pp. 28-43.

2. Resolution[3] dated October 18, 2016, denying petitioner's motion for reconsideration.

**The Antecedents**

On October 17, 2014, petitioner Jerry Bering Talaugon sued respondents BSM Crew Service Centre Phils., Inc., Bernard Schulte Shipmanagement Ltd., and Danilo Mendoza for full disability benefits, damages, and attorney's fees.

Petitioner's Version

Respondents employed him as an oiler on board M/T Erika Schulte. His duties included maintaining the engine's machinery, sewage, lighting, and air-conditioning. During his employment, he felt dizzy and nauseous. His lower abdomen was painful. He got hospitalized in Saudi Arabia and diagnosed with "Renal Colic Lumbago post Zoster Neuralgia." He was given pain medications and advised to be repatriated for further treatment.[4]

On January 18, 2014, he returned to the country and thereafter consulted with company-designated physician Dr. Richard Olalia. The latter diagnosed him with "Hyperthesia, Ruled out Hansen's Disease, L4-L5 Disc Protrusion, Disc Dessication" and advised therefor physical therapy.[5]

On April 3, 2014, another company-designated physician Dr. Godfrey Robeniol found a tumor in his spinal cord. A few days later, he underwent surgery for tumor removal.[6]

After undergoing surgery and physical therapy, he went back to, yet, another company-designated physician Dr. Gilbert Rañoa. The latter observed that he was still suffering lower back pain probably due to his lumbar spondylosis. Dr. Rañoa then declared

---

[3] *Rollo*, pp. 45-47.

[4] *Rollo*, pp. 29-30.

[5] *Id.* at 30.

[6] *Id.* at 30.

that his illness was not work related. Dr. Rañoa, nonetheless, offered to give him a disability grading of 11.[7]

He, thereafter, sought the opinion of his personal physician, Dr. Venancio Garduce who concluded that due to the weakness of his upper extremities, it was impossible for him to be employed again as seafarer. Dr. Garduce opined he was entitled to a Grade 3 disability rating.[8]

Respondents' Version

While on board, petitioner noted blisters on his right lumbar region accompanied by fever, headache, and body pain. The blisters, however, healed without medication. Upon petitioner's repatriation, company designated Dr. Robert Lim found him suffering from Hyposthetics (nerve damage).[9]

Petitioner underwent an MRI which showed L4-L5 disc protrusion and disc dessication. Since his back pain persisted, another MRI was done where a tumor was discovered in his spine.[10]

In April 25 2014, he had the tumor excised. On May 15, 2014, he was seen by Dr. Mylene Cruz-Balbon who noted that while he continued with his rehabilitation, "the prognosis of returning to (his) sea duties is guarded." Yet another company physician, Dr. William Chuasuan, Jr. found that petitioner was suffering from a grade 11 disability for slight rigidity or 1/3 loss of motion or lifting power.[11]

**The Ruling of the Labor Arbiter**

By Decision dated May 3, 2015, Labor Arbiter Nicolas awarded petitioner permanent total disability compensation. The labor

---

[7] *Id.* at 30.

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

[9] *Id.* at 31.

[10] *Id.* at 31.

[11] *Id.* at 31 and 37.

arbiter ruled that the company-designated physicians failed to make a final assessment of petitioner's condition within 120/240 window period. Petitioner's disability had, therefore, become total and permanent.[12]

**The Ruling of the National Labor Relations Commission (NLRC)**

On appeal, the NLRC modified the award to partial permanent disability. It stressed that Dr. Chuasuan, Jr.'s assessment of petitioner's condition equivalent to grade 11 disability was made within the 120-day period from the latter's repatriation on January 17, 2014. Even arguing that his treatment lasted beyond 120 days, the extended period was justified because petitioner needed further medical treatment.[13]

**The Ruling of the Court of Appeals**

By Decision dated August 31, 2016, the Court of Appeals affirmed. It noted that from the time petitioner got repatriated on January 18, 2014 up to the time Dr. Chuasuan, Jr. recommended a grade 11 disability on May 15, 2014, only 117 days had elapsed. Also, Dr. Chuasuan, Jr. had actually given petitioner a final assessment within the 120-day period, hence, the latter cannot be deemed totally and permanently disabled.[14]

By Resolution dated October 18, 2016, petitioner's motion for reconsideration was denied.[15]

**The Present Petition**

Petitioner now asks the Court to reverse the Court of Appeals' assailed dispositions. He reiterates that the company physicians failed to make a final disability assessment of his illness within

---

[12] *Id.* at 32.

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

[14] *Id.* at 28-43.

[15] *Id.* at 45-47.

the 120/240 window. The law, thus, presumes that his disability had become permanent and total. But even arguing that a final and definite assessment was made within the prescribed period, he was still unable to return for sea duty after his illness. Thus, he should be deemed permanently and totally disabled.[16]

For their part, respondents counter that company physician Dr. Chuasuan, Jr. actually issued Medical Report dated May 15, 2014, finding petitioner's illness equivalent to grade 11 disability. The assessment was issued within 120 days from the time he got repatriated. Hence, the same dispels petitioner's claim for permanent total disability compensation.[17]

**The Core Issue**

Is petitioner entitled to permanent total disability benefits?

**The Ruling**

As a rule, only questions of law may be raised *via* a petition for review under Rule 45 of the Rules of Court. This rule, however, is not absolute and admits certain exceptions, *e.g.* where the factual findings of the Court of Appeals are contrary to those of the labor arbiter and the NLRC, as in this case. The Court, therefore, may look into such conflicting views and make its own factual determination of the real extent and character of petitioner's ailments.[18]

Petitioner vigorously asserts that he is entitled to permanent total disability benefits because the company-designated physicians failed to make a final assessment of his illness. Respondents, on the other hand, insist that after a series of evaluation, Dr. Chuasuan, Jr. actually gave petitioner a disability grade of 11 within 120 days from the time petitioner got repatriated.

---

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

[17] *Id.* at 76-82.

[18] See *Aldaba v. Career Philippines Ship-Management, Inc.*, 811 Phil. 486, 494-495 (2017).

In ***Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.***, the Court set the following guidelines to determine a seafarer's disability, *viz*:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.* seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[19]

Based thereon, two (2) requisites must concur for a determination of a seafarer's condition: 1) an assessment must be issued within the 120/240 window, and 2) the assessment must be final and definitive.

Here, we agree with the Court of Appeals that the company-designated physician made an assessment on petitioner's illness within the 120-day period. Records show that Dr. Chuasuan, Jr. declared petitioner's disability rating as Grade 11 on May 15, 2014 or 117th day since he was evaluated and had been undergoing continuous medical treatment.

---

[19] *See* 765 Phil. 341, 362-363, (2015).

The next question: was the assessment final and definitive?

Section 20(B) of POEA-SEC[20] provides that it is the primary responsibility of a company-designated physician to determine the disability grading or fitness to work of seafarers. To be conclusive, however, company-designated physicians' medical assessments or reports must be complete and definite. A final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.

Here, Medical Report dated May 15, 2014 contained the following observations: "the prognosis of returning to (his) sea

---

[20] Section 20. COMPENSATION AND BENEFITS.

x x x x x x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x 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. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days. For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits. 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.

duties is guarded" and "If patient is entitled to a disability, his suggested disability grading is Grade 11 - slight rigidity or 1/3 loss of motion of lifting power of the trunk."[21]

This is hardly the "definite and conclusive assessment of the seafarer's disability or fitness to return to work" required by law from the company-designated physician. For there was nothing on record showing that the company designated physician explained in detail the progress of petitioner's treatment and the approximate period needed for him to fully recover.[22]

In ***Carcedo v. Maine Marine Phils., Inc.***, the Court ruled that the company-designated physician's disability assessment was not definitive since the seafarer continued to require medical treatments thereafter. Considering that the doctor failed to issue a final assessment, Carcedo's disability was declared to be permanent and total.[23]

In ***Island Overseas Transport Corp. v. Beja***, a month after the seafarer Beja's knee operation, the company-designated physician issued Grades 10 and 13 partial disability grading of his medical condition. The Court considered these assessments as tentative because the seafarer continued his physical therapy sessions, which even went beyond 240 days. Further, the company-designated physician "did not even explain how he arrived at the partial permanent disability assessment," nay, provided any justification for his conclusion that Beja was inflicted with Grades 10 and 13 disability.[24]

Another. In ***Orient Hope Agencies Inc. v. Jara***, the Court considered that aside from the belated assessment of seafarer Jara's injury, the medical report did not contain any definitive declaration as to his fitness to work. On the contrary, the report stated that as of his last check up, he was still complaining of

---

[21] *Rollo*, p. 38.

[22] See *Orient Hope Agencies Inc. v. Jara*, G.R. No. 204307, June 6, 2018.

[23] See 758 Phil. 166, 184 (2015).

[24] See 774 Phil. 332, 347 (2015).

left knee pain. Under the circumstances, it would be improbable to expect that by the last day of the 240-day period, Jara would have fully recovered from his injury or regained his pre-injury capacity as to be able to go back to his sea duty.[25]

Consequently, without a final and definitive assessment from the company-designated physician on petitioner's disability, the same is deemed permanent and total by operation of law.

At any rate, in disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity. Total disability refers to an employee's inability to perform his or her usual work. It does not require total paralysis or complete helplessness. Permanent disability, on the other hand, is a worker's inability to perform his or her job for more than 120 days, or 240 days if the seafarer required further medical attention justifying the extension of the temporary total disability period, regardless of whether or not he loses the use of any part of his body.[26]

Indeed, given petitioner's persistent back pain, it is highly improbable for him to perform his usual tasks as oiler in any vessel, thus, resulting in his loss of earning capacity.

**ACCORDINGLY,** the petition is **GRANTED**. The assailed Decision dated August 31, 2016 and Resolution dated October 18, 2016 of the Court of Appeals in CA-G.R. SP No. 144155 are **REVERSED AND SET ASIDE**. Respondents BSM Crew Service Centre Phils., Inc., Bernard Schulte Shipmanagement Ltd. and Danilo Mendoza are ordered to pay petitioner Jerry Bering Talaugon US$60,000.00 as permanent and total disability benefits and attorney's fees equivalent to ten (10%) of this amount. Legal interest of 6% per annum is imposed on the total judgment award from the finality of this Decision until fully paid.

**SO ORDERED.**

---

[25] *Supra* note 22

[26] *Id.*

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

---

**SECOND DIVISION**

[G.R. No. 229212. September 4, 2019]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **GERARDO LABINI *y* GRAJO @ "JERRY,"** *appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); REQUIREMENT OF THREE WITNESSES UNDER SECTION 21 OF RA 9165, EXPLAINED.** — Since the alleged commission of the offense took place on 19 August 2011, the applicable provision is Section 21 of RA 9165. Section 21 requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. Under the IRR, if the immediate physical inventory and photographing are not practicable, the buy-bust team should conduct the same as soon as it reaches the nearest police station, or the nearest office of the apprehending officer or team. The inventory must be done in the presence of the accused or his representative or counsel, a representative of the DOJ, the media, and an elected public official, who shall be required to sign the copies of the inventory and be given a copy thereof. Clearly, the three required witnesses should be physically present at the time of the apprehension of the accused or immediately thereafter, a requirement that the buy-bust team can easily comply with because a buy-bust operation, by its nature, is a planned activity. This means that the buy-bust team has enough time and opportunity to bring with them, or immediately after the buy-bust operation, the said witnesses.

**2. ID.; ID.; ID.; NON-OBSERVANCE OF THE THREE WITNESSES RULE COUPLED WITH THE PROSECUTION'S FAILURE TO OFFER ANY EXPLANATION OR JUSTIFICATION FOR ITS NON-COMPLIANCE CREATED DOUBT AS TO THE GUILT**

**OF THE APPELLANT THAT WARRANTS HIS ACQUITTAL.** ––In this case, the prosecution only explained why the apprehending officers failed to mark the seized evidence and conduct the inventory of the items at the place where the buy-bust operation took place. The prosecution explained that the side street where the buy-bust operation took place was quickly filled by people after the incident, and the team needed to secure the items they seized from appellant. The prosecution also explained that the barangay hall where they took appellant was just 30 meters away from the street where the buy-bust operation transpired. However, there was no explanation why only Chairperson Ureña was present during the inventory, which constitutes non-compliance with the three-witness rule. The Court has ruled that it is a grave error to trivialize the necessity of the number and identity of the witnesses enumerated in the law. The police officers' cavalier attitude towards adherence to procedure and protection of the rights of the accused is contrary to what is expected from our servants and protectors. The non-observance of the three-witness rule, coupled with the prosecution's failure to offer any explanation or justification for its non-compliance, is a clear violation of Section 21 of RA 9165, as amended, and its implementing rules and warrants the acquittal of appellant from the offenses charged for failure to prove his guilt beyond reasonable doubt.

**APPEARANCES OF COUNSEL**

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

## D E C I S I O N

**CARPIO, *J.*:**

### The Case

Before the Court is an appeal from the 2 December 2015 Decision[1] of the Court of Appeals in CA-G.R. CR-HC

[1] *Rollo*, pp. 2-24. Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Amy C. Lazaro-Javier (now a member of this Court) and Melchor Q.C. Sadang concurring.

No. 06978. The Court of Appeals affirmed the 5 May 2014 Decision[2] of the Regional Trial Court of Makati City, Branch 64 (trial court), finding appellant Gerardo Labini *y* Grajo @ Jerry guilty beyond reasonable doubt for violation of Sections 5 and 11, Article II of Republic Act No. 9165 (RA 9165).[3]

## The Antecedent Facts

Appellant was charged with violation of Sections 5, 11 and 15, Article II of RA 9165 in three separate Informations, as follows:

Criminal Case No. 11-2601

On the 19th day of August 2011, in the City of Makati, the Philippines, accused, not being authorized by law, and without the corresponding license or prescription, did then and there willfully, unlawfully, and feloniously sell, deliver, and distribute zero point zero three (0.03) gram of methamphetamine hydrochloride, a dangerous drug, in consideration of Php300.

CONTRARY TO LAW.

Criminal Case No. 11-2602

On the 19th day of August 2011, in the City of Makati, the Philippines, accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding prescription, did then and there willfully, unlawfully, and feloniously have in his possession, direct custody and control a total of zero point zero two (0.02) gram of methamphetamine hydrochloride, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.

Criminal Case No. 11-2603

On the 19th day of August 2011, in the City of Makati, the Philippines, accused, not being lawfully authorized by law to possess or use dangerous drug, and without the corresponding prescription,

---

[2] CA *rollo*, pp. 63-69. Penned by Judge Gina M. Bibat-Palamos.

[3] Comprehensive Dangerous Drugs Act of 2002.

did then and there willfully, unlawfully, and feloniously use methamphetamine (*sic*), a dangerous drug, as shown in a confirmatory test conducted on him after he was arrested, in violation of the above-cited law.

CONTRARY TO LAW.[4]

Appellant filed a Motion for Judicial Determination of Probable Cause dated 9 January 2012. The trial court denied the motion in its Order of even date. Upon arraignment, appellant entered separate pleas of not guilty to the charges against him.

The facts are as follows:

Gary M. Pagaduan (Pagaduan), an Operative of the Makati Anti-Drug Abuse Council (MADAC), testified that MADAC assisted the Philippine Drug Enforcement Agency (PDEA) and the Station Anti-Illegal Drugs Special Operations Task Group (SAIDSOTG) (collectively referred to as the team) in a buy-bust operation they conducted against appellant on 19 August 2011. Pagaduan was assigned as the poseur-buyer, with PO1 Michelle Gimena (Gimena) as his back-up companion.

On 19 August 2011 at around 4:45 p.m., the team arrived at Kasoy Street, Barangay Rizal, Makati City. The team was accompanied by a confidential informant who introduced Pagaduan to appellant. The confidential informant asked appellant, "*meron ba*?" Appellant asked for ₱300.00. Pagaduan gave the money to appellant. In turn, appellant gave Pagaduan a sachet containing *shabu*. Pagaduan gave the pre-arranged signal to the team. Gimena, together with the MADAC operatives, rushed to the scene. Pagaduan held appellant to prevent him from escaping and asked him to sit down. Pagaduan ordered appellant to empty his pockets. Appellant took from his pocket a red toothbrush case which contained two sachets of *shabu*.

Pagaduan testified that a lot of people started swarming the street because of the commotion. The team secured the specimens and took appellant to the barangay hall which was

---

[4] *Rollo*, pp. 3-4.

about 30 meters away from Kasoy Street. The inventory of the items seized took place in the barangay hall, witnessed by Chairperson Wenefreda Ureña (Ureña). From the barangay hall, the team went back to their office for the preparation of the request for laboratory examination of the sachets seized and for the medical and urine testing of appellant. PS/Insp. Anamelisa Bacani (Bacani) received the three sachets, conducted a laboratory examination, and issued a Physical Science Report that the specimens contained in the three sachets tested positive for the presence of methamphetamine hydrochloride (*shabu*). The parties stipulated on and dispensed with the testimony of Bacani.

For the defense, appellant claimed that between 4:00 p.m. to 5:00 p.m. of 19 August 2011, he was inside his house watching a television show. The only person with him was his sleeping seven-year old niece. Appellant heard a commotion outside his house. He turned off the television and went outside. He saw a person wearing a civilian attire and carrying a firearm standing inside their terrace, accompanied by one female and two male persons. The person in civilian attire asked him where his companion ran. Appellant answered that his niece was his only companion in the house. The two male persons handcuffed appellant, while the person wearing civilian attire and his female companion entered his house.

These four persons brought appellant to the barangay hall. Ureña, who was surprised to see him at the barangay hall, asked him what happened. Appellant could not give any explanation. Appellant alleged one of the persons placed a toothbrush (case) and two sachets on the table. He asked appellant to face the items and took his picture.

Mark Jonil Aquino[5] (Aquino), appellant's nephew, testified that he was inside his room at the second floor of the house when he heard a commotion. He peeked through the window and saw his uncle with four persons. His uncle was handcuffed.

---

[5] Also referred to in the records as Mark Jonel Aquino.

One of the four persons looked up and saw him. Fearing that he would be pursued, Aquino went to his grandmother's house.

**The Decision of the Trial Court**

In its 5 May 2014 Decision, the trial court found appellant guilty of violation of Sections 5 and 11, Article II of RA 9165 but acquitted him for violation of Section 15 thereof.

The trial court ruled that the prosecution was able to establish all the elements of illegal possession of dangerous drugs, *i.e.*, that (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed said drug. The trial court held that the buy-bust team was able to preserve the integrity and evidentiary value of the items seized from appellant. The trial court rejected appellant's defense of *alibi* as a common and standard defense ploy in most cases involving violation of RA 9165.

The dispositive portion of the trial court's decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. 11-2601, finding the accused Gerardo Labini *y* Grajo, GUILTY of the charge for violation of Section 5, Article II of RA 9165 and sentencing him to life imprisonment and to pay a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00) without subsidiary imprisonment in case of insolvency; and

2. In Criminal Case No. 11-2602, finding the accused Gerardo Labini *y* Grajo, GUILTY of the charge for violation of Section 11, Article II of RA 9165 and sentencing him to an indeterminate penalty of twelve (12) years and one (1) day to fifteen (15) years of imprisonment and to pay a fine of FOUR HUNDRED THOUSAND PESOS (Php400,000.00) without subsidiary imprisonment in case of insolvency.

3. In Criminal Case No. 11-2603, finding the accused Gerardo Labini *y* Grajo NOT GUILTY of the charge for violation of Section 15 of RA 9165.

SO ORDERED.[6]

Appellant filed a notice of appeal from the trial court's decision.

**The Decision of the Court of Appeals**

In its 2 December 2015 Decision, the Court of Appeals denied the appeal for lack of merit and affirmed the trial court's decision.

The Court of Appeals ruled that the prosecution was able to establish the chain of custody. The Court of Appeals ruled that while a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain, what is important is the preservation of the integrity and evidentiary value of the items seized. In this case, the prosecution sufficiently established the evidentiary value of the *corpus delicti* and proved that the sachets containing *shabu* that were bought and recovered from appellant were the same ones presented before the trial court.

The Court of Appeals ruled that the prosecution explained why the inventory of the items seized was not done in the place where the buy-bust operation took place. The Court of Appeals ruled that Kasoy Street is an *eskinita* or a secondary road, and a lot of people congregated in the area when the buy-bust operation took place. According to the Court of Appeals, the fact that the marking of the evidence seized was done in the barangay hall did not affect their admissibility. The Court of Appeals further ruled that the inventory was made in the presence of the appellant and Chairperson Ureña.

The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, premises considered, the appeal is DENIED for lack of merit. The Decision dated 05 May 2014 of the Regional Trial Court of Makati City, Branch 64 finding accused-appellant Gerardo Labini *y* Grajo @ Jerry guilty beyond reasonable doubt for violations of

---

[6] CA *rollo*, p. 69.

Sections 5 and 11, Article II of Republic Act No. 9165 and sentencing him to suffer the penalty of life imprisonment and to pay a fine in the amount of Php500,000.00 without subsidiary imprisonment in case of insolvency in *Criminal Case No. 11-2601*, and the indeterminate penalty of imprisonment of twelve (12) years and one (1) day to fifteen (15) years of imprisonment and to pay a fine of Php400,000.00 without subsidiary imprisonment in case of insolvency in *Criminal Case No. 11-2602* are AFFIRMED.

SO ORDERED.[7] (Italicization in the original)

Appellant appealed from the Court of Appeals' decision.

**The Issue**

The only issue in this case is whether the guilt of appellant has been proven beyond reasonable doubt.

**The Ruling of this Court**

The appeal has merit.

At the time of the commission of the alleged crime on 19 August 2011, the prevailing law that enumerates the requirements of the *chain of custody rule* was Section 21 of RA 9165. Prior to its amendment by Republic Act No. 10640[8] (RA 10640) on 15 July 2014, Section 21 of RA 9165 provides:

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

---

[7] *Rollo*, p. 23.

[8] 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."

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

x x x (Emphasis supplied)

The implementing rule for Section 21 of RA 9165 states:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and 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 the disposition in the following manner:

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

x x x x x x x x x

On 15 July 2014, RA 10640 amended Section 21 of RA 9165, as follows:

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same **in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media** who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance [with] these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.
>
> x x x x x x x x x (Emphasis supplied)

Since the alleged commission of the offense took place on 19 August 2011, the applicable provision is Section 21 of RA 9165. Section 21 requires the apprehending team to conduct a physical inventory of the seized items and the photographing

of the same immediately after seizure and confiscation. Under the IRR, if the immediate physical inventory and photographing are not practicable, the buy-bust team should conduct the same as soon as it reaches the nearest police station, or the nearest office of the apprehending officer or team. The inventory must be done in the presence of the accused or his representative or counsel, a representative of the DOJ, the media, and an elected public official, who shall be required to sign the copies of the inventory and be given a copy thereof. Clearly, the three required witnesses should be physically present at the time of the apprehension of the accused or immediately thereafter, a requirement that the buy-bust team can easily comply with because a buy-bust operation, by its nature, is a planned activity.[9] This means that the buy-bust team has enough time and opportunity to bring with them, or immediately after the buy-bust operation, the said witnesses.[10]

In *People v. Lim*,[11] this Court enumerated the mandatory policy to prove chain of custody under Section 21 of RA 9165, as amended, as follows:

1. In the sworn statement/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21(1) of R.A. No. 9165, as amended, and its IRR;
2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items;
3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary

---

[9] *People v. Cadungog*, G.R. No. 229926, 3 April 2019.

[10] *Id.*

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

investigation in order to determine the (non) existence of probable cause.

4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.

In *People v. Sipin*,[12] this Court ruled that the prosecution bears the burden of proving compliance with the procedure laid down in Section 21 of RA 9165, and its failure to follow the mandated procedure must be adequately explained and must be proven as a fact under the rules.[13] In *Sipin*, the Court ruled what constitutes justifiable reasons for the absence of any of the three witnesses, thus:

> (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected officials] themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media 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 the 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.[14]

In this case, the prosecution only explained why the apprehending officers failed to mark the seized evidence and conduct the inventory of the items at the place where the buy-bust operation took place. The prosecution explained that the

---

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

[13] *People v. Cadungog*, *supra* note 9.

[14] *People v. Orcullo*, G.R. No. 229675, 8 July 2019.

side street where the buy-bust operation took place was quickly filled by people after the incident, and the team needed to secure the items they seized from appellant. The prosecution also explained that the barangay hall where they took appellant was just 30 meters away from the street where the buy-bust operation transpired. However, there was no explanation why only Chairperson Ureña was present during the inventory, which constitutes non-compliance with the three-witness rule.

The Court has ruled that it is a grave error to trivialize the necessity of the number and identity of the witnesses enumerated in the law.[15] The police officers' cavalier attitude towards adherence to procedure and protection of the rights of the accused is contrary to what is expected from our servants and protectors.[16] The non-observance of the three-witness rule, coupled with the prosecution's failure to offer any explanation or justification for its non-compliance, is a clear violation of Section 21 of RA 9165, as amended, and its implementing rules and warrants the acquittal of appellant from the offenses charged for failure to prove his guilt beyond reasonable doubt.

**WHEREFORE,** we **GRANT** the appeal. The 2 December 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06978, which affirmed the 5 May 2014 Decision of the Regional Trial Court of Makati City, Branch 64 in Criminal Case No. 11-2601 and in Criminal Case No. 11-2602, finding appellant Gerardo Labini *y* Grajo @ Jerry guilty beyond reasonable doubt for violation, respectively, of Sections 5 and 11, Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Accordingly, appellant Gerardo Labini *y* Grajo @ Jerry is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause.

---

[15] *People v. Tampus*, G.R. No. 221434, 6 February 2019.

[16] *Id.*

Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Bureau of Corrections in Muntinlupa City for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

**SO ORDERED.**

*Leonen,*[*] *Caguioa, Reyes, J. Jr.,* and *Zalameda, JJ.,* concur.

---

**THIRD DIVISION**

[G.R. No. 230817. September 4, 2019]

**VIVE EAGLE LAND, INC.,** *petitioner, vs.* **NATIONAL HOME MORTGAGE FINANCE CORPORATION, JOSEPH PETER S. SISON, and CAVACON CORPORATION,** *respondents.*

**SYLLABUS**

**1. CIVIL LAW; SPECIAL CONTRACTS; SALES; CONTRACT TO SELL, DEFINED AND EXPLAINED; CONTRACT TO SELL LIKENED TO A CONDITIONAL CONTRACT OF SALE.—** 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 latter upon his fulfillment of the conditions agreed upon, *i.e.*, the full payment of the purchase price and/or compliance with the other obligations stated in the contract to sell. Given

---

[*] Designated additional member per Raffle dated 2 September 2019.

its contingent nature, the failure of the prospective buyer to make full payment and/or abide by his commitments stated in the contract to sell prevents the obligation of the prospective seller to execute the corresponding deed of sale to effect the transfer of ownership to the buyer from arising. A contract to sell is akin to a conditional sale where the efficacy or obligatory force of the vendor's obligation to transfer title is subordinated to the happening of a future and uncertain event, so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed. In a contract to sell, the fulfillment of the suspensive condition will not automatically transfer ownership to the buyer although the property may have been previously delivered to him. The prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale. Conversely, in a conditional contract of sale, the fulfillment of the suspensive condition renders the sale absolute and the previous delivery of the property has the effect of automatically transferring the seller's ownership or title to the property to the buyer.

2. **ID.; ID.; ID.; CONTRACT OF SALE DISTINGUISHED FROM CONTRACT TO SELL.—** [T]he Court has ruled that in a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold whereas in a contract to sell, the ownership is, by agreement, retained by the vendor and is not to pass to the vendee until full payment of the purchase price. In a contract of sale, the vendee's non--payment of the price is a negative resolutory condition, while in a contract to sell, the vendee's full payment of the price is a positive suspensive condition to the coming into effect of the agreement. In the first case, the vendor has lost and cannot recover the ownership of the property unless he takes action to set aside the contract of sale. In the second case, the title simply remains in the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract. Verily, in a contract to sell, the prospective vendor binds himself to sell the property subject of the agreement exclusively to the prospective vendee upon fulfilment of the condition agreed upon which is the full payment of the purchase price but reserving to himself the ownership of the subject property despite delivery thereof to the prospective buyer.

**3. ID.; ID.; ID.; THE PARTIES' AGREEMENT IN CASE AT BAR IS A CONTRACT TO SELL CONDITIONED UPON THE FULL PAYMENT OF THE PURCHASE PRICE; THE AGREEMENT SUFFICIENTLY EVINCED THE INTENT OF THE VENDOR TO RESERVE OWNERSHIP IN ITS NAME.—** [A] more cohesive reading of the parties' agreement herein would lead to no other conclusion than that NHMFC transferred to Vive its rights over the property subject to the condition that the latter fully pays the balance of the purchase price. It is of no moment that what Section 7 requires from NHMFC is the execution of a "Certificate of Full Payment" and not a "Deed of Absolute Sale." The mere fact that it expressly states that NHMFC shall deliver the titles to the property *upon full payment of the purchase price* suffices to evince the intent of NHMFC to reserve ownership in its name. As pointed out by the CA, this intention was sufficiently established by, and may reasonably inferred from, the fact that title to the subject property was not immediately transferred, through a formal deed of conveyance, in the name of Vive prior to or at the time of Vive's first payment of ₱4,000,000.00.

**4. ID.; ID.; ID.; ID.; IT IS IRRELEVANT THAT THE PARTIES DESCRIBED THE CANCELLATION OF THE AGREEMENT AS ONE OF RESCISSION, WHICH IS NOT AVAILABLE IN CONTRACTS TO SELL.—** It is, likewise, of no moment that the contract grants NHMFC the right to rescind the same as a consequence of an event of default. x x x We concur with the appellate court in finding that it is immaterial that the parties described the cancellation of the agreement as one of rescission, which is not available in contracts to sell. The parties, as laymen, are understandably not adept in the legal terms and their implications. At any rate, courts are not held captive by the conclusions of the parties in their contracts. It is an established principle in law that a contract is what the law defines it to be and not what the contracting parties call it.

**5. ID.; ID.; ID.; ID.; PETITIONER CANNOT PUT THE BLAME ON THE VENDOR OR USE THE ISSUES AFFECTING THE PROPERTY FOR ITS FAILURE TO PAY THE PURCHASE PRICE WHEN IT EXPLICITLY ADMITTED IN THE CONTRACT ITS AWARENESS THEREOF.—** [A] cursory reading of the agreement would reveal that Vive was in truth aware of the nature of the property it was purchasing. x x x In view of the foregoing, Vive cannot be permitted to place the

blame on NHMFC or the issues affecting the property for its failure to comply with its obligation to pay when it explicitly admitted in the contract its awareness thereof. Besides, as aptly pointed out by respondents, there is nothing in the contract giving NHMFC the obligation to assist in the litigation of the issues surrounding the property. Neither was there any evidence presented supporting the allegation that NHMFC even prevented Vive from obtaining the developmental loan.

**6. ID.; ID.; ID.; ID.; THE ACT OF THE PRESIDENT OF THE VENDOR CORPORATION GRANTING MORATORIUM ON THE COLLECTION PERIOD, HAVING BEEN DONE WITHOUT AUTHORITY FROM THE BOARD OF DIRECTORS, IS NOT BINDING ON THE SAID CORPORATION.—** It is a fundamental principle in corporate law that a juridical entity cannot act or give its consent except through its board of directors as a collective body, which is vested with the power and responsibility to decide whether the corporation should enter into a contract that will bind the corporation, subject to the Articles of Incorporation, By-Laws, or relevant provisions of law. x x x Thus, NHMFC, being a juridical person, cannot conduct its business, make decisions, or act in any manner without action from its board of directors. Said board must act as a body in order to exercise corporate powers. As such, no person, not even its officers, can validly bind a corporation without the authority of the corporation's board of directors. Nevertheless, the corporation may delegate through a board resolution its corporate powers or functions to a representative, subject to limitations under the law and the corporation's articles of incorporation. Accordingly, without delegation by the board of directors or trustees, acts of a person — including those of the corporation's directors, trustees, shareholders, or officers — executed on behalf of the corporation are generally not binding on the corporation. In view of the absence of a resolution from NHMFC's Board of Directors authorizing Atty. Salud to grant any kind of moratorium, We adopt with approval the CA's finding that NHMFC is not liable under the same.

**7. ID.; ID.; ID.; DOCTRINE OF ESTOPPEL, EXPLAINED; DOCTRINE OF APPARENT AUTHORITY IS A SPECIES OF THE DOCTRINE OF ESTOPPEL; INSTANCES WHERE THE COURT RECOGNIZED PRESUMED OR APPARENT AUTHORITY OR CAPACITY TO BIND CORPORATE**

**REPRESENTATIVE; NOT PRESENT IN CASE AT BAR.—** The doctrine of apparent authority is a species of the doctrine of estoppel. Article 1431 of the Civil Code provides that through estoppel, an admission or representation is rendered conclusive upon the person making it and cannot be denied or disproved as against the person relying thereon. Estoppel rests on the rule that when a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it. In certain instances, therefore, the Court has recognized presumed or apparent authority or capacity to bind corporate representatives in cases when the corporation, through its silence or other acts of recognition, allowed others to believe that persons, through their usual exercise of corporate powers, were conferred with authority to deal on the corporation's behalf.

**8. ID.; ID.; ID.; ID.; ID.; THE INSTANT CASE DOES NOT INVOLVE ANY OF THOSE INSTANCES WHERE THE COURT APPLIED THE DOCTRINE OF APPARENT AUTHORITY; THERE IS NO PROOF THAT ATTY. CACAL WAS AUTHORIZED BY RESPONDENT CORPORATION TO GRANT THE MORATORIUM OR FAVOR.—** The present case, however, does not involve any of those instances. First of all, there is no proof to show that Atty. Salud was, in truth, represented to be "the face" of NHMFC. As NHMFC correctly maintained, Vive failed to adduce evidence during trial to establish that NHMFC had, indeed, clothed Atty. Salud with apparent power to grant the moratorium or that Atty. Salud, had, in the past, granted similar moratoriums in Vive's favor. x x x Atty. Cacal's alleged knowledge acquired through a letter addressed to him cannot instantly be assumed as knowledge of NHMFC itself. This is especially so in view of the fact that apart from its mere allegation, Vive failed to present any evidence to establish that Atty. Cacal was actually appointed by the corporation as its authorized representative.

**9. ID.; ID.; ID.; ID.; ID.; NEITHER CAN RESPONDENT CORPORATION BE DEEMED TO HAVE RATIFIED THE UNAUTHORIZED ACTS OF ITS OFFICER IN GRANTING THE MORATORIUM OR FAVOR; IT IS IMPOSSIBLE FOR THE SAID CORPORATION TO RATIFY AN UNAUTHORIZED ACT**

**OF ITS OFFICER WHICH IT HAD NO KNOWLEDGE OF.—** Neither can NHMFC be deemed to have ratified the unauthorized acts of its officers. Time and again, the Court has held that "ratification is a voluntary and deliberate confirmation or adoption of a previous unauthorized act. It converts the unauthorized act of an agent into an act of the principal. It cures the lack of consent at the time of the execution of the contract entered into by the representative, making the contract valid and enforceable. It is, in essence, consent belatedly given through express or implied acts that are deemed a confirmation or waiver of the right to impugn the unauthorized act." But as already mentioned, not only was it proven that the grant of the moratorium was unauthorized by the board, it was also shown that NHMFC was not duly informed about the same. It is rather impossible for NHMFC to ratify, whether expressly or impliedly by its silence, an unauthorized act of its agent which it had no knowledge of. Indeed, silence, acquiescence, retention of benefits, and acts that may be interpreted as approval of the act do not by themselves constitute implied ratification. For an act to constitute an implied ratification, there must be no acceptable explanation for the act other than that there is an intention to adopt the act as his or her own. It cannot be inferred from acts that a principal has a right to do independently of the unauthorized act of the agent.

**10. REMEDIAL LAW; CIVIL PROCEDURE; RULE 45 PETITION; ISSUES NOT RAISED DURING THE PROCEEDINGS BELOW CANNOT BE VENTILATED FOR THE FIRST TIME ON APPEAL BEFORE THE COURT.—** [I]t has not escaped the Court's attention that the argument was raised for the first time before the Court, not in Vive's Petition for Review on *Certiorari*, but only in its Motion for Reconsideration. It is a rudimentary principle of law that matters neither alleged in the pleadings nor raised during the proceedings below cannot be ventilated for the first time on appeal before the Supreme Court. It would be offensive to the basic rules of fair play and justice to allow Vive to raise an issue that was not brought up before the trial court and appellate court. While it is true that litigation is not a game of technicalities, it is equally true that elementary considerations of due process require that a party be duly apprised of a claim against him before judgment may be rendered.

**11. CIVIL LAW; SALES; MACEDA LAW DOES NOT APPLY TO THE PRESENT CASE; THE SUBJECT AGREEMENT IS NOT THE KIND OF ONEROUS CONTRACT OF ADHESION UNDER THE MACEDA LAW.—** [T]he Court cannot apply the provisions of the Maceda Law to the present case. The contract to sell herein is between Vive, a corporation engaged in the realty business, and NHMFC, a government corporation mandated to increase the availability of loans for Filipinos who seek to acquire their own homes by operating a secondary market for home mortgages. As such, it is rather obvious that the contract before Us is not the kind of onerous contract of adhesion under the Maceda Law drawn up by private real estate developers designed to entrap innocent low-income earners by requiring installment payments for several years only to be forfeited by the former upon failure to make a single payment. In fact, Vive, the buyer of the subject property, has been insisting that it was an essential consideration of the contract for Vive to be able to use the property as collateral for a loan to develop the same into a residential subdivision. It cannot be denied, therefore, that Vive is not the "innocent, low-income buyer" that the Maceda Law was enacted to protect. Neither is NHMFC the "real estate developer" that said law intends to regulate in order to prevent the enjoyment of any unnecessary exploitation. To repeat, the Maceda Law was enacted to remedy the plight of low and middle-income lot buyers, save them from the exacting default clauses in real estate sales, and assure them of a home they can call their own.

**12. ID.; CONTRACTS; INTERPRETATION OF; THE LANGUAGE OF THE CONTRACT TO SELL EXECUTED BY THE PARTIES HEREIN IS TOO CLEAR TO BE MISTAKEN; PETITIONER ENTERED INTO AN AGREEMENT FULLY AWARE OF THE NATURE AND CONDITION OF THE SUBJECT PROPERTY AND ASSUMED RESPONSIBILITY OVER THE PENDING LEGAL ISSUES AFFECTING THE SAME; EFFECTS OF PETITIONER'S FAILURE TO PAY.—** It is a cardinal rule in the interpretation of contracts that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. A court's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them. Where the written terms of the contract are not

ambiguous and can only be read one way, the court will interpret the contract as a matter of law. The contract to sell executed by the parties herein could not be any clearer. In a language too clear to be mistaken, Vive entered into the agreement fully aware of the nature and condition of the subject property and expressly assumed responsibility over the pending legal issues affecting the same. It also deliberately waived all its rights to demand for the return of any and all amounts it had paid NHMFC prior to its commission of an event of default. As such, and as We have declared above, Vive cannot now be permitted to put the blame on NHMFC or the issues affecting the property for its failure to adhere to the clear provisions of the contract. x x x [B]y the clear and express provisions of the agreement, the default on the part of Vive unequivocally gave NHMFC the right to: (1) annul and cancel the contract; (2) dispose of the property as if the contract was never executed; and (3) treat the sums of money paid by Vive as rentals for the latter's use and occupancy thereof.

**APPEARANCES OF COUNSEL**

*Villanueva Gabionza & Dy* for petitioner.
*Panopio Escober and Associates* for respondent Sison.
*Catubay & Catubay* for respondent Cavacon Corporation.
*Rodolfo N. Erbon, Dante Q. Rizada* and *Nestor Formaran* for respondent NHMFC.

## D E C I S I O N

**PERALTA, *J.*:**

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated August 23, 2016 and the Resolution[2] dated March 30,

---

[1] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Elihu A. Ibañez and Victoria Isabel A. Paredes, concurring; *rollo*, Vol. I, pp. 8-34.

[2] *Id.* at 36-43.

2017 of the Court of Appeals (CA) in CA-G.R. CV No. 105312, which affirmed the Decision[3] dated September 18, 2014 of the Regional Trial Court (*RTC*), Branch 138, Makati City and the Order[4] dated June 15, 2015 of the RTC, Branch 139, Makati City, in Civil Case No. 06-308.

The antecedent facts are as follows.

On April 18, 2006, petitioner Vive Eagle Land, Inc., a corporation engaged in the realty business and represented by its President, Virgilio O. Cervantes, filed a complaint for declaration of nullity of rescission, declaration of suspension of payment of purchase price and interest, and other reliefs against respondents National Home Mortgage Finance Corporation (*NHMFC*), a government corporation created by virtue of Presidential Decree No. 1267, Joseph Peter S. Sison, President of NHMFC, and Cavacon Corporation, a domestic corporation engaged in the business of construction. In its complaint, Vive alleged that on November 17, 1999, it entered into a Deed of Sale of Rights, Interests, and Participation Over Foreclosed Assets, whereby it agreed to purchase NHMFC's rights, interests, and participation in the foreclosed property of *Alyansa ng mga Maka-Maralitang Asosasyon at Kapatirang Organisasyon, Inc*. located at Barangay Sta. Catalina, Angeles City, with an area of 73.5565 hectares covered by Transfer Certificate of Title (*TCT*) Nos. 86340 and 86341 for a total purchase price of ₱40,000,000.00 payable in the following manner: (1) the amount of ₱8,000,000.00 as 20% downpayment payable in two equal installments, the first of which shall be due on or before December 4, 1999, and the second, from the execution of the Deed of Conditional Sale, but in no case shall be later than January 4, 2000; and (2) the balance of ₱32,000,000.00 shall be paid in 10 equal installments in the amount of ₱3,200,000.00 per installment, plus 14% interest *per annum*, with the first installment due on July 4, 2000 and every

---

[3] *Id.* at 201-235; penned by Judge Josefino A. Subia.

[4] *Id.* at 250-314; penned by Judge Benjamin T. Pozon.

6 months thereafter until fully paid. Pursuant to the Deed of Sale, Vive paid the first installment of the downpayment in the amount of ₱4,000,000.00.[5]

Vive, however, did not pay the subsequent installments. According to Vive, it failed to pay because it was prevented from exercising its right to avail of a developmental loan under Section 8 of the Deed of Sale due to issues on the subject property, particularly: (1) the issuance of numerous certificates of land awards over the same; and (2) the classification of the same as agricultural, subjecting it to the coverage of the Comprehensive Agrarian Reform Program (*CARP*).[6] While awaiting the resolution of said issues, Vive requested NHMFC for a moratorium or suspension of the period of payment, the corresponding waiver of interest, and a 10% reduction of the purchase price for litigation costs it incurred. On June 17, 2004, NHMFC, through its then President, Atty. Angelico T. Salud, initially agreed on the moratorium but advised Vive to submit its request of waiver and interest reduction to the NHMFC's Board of Directors.[7]

Notwithstanding the agreement, NHMFC, through Sison, notified Vive through a letter dated February 10, 2006 of the rescission/cancellation and/or revocation of the Deed of Sale due to the alleged non-payment of the balance of the purchase price. It reiterated its decision to rescind in another letter dated February 27, 2006. Said non-payment by Vive of the subsequent installments became NHMFC's defense in its Answer to Vive's complaint. According to NHMFC, its decision to rescind the Deed of Sale was valid in view of Vive's refusal to pay the subject installments. Moreover, since Vive was well aware of the condition of the property prior to its purchase, it was not justified in suspending its payment of the purchase price.

---

[5] *Id.* at 103-104.

[6] *Id.* at 107.

[7] *Id.* at 108.

Vive amended its complaint arguing that without its knowledge and consent, NHMFC and Cavacon, in bad faith, entered into a Memorandum of Agreement on August 7, 2008 by virtue of which NHMFC sold the subject property on an "as is-where is" basis to Cavacon for ₱35,000,000.00 despite the pendency of the instant case and Cavacon's knowledge of the prior sale. NHMFC countered that by virtue of Section 5 of the Deed of Sale, it had the right to rescind the Deed of Sale due to Vive's continuous failure to pay the purchase price and to thereafter freely dispose of the subject property as if the Deed of Sale has never been made.[8]

On September 18, 2014, the RTC of Makati City, Branch 138, dismissed Vive's complaint, finding NHMFC's rescission of the Deed of Sale to be valid.[9] It disposed of the case as follows:

> WHEREFORE, in view of the foregoing, finding the rescission of the Deed of Sale to be valid, the complaint filed by the plaintiff Vive Eagle Land, Inc. against defendants National Home Mortgage Finance Corporation, Joseph Peter S. Sison and defendant Cavacon for Declaration of Nullity of Rescission, Declaration of Suspension of Payment of Purchase Price and Interest and Other Reliefs is hereby DISMISSED for lack of merit.
>
> SO ORDERED.[10]

On Vive's motion, however, the Presiding Judge of Branch 138 inhibited himself and ordered the re-raffling of the case. Subsequently, the case was raffled to the RTC Branch 133 which, on January 13, 2015, granted Vive's motion for reconsideration, declaring null and void NHMFC's rescission of the Deed of Sale, declaring Vive as the owner of the property, declaring due and demandable the subsequent installments of the downpayment without interest, and ordering NHMFC to

---

[8] *Id.* at 111.

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

[10] *Id.* at 234.

pay attorney's fees and litigation expenses. The dispositive portion of the Order provides:

WHEREFORE, foregoing considered, the Motion for Reconsideration of the plaintiff is GRANTED, the Decision dated September 18, 2014 is REVERSED and SET ASIDE, judgment is hereby rendered against the defendants and in favour of the plaintiff as follows:

a. declaring NULL and VOID defendant NHMFC's rescission/cancellation of the Deed of Sale dated November 17, 1999 between plaintiff VELI and defendant NHMFC;
b. declaring VALID and SUBSISTING the Deed of Sale dated November 17, 1999 between plaintiff VELI and defendant NHMFC;
c. declaring plaintiff VELI as the OWNER of the subject properties covered by Deed of Sale dated November 17, 1999;
d. declaring DUE and DEMANDABLE the second installment of the downpayment under Section 1.01 of the Deed of Sale without imposition of any interest or penalty within thirty (30) days from plaintiffs receipt of this Order;
e. declaring VALID and SUBSISTING the schedule of payments under Section 1.02 of the Deed of Sale with the first ten (10) equal semi-annual installments in the amount of THREE MILLION TWO HUNDRED THOUSAND PESOS (₱3,200,000.00) to be paid six (6) months after payment of the second installment of the downpayment under Section 1.01, and the subsequent ones every six (6) months thereafter without imposition of any interest or penalty; and
f. ordering defendants, jointly and severally, to pay plaintiff attorney's fees and litigation expenses in the amount of FIVE HUNDRED THOUSAND PESOS (₱500,000.00) and costs of suit.

SO ORDERED.[11]

Pursuant to the court's Order, Vive tendered the second installment of the downpayment in the amount of ₱4,000,000.00

[11] *Id.* at 247-248.

to NHMFC which refused to accept. Thereafter, on NHMFC's motion, the Presiding Judge of Branch 133 voluntarily inhibited himself and again ordered the re-raffling of the case, which was next raffled to RTC Branch 139. In an Order[12] dated June 15, 2015, said court granted NHMFC's motion for reconsideration and reinstated the Decision of RTC Branch 138 finding NHMFC's rescission valid. Thus:

> WHEREFORE, IN LIGHT OF THE FOREGOING, the defendants' Motions for Reconsideration both filed on 5 February 2015 are hereby GRANTED. The Order of this Court (Branch 133) dated 13 January 2015, which granted the Motion of Reconsideration filed by plaintiff VELI, reversed and set aside its (Branch 138) Decision dated 18 September 2014 and rendered judgment against the defendants and in favor of plaintiff, is RECONSIDERED AND SET ASIDE. The Decision of this Court (Branch 138) dated 18 September 2014 finding the rescission of the Deed of Sale to be valid and dismissing for lack of merit the complaint filed by the plaintiff Vive Eagle Land, Inc. against defendants National Home Mortgage Finance Corporation, Joseph Peter S. Sison and defendant Cavacon for Declaration of Nullity of Suspension of Payment of Purchase Price and Interest and Other Reliefs, is hereby REINSTATED.
>
> Furnish copies of this Order to the plaintiff, the defendants and their respective counsels.
>
> SO ORDERED."[13]

In a Decision dated August 23, 2016, the CA affirmed the Decision of the RTC Branch 139. *First*, the appellate court held that Vive's failure to pay the purchase price on the date and in the manner prescribed by the Deed of Sale is an event of default giving NHMFC the right to annul/cancel the contract and forfeiting whatever right Vive may have acquired thereunder pursuant to Section 5 thereof.[14] *Second*, it is clear

---

[12] *Id.* at 250-314.

[13] *Id.* at 314.

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

from Section 7[15] of the Deed of Sale that the parties intended their agreement to be a contract to sell or a conditional sale. The title to the property was not immediately transferred, through a formal deed of conveyance, in the name of Vive prior to or at the time of the first payment. Thus, since the title and ownership remains with NHMFC until Vive fully pays the balance of the purchase price, the Deed of Sale was merely a contract to sell. As such, NHMFC can validly exercise its right to annul and/or cancel the Deed of Sale upon failure of Vive to pay the purchase price on the date and manner prescribed. Thus, considering that the Deed of Sale was validly annulled and/or cancelled, the subsequent transaction and MOA entered into between NHMFC and Cavacon is valid.[16]

Moreover, the appellate court, in its Resolution dated March 30, 2017, rejected Vive's contention that NHMFC's grant of the moratorium was proven through a letter dated June 17, 2004 when Atty. Salud, then President of NHMFC, initially agreed to the moratorium on the collection period for the balance of the purchase price.[17] It found nothing in the records to indicate that the NHMFC Board of Directors approved the undertaking made by Atty. Salud. Thus, since it was unilaterally granted without board approval, the CA denied Vive's motion for reconsideration.[18]

On May 22, 2017, Vive filed a Petition for Review on *Certiorari* before the Court assailing the Decision of the CA. It invoked the following arguments:

---

[15] Section 7. TITLE OF PROPERTY

Upon full payment by the VENDEE of the sales price of the rights, interests, and participations in the property and other sums due, the VENDOR shall execute a Certificate of full payment and deliver the Duplicate Original Transfer Certificate of Title Nos. 86340 and 86341 to the VENDEE. Expenses for the Transfer of the title to VENDEE shall be for the VENDEE's account.

[16] *Rollo*, Vol. I, p. 127.

[17] *Id.* at 135.

[18] *Id.* at 135-137.

I.

THE COURT OF APPEALS COMMITTED MANIFEST ERROR AND DEVIATED FROM ESTABLISHED LAW AND JURISPRUDENCE WHEN IT FOUND THAT THE DEED OF SALE OF RIGHTS, INTERESTS, AND PARTICIPATION OVER FORECLOSED ASSETS DATED 17 NOVEMBER 1999 EXECUTED BETWEEN PETITIONER AND RESPONDENT [NHMFC] WAS A CONTRACT TO SELL AND NOT A CONTRACT OF SALE CONSIDERING THAT THERE WAS AN ABSOLUTE TRANSFER OF OWNERSHIP OF THE SUBJECT MATTER OF THE SALE TO PETITIONER UPON EXECUTION THEREOF.

II.

THE COURT OF APPEALS COMMITTED MANIFEST ERROR AND DEVIATED FROM ESTABLISHED LAW AND JURISPRUDENCE WHEN IT FOUND PETITIONER IN DEFAULT CONSIDERING THAT THERE WAS A MORATORIUM ON THE COLLECTION ON THE BALANCE OF THE PURCHASE PRICE OF THE AMAKO PROPERTY.

III.

THE COURT OF APPEALS COMMITTED MANIFEST ERROR AND DEVIATED FROM ESTABLISHED LAW AND JURISPRUDENCE WHEN IT UPHELD THE RESCISSION OF THE DEED OF SALE OF RIGHTS, INTERESTS, AND PARTICIPATION OVER FORECLOSED ASSETS DATED 17 NOVEMBER 1999 CONSIDERING THAT THERE WAS NO SUBSTANTIAL BREACH THEREOF.

IV.

THE COURT OF APPEALS COMMITTED MANIFEST ERROR AND DEVIATED FROM ESTABLISHED LAW AND JURISPRUDENCE WHEN IT EFFECTIVELY UPHELD THE VALIDITY OF THE MEMORANDUM OF AGREEMENT DATED 07 AUGUST 2008 ENTERED INTO BY RESPONDENT [NHMFC] AND [RESPONDENT] CAVACON CORPORATION AND WAS NOT ENTERED INTO IN BAD FAITH.

V.

THE COURT OF APPEALS COMMITTED MANIFEST ERROR AND DEVIATED FROM ESTABLISHED LAW AND JURISPRUDENCE

WHEN IT EFFECTIVELY UPHELD THE DISMISSAL OF PETITIONER'S CLAIM FOR ATTORNEY'S FEES.[19]

*First*, Vive alleged that the Deed of Sale is a valid contract of sale which absolutely transferred to Vive all of NHMFC's rights, interests, and participation over the property. The fact that the contract is bereft of any provision requiring NHMFC to execute a Deed of Absolute Sale in order to transfer ownership to Vive indicates that there was no intention to retain ownership by NHMFC. Had the parties intended on a contract to sell, there would not have been a necessity to annul/cancel a Deed of Sale to allow NHMFC to dispose the property upon default for basic is the rule that contracts to sell need not be annulled for non-payment since such payment is a positive suspensive condition, failure of which is not really a breach, but an event that prevents the obligation of NHMFC to convey title from arising.

*Second*, even assuming that the Deed of Sale is a contract to sell, Vive was never in default to pay the balance of the purchase price. It was an essential consideration of the contract for Vive to be able to use the property as collateral for a loan to develop the same into a residential subdivision. But Vive discovered issues, such as the coverage of the CARP, affecting the property after the execution of the Deed of Sale rendering it impossible for Vive to use the same as intended. Thus, further payments are suspended pending resolution of the DARAB of the issues affecting the property. Vive added that since NHMFC itself, in failing to assist Vive with the litigation on the subject property, prevented Vive from obtaining the loan to pay the balance of the purchase price, Vive should be considered as having constructively fulfilled its obligation in view of Article 1186 of the Civil Code which provides that the condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfilment.[20]

---

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

[20] *Id.* at 75-80.

*Third*, Vive further argued that it could not have been in default as it was validly granted a moratorium. Contrary to the CA's finding that there is nothing in the June 17, 2004 letter that would indicate NHMFC's acquiescence to said moratorium, Vive cited the portion of said letter which states that "*In line with our discussion, we initially agreed for a moratorium on the collection period*, we cannot, however, favorably consider your request for discount on purchase price and waiver of interest and penalties without prior approval from our Board." According to Vive, the matter that would be referred for board approval was the request for discount and waiver of interests. There was no mention, however, of the necessity to secure approval for the moratorium. Moreover, Vive added that even NHMFC's actuations showed that it consented to the moratorium since it only demanded payment in its letter dated February 10, 2006, under its new President, Sison, despite the fact that the second installment was scheduled as early as January 4, 2000 and the first 10 semi-annual installments was scheduled on July 4, 2000.[21] Thus, such inaction was an affirmation that there was a valid moratorium.

*Fourth*, Vive maintained that since there was a valid and subsisting moratorium suspending payment of the purchase price until resolution of the DARAB cases, it did not commit any breach of contract that supposedly entitled NHMFC to unilaterally rescind the Deed of Sale. In fact, Vive points out that in its letter to NHMFC, dated July 4, 2005, it categorically thanked NHMFC for the moratorium it granted. Despite this, NHMFC never replied to said letter. Clearly, NHMFC had full and actual knowledge of the moratorium and did not deny nor repudiate the same. It is, therefore, now estopped from denying its existence and validity.[22]

*Fifth*, Vive asseverated that the subsequent MOA between NHMFC and Cavacon whereby NHMFC sold the subject property to Cavacon was entered into in bad faith because of

---

[21] *Id.* 80-83.

[22] *Id.* at 83-88.

the fact that they entered into said contract despite their full knowledge of the instant case. In fact, they even conveniently entered into the MOA on August 7, 2008, after the issues over the property have been removed, as when the CLOAs over the property have been decreed cancelled with finality by the Court on March 17, 2008.[23]

In a Resolution[24] dated June 7, 2017, the Court denied Vive's Petition for Review on *Certiorari* for failure to sufficiently show any reversible error in the assailed judgment of the CA to warrant the exercise of discretionary appellate jurisdiction.

On July 19, 2017, Vive filed a Motion for Reconsideration praying that the Court take a second look at the circumstances of the case, especially considering that the lower courts themselves are at odds with one another as to how the issues should be resolved.[25] Aside from reiterating its arguments in the Petition, Vive alleged for the first time that since the Deed of Sale contemplates the sale of two (2) parcels of land which are not classified as commercial or industrial, the payment for which is to be made in installments, the Court should take judicial notice of Republic Act (*R.A.*) No. 6552, known as the *Realty Installment Buyer Act* or the *Maceda Law*. Thus, in view of the fact that NHMFC's cancellation failed to comply with the Act's mandatory twin requirements of a notarized notice of cancellation and a refund of the cash surrender value, the Deed of Sale remains valid and subsisting.[26] Vive added that even assuming that the rescission effected by NHMFC was valid, the lower courts should have ordered mutual restitution and that the parties surrender that which they received, and to place each other in their original position. NHMFC has no basis to lay claim on and reap the benefits of Vive's labor to cleanse the title of the property from any and all adverse claims.[27]

---

[23] *Id.* at 88-90.

[24] *Id.* at 553-554.

[25] *Rollo*, Vol. II, p. 558.

[26] *Id.* at 579.

[27] *Id.* at 585.

On October 25, 2017, respondents NHMFC and Cavacon filed their Comment refuting the arguments raised by Vive in its Motion for Reconsideration. *First*, they maintained that the Deed of Sale is a conditional sale or contract to sell for as expressly stipulated by Vive in its Offer to Purchase, the downpayment shall be payable within a few days from the signing of a "Deed of Conditional Sale."[28] This is also shown by the fact that the original duplicate copies of the titles were not delivered to Vive.

*Second*, respondents insist that there was no valid moratorium on the collection period. Since Atty. Salud, in initially agreeing to a moratorium, did not secure prior board approval, said moratorium is unenforceable against NHMFC. Moreover, citing the ruling of the RTC, Branch 138, respondents assert that while it may be true that Atty. Salud granted a moratorium on the schedule of payments, but such grant cannot extend beyond the end of the term on January 4, 2005, or until the resolution of the legal issues affecting the property, because this would make the terms of the payment indefinite, in contravention of Article 1182 of the Civil Code which states that "when the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation shall be void."[29] In addition, respondents reject Vive's invocation of apparent authority, equitable estoppel, and laches in the absence of supporting evidence presented during trial. The government is not bound by unauthorized acts of its agent, even though within the apparent scope of their authority.[30] Also, Vive failed to adduce evidence during trial to show that NHMFC had, indeed, clothed Atty. Salud with apparent power to grant the moratorium by presenting evidence that Atty. Salud, had, in the past, granted similar moratoriums in Vive's or other parties' favor. Furthermore, NHMFC's silence and lack of effort in collecting installments

---

[28] *Id.* at 602.

[29] *Id.* at 607.

[30] *Id.* at 606.

does not amount to implied ratification of Atty. Salud's unauthorized grant of moratorium because for an act of the principal to be considered as ratification, such act must be inconsistent with any other hypothesis than that he approved and intended to adopt what has been done in his name.[31]

*Third*, respondents asseverate that the Deed of Sale was validly rescinded on the ground of substantial violation of the terms thereof by failing to pay the purchase price within the stipulated period. Vive cannot unilaterally make its principal obligation to pay conditional on the resolution of the issues affecting the properties.[32] Moreover, respondents point to the absence of evidence that Vive had asked NHMFC for some documents needed for the resolution of the DARAB cases nor was there evidence showing that Vive ever attempted to apply for a loan after the execution of the Deed of Sale. In addition, contrary to Vive's contention, respondents allege that the Maceda Law is inapplicable to the instant case for the same covers transactions involving the sale of real estate on installment payments where the buyer has paid at least 2 years of installments. Here, Vive has only paid the first installment of ₱4 million. Because of Vive's failure to pay and NHMFC's valid rescission of the contract, Vive had forfeited whatever rights it might have acquired over the properties and has no right to ask for the refund of the ₱4 million pursuant to Section 5.2 of the Deed of Sale which provides that "the sums of money paid shall be considered and treated as rentals for the occupancy and use of the property and VENDEE waives all rights to ask or demand the return thereof."[33] Respondents add that as stipulated in the Offer to Purchase and the Deed of Sale, Vive was fully aware of the limiting conditions inherent in the properties and the legal problems affecting the same. Thus, it is not entitled to the reimbursement for expenses it incurred in the litigation of the same.[34]

---

[31] *Id.* at 611.

[32] *Id.* at 613.

[33] *Id.* at 615.

[34] *Id.* at 616.

*Fourth*, respondents argue that the MOA was entered into in good faith, citing the ruling of the RTC, Branch 139, which held that Cavacon disclosed to Vive the fact that it entered into the MOA in its Answer to Vive's Amended Complaint, while NHMFC disclosed the same in its Opposition to the Motion to Admit the Amended Complaint. As to Vive's assertion that NHMFC conveniently sold the property to Cavacon only after the legal issues affecting it had been resolved, respondents allege that Vive failed to present any supporting evidence to show when respondents became aware to the said decision of the Court.[35]

On October 20, 2017, respondent Sison filed its own, separate Comment[36] essentially refuting the arguments raised by Vive in its Motion for Reconsideration and declaring that the Court should not allow Vive to make allegations that are a mere rehash of the ones taken up in the proceedings below and to raise entirely new issues not agreed to a pre-trial nor taken up during trial. On October 25, 2017, Vive filed its Reply[37] refuting the allegations in respondents' Comment. Thereafter, on November 8, 2017, NHMFC and Cavacon filed a Manifestation and Motion seeking to have the Comment filed by respondent Sison and the Reply filed by Vive in response thereto be expunged from the records of the case because they tend to mislead, confuse, and waste the time of the Court. NHMFC and Cavacon assert that Sison's Comment came as a surprise for neither they, nor their counsel, who was also Sison's counsel, were informed that he was getting a separate counsel to file his own Comment. On November 24, 2017, Vive filed its Reply to the Comment of NHMFC and Cavacon. In response, NHMFC and Cavacon filed their Rejoinder on November 29, 2017. Likewise, Sison filed his Rejoinder on December 1, 2017. Thereafter, in a Counter-Manifestation filed also on December 1, 2017, Sison rejects the allegations of NHMFC and Cavacon stating that he

---

[35] *Id.* at 617-619.

[36] *Id.* at 705-750.

[37] *Id.* at 626-652.

has all the right to choose, engage, and be represented by a primary or collaborating counsel either in his personal or private capacity, having been resigned from NHMFC as President thereof. In its Reply filed on December 27, 2017, Vive alleged that since Sison's co-respondents as well as his original counsels were blindsided by the sudden appearance of new collaborating counsel, the same is irregular, illegal, and unauthorized, and should be expunged from the records.

In a Resolution[38] dated April 18, 2018, the Court resolved to grant Vive's Motion for Reconsideration, giving due course to the Petition for Review on *Certiorari*, and to require respondents to file their comments on said petition. After an exchange of pleadings wherein the parties essentially reiterated their arguments in their respective Comments and Rejoinders, the Court shall now resolve the conflicting issues presented by the parties.

We rule in favor of the respondents.

At the outset, the Court sustains the appellate court's finding that the nature of the agreement between the parties herein is one akin to a 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 latter upon his fulfillment of the conditions agreed upon, *i.e.*, the full payment of the purchase price and/or compliance with the other obligations stated in the contract to sell. Given its contingent nature, the failure of the prospective buyer to make full payment and/or abide by his commitments stated in the contract to sell prevents the obligation of the prospective seller to execute the corresponding deed of sale to effect the transfer of ownership to the buyer from arising. A contract to sell is akin to a conditional sale where the efficacy or obligatory force of the vendor's obligation to transfer title is subordinated to the happening of a future and uncertain event,

---

[38] *Id.* at 901-905.

so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed. In a contract to sell, the fulfillment of the suspensive condition will not automatically transfer ownership to the buyer although the property may have been previously delivered to him. The prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale. Conversely, in a conditional contract of sale, the fulfillment of the suspensive condition renders the sale absolute and the previous delivery of the property has the effect of automatically transferring the seller's ownership or title to the property to the buyer.[39]

A plain and simple reading of the contract executed by the parties readily reveals that the same is a contract to sell and not a contract of sale. Section 7 thereof provides:

Section 7. TITLE OF PROPERTY

**Upon full payment by the VENDEE of the sales price** of the rights, interest and participations in the property and other sums due, **the VENDOR shall execute a Certificate of [full payment) and deliver the Duplicate Original Transfer Certificate of Title Nos. 86340 and 86341 to the VENDEE**. Expenses for the transfer of the title to VENDEE shall be for VENDEE's account.[40]

As clearly stipulated above, it is only upon Vive's full payment of the purchase price shall NHMFC be obligated to deliver the title to the property. Otherwise put, by virtue of the aforequoted provision, NHMFC expressly reserved title and ownership of the subject property in its name pending Vive's payment of the full amount even though possession thereof was already granted in favor of Vive. It is, therefore, clear that the parties intended their agreement to be merely a contract to sell, conditioned upon the full payment of the purchase price. Time and again, the Court has ruled that in a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold whereas in a contract to sell, the ownership is, by agreement,

---

[39] *Villamil v. Spouses Erguiza*, G.R. No. 195999, June 20, 2018.

[40] *Rollo*, Vol. I. p. 143. (Emphases ours)

retained by the vendor and is not to pass to the vendee until full payment of the purchase price. In a contract of sale, the vendee's non-payment of the price is a negative resolutory condition, while in a contract to sell, the vendee's full payment of the price is a positive suspensive condition to the coming into effect of the agreement. In the first case, the vendor has lost and cannot recover the ownership of the property unless he takes action to set aside the contract of sale. In the second case, the title simply remains in the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract. Verily, in a contract to sell, the prospective vendor binds himself to sell the property subject of the agreement exclusively to the prospective vendee upon fulfilment of the condition agreed upon which is the full payment of the purchase price but reserving to himself the ownership of the subject property despite delivery thereof to the prospective buyer.[41]

On this matter, Vive insists that the subject contract is a contract of sale because of the following paragraph therein:

> NOW THEREFORE, for in consideration of the foregoing premises and the sum of FORTY MILLION PESOS (₱40,000,000.00) Philippine currency x x x VENDOR hereby SELLS, TRANSFERS and CONVEYS to the VENDEE, whatever rights, interest, and participation the VENDOR has over the above-described parcel of land and all the improvements found thereon by way of negotiated sale x x x.

The contention is not completely accurate. A cursory reading of the above excerpt in its entirety would show that the phrase "subject to the following terms and conditions:" was left out from the citation. As such, Vive cannot argue that by virtue of the foregoing incomplete text, NHMFC absolutely, unconditionally, and without reservation, sold its ownership over the subject property because the same was categorically made "subject to the following terms and conditions," one of which is Section 7 of the agreement. It is well to remember that contracts

---

[41] *Danan v. Spouses Serrano*, 792 Phil. 37, 46-47 (2016).

must always be read and interpreted in its totality, never in isolation only to serve one's claims and interests. Certainly, a more cohesive reading of the parties' agreement herein would lead to no other conclusion than that NHMFC transferred to Vive its rights over the property subject to the condition that the latter fully pays the balance of the purchase price.

It is of no moment that what Section 7 requires from NHMFC is the execution of a "Certificate of Full Payment" and not a "Deed of Absolute Sale." The mere fact that it expressly states that NHMFC shall deliver the titles to the property *upon full payment of the purchase price* suffices to evince the intent of NHMFC to reserve ownership in its name. As pointed out by the CA, this intention was sufficiently established by, and may reasonably inferred from, the fact that title to the subject property was not immediately transferred, through a formal deed of conveyance, in the name of Vive prior to or at the time of Vive's first payment of ₱4,000,000.00.[42] To the Court, moreover, if Vive truly believed that by virtue of the subject contract, it was already acquiring absolute ownership of the property, it should have already demanded the delivery of the Duplicate Original Transfer Certificate of Title Nos. 86340 and 86341 right from the execution of the same. What is more is that the parties even stipulated in their contract that it shall be considered as an event of default should Vive subdivide, lease, sell, transfer, assign, or otherwise dispose of the property without prior written consent of NHMFC. If, indeed, NHMFC absolutely parted with the ownership of the property, it should no longer have any business insofar as Vive's decisions relating to the property is concerned. Settled is the rule that ownership of a property includes the right to enjoy and dispose of the thing owned without other limitations than those established by law.[43]

It is, likewise, of no moment that the contract grants NHMFC the right to rescind the same as a consequence of an event of

---

[42] *Rollo*, Vol. I, p. 123.

[43] Civil Code, Article 428.

default. Vive asserts that if the parties truly intended on a contract to sell, there would not have been a necessity to annul or cancel the contract upon default in view of the rule that contracts to sell need not be annulled for non-payment since such payment is a positive suspensive condition, failure of which is not really a breach, but an event that prevents the obligation of NHMFC to convey title from arising. The argument deserves scant consideration. Instead, We concur with the appellate court in finding that it is immaterial that the parties described the cancellation of the agreement as one of rescission, which is not available in contracts to sell. The parties, as laymen, are understandably not adept in the legal terms and their implications. At any rate, courts are not held captive by the conclusions of the parties in their contracts. It is an established principle in law that a contract is what the law defines it to be and not what the contracting parties call it.[44]

In its Petition, Vive further claims that even assuming that the Deed of Sale is a contract to sell, it was never in default to pay the balance of the purchase price because further payments are suspended pending resolution of the issues affecting the property. According to Vive, it was an essential consideration of the contract for Vive to be able to use the property as collateral for a loan to develop the same into a residential subdivision. But the issues surrounding the property rendered it impossible for Vive to do so. In fact, NHMFC further prevented Vive from obtaining the loan when it failed to assist with the litigation on the property. The assertion, however, fails to persuade. On the contrary, a cursory reading of the agreement would reveal that Vive was in truth aware of the nature of the property it was purchasing. The pertinent provisions explicitly state:

> WHEREAS, pursuant to the disposition policies under Board Resolution No. 2391, dated June 23, 1994, VENDOR was authorized to sell and convey whatever rights, interests, and participation it has on "as is where is basis" the property of ALYANSA NG MGA MAKA-MARALITANG ASOSASYON AT KAPATIRANG ORGANISASYON, INC. (AMAKO), x x x.

---

[44] *Rollo*, Vol. I, p. 126.

WHEREAS, **VENDEE has full knowledge of the nature and extent of the VENDOR's rights, interests, and participation over the foreclosed property subject of this contract including pending litigation involving claims of alleged tenants to the property.**

x x x x x x x x x

Section 9. EJECTMENT

**VENDEE at his own expense assumes responsibility of ejecting squatters and/or occupants of the property, if any**.[45]

In view of the foregoing, Vive cannot be permitted to place the blame on NHMFC or the issues affecting the property for its failure to comply with its obligation to pay when it explicitly admitted in the contract its awareness thereof. Besides, as aptly pointed out by respondents, there is nothing in the contract giving NHMFC the obligation to assist in the litigation of the issues surrounding the property. Neither was there any evidence presented supporting the allegation that NHMFC even prevented Vive from obtaining the developmental loan.

As for Vive's argument that it could not have been in default as it was validly granted a moratorium, the same must necessarily fail. Vive consistently maintains that NHMFC, through its then President, Atty. Salud, agreed on a moratorium on the collection period as evidenced by Salud's June 17, 2004 letter. Vive cannot deny, however, that the alleged moratorium did not have board approval. It is a fundamental principle in corporate law that a juridical entity cannot act or give its consent except through its board of directors as a collective body, which is vested with the power and responsibility to decide whether the corporation should enter into a contract that will bind the corporation, subject to the Articles of Incorporation, By-Laws, or relevant provisions of law.[46] Section 23 of the Corporation Code provides:

SEC. 23. *The board of directors or trustees*. — Unless otherwise provided in this Code, the corporate powers of all corporations formed

---

[45] *Id.* at 140-144. (Emphases ours)

[46] *Ayala Land, Inc. v. ASB Realty Corporation, et al.*, G.R. No. 210043, September 26, 2018.

under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified.

Thus, NHMFC, being a juridical person, cannot conduct its business, make decisions, or act in any manner without action from its board of directors. Said board must act as a body in order to exercise corporate powers.[47] As such, no person, not even its officers, can validly bind a corporation without the authority of the corporation's board of directors. Nevertheless, the corporation may delegate through a board resolution its corporate powers or functions to a representative, subject to limitations under the law and the corporation's articles of incorporation.[48] Accordingly, without delegation by the board of directors or trustees, acts of a person — including those of the corporation's directors, trustees, shareholders, or officers — executed on behalf of the corporation are generally not binding on the corporation.[49] In view of the absence of a resolution from NHMFC's Board of Directors authorizing Atty. Salud to grant any kind of moratorium, We adopt with approval the CA's finding that NHMFC is not liable under the same.

This notwithstanding, Vive argues that even granting that Atty. Salud did not have power to grant a moratorium, his act can nevertheless bind NHMFC under the doctrine of apparent authority. According to Vive, it cannot be faulted for relying on Atty. Salud's letter because NHMFC made it appear that Salud was empowered to negotiate, administer, and execute the subject Deed of Sale. Vive added that contrary to the findings of the trial court, NHMFC even had knowledge of the moratorium granted in Vive's favor. This is shown by a July 4, 2005 letter

---

[47] *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas*, 776 Phil. 401, 440 (2016).

[48] *Id.* at 441.

[49] *Id.*

written by Vive thanking NHMFC for the moratorium on the collection period. Vive asserts that said letter was addressed to Atty. Rustico P. Cacal, in his capacity as Senior Vice-President, Corporate Legal Counsel, and Board Secretary. Thus, the knowledge gained by Atty. Cacal in said capacity constitutes knowledge of NHMFC for basic is the rule that notice to the agent is notice to the principal. In support of this contention, Vive cites Our ruling in *Francisco v. Government Service Insurance System (GSIS)*,[50] where We held that "knowledge of facts acquired by an officer or agent of a corporation in relation to matters within the scope of his authority is notice to the corporation whether he communicates such knowledge or not." Moreover, even assuming that Atty. Salud was not vested with apparent authority to grant a moratorium, NHMFC is effectively estopped from denying the same in view of its silence following the grant thereof. As shown by the records, NHMFC made no efforts to collect the installments after the moratorium was granted.

The contention is devoid of merit.

The doctrine of apparent authority is a species of the doctrine of estoppel. Article 1431 of the Civil Code provides that through estoppel, an admission or representation is rendered conclusive upon the person making it and cannot be denied or disproved as against the person relying thereon. Estoppel rests on the rule that when a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.[51] In certain instances, therefore, the Court has recognized presumed or apparent authority or capacity to bind corporate representatives in cases when the corporation, through its silence or other acts of recognition, allowed others to believe

---

[50] 117 Phil. 586, 595 (1963).

[51] *Ayala Land, Inc. v. ASB Realty Corporation, et al.*, *supra* note 46, citing *Nogales v. Capitol Medical Center*, 540 Phil. 225, 246 (2006).

that persons, through their usual exercise of corporate powers, were conferred with authority to deal on the corporation's behalf.[52]

The present case, however, does not involve any of those instances. First of all, there is no proof to show that Atty. Salud was, in truth, represented to be "the face" of NHMFC. As NHMFC correctly maintained, Vive failed to adduce evidence during trial to establish that NHMFC had, indeed, clothed Atty. Salud with apparent power to grant the moratorium or that Atty. Salud, had, in the past, granted similar moratoriums in Vive's favor. It bears stressing, moreover, that even the mere execution of the subject deed of sale was accomplished not by Atty. Salud, but by NHMFC's then President Augusto A. Legasto, Jr.[53] Second, just because Vive sent a letter to Atty. Rustico P. Cacal, in his capacity as Senior Vice-President, Corporate Legal Counsel, and Board Secretary, does not mean that NHMFC already had knowledge of the moratorium. While it may be true that knowledge of an officer is considered knowledge of the corporation, this rule applies only when the officer is acting within the authority given to him or her by the corporation.[54] In *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas*, We ratiocinated:

> The public should be able to rely on and be protected from the representations of a corporate representative acting within the scope of his or her authority. This is why an authorized officer's knowledge is considered knowledge of corporation. **However, just as the public should be able to rely on and be protected from corporate representations, corporations should also be able to expect that they will not be bound by unauthorized actions made on their account**.
>
> **Thus, knowledge should be actually communicated to the corporation through its authorized representatives. A corporation cannot be expected to act or not act on a knowledge that had not been communicated to it through an authorized representative. There**

---

[52] *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas, supra* note 47, at 449.

[53] *Rollo*, Vol. I, p. 140.

[54] *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas, supra* note 47, at 448.

**can be no implied ratification without actual communication. Knowledge of the existence of contract must be brought to the corporation's representative who has authority to ratify it. Further, "the circumstances must be shown from which such knowledge may be presumed."**

The Spouses Guillermo and Dolores Torres' knowledge cannot be interpreted as knowledge of petitioner. Their knowledge was not obtained as petitioner's representatives. It was not shown that they were acting for and within the authority given by petitioner when they acquired knowledge of the loan transactions and the mortgages. The knowledge was obtained in the interest of and as representatives of the thrift banks.[55]

On the basis of the foregoing pronouncement, Atty. Cacal's alleged knowledge acquired through a letter addressed to him cannot instantly be assumed as knowledge of NHMFC itself. This is especially so in view of the fact that apart from its mere allegation, Vive failed to present any evidence to establish that Atty. Cacal was actually appointed by the corporation as its authorized representative. Neither did it present any explanation as to why it chose to send its "thank you" letter to Atty. Cacal instead of the board of directors itself considering the fact that Atty. Salud, in his June 17, 2004 letter, stated that he "will submit the request to the Board for consideration and guidance" and that he "will seek authority to negotiate" with Vive. Said statements should have already alerted Vive, an established business entity engaged in real estate, of the need for board approval.

Unfortunately for Vive, moreover, it cannot rely on our ruling in *Francisco*. There, Francisco sought the redemption of a property that GSIS acquired in a foreclosure proceeding due to the failure of the former's daughter to pay the loan she obtained from the latter. Thus, he sent a telegram of his proposal to the general manager of GSIS who, in turn, stated in another telegram that the GSIS approved the proposal. In fulfillment of his proposed redemption scheme, Francisco began remitting several amounts to GSIS, which received the same and issued

---

[55] *Id.* at 448-449. (Emphases ours)

corresponding official receipts therefor. After a few months, however, GSIS sent Francisco a letter demanding for the payment of the loan and informing the latter that the one-year redemption period had already expired. It also consolidated the title to the property in its name. Aggrieved, Francisco filed a complaint alleging that the GSIS must honor their agreement in the telegram he sent. In ruling in Francisco's favor, the Court held that first, the GSIS did not disown its general manager's telegram of acceptance but only alleged mistake in the wording thereof. Second, when Francisco made his first remittance to GSIS, he accompanied the same with a telegram wherein he referred to the acceptance made by GSIS's general manager. This notwithstanding, GSIS made no effort to correct the telegram of acceptance as it later on claimed to be erroneous. More importantly, it even received the payments made by Francisco. Thus, the Court ruled that this silence, taken together with the unconditional acceptance of three other subsequent remittances from [Francisco], constitutes in itself a binding ratification of the original agreement.[56]

The same cannot be said in this case, however, under the obtaining undisputed facts. Unlike GSIS, NHMFC never accepted any form of payment from Vive in furtherance of their alleged amended contract. Also, unlike GSIS, NHMFC made no representation making Atty. Cacal as its representative authorized to receive notice of a supposed moratorium on NHMFC's behalf. In view of this absence of evidence pointing to similar acts that can be interpreted as NHMFC holding Atty. Cacal to receive information or even Atty. Salud to grant a moratorium in its behalf, there can be no apparent authority that would render NHMFC as estopped from denying the binding effect of the unauthorized acts of these officers. Certainly, consent of NHMFC cannot simply be presumed from representations of its individual officers without authority from the board, especially if obligations will be incurred as a result.[57]

---

[56] *Francisco v. Government Service Insurance System, supra* note 50.

[57] *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas, supra* note 47, at 442.

Neither can NHMFC be deemed to have ratified the unauthorized acts of its officers. Time and again, the Court has held that "ratification is a voluntary and deliberate confirmation or adoption of a previous unauthorized act. It converts the unauthorized act of an agent into an act of the principal. It cures the lack of consent at the time of the execution of the contract entered into by the representative, making the contract valid and enforceable. It is, in essence, consent belatedly given through express or implied acts that are deemed a confirmation or waiver of the right to impugn the unauthorized act."[58] But as already mentioned, not only was it proven that the grant of the moratorium was unauthorized by the board, it was also shown that NHMFC was not duly informed about the same. It is rather impossible for NHMFC to ratify, whether expressly or impliedly by its silence, an unauthorized act of its agent which it had no knowledge of. Indeed, silence, acquiescence, retention of benefits, and acts that may be interpreted as approval of the act do not by themselves constitute implied ratification. For an act to constitute an implied ratification, there must be no acceptable explanation for the act other than that there is an intention to adopt the act as his or her own. It cannot be inferred from acts that a principal has a right to do independently of the unauthorized act of the agent.

In an attempt to save its plight, Vive raised for the first time in its Motion for Reconsideration before the Court the argument that the Deed of Sale must remain valid and subsisting in view of NHMFC's failure to comply with the mandatory twin requirements of a notarized notice of cancellation and a refund of the cash surrender value under the Maceda Law. Specifically, Vive argues that since the instant transaction involves the sale of real estate payable in installments, and that the subject property is not one that is excluded in Section 3[59] of the Maceda Law,

---

[58] *Id.* at 445-446.

[59] SECTION 3. In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buldings and sales to tenants under Republic Act Numbered Thirty-eight hundred

the provisions under Section 4[60] thereof should apply. Thus, NHMFC may only cancel their contract after giving Vive a grace period of not less than sixty days from the date the installment became due and upon the expiration of said grace period, only after thirty days from receipt by Vive of a notice of cancellation or demand for rescission by a notarial act. But since NHMFC failed to comply with the requirements of Section 4, its notice to rescind not being a notarized document, their contract must be deemed valid and subsisting.

The contention is untenable.

In the first place, it has not escaped the Court's attention that the argument was raised for the first time before the Court, not in Vive's Petition for Review on *Certiorari*, but only in its Motion for Reconsideration. It is a rudimentary principle of law that matters neither alleged in the pleadings nor raised during the proceedings below cannot be ventilated for the first time on appeal before the Supreme Court. It would be offensive to the basic rules of fair play and justice to allow Vive to raise an issue that was not brought up before the trial court and appellate court. While it is true that litigation is not a game of technicalities, it is equally true that elementary considerations of due process require that a party be duly apprised of a claim against him before judgment may be rendered.[61]

But even if We make an exception and give due course to the belated assertion, Vive's argument still would not alter the

---

forty-four, as amended by Republic Act Numbered Sixty-three hundred eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments: x x x.

[60] SECTION 4. In case where less than two years of installments were paid, the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due. If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act.

[61] *Ejercito v. Hon. Commission on Elections, et al.*, 748 Phil. 205, 257-258 (2014).

outcome of the case. Contrary to Vive's claims, the Maceda Law does not apply to the instant contract to sell.

In *Active Realty Development Corporation v. Daroya*,[62] the Court unequivocally pronounced that the declared policy of the Maceda Law is to protect the innocent, low-income buyers of real estate who are eager to acquire property upon which to build their homes from the exploitative and onerous installment schemes of private housing developers who get to forfeit all payments upon default by the buyer and resell the same property under the same exigent conditions. We elucidated in the following wise:

> The contract to sell in the case at bar is governed by Republic Act No. 6552 — "The Realty Installment Buyer Protection Act," or more popularly known as the Maceda Law — which came into effect in September 1972. Its declared public policy is to protect buyers of real estate on installment basis against onerous and oppressive conditions. The law seeks to address the acute housing shortage problem in our country that has prompted thousands of middle- and lower-class buyers of houses, lots and condominium units to enter into all sorts of contracts with private housing developers involving installment schemes. Lot buyers, mostly low-income earners eager to acquire a lot upon which to build their homes, readily affix their signatures on these contracts, without an opportunity to question the onerous provisions therein as the contract is offered to them on a "take it or leave it" basis. Most of these contracts of adhesion, drawn exclusively by the developers, entrap innocent buyers by requiring cash deposits for reservation agreements which oftentimes include, in fine print, onerous default clauses where all the installment payments made will be forfeited upon failure to pay any installment due even if the buyers' had made payments for several years. Real estate developers thus enjoy an unnecessary advantage over lot buyers who they often exploit with iniquitous results. They get to forfeit all the installment payments of defaulting buyers and resell the same lot to another buyer with the same exigent conditions. To help especially the low-income lot buyers, the legislature enacted R.A. No. 6552 delineating the rights and remedies of lot buyers and protect them from one-sided and pernicious contract stipulations.[63]

---

[62] *Active Realty & Development Corp. v. Daroya*, 431 Phil. 753 (2002).

[63] *Id.* at 760-761.

Seen in the foregoing light, the Court, in *Spouses Garcia v. Court of Appeals*, refused to apply the Maceda Law to the contract to sell between buyers, the Spouses Garcia, and seller, Emerlita Dela Cruz, covering five (5) parcels of land in Cavite. There, the spouses refused to pay the last installment claiming to have discovered an infirmity on the subject lots. Consequently, Dela Cruz rescinded their contract and sold the property to another buyer. When the spouses questioned Dela Cruz' rescission, the Court ruled that their contract was clear in the sense that Dela Cruz had the right to cancel the contract upon the failure of the spouses to pay the purchase price on the stipulated dates. In particular, We held that while the Maceda Law applies to contracts of sale of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants, the subject lands, comprising five (5) parcels and aggregating 69,028 square meters, do not comprise residential real estate within the contemplation of the Maceda Law.[64]

By the same token, the Court, in *Spouses Dela Cruz v. Court of Appeals*, ruled that the Maceda Law does not govern the contract to sell entered into by sellers, the Spouses Dela Cruz and buyers, the Spouses Aguila, of a house located in Town and Country Executive Village, Antipolo, Rizal, because it is not a contract involving a subdivision owner or developer but only between two couples, *i.e.,* the original house-owners and the subsequent buyers of the house and lot.[65]

Guided by the foregoing precepts, the Court cannot apply the provisions of the Maceda Law to the present case. The contract to sell herein is between Vive, a corporation engaged in the realty business, and NHMFC, a government corporation mandated to increase the availability of loans for Filipinos who seek to acquire their own homes by operating a secondary market

---

[64] *Spouses Garcia, et al. v. Court of Appeals, et al*., 633 Phil. 294, 303 (2010).

[65] *Spouses Dela Cruz v. Court of Appeals*, 485 Phil. 168, 180 (2004).

for home mortgages.[66] As such, it is rather obvious that the contract before Us is not the kind of onerous contract of adhesion under the Maceda Law drawn up by private real estate developers designed to entrap innocent low-income earners by requiring installment payments for several years only to be forfeited by the former upon failure to make a single payment. In fact, Vive, the buyer of the subject property, has been insisting that it was an essential consideration of the contract for Vive to be able to use the property as collateral for a loan to develop the same into a residential subdivision. It cannot be denied, therefore, that Vive is not the "innocent, low-income buyer" that the Maceda Law was enacted to protect. Neither is NHMFC the "real estate developer" that said law intends to regulate in order to prevent the enjoyment of any unnecessary exploitation. To repeat, the Maceda Law was enacted to remedy the plight of low and middle-income lot buyers, save them from the exacting default clauses in real estate sales, and assure them of a home they can call their own.[67]

In a last-ditch effort to protect its interests, Vive similarly raised for the first time in its Motion for Reconsideration that even assuming that the rescission effected by NHMFC was valid, the lower courts should have ordered mutual restitution and that the parties surrender that which they received and to place each other in their original position. Referring to its efforts in cleansing the title of the property from adverse claims, Vive added that NHMFC should not be permitted to benefit therefrom especially when it conveniently sold the property to Cavacon only after the legal issues affecting it had been resolved. The Court remains unconvinced. For one, there is no proof of NHMFC's bad faith in allegedly waiting for the resolution of the legal issues before it decided to sell the property to Cavacon. As NHMFC asserted, Vive did not present any evidence to

---

[66] https://www.nhmfc.gov.ph/index.php/corporate-profile/history (last visited August 2, 2019).

[67] *Active Realty & Development Corp. v. Daroya*, *supra* note 62, at 763.

show when it became aware of the said resolution. For another, We go back to the provisions of the contract itself, the pertinent portions of which state:

> WHEREAS, pursuant to the disposition policies under Board Resolution No. 2391, dated June 23, 1994, VENDOR was authorized to sell and convey whatever rights, interests, and participation it has on "as is where is basis" the property of ALYANSA NG MGA MAKA-MARALITANG ASOSASYON AT KAPATIRANG ORGANISASYON, INC. (AMAKO), x x x.
>
> WHEREAS, **VENDEE has full knowledge of the nature and extent of the VENDOR's rights, interests, and participation over the foreclosed property subject of this contract including pending litigation involving claims of alleged tenants to the property**.
>
> x x x x x x x x x
>
> Section 5: EFFECTS OF DEFAULT
>
> Upon the occurrence of an event of default, NHMFC shall have the right to:
>
> x x x x x x x x x
>
> 5.2 VENDOR shall then be at liberty to dispose of the same as if this Deed of Sale of Rights, Interest and participation over Foreclosed Assets has never been made, and in the event of such annulment, the sums of money paid shall be considered and treated as rentals for the occupancy and use of the property and **VENDEE waives all rights to ask or demand the return hereof**. VENDEE further agrees to peacefully and quickly vacate the property. All permanent/fixed improvements found in the premises shall belong to the VENDOR without liability on the part of VENDOR to reimburse VENDEE of the cost of said improvements;
>
> x x x x x x x x x
>
> Section 9. EJECTMENT
>
> **VENDEE at his own expense assumes responsibility of ejecting squatters and/or occupants of the property, if any**.[68]

---

[68] *Rollo*, pp. 140-144. (Emphases ours)

It is a cardinal rule in the interpretation of contracts that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. A court's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them. Where the written terms of the contract are not ambiguous and can only be read one way, the court will interpret the contract as a matter of law.[69] The contract to sell executed by the parties herein could not be any clearer. In a language too clear to be mistaken, Vive entered into the agreement fully aware of the nature and condition of the subject property and expressly assumed responsibility over the pending legal issues affecting the same. It also deliberately waived all its rights to demand for the return of any and all amounts it had paid NHMFC prior to its commission of an event of default. As such, and as We have declared above, Vive cannot now be permitted to put the blame on NHMFC or the issues affecting the property for its failure to adhere to the clear provisions of the contract.

Stripped of all complexities, the simple fact remains that Vive failed to comply with its obligation to pay the stipulated amounts for the purchase of the property subject of the agreement. This comprises as an event of default which, under the contract, produces the following effects:

> Section 5: EFFECTS OF DEFAULT
>
> Upon the occurrence of an event of default, NHMFC shall have the right to:
>
> 5.1 **Declare the contract annulled/cancelled. VENDEE shall forfeit and waive whatever rights he might have acquired over the property**.
>
> 5.2 **VENDOR shall then be at liberty to dispose of the same as if this Deed of Sale of Rights, Interest and**

---

[69] *The Wellex Group, Inc. v. U-Land Airlines, Co., Ltd.*, 750 Phil. 530, 568 (2015), citing *Norton Resources and Development Corporation v. All Asia Bank Corporation*, 620 Phil. 381, 388 (2009) [Per *J.* Nachura, Third Division].

> **participation over Foreclosed Assets has never been made,** and in the event of such annulment, **the sums of money paid shall be considered and treated as rentals for the occupancy and use of the property and VENDEE waives all rights to ask or demand the return hereof.** VENDEE further agrees to peacefully and quickly vacate the property. All permanent/fixed improvements found in the premises shall belong to the VENDOR without liability on the part of VENDOR to reimburse VENDEE of the cost of said improvements; x x x.[70]

Indubitably, by the clear and express provisions of the agreement, the default on the part of Vive unequivocally gave NHMFC the right to: (1) annul and cancel the contract; (2) dispose of the property as if the contract was never executed; and (3) treat the sums of money paid by Vive as rentals for the latter's use and occupancy thereof. As a matter of fact, Vive even consciously and categorically waived any and all rights to demand for the return of the sums of money it paid to NHMFC. It is for this reason that the Court cannot give credence to Vive's argument that the subsequent sale between NHMFC and Cavacon was entered into in bad faith. As far as NHMFC was concerned, it was merely acting in accordance with the provisions of the contract to sell, having every right to dispose of the property as if the sale of the same to Vive was never executed. As the Court similarly held in *Spouses Garcia v. Court of Appeals*,[71] Dela Cruz, the seller of the property, was within her rights to sell the subject lands to another buyer as a result of the Spouses Garcia's failure to pay the balance of the purchase price on the stipulated date of their contract to sell.

All told, the Court finds no cogent reason to reverse the conclusions reached by the appellate court. At the risk of being repetitive, Vive consistently failed to pay the balance of the purchase price on the date and in the manner prescribed by

---

[70] *Rollo*, Vol. I, p. 143. (Emphases ours)

[71] *Supra* note 64.

the contract to sell. Unfortunately for Vive, moreover, this failure could not be justified by its contentions that ownership was already transferred to it in the absolute sense, that it was granted a moratorium or that the issues inherent in the subject property suspended all subsequent payments. The provisions of the contract are clear. To begin with, the agreement executed by the parties is a contract to sell as shown by the fact that NHMFC expressly reserved its title to the subject property. As such, Vive's non-payment constituted an event of default that granted NHMFC the right to cancel their contract. The argument that Vive was granted a moratorium on the collection period hardly persuades in the absence of proof that NHMFC's board of directors approved the same or that NHMFC authorized its officers to grant the suspension on its behalf.

At the end of the day, there is no denying that Vive was well aware of the complications surrounding the property. Yet, despite knowledge of the pending issues, Vive still endeavored to acquire the lots and even assumed all responsibility for the resolution thereof. It cannot, therefore, take refuge on this condition of the property as an excuse for its breach of contract. Thus, in view of Vive's failure to comply with its obligations under the agreement, We rule that NHMFC validly cancelled the same. That the cancellation was not executed in compliance with the Maceda Law is of little relevance for said law is inapplicable to the present contract. Ultimately, as a legal consequence of Vive's default, and by the express authority of the agreement, NHMFC cannot be faulted for selling the property to Cavacon. The subsequent transaction entered into between NHMFC and Cavacon is, therefore, valid.

**WHEREFORE,** premises considered, the instant petition is **DENIED**. The assailed Decision dated August 23, 2016 and the Resolution dated March 30, 2017 of the Court of Appeals in CA-G.R. CV No. 105312 are **AFFIRMED**.

**SO ORDERED.**

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

**SECOND DIVISION**

[G.R. No. 230983. September 4, 2019]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **EDGARDO GARCIA *y* ANCHETA,** *accused-appellant.*

**SYLLABUS**

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; IN CRIMINAL CASES, SINCE AN APPEAL THROWS THE ENTIRE CASE WIDE OPEN FOR REVIEW, AN ISSUE RAISED FOR THE FIRST TIME ON APPEAL MAY BE REVIEWED BY THE COURT.—** In criminal cases, an appeal throws the entire case wide open for review. Thus, even if appellant challenged the arresting officers' compliance with the chain of custody rule first time on appeal, the Court is not barred from reviewing whether there was indeed unjustified deviation from the rule.

2. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); SECTION 21 THEREOF; LINK IN THE CHAIN OF CUSTODY THAT MUST BE ESTABLISHED BY THE PROSECUTION TO ENSURE THE INTEGRITY OF THE SEIZED DRUG ITEM.—** Petitioner was charged with unauthorized sale of dangerous drug allegedly committed on July 4, 2013. The governing law, therefore, is RA 9165. Section 21 of which prescribes the standard in preserving the *corpus delicti* in illegal drug cases. x x x 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.

**3. ID.; ID.; ID.; ID.; MARKING OF THE SEIZED ITEM IMMEDIATELY AFTER SEIZURE IS VITAL TO ENSURE THE INTEGRITY AND VERACITY BY PREVENTING SWITCHING, PLANTING, OR CONTAMINATION OF EVIDENCE; CASE AT BAR.—** [A]s admitted by the prosecution witnesses themselves, the seized item was not immediately marked upon the arrest of appellant. The Court held in ***People v. Ramirez*** that marking of the seized item immediately after seizure is vital to ensure its integrity and veracity by preventing switching, planting, or contamination of evidence. Here, PO3 Yaris testified to placing the seized item in his pocket without marking them immediately upon confiscation. The marking was only done when Valdez and Lim arrived around ten (10) minutes following appellant's arrest. During this ten (10)-minute interval, the *corpus delicti* remained in PO3 Yaris' pocket without any way of differentiating it from other drug items that may have been in PO3 Yaris' possession, too, at that time. This cast serious doubt on the identity of the item that was later marked and inventoried. For we cannot foreclose the possibility that what PO3 Yaris retrieved from his pocket was the same item allegedly sold by appellant. Even media representative Valdez admitted that he was unsure of the integrity of the *corpus delicti.* Thus, the rationale behind the marking requirement was defeated when PO3 Yaris placed the *corpus delicti* in his pocket for ten (10) minutes before marking it. The arresting officers failed to guarantee that what PO3 Yaris recovered from his pocket and eventually marked was the same drug item he supposedly received from appellant during the buy-bust operation.

**4. ID.; ID.; ID.; ID.; MERE STATEMENTS OF UNAVAILABILITY OF REQUIRED WITNESSES BY THEMSELVES DO NOT EXCUSE NON-COMPLIANCE WITH THE LAW; PROSECUTION MUST ESTABLISH THAT EARNEST EFFORTS WERE MADE TO SECURE THE PRESENCE OF REQUIRED WITNESSES; CASE AT BAR.—** [T]here was no representative from the DOJ to witness the physical inventory and photograph of the seized items. No valid reason was offered for this omission. PO3 Yaris merely testified that they did not even bother contacting a DOJ representative because it was already early morning. In rendering an acquittal, the Court held in ***People v. Lim*** that mere statements of unavailability of the required witnesses, by themselves do not excuse non-compliance with Section 21, RA 9165. It is still necessary for the prosecution

to establish that earnest efforts were made to secure the presence of the required witnesses.

**5. ID.; ID.; ID.; ID.; ABSENT ANY TESTIMONY ON THE MANAGEMENT, STORAGE, AND PRESERVATION OF THE SEIZED ILLEGAL DRUG, FOURTH LINK COULD NOT BE REASONABLY ESTABLISHED; CASE AT BAR.—** [T]he prosecution did not present any witness to testify on how the forensic chemist handled the specimen during laboratory examination and how the evidence custodian preserved it thereafter. In ***People v. Ubungen***, the Court ruled that absent any testimony on the management, storage, and preservation of the seized illegal drug, the fourth link in the chain of custody could not be reasonably established.

**6. ID.; ID.; ID.; ID.; DEVIATION FROM THE ESTABLISHED PROTOCOL MAY BE EXCUSED IF JUSTIFIABLE GROUNDS EXIST AND SO LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; CASE AT BAR.—** Indeed, the chain of custody was broken from its incipience until its final stages. Although a saving clause in the Implementing Rules and Regulations of RA 9165 allows deviation from established protocol, this is subject to the condition that justifiable grounds exist and "so long as the integrity and evidentiary value of the seized items are properly preserved." Here, since the arresting officers offered no valid explanation for the procedural deficiencies, the saving clause cannot be validly invoked, barring the proviso from coming into play.

**7. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS; CANNOT PREVAIL WHEN THERE IS COMPELLING EVIDENCE ON RECORD OF THE REPEATED BREACH OF THE CHAIN OF CUSTODY; VERDICT OF ACQUITTAL, PROPER IN CASE AT BAR.—** Suffice it to state that the presumption of regularity in the performance of official functions cannot substitute for compliance in an attempt to reconnect the broken links. For it is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary. And here, the presumption was amply overturned, nay, overthrown by compelling evidence on record of the repeated breach of the chain of custody rule. Verily, a verdict of acquittal is in order.

**APPEARANCES OF COUNSEL**

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

## D E C I S I O N

**LAZARO-JAVIER, *J.*:**

### The Case

This appeal[1] assails the Decision of the Court of Appeals in CA-G.R CR-H.C. No. 07526 dated September 30, 2016[2] affirming appellant's conviction for violation of Section 5, Article II of Republic Act (RA) 9165.[3]

### The Proceedings Before the Trial Court

### The Charge

By Information dated July 12, 2013, appellant Edgardo Garcia *y* Ancheta was charged with violation of Section 5, Article II of RA 9165, thus:

That on or about the 4th day of July 2013, in the City of San Fernando, La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously, deliver and sell one (1) piece of heat sealed transparent plastic sachet containing methamphetamine hydrochloride otherwise known as "*shabu*", a dangerous drug, with a net weight of zero point zero two three one (0.0231) gram to PO3 Elvis L. Yaris, who posed as poseur buyer, and in consideration of said *shabu*, used marked money, consisting of one (1) piece of fake One Thousand peso Bill (₱1,000.00) bearing serial number B081871, without fist securing the necessary permit, license or authority from the proper government agency.

---

[1] Filed under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Elihu A. Ybañez and Nina G. Antonio-Valenzuela; *Rollo*, pp. 2-21.

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

Contrary to Law.[4]

The case was raffled to the Regional Trial Court (RTC) - Branch 29, San Fernando City, La Union.

On arraignment, appellant pleaded *not guilty*.

During the trial, PSI Maria Theresa Amor Manuel,[5] PO3 Marie June Milo,[6] PO3 Elvis Yaris, PO3 John Ely Bayan, and DZNL radio announcer Rico Valdez testified for the prosecution. Appellant was the lone witness for the defense.[7]

**The Prosecution's Version**

**PO3 Yaris** testified that on July 4, 2013, around midnight, a confidential informant (CI) went to the San Fernando City police station to report that appellant was selling *shabu* at Paris Building, Barangay III, Rizal Ave., San Fernando City. Acting on this report, P/Supt. Manuel Apostol instructed his subordinates to conduct a buy-bust operation.[8] He (PO3 Yaris) was designated as poseur-buyer and PO3 Bayan as back-up. They prepared the buy-bust money consisting of one Php1,000 bill marked with his initials "ELY." Thereafter, the CI accompanied the team to the place of operation.[9]

Around 1:20 in the morning, appellant arrived. The CI approached appellant and they had a brief conversation. He later joined in and the CI introduced him to appellant as an interested buyer. He said he was buying Php1,000-worth and handed the marked bill to appellant, who, in turn, brought out one (1) heat-sealed plastic sachet containing white crystalline substance from his right pocket and turned it over to him.[10]

---

[4] *Rollo*, p. 3.

[5] Forensic Chemist of PNP Regional Crime Laboratory Office.

[6] Duty Police Non-commissioned Officer of the Crime Laboratory.

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

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

[9] *Id*. at 4.

[10] *Id*. at 6.

After he secured the item, he placed it in his pocket and arrested appellant. PO3 Bayan and PO2 Lucena rushed to where they were and helped him restrain appellant. He conducted a body search following the latter's arrest and recovered the buy-bust money, a cellular phone, two (2) lighters, and a Swiss knife from him.[11]

Ten (10) minutes later, media representative Rico Valdez and *Punong Barangay* Pepito Lim arrived at the place of arrest. He laid the seized items on the pavement and proceeded to mark and inventory said items in their presence. PO2 Bermudez took photos to document the operation.[12]

His team brought appellant to the City Health Office for medical examination. He prepared the request for laboratory examination and submitted it with the plastic sachet to the Regional Crime Laboratory Office 1. He was in possession of the item from the time appellant handed it to him until PO3 Milo received it at the crime laboratory.[13]

**PO3 Bayan** essentially corroborated PO3 Yaris' factual narration.[14]

Meanwhlie, **Rico Valdez** testified that a police officer called him to witness the inventory of items seized from appellant. When he arrived at the place of arrest, he saw PNP members, appellant, and *Punong Barangay* Lim. PO3 Yaris showed him the seized items consisting of a plastic sachet containing white crystalline substance, buy-bust money in the amount of Php1,000, a cellphone, two (2) lighters, and a Swiss knife, all laid down on the pavement. Thereafter, PO3 Yaris marked the items in their presence and prepared an inventory. He and Lim signed the Certification of Inventory as witnesses.[15]

---

[11] *Id.*

[12] *Id.*

[13] *Id.* at 7.

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

[15] *Id.* at 8.

The prosecution marked the following evidence: Joint Affidavit Complaint of PO3 Yaris and SPO3 Bayan; one (1) heat-sealed plastic sachet containing white crystalline substance; buy-bust money; one unit Nokia cellular phone; Swiss knife; two lighters; Pre-operational Report; Coordination Report; Request for Laboratory Report; Certification of Inventory; Initial Laboratory Report with Final Chemistry Report; Photographs; Medical Certificate of appellant; and Sketch.[16]

**The Defense's Evidence**

Appellant denied the allegations against him. He narrated that even before his arrest, he already knew PO3 Yaris and PO3 Bayan because he arranged an entrapment operation with them for the arrest of a certain Gina Alvento who planned on illegally mortgaging a firearm to his brother, the Chief *Barangay Tanod*. The police officers provided him with Php2,000 boodle money for the operation.

On June 29, 2013, Alvento went to his house with a .38 firearm. He tried to contact PO3 Yaris and PO3 Bayan but failed to reach them so other officers arrived to arrest Alvento.[17] He surmised that PO3 Yaris and PO3 Bayan were humiliated because other police officers had step in to effect the arrest of Alvento which they were supposed to perform.[18] PO3 Yaris and PO3 Bayan took the incident against him personally.

Thereafter, on July 3, 2013, around 11 o'clock in the evening, he was on his way home when PO3 Yaris and PO3 Bayan, on board a motorcycle, suddenly stopped near him. PO3 Bayan placed his hands inside his pockets and claimed that he recovered something therefrom. The policemen brought him to the precinct and boxed him in the abdomen before taking him to the City Health Office the next day.

---

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

[17] *Id* at 9-10.

[18] *Id*. at 10.

He maintained that he only had a lighter, a cellular phone, one (1) Php500 bill, and five (5) Php100 bills in his possession at that time;[19] PO3 Yaris planted the supposed buy-bust money in his pocket. He recognized the Php1,000.00 marked bill as part of the original Php2,000 boodle money given to him by PO3 Yaris for the entrapment operation against Alvento.[20]

### The Trial Court's Ruling

As borne by its Decision dated May 5, 2015,[21] the trial court rendered a verdict of conviction, *viz*:

> WHEREFORE, premises considered, the Court finds the accused Edgardo Garcia guilty beyond reasonable doubt of the crime of violation of Section 5, Article II of R.A. [9165] and hereby sentences him to suffer the penalty of Life Imprisonment, without eligibility of parole, and to pay the fine of ₱500,000.00. The period of preventive imprisonment suffered by the accused shall be credited in his favor.
>
> The sachet of *shabu* subject of the case is ordered transmitted to the PDEA for proper disposition.
>
> SO ORDERED.[22]

It ruled that all the elements of the crime were sufficiently established, that the chain of custody was duly observed, and the *corpus delicti* was positively identified.[23]

### The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for rendering a verdict of conviction despite the prosecution's alleged procedural lapses and gaps in the chain of custody, *viz*:

---

[19] *Id.*

[20] *Id.*

[21] Penned by Presiding Judge Asuncion F. Mandia.

[22] CA *rollo*, pp. 50-56.

[23] *Id.* at 55.

***First***, after the purported transaction, PO3 Yaris placed the seized item in his pocket without marking the same, casting doubt on the identity of the *corpus delicti*;[24]

***Second***, the police officers did not testify on how the specimen was preserved and safeguarded during and after its laboratory examination;[25]

***Third***, the evidence custodian to whom the item was allegedly endorsed after examination was neither identified nor presented;[26]

***Fourth***, no representative from the Department of Justice (DOJ) was present during the conduct of inventory and photography of the seized items;[27]

***Finally***, Valdez testified that he was not sure if the items inventoried were actually recovered from appellant.[28]

The Office of the Solicitor General, through Assistant Solicitor General Renan E. Ramos and Associate Solicitor III Analyn G. Avila defended the verdict of conviction.[29] It argued that all the elements of illegal sale of dangerous drugs were established by testimonial, documentary and object evidence; the integrity and evidentiary value of the seized items were preserved; and the *corpus delicti* was identified in open court.[30]

More, the totality of evidence showed that the chain of custody was not broken. PO3 Yaris testified that he arrested appellant and seized items from him following a buy-bust operation; conducted the inventory of the seized items in the presence of

---

[24] *Id*. at 41.

[25] *Id*. at 42.

[26] *Id*. at 43.

[27] *Id*. at 44.

[28] *Id*.

[29] *Id*. at 80-90.

[30] *Rollo*, p. 10.

media representative Valdez and *Punong Barangay* Lim; prepared the inventory which Valdez and Lim signed while PO2 Bermudez took photographs; prepared the request for laboratory examination; and turned over the documents and sachet to Regional Crime Laboratory Office 1. These led to the indubitable conclusion that the identity and integrity of the *corpus delicti* were preserved.[31]

Finally, appellant's defenses of denial and frame-up failed against the evidence of the prosecution. Police officers were presumed to have acted regularly in the performance of their official functions, absent any proof to the contrary.[32]

**The Court of Appeals' Ruling**

By Decision dated September 30, 2016, the Court of Appeals affirmed.[33] It found that all the elements of the crime were present and appellant was positively identified in open court as the subject of the buy-bust operation. More, appellant raised the alleged broken chain of custody for the first time on appeal. At any rate, the chain of custody was substantially complied with and the *corpus delicti* was established with certainty.[34] Finally, appellant failed to adduce sufficient evidence to substantiate his defense of denial and frame-up; the presumption of regularity of performance of official duties therefore prevailed.[35]

**The Present Appeal**

Appellant now asks the Court for a verdict of acquittal.[36]

---

[31] CA *rollo*, p. 88.

[32] *Id*. at 89.

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

[34] *Id*. at 16.

[35] *Id*. at 17.

[36] *Id*. at 22.

In compliance with Resolution dated June 28, 2017, both appellant and the OSG manifested that in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.[37]

**Issue**

Did the Court of Appeals err in affirming the trial court's verdict of conviction despite the attendant procedural deficiencies relative to the chain of custody over the *corpus delicti*.

**Ruling**

We acquit.

In criminal cases, an appeal throws the entire case wide open for review.[38] Thus, even if appellant challenged the arresting officers' compliance with the chain of custody rule first time on appeal, the Court is not barred from reviewing whether there was indeed unjustified deviation from the rule.

Petitioner was charged with unauthorized sale of dangerous drug allegedly committed on July 4, 2013. The governing law, therefore, is RA 9165. Section 21 of which prescribes the standard in preserving the *corpus delicti* in illegal drug cases, *viz*:

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

---

[37] *Id*. at 29-35.

[38] "The reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors." *Miguel v. People*, G.R. No. 227038, July 31, 2017, 833 SCRA 440, 448, citing *People v. Alejandro*, 807 Phil. 221, 229 (2017), and *People v. Comboy*, 782 Phil. 187, 196 (2016).

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. (emphasis added)

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody:[39] ***first***, the

---

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

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.[40]

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.[41]

Records show that the arresting officers here had repeatedly breached the chain of custody rule.

Prosecution witness PO3 Yaris testified:

PROS. CORPUZ

x x x x x x x x x

Q What happened after arrival at the place of transaction?
A We waited for a couple of minutes when a person arrived.

Q About how many minutes did you wait?
A Maybe around 5 minutes [ma'am].

---

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

[40] *Jocson v. People*, G.R. No. 199644, June 19, 2019, citing *People v. Dahil*, 750 Phil. 212, 231 (2015).

[41] *Id*., citing *People vs. Hementiza*, 807 Phil. 1017, 1026 (2017).

Q What happened when a certain person arrived?
A The CI approached to (*sic*) the person who arrived.

Q What happened after the CI approached this person?
A They talked for a while then I went near to (*sic*) them and the CI introduced me to the person as the interested buyer.

Q Were you able to hear their conversation prior to the time that you approached them the CI and Edgardo Garcia?
A Yes [ma'am].

Q What were they talking about before you approached [them]?
A He asked "who am I" and he was also asking if I was the interested buyer, [ma'am].

Q Who was the person asking your identity?
A Edgardo Garcia, [ma'am].

x x x x x x x x x

Q After that, what happened next?
A He asked me if how much am I going to buy then thereafter, he took out something from his right pocket.

Q And what did you do after that?
A I handed to him the boodle money.

Q Can you describe to us how did you hand the money to Edgardo Garcia?
A I just handed to him.

Q I'm handing you again this boodle money which you identified a while ago, can you show us how this boodle money was handed by you to Edgardo Garcia?
A This way [ma'am] (witness demonstrating to us how the boodle money was handed to Edgardo Garcia by holding the boodle money that was folded into four in such a way that the markings cannot be readily seen).

Q After you handed the Php1,000.00 boodle money to Edgardo Garcia what happened next?
A When he got hold the money he took out something from his right pocket and gave it to me.

Q And what was that something that he handed to you?
A One heat sealed transparent plastic sachet mam (*sic*).

x x x x x x x x x

**Q When this one heat sealed transparent plastic sachet was handed to you what did you do next?**
**A I put it in my pocket and there after I apprehended him, [ma'am].**

x x x x x x x x x

Q And after searching the body of the accused and after you recovered all the items you previously identified, what else did you do if there's any?
A I prepared the inventory of the items that were seized from him in the presence of the media and the barangay official, [ma'am].[42]
(Emphases supplied)

x x x x x x x x x

On cross:

PROS. CORPUZ

x x x x x x x x x

Q You then prepared the certificate of inventory?
A Yes ma'am.

Q So the sachet and the boodle money you got from him were those placed in the certificate of inventory?
A Yes ma'am.

Q And being the arresting officer, and the one who frisked him, you were the one who placed those items you obtained from his possession in the certificate of inventory?
A Yes ma'am.

Q I'm showing to you the Certificate of Inventory, this is the Certificate of Inventory you yourself prepared is it not?
A Yes ma'am.

Q And of course you put here the items you confiscated from his possession?
A Yes ma'am.

---

[42] TSN Dated May 7, 2014, Testimony of PO3 Elvis Yaris, pp. 10-17.

Q Including one (1) small transparent plastic sachet containing white crystalline substance known as *shabu* is that correct?
A Yes ma'am.

Q And the boodle money?
A Yes ma'am.

**Q The certificate of inventory was not signed by the accused?**
**A None ma'am.**

**Q And there was no representative from the DOJ to sign the certificate of inventory?**
**A None ma'am.**[43]
(Emphases supplied)

x x x x x x x x x

PROS CORPUZ.

Q Mr. witness will you explain to us how come that the signature of the accused does not appear in the certificate of inventory?
A We were not able to have him sign because I do not know whether he should sign or not ma'am.

**Q And will you explain to us why one of the members of the DOJ did not sign the certificate of inventory?**
**A Because it was already early morning so we have not contacted any member or representative from the DOJ ma'am.**[44]
(Emphasis supplied)

x x x x x x x x x

Prosecution witness PO3 Bayan further testified:

PROS. CORPUZ

x x x x x x x x x

---

[43] TSN Dated June 18, 2014, Testimony of Elvis Yaris on Cross, p. 10.

[44] *Id*. at 11.

Q After a body search was conducted upon the person of the male person, do you know what your other companions did, PO2 Lucena, Capt. Miedes and Francisca Bermudez?
A I heard Capt. Miedes calling through the cellphone the representative from the media, Rico Valdez.

Q And what happened after the call Mr. Witness?
A After the call ma'am Rico Valdez and the barangay official of Barangay III arrived.

**Q How many minutes after the arrest was the arrival of this Rico Valdez?**
**A More or less 10 minutes ma'am.**

**Q What about the representative of Barangay III?**
**A Maybe more or less 10 minutes also ma'am.**

x x x x x x x x x

Q And then what happened Mr. Witness after the representative of Barangay III and the media representative arrived?
A PO3 Yaris presented the seized items and the recovered boodle money and the white heat sealed sachet to the media representative and the barangay officials (*sic*), and also in front of Edgardo ma'am.

Q When you said PO3 Yaris presented the items seized and the plastic sachet, how did he present the same to the accused, to the media representative and to the representative of the barangay official?
A He put it on top of the cemented floor ma'am.

**Q After he presented the same, what else did he do if you can still remember?**
**A He put markings on it then after which, he conducted an inventory.**[45]
(Emphasis supplied)

x x x x x x x x x

---

[45] TSN Dated August 6, 2014, Testimony of John Ely Bayan, pp. 6-8.

Finally, prosecution witness Valdez testified:

PROS. CORPUZ

x x x x x x x x x

Q What about the corresponding markings were you able to see these markings?
A Yes [ma'am].

Q When [were] these markings placed?
A The markings [were] placed outside the plastic sachet, [ma'am].

Q Were you present when these markings were placed Mr. Witness?
A Yes [ma'am].

Q What about the boodle money amounting to Php1,000.00 were you able to see this Mr. Witness?
A Yes [ma'am].

Q And also the nokia cell phone?
A Yes [ma'am].

Q And also the two lighters?
A Yes [ma'am].

Q These five (5) items I mentioned to you contained already markings, were you able to see these markings?
A Yes [ma'am].

Q Where [did] the [marking] [take] place?
A At the place of operation [ma'am].

Q And were you present when these markings were made?
A Yes [ma'am].

Q Were you present when the Certificate of Inventory was prepared?
A Yes [ma'am].

x x x x x x x x x

On Cross:

ATTY. AGTARAP

x x x x x x x x x

Q When you said that you did not see the conduct of the body search you don't know if those items which were listed in the [Certificate] of Inventory were really those items which were recovered from the possession of the accused?
A I saw them before I signed...

Q My question Mr. witness is that, you said that you were not around during the conduct of the body search upon the person of Edgardo Garcia, correct?
A Yes [ma'am].

Q So those items that were listed in the [Certificate] of Inventory you are not sure if these are the items which were recovered from the accused, is that correct Mr. witness?
A Yes [ma'am].[46]

x x x x x x x x x

***First***, as admitted by the prosecution witnesses themselves, the seized item was not immediately marked upon the arrest of appellant. The Court held in ***People v. Ramirez***[47] that marking of the seized item immediately after seizure is vital to ensure its integrity and veracity by preventing switching, planting, or contamination of evidence.[48]

Here, PO3 Yaris testified to placing the seized item in his pocket without marking them immediately upon confiscation. The marking was only done when Valdez and Lim arrived around ten (10) minutes following appellant's arrest. During this ten (10)-minute interval, the *corpus delicti* remained in PO3 Yaris' pocket without any way of differentiating it from other drug items that may have been in PO3 Yaris' possession, too, at that time. This cast serious doubt on the identity of the item that was later marked and inventoried. For we cannot foreclose the possibility that what PO3 Yaris retrieved from his pocket was the same item allegedly sold by appellant. Even media

---

[46] TSN Dated September 3, 2014, Testimony of Rico Valdez, pp. 6-10.

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

[48] *Id*., citing *People v. Nuarin*, 764 Phil. 550, 557-558 (2015).

representative Valdez admitted that he was unsure of the integrity of the *corpus delicti.*

Thus, the rationale behind the marking requirement was defeated when PO3 Yaris placed the *corpus delicti* in his pocket for ten (10) minutes before marking it. The arresting officers failed to guarantee that what PO3 Yaris recovered from his pocket and eventually marked was the same drug item he supposedly received from appellant during the buy-bust operation.

***Second***, there was no representative from the DOJ to witness the physical inventory and photograph of the seized items. No valid reason was offered for this omission. PO3 Yaris merely testified that they did not even bother contacting a DOJ representative because it was already early morning.[49]

In rendering an acquittal, the Court held in ***People v. Lim***[50] that mere statements of unavailability of the required witnesses, by themselves do not excuse non-compliance with Section 21, RA 9165. It is still necessary for the prosecution to establish that earnest efforts were made to secure the presence of the required witnesses.

***Finally***, the prosecution did not present any witness to testify on how the forensic chemist handled the specimen during laboratory examination and how the evidence custodian preserved it thereafter. In ***People v. Ubungen***,[51] the Court ruled that absent any testimony on the management, storage, and preservation of the seized illegal drug, the fourth link in the chain of custody could not be reasonably established.

Indeed, the chain of custody was broken from its incipience until its final stages. Although a saving clause in the Implementing Rules and Regulations of RA 9165 allows deviation from

---

[49] TSN Dated June 18, 2014, Testimony of Elvis Yaris-Cross, p. 11.

[50] G.R. No. 231989, September 4, 2018, citing *People v. Ramons*, G.R. No. 233744, February 28, 2018.

[51] G.R. No. 225497, July 23, 2018.

established protocol, this is subject to the condition that justifiable grounds exist and "so long as the integrity and evidentiary value of the seized items are properly preserved."[52] Here, since the arresting officers offered no valid explanation for the procedural deficiencies, the saving clause cannot be validly invoked, barring the proviso from coming into play.

Suffice it to state that the presumption of regularity in the performance of official functions[53] cannot substitute for compliance in an attempt to reconnect the broken links. For it is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary.[54] And here, the presumption was amply overturned, nay, overthrown by compelling evidence on record of the repeated breach of the chain of custody rule. Verily, a verdict of acquittal is in order.

**ACCORDINGLY,** the appeal is **GRANTED**. The Decision dated September 30, 2016 of the Court of Appeals in CA-G.R CR-H.C. No. 07526 is **REVERSED** and **SET ASIDE**.

Appellant **EDGARDO GARCIA *y* ANCHETA** is **ACQUITTED**. The Director of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release appellant Edgardo Garcia *y* Ancheta from custody unless he is being held for some other lawful cause; and b) submit his report on the action taken within five (5) days from notice. Let entry of final judgment be issued immediately.

**SO ORDERED.**

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

---

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

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

[54] *People v. Cabiles*, June 7, 2017, G.R. No. 220758, 827 SCRA 89, 98.

**FIRST DIVISION**

[G.R. No. 232380. September 4, 2019]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **RONALD JAURIGUE @ "RON-RON" *a.k.a.* RONALDO VICENTE *y* JAURIGUE,** *accused-appellant.*

**SYLLABUS**

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; AN APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW. —** [I]t must be stressed that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment, whether they are assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. **CRIMINAL LAW; MURDER; ELEMENTS. —** To successfully prosecute the crime of Murder, the following elements must be established, namely: (*a*) that a person was killed; (*b*) the accused killed him or her; (*c*) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (*d*) the killing is not Parricide or Infanticide. If the foregoing qualifying circumstances are not present or cannot be proven beyond reasonable doubt, the accused may only be convicted of Homicide, as defined and penalized under Article 249 of the RPC.

3. **ID.; QUALIFYING CIRCUMSTANCES; TREACHERY, ESSENCE OF; TWO CONDITIONS THAT MUST BE PRESENT FOR TREACHERY TO EXIST. —** Under the RPC, "[t]here is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." Case law explains that the essence of treachery is that the attack was deliberate and without warning, done in

a swift and unexpected way, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. For treachery to exist, two (2) conditions must be present: (*a*) at the time of the attack, the victim was not in a position to defend himself; and (*b*) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him. Conversely, the Court has held that there can be no treachery when the victim was "forewarned of the danger he was in," "put on guard," or otherwise "could anticipate aggression from the assailant" as when "the assault is preceded by a heated exchange of words between the accused and the victim; or when the victim is aware of the hostility of the assailant towards the former."

**4. ID.; ID.; EVIDENT PREMEDITATION; ESSENCE OF; REQUISITES TO BE APPRECIATED. —** [T]he circumstance of evident premeditation can be taken into account only when there has been a cold and deep meditation, and a tenacious persistence in the accomplishment of the criminal act. Its essence is that the execution of the criminal act be preceded by cool thought and reflection upon the resolve to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment. Verily, the requisites for the appreciation of evident premeditation are: (*a*) the time when the accused determined to commit the crime; (*b*) an act manifestly indicating that the accused had clung to his determination to commit the crime; and (*c*) the lapse of a sufficient length of time between the determination and execution to allow him to reflect upon the consequences of his act.

**5. ID.; ID.; ID.; CIRCUMSTANCES IN CASE AT BAR SHOW NO EVIDENT PREMEDITATION COMMITTED. —** In this case, records show that the killing of the victim was preceded by two (2) noisy episodes, particularly: (*a*) when Aquiles initiated a noisy raucous in the compound by loudly shouting for Charles to come out and threatening to kill him; and (*b*) after being driven away by Charles' relative, the group returned moments later to instigate another raucous where Aquiles, once again, challenged Charles to come out and face him in a fight. Evidently, the attack was not sudden nor unexpected since, from the inception of the first raucous, Charles was already put on guard and had been forewarned of the danger he was in. Moreover, it cannot be said that Ronald deliberately nor

consciously adopted particular means of carrying out the attack as the evidence on record reveals that his companion, Aquiles, initially wanted to have a mere face-off with Charles, and it was only when the latter failed to come out that Aquiles and Ronald tried to shoot the victim with their *sumpak*. Similarly, there is nothing on the records that would show that Ronald's attack on Charles was premeditated, *i.e.*, that his commission of the crime was preceded by cool thought and a reflection with the resolution to carry out the criminal intent during a span of time sufficient to arrive at the hour of judgment. Verily, evident premeditation cannot be appreciated absent any proof as to how and when the plan to kill was hatched or the amount of time elapsed before it was carried out.

**6. ID.; HOMICIDE; THE COURT DEEMS IT PROPER TO CONVICT APPELLANT ONLY FOR HOMICIDE; PENALTY. —** [T]he Court deems it proper to convict Ronald only for Homicide, which is necessarily included in the crime of Murder. Anent the proper penalty to be imposed, Article 249 of the RPC imposes the penalty of *reclusion temporal* for the crime of Homicide; and considering that there are neither aggravating nor mitigating circumstances in this case, the penalty should be imposed in its medium period. Therefore, applying the Indeterminate Sentence Law, Ronald should be sentenced to suffer the penalty of imprisonment for an indeterminate period of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum.

**7. ID.; ID.; CIVIL LIABILITY; TEMPERATE DAMAGES IN LIEU OF ACTUAL DAMAGES, AWARDED; CIVIL INDEMNITY AND MORAL DAMAGES ALSO AWARDED. —** As to Ronald's civil liability *ex delicto*, case law instructs that when the actual damages proven by receipts during trial is less than the sum allowed by the Court as temperate damages, the award of the latter in lieu of the former is justified. The rationale for this rule is that it would be anomalous and unfair for the victim's heirs, who tried and succeeded in presenting receipts and other evidence to prove actual damages, to receive an amount which is less than that given as temperate damages to those who are not able to present any evidence at all. Here, in light of the fact that the actual damages proven in this case is only ₱6,466.00 and the prevailing award for temperate damages is now

₱50,000.00, the Court deems it appropriate to award the latter amount to Charles' heirs. Further, in line with prevailing jurisprudence, the Court also deems it proper to further award to the said heirs the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. Finally, all monetary awards shall earn legal interest at the rate of six percent (6%) per annum on all amounts from the finality of this Decision until full payment.

**APPEARANCES OF COUNSEL**

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

## D E C I S I O N

**PERLAS-BERNABE, *J.*:**

Before the Court is an ordinary appeal[1] filed by accused-appellant Ronald Jaurigue @ "Ron-Ron" *a.k.a.* Ronaldo Vicente *y* Jaurigue (Ronald) assailing the Decision[2] dated November 23, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06236 which affirmed the Decision[3] dated June 17, 2013 of the Regional Trial Court of Manila, Branch 19 (RTC) in Crim. Case No. 07-257476, finding him guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code (RPC).

### The Facts

The instant case stemmed from an Information[4] filed before the RTC charging Ronald, Benjamin Jaurigue *y* Caponpon @

---

[1] See Notice of Appeal dated December 2, 2016; *rollo*, pp. 10-11.

[2] *Id.* at 2-9. Penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Noel G. Tijam (Ret.) and Francisco P. Acosta, concurring.

[3] CA *rollo*, pp. 74-85. Penned by Presiding Judge Marlo A. Magdoza-Malagar.

[4] Records, p. 1; italics supplied.

BJ (BJ), Alejandro Atienza, Jr. @ Aquiles (Aquiles), and Jojo Mojica (Jojo) with the crime of Murder, defined and penalized under Article 248 of the RPC, the accusatory portion of which states:

> That on or about October 16, [2006], in the City of Manila, Philippines, the said accused, conspiring [and] confederating together and helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill, qualified [by] treachery [and] evident premeditation, attack, assault and use personal violence upon the person of one CHARLES NABAZA *Y* SERRANO, by then and there shooting the latter in the chest with a "*sumpak*", thereby inflicting upon said CHARLES NABAZA *Y* SERRANO a gun shot wound which was the direct and immediate cause of his death thereafter.
>
> Contrary to law.[5]

The prosecution alleged that at around 10:30 in the evening of October 16, 2006,[6] Ronald, BJ, Aquiles, Jojo, a certain Juricho, and an unidentified person went to the residential compound where the victim, Charles[7] Nabaza *y* Serrano (Charles), was residing. From outside Charles' unit, Aquiles loudly challenged him to come out and threatened to kill him, but the group was driven away by Charles' relative. Relentless, the group returned after a few minutes and proceeded to the door of Charles' unit. There, Aquiles repeatedly kicked the door, demanded again for Charles to appear, and made threats to kill him, loudly shouting "*Charles, si Aquiles ito, asawa ni Michelle. Di mo kami kialala. Mamili ka ng kakatalunin mo. Ano gusto mo gawin ko sa iyo, bugbugin kita, mag-square tayo o papatayin kita.*" When the door partly opened, Aquiles went to Ronald, who was waiting at the gate with the others, and asked for a *sumpak*,[8] saying "*akin na nga yang sumpak, papatayin na*

---

[5] *Id.*

[6] Incorrectly dated as "October 16, 2007" in some parts of the records.

[7] "Charlie" in some parts of the records.

[8] An improvised handgun. See CA *rollo*, p. 75.

*natin*," which the latter handed to him. Heading back to the unit, Aquiles aimed inside and pulled the trigger; however, the *sumpak* failed to fire. He then returned the weapon to Ronald, who, in turn, peeked into the opening of the door and fired a single shot. Thereafter, Ronald and his group fled. Several people who witnessed the incident later found Charles sprawled on the floor, with a wound on his chest. They then brought him to the hospital where he was pronounced dead. Ronald and BJ were eventually arrested, while the others remain at-large.[9]

For their part, Ronald and BJ each interposed the defenses of denial and alibi. Ronald averred that at the time of the incident, he was at his cousin's house in Las Piñas; while on the other hand, BJ maintained that at the time of the incident, he was just at home watching television with his friends.[10]

**The RTC Ruling**

In a Decision[11] dated June 17, 2013, the RTC found Ronald guilty beyond reasonable doubt of the crime of Murder, and accordingly sentenced him to suffer the penalty of imprisonment of *reclusion perpetua* to death and ordered him to pay Charles' heirs the amounts of ₱6,466.00[12] as actual and compensatory damages, ₱50,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages, plus costs of suit. On the other hand, BJ was acquitted on the ground of reasonable doubt.[13]

The trial court ruled that the prosecution sufficiently proved all the elements of the crime charged based on the testimonies of no less than three (3) witnesses who categorically stated that it was Ronald who shot Charles. It also held that the killing

---

[9] See *rollo*, pp. 2-4. See also CA *rollo*, pp. 74-77.

[10] See *rollo*, p. 4. See also CA *rollo*, pp. 78-81.

[11] CA *rollo*, pp. 74-85.

[12] Based on receipts showing payment of funeral expenses in the aggregate amount of ₱6,466.00; see *id.* at 84.

[13] *Id.* at 84-85.

was qualified to Murder, considering that Charles was shot when he was trapped in his unit without any means of escape. On this note, the RTC found Ronald's defense of denial and alibi unavailing in light of such positive identification of him as the culprit. On the other hand, there was no showing that BJ assented to the killing, opining that he was merely present at the scene of the crime, there being no overt act on his part, thereby warranting his acquittal.[14]

Aggrieved, Ronald appealed to the CA.[15]

**The CA Ruling**

In a Decision[16] dated November 23, 2016, the CA affirmed Ronald's conviction with the following modifications: (*a*) he is sentenced to suffer the penalty of *reclusion perpetua*; and (*b*) ordered to pay Charles' heirs the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱50,000.00 as temperate damages, with legal interest at the rate of six percent (6%) per annum on all amounts from the finality of the decision until full payment.[17] It held that there was no reason to disturb the RTC's factual findings, and that Ronald's culpability was clear based on the positive identification of the witnesses.[18]

Hence, this appeal.

**The Issue Before the Court**

The issue before the Court is whether or not the CA correctly affirmed accused-appellant's conviction for the crime of Murder.

---

[14] See *id.* at 81-83.

[15] See *rollo*, p. 2.

[16] *Id.* at 2-9.

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

[18] See *id.* at 5-8.

## The Court's Ruling

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment, whether they are assigned or unassigned.[19] The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[20]

Guided by the foregoing considerations, the Court modifies Ronald's conviction, as will be explained hereunder.

Article 248 of the RPC reads:

> 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;
>
> 2. In consideration of a price, reward, or promise;
>
> 3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
>
> 4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;
>
> 5. With evident premeditation;
>
> 6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

---

[19] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

[20] *People v. Comboy*, 782 Phil. 187, 196 (2016).

To successfully prosecute the crime of Murder, the following elements must be established, namely: (*a*) that a person was killed; (*b*) the accused killed him or her; (*c*) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (*d*) the killing is not Parricide or Infanticide.[21] If the foregoing qualifying circumstances are not present or cannot be proven beyond reasonable doubt, the accused may only be convicted of Homicide, as defined and penalized under Article 249 of the RPC.[22]

In the instant case, the courts *a quo* correctly found that through the positive and categorical testimonies of no less than three (3) eyewitnesses, the prosecution had established beyond reasonable doubt that it was Ronald who shot and killed Charles. Since there is no indication that the trial court and the CA overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case, the Court finds no reason to deviate from their factual findings. In this regard, it should be noted that the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties.[23]

However, after a judicious perusal of the records, there is doubt as to the existence of the qualifying circumstance of treachery, as found by the courts *a quo*, or even the qualifying circumstance of evident premeditation which was alleged in the Information.

Under the RPC, "[t]here is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself

---

[21] See *Ramos v. People*, 803 Phil. 775, 783 (2017), citing *People v. Las Piñas*, 739 Phil. 502, 524 (2014).

[22] See *Cirera v. People*, 739 Phil. 25, 39 (2014).

[23] See *People v. Maylon*, G.R. No. 240664, March 11, 2019, citing *Cahulogan v. People*, G.R. No. 225695, March 21, 2018.

arising from the defense which the offended party might make."[24] Case law explains that the essence of treachery is that the attack was deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape.[25] For treachery to exist, two (2) conditions must be present: (*a*) at the time of the attack, the victim was not in a position to defend himself; and (*b*) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.[26] Conversely, the Court has held that there can be no treachery when the victim was "forewarned of the danger he was in,"[27] "put on guard,"[28] or otherwise "could anticipate aggression from the assailant"[29] as when "the assault is preceded by a heated exchange of words between the accused and the victim; or when the victim is aware of the hostility of the assailant towards the former."[30]

On the other hand, the circumstance of evident premeditation can be taken into account only when there has been a cold and deep meditation, and a tenacious persistence in the accomplishment of the criminal act. Its essence is that the execution of the criminal act be preceded by cool thought and reflection upon the resolve to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment. Verily, the requisites for the appreciation of evident premeditation are:

---

[24] See Article 14 (16) of the RPC.

[25] See *People v. Cirbeto*, G.R. No. 231359, February 7, 2018, 855 SCRA 234, 246-247.

[26] *Id.* at 247.

[27] *People v. Casas*, 755 Phil. 210, 221 (2015).

[28] See Court's Resolution in *People v. Cabalce*, G.R. No. 208280, March 16, 2015.

[29] See Court's Resolution in *People v. Buen*, G.R. No. 208408, July 4, 2016.

[30] See *People v Aseniero*, G.R. No. 218209, April 10, 2019, citing *People v. Escarlos*, 457 Phil. 580, 599 (2003).

(*a*) the time when the accused determined to commit the crime; (*b*) an act manifestly indicating that the accused had clung to his determination to commit the crime; and (*c*) the lapse of a sufficient length of time between the determination and execution to allow him to reflect upon the consequences of his act.[31]

In this case, records show that the killing of the victim was preceded by two (2) noisy episodes, particularly: (*a*) when Aquiles initiated a noisy raucous in the compound by loudly shouting for Charles to come out and threatening to kill him; and (*b*) after being driven away by Charles' relative, the group returned moments later to instigate another raucous where Aquiles, once again, challenged Charles to come out and face him in a fight.[32] Evidently, the attack was not sudden nor unexpected since, from the inception of the first raucous, Charles was already put on guard and had been forewarned of the danger he was in. Moreover, it cannot be said that Ronald deliberately nor consciously adopted particular means of carrying out the attack as the evidence on record reveals that his companion, Aquiles, initially wanted to have a mere face-off with Charles, and it was only when the latter failed to come out that Aquiles and Ronald tried to shoot the victim with their *sumpak*.[33]

Similarly, there is nothing on the records that would show that Ronald's attack on Charles was premeditated, *i.e.*, that his commission of the crime was preceded by cool thought and a reflection with the resolution to carry out the criminal intent during a span of time sufficient to arrive at the hour of judgment.[34] Verily, evident premeditation cannot be appreciated absent any proof as to how and when the plan to kill was hatched or the amount of time elapsed before it was carried out.[35]

---

[31] See *People v. Macaspac*, 806 Phil. 285, 293-294 (2017).

[32] See *rollo*, p. 3. See also CA *rollo*, p. 75.

[33] See *id.*

[34] See *People v. Escabarte*, 242 Phil. 295, 306 (1988).

[35] See *People v. Peñones*, 277 Phil. 713, 724 (1991).

In light of the foregoing, the Court deems it proper to convict Ronald only for Homicide, which is necessarily included in the crime of Murder.[36]

Anent the proper penalty to be imposed, Article 249 of the RPC imposes the penalty of *reclusion temporal* for the crime of Homicide; and considering that there are neither aggravating nor mitigating circumstances in this case, the penalty should be imposed in its medium period. Therefore, applying the Indeterminate Sentence Law, Ronald should be sentenced to suffer the penalty of imprisonment for an indeterminate period of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum.

As to Ronald's civil liability *ex delicto*, case law instructs that when the actual damages proven by receipts during trial is less than the sum allowed by the Court as temperate damages, the award of the latter in lieu of the former is justified. The rationale for this rule is that it would be anomalous and unfair for the victim's heirs, who tried and succeeded in presenting receipts and other evidence to prove actual damages, to receive an amount which is less than that given as temperate damages

---

[36] See Sections 4 and 5, Rule 120 of the Rules of Court, which read:

Section 4. *Judgment in case of variance between allegation and proof.* — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

Section 5. *When an offense includes or is included in another.* — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

to those who are not able to present any evidence at all.[37] Here, in light of the fact that the actual damages proven in this case is only ₱6,466.00 and the prevailing award for temperate damages is now ₱50,000.00,[38] the Court deems it appropriate to award the latter amount to Charles' heirs. Further, in line with prevailing jurisprudence,[39] the Court also deems it proper to further award to the said heirs the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. Finally, all monetary awards shall earn legal interest at the rate of six percent (6%) per annum on all amounts from the finality of this Decision until full payment.

**WHEREFORE,** the Court **AFFIRMS** with **MODIFICATION** the Decision dated November 23, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 06236. Accordingly, accused-appellant Ronald Jaurigue @ "Ron-Ron" *a.k.a.* Ronaldo Vicente *y* Jaurigue is found **GUILTY** beyond reasonable doubt of the crime of Homicide, defined and penalized under Article 249 of the Revised Penal Code. He is sentenced to suffer the penalty of imprisonment for an indeterminate period of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum. Further, he is also ordered to pay the victim's heirs the following amounts: (*a*) ₱50,000.00 as civil indemnity; (*b*) ₱50,000.00 as moral damages; (*c*) ₱50,000.00 as temperate damages; and (*d*) costs of suit. All monetary awards shall earn legal interest at the rate of six percent (6%) per annum from the finality of this Decision until full payment.

**SO ORDERED.**

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

---

[37] *People v. Racal*, G.R. No. 224886, September 4, 2017, 838 SCRA 476,498.

[38] See *People v. Jugueta*, 783 Phil. 806 (2016).

[39] See *id.* at 852-853.

**FIRST DIVISION**

[G.R. No. 238892. September 4, 2019]

**SPOUSES AURORA TOJONG SU and AMADOR SU,** *petitioners, vs.* **EDA BONTILAO, PABLITA BONTILAO, and MARICEL DAYANDAYAN,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; REVISED RULES ON SUMMARY PROCEDURE *VIS-À-VIS* REVISED RULES OF COURT; THE COURT FINDS THAT THERE IS SUFFICIENT WRITTEN AUTHORIZATION IN FAVOR OF PETITIONERS' COUNSEL THAT EXCUSED THE NON-APPEARANCE OF PETITIONERS AT THE PRELIMINARY CONFERENCE. —** [P]etitioners executed an SPA dated November 28, 2012 in favor of their former counsel, Atty. Amores, expressly granting him full authority to represent them during the preliminary conference as well as to enter into a compromise agreement or submit to alternative modes of dispute resolution, *inter alia.* The SPA has been offered before the MTCC and attached to the records of the case as page 43, thereby negating any suggestions of a belated execution in order to excuse petitioners' absence during the first scheduled preliminary conference. In accordance with the provisions of Section 4, Rule 18 of the Revised Rules of Court as above-quoted, the Court finds the SPA to be sufficient written authorization in favor of petitioners' counsel that excused the non-appearance of petitioners at the preliminary conference. In fact, it would appear that the existence of said SPA was the reason why Atty. Amores did not bother to explain the non-appearance of petitioners and why the MTCC no longer found it necessary to inquire into the same.

**2. ID.; ID.; A MOTION FOR RECONSIDERATION FROM AN ORDER OF DISMISSAL ON THE GROUND OF NON-APPEARANCE AT THE PRELIMINARY CONFERENCE IS NOT A *PRO FORMA* MOTION; PETITIONERS' ACTIONS, TAKEN TOGETHER, SHOW THAT THEY HAD NO INTENTION OF DELAYING THE PRELIMINARY CONFERENCE OR TRIFLING WITH THE SUMMARY NATURE**

**OF EJECTMENT PROCEEDINGS. ––** [T]he motion for reconsideration filed by Atty. Amores is not a prohibited motion, contrary to respondents' refutations. True, Section 19 (c) of the Rules on Summary Procedure and Section 13 (3) of Rule 70 of the Revised Rules of Court consider a motion for reconsideration a prohibited pleading. However, the motion for reconsideration contemplated thereunder is one seeking reconsideration of a judgment rendered on the merits, not from an order of dismissal on the ground of non-appearance at the preliminary conference, as in this case. The MTCC's June 14, 2013 Order dismissing petitioners' case was not an adjudication on the merits; as such, reconsideration thereof was correctly sought by Atty. Amores, which was not a *pro forma* motion and therefore, tolled the running of the prescriptive period to make an appeal. x x x Atty. Amores filed a motion for reconsideration explaining the reasons for his non-appearance. These actions, taken together, show that petitioners had no intention of deliberately delaying or postponing the preliminary conference or trifling with the summary nature of ejectment proceedings; instead, it evinces their legitimate desire to comply with court processes. The lack of efforts to manifest to the court the reason for their absence at the preliminary conference is more apparent than real: the existence of the SPA in the records of the case more than sufficiently explains their non-appearance thereat. Thus, the Court finds no reason for the CA to set aside the courts *a quo's* order recalling its dismissal of the case and allowing it to proceed on its course and resolving the same on the merits.

**3. ID.; ID.; PETITIONERS CANNOT BE FAULTED FOR THEIR FAILURE TO FILE A PRE-TRIAL BRIEF; REASONS. ––** [W]hile it is true that failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial, and therefore, shall be a cause for dismissal of the action save for justifiable reasons or the existence of a written authority in favor of a party's representative, it is likewise true that cases governed by the Rules on Summary Procedure may be resolved on the basis of the pleadings, affidavits of witnesses, and position papers filed by the parties. Further, as aptly pointed out by the MTCC, its Notice of Preliminary Conference did not require the filing of the parties' pre-trial briefs; all that was required was their appearance thereat. As such, petitioners cannot be faulted in this regard.

**4. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; NATURE, EXPLAINED; REQUISITE FOR A VALID CAUSE OF ACTION. —** Unlawful detainer involves the defendant's withholding of the possession of the property to which the plaintiff is entitled, after the expiration or termination of the former's right to hold possession under the contract, whether express or implied. A requisite for a valid cause of action of unlawful detainer is that the possession was originally lawful, but turned unlawful only upon the expiration of the right to possess. To show that the possession was initial1y lawful, the basis of such lawful possession must then be established.

**5. ID.; ID.; ID.; IN UNLAWFUL DETAINER BASED ON TOLERANCE, IT IS OF UTMOST IMPORTANCE TO PROVE THE ACTS OF TOLERANCE; PETITIONERS FAILED IN THIS REGARD. —** In an action for unlawful detainer based on tolerance, the acts of tolerance must be proved; bare allegations are insufficient. For tolerance to exist, the complainants in an unlawful detainer must prove that they had consented to the possession over the property through positive acts. After all, tolerance signifies permission and not merely silence or inaction as silence or inaction is negligence and not tolerance. x x x The fact of tolerance is of utmost importance in an action for unlawful detainer. Without proof that the possession was legal at the outset, the logical conclusion would be that the defendant's possession of the subject property will be deemed illegal from the very beginning, for which, the action for unlawful detainer shall be dismissed. Thus, an action for unlawful detainer fails in the absence of proof of tolerance, coupled with evidence of how the entry of the respondents was effected, or how and when the dispossession started. The Court has meticulously examined the records and finds that petitioners failed to adduce evidence to establish that the respondents' occupation of the subject property was actually effected through their tolerance or permission. There is dearth of evidence to show how and when the respondents entered the subject lot, as well as how and when the permission to occupy was purportedly given by petitioners. Hence, there was no basis for the MTCC and RTC to conclude that respondents' occupation of the subject property was by mere tolerance of petitioners.

**6. ID.; ID.; ID.; IT WAS AN ERROR FOR THE COURT *A QUO* TO RESOLVE THE PRESENT CASE ON THE BASIS OF A TORRENS TITLE BECAUSE EVEN A LEGAL OWNER OF THE PROPERTY CANNOT CONVENIENTLY USURP POSSESSION AGAINST A POSSESSOR WITHOUT THE ESSENTIAL REQUISITES OF A SUMMARY ACTION FOR EJECTMENT. —** [I]t was error for the courts *a quo* to rule in favor of petitioners merely on the basis of the Torrens title registered in their names. There is no question that the holder of a Torrens title is the rightful owner of the property thereby covered and is entitled to its possession. However, the fact alone that petitioners have a title over the subject property does not give them unbridled authority to immediately wrest possession from its current possessor in the absence of evidence proving the allegations in their unlawful detainer claim. Indeed, even the legal owner of the property cannot conveniently usurp possession against a possessor, through a summary action for ejectment, without proving the essential requisites thereof. Accordingly, should the owner choose to file an action for unlawful detainer, it is imperative for him/her to first and foremost prove that the occupation was based on his/her permission or tolerance. Absent which, the owner would be in a better position by pursuing other more appropriate legal remedies.

**APPEARANCES OF COUNSEL**

*Roberto R. Palmares* for petitioners.
*Earl M. Bonachita,* collaborating counsel for petitioners.
*Vicente B. Roco* for respondents.

## D E C I S I O N

**PERLAS-BERNABE, *J.*:**

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated December 14, 2017 and the

---

[1] *Rollo,* pp. 7-25.

[2] *Id.* at 37-51. Penned by Associate Justice Pamela Ann Abella Maxino with Associate Justices Geraldine C. Fiel-Macaraig and Louis P. Acosta, concurring.

Resolution[3] dated March 23, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 10906 which reversed and set aside the Decision[4] dated December 2, 2016 and the Order[5] dated April 26, 2017 of the Regional Trial Court of Lapu-Lapu City, Branch 54 (RTC) in Civil Case No. M-LLP-12-01304-CV-RTC-54 and dismissed the present complaint for unlawful detainer.

## The Facts

The subject matter of the present controversy is a parcel of land located at Barrio Looc, Lapu-Lapu City with an area of 2,830 square meters, more or less, designated as Lot No. 1036 covered by Transfer Certificate of Title (TCT) No. 29490[6] of the Registry of Deeds of Lapu-Lapu City, registered in the name of petitioner Aurora Tojong Su (Aurora), married to petitioner Amador P. Su (Amador; collectively, petitioners).

On March 1, 2012, petitioners filed a complaint[7] for unlawful detainer, damages, and attorney's fees against respondents Eda Bontilao[8] (Eda), Pablita Bontilao[9] (Pablita), and Maricel Dayandayan (Maricel; collectively, respondents) as well as several others[10] before the Municipal Trial Court in Cities, Lapu-

---

[3] *Id.* at 52-59.

[4] *Id.* at 225-229. Penned by Presiding Judge Victor Teves, Sr.

[5] *Id.* at 242-246.

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

[7] *Id.* at 60-63.

[8] Also referred to as "Nida Bontilao" and "Ida Bontilao" in the records. See Order dated March 3, 2014, *id.* at 120.

[9] Also referred to as "Pablito Bontilla" in the records. See *id.* at 120.

[10] Also impleaded as defendants were Noel Lutero, Ceasar Berdon, Joejet L. Concon, Pastor Berdon, Bonifacio Ong, Sr., Bonifacio Ong, Jr., Teddy Villa, Sally Elizar Villa, and Jonathan Ong. Records show that the case was terminated as to them, except Noel Lutero and Ceasar Berdon, upon the rendition of a Judgment based on two separate Compromise Agreements; see Order dated June 14, 2013, *id.* at 88.

Lapu City (MTCC), alleging that respondents had constructed their houses on the subject property and had been occupying the same by petitioners' mere tolerance, with the understanding that they will peacefully vacate the premises upon proper demand.[11]

Unfortunately, when petitioners informed respondents of their need of the subject property and requested them to voluntarily vacate the same, respondents refused.[12] Petitioners' formal demand[13] for them to do so likewise went unheeded. Thus, after efforts for an amicable settlement before the barangay similarly failed,[14] petitioners instituted the present complaint for unlawful detainer.

In defense,[15] respondents claimed that petitioners had no cause of action against them, not being the real owners of the subject property. They averred that petitioners obtained their title through fraud, having bought the subject property from one Gerardo Dungog (Gerardo) despite full knowledge that it was their predecessor, Mariano Ybañez (Mariano), who owned the same as evidenced by a tax declaration issued under his name. As the legitimate heirs of Mariano, respondents claimed to be the true owners of the subject property who were in continuous possession thereof since their youth. Consequently, they could not have been occupying the subject property by the mere tolerance of petitioners.[16]

The case was set for preliminary conference on June 14, 2013. However, despite due notice, petitioners and their counsel

---

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

[12] *Id.* at 61.

[13] *Id.* at 67-78.

[14] See Certification to File Action dated September 2, 2008; *id.* at 66.

[15] See Answer with Counterclaim dated November 29, 2012; *id.* at 79-85.

[16] *Id.*

failed to appear. Only respondents and their counsel, Atty. Vicente Roco (Atty. Roco) were present.[17]

**The Proceedings Before The MTCC and Its Ruling**

In an Order[18] dated June 14, 2013, the MTCC dismissed the case insofar as respondents were concerned[19] for failure of petitioners and their counsel to appear at the preliminary conference despite due notice.

Petitioners' counsel, Atty. John Paul P. Amores (Atty. Amores), filed a motion for reconsideration[20] against the order of dismissal, explaining that his wife and three-year-old son fell ill in the morning of June 14, 2013, leaving him with no choice but to attend to them. He clarified that he exerted efforts to contact the court through telephone and apprise them of his absence, but failed.[21]

After hearing Atty. Amores's motion for reconsideration and finding his explanations to be well-taken, the MTCC issued an Order[22] dated June 28, 2013 granting the same and resetting the preliminary conference anew on August 9, 2013. Thereafter, Atty. Amores withdrew[23] as counsel for petitioners and Atty. Roberto R. Palmares (Atty. Palmares) entered his appearance[24] in the case. With the termination of the preliminary conference, the parties were required to submit their position papers within ten (10) days from receipt, after which or the lapse of the said

---

[17] *Id.* at 39.

[18] *Id.* at 88. Penned by Presiding Judge Allan Francisco S. Garciano.

[19] The rest of the defendants entered into separate compromise agreements with petitioners, which the MTCC ordered submitted for judgment in the same Order.

[20] *Rollo,* pp. 89-91.

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

[22] *Id.* at 92.

[23] *Id.* at 93-94.

[24] *Id.* at 95-96.

period, the case was deemed submitted for decision in an Order dated October 4, 2013.[25]

Subsequently, respondents filed an Omnibus Motion,[26] praying that the June 14, 2013 Order dismissing the case for non-appearance of petitioners and their counsel at the preliminary conference be reinstated and declared final and executory, and that the subsequent Orders dated June 28, 2013 and October 4, 2013 be recalled for lack of factual and legal basis. Respondents insisted that petitioners and their former counsel, Atty. Amores, failed to offer any justifiable reason for their absence at the preliminary conference, and under the rules, such inexcusable absence is a ground for the dismissal of the case. As such, the MTCC correctly ordered its dismissal on June 14, 2013. Further, respondents pointed out that the motion for reconsideration filed by Atty. Amores was a prohibited pleading under the Rules on Summary Procedure. Finally, they contended that petitioners failed to file their pre-trial brief.

In an Order[27] dated September 21 , 2015, the MTCC denied respondents' Omnibus Motion, ratiocinating that a motion for reconsideration is a prohibited pleading only if it seeks reconsideration of a judgment rendered *on the merits.* In this case, since the order of dismissal issued by the MTCC was grounded on the failure of petitioners and their counsel to appear during the preliminary conference – hence, a procedural ground – the motion for reconsideration filed by Atty. Amores was not a prohibited pleading.

Similarly, the MTCC rejected respondents' assertion that petitioners' failure to file a pre-trial brief is a cause for the dismissal of the action, explaining that the unlawful detainer case can be decided on the basis of the pleadings, documentary evidence, and position papers of the parties as it is covered by the Rules on Summary Procedure. Stressing that pre-trial briefs

---

[25] *Id.* at 97.

[26] *Id.* at 98-106.

[27] *Id.* at 136-144-B.

may be submitted only suppletorily and not mandatorily, the MTCC pointed out that in the Notice of Preliminary Conference,[28] what was required was merely the appearance of the parties. Finally, it emphasized that the merits of the case justify the relaxation of strict rules of procedure, positing that the ends of justice are better served if the parties will be given full opportunity to address the issues raised.[29]

After due proceedings, the MTCC rendered a Decision[30] dated October 6, 2015 finding in favor of petitioners and against respondents. Accordingly, it ordered respondents and all persons claiming rights under them to immediately vacate the subject property, to surrender the peaceful possession thereof to petitioners, and to jointly and severally pay them the amount of ₱10,000.00 as attorney's fees.[31]

In so ruling, the MTCC found that being the registered owners of the subject property covered by TCT No. 29490, petitioners have the right of possession over the same, being one of the attributes of ownership. Moreover, the actual possession and occupation of respondents was by mere tolerance of petitioners, hence, respondents were bound to peacefully vacate upon demand. The MTCC noted that respondents failed to present any countervailing evidence to support their claim of ownership or, at the least, possession of the subject property. Their allegation that they are the legitimate heirs of Mariano, who they averred was the original owner of the subject property, cannot be given credence as the same would amount to a collateral attack on the title of petitioners.[32]

Dissatisfied, respondents appealed to the RTC.

---

[28] *Id*. at 86-87.

[29] *Id.* at 140-144.

[30] *Id.* at 145-157.

[31] *Id.* at 157.

[32] *Id.* at 151-156.

**The RTC Ruling**

In a Decision[33] dated December 2, 2016, the RTC affirmed the MTCC Decision *in toto,* reiterating its ruling that a motion for reconsideration is a prohibited pleading only if it seeks reconsideration of a judgment rendered on the merits. Since the order of dismissal issued by the RTC was based on a technicality, the motion for reconsideration filed by petitioners' counsel was therefore not prohibited. Moreover, it sustained the MTCC's ruling that pre-trial briefs may be submitted suppletorily but not mandatorily.[34]

On the substantive issue, the RTC affirmed the MTCC's finding that respondents' occupation of the subject property was by mere tolerance of petitioners, who were the registered owners thereof and therefore, entitled to its possession as an attribute of ownership upon demand. As regards the issues of lack of jurisdiction, laches and prescription, the RTC held that respondents never raised the same in their answer or in the proceedings before the MTCC; thus, they are now barred from raising the same.[35]

Respondents filed a motion for reconsideration[36] while petitioners moved for the issuance of a writ of execution. In an Order[37] dated April 26, 2017, the RTC denied respondents' motion. On the other hand, it granted petitioners' motion for the issuance of a writ of execution without prejudice, however, to a further appeal that may be taken by respondents. Accordingly, respondents filed an appeal before the CA.

In their petition for review,[38] respondents prayed for the outright dismissal of the complaint on account of the non-

---

[33] *Id.* at 225-229.

[34] *Id.* at 150-157.

[35] *Id.*

[36] *Id.* at 230-241.

[37] *Id.* at 242-246.

[38] CA *rollo,* pp. 3-32.

appearance of petitioners and their counsel during the first scheduled preliminary conference, their failure to file a pre-trial brief, and the lack of a satisfactory explanation therefor. On the substantive aspect, they maintained that they are the legitimate heirs of Mariano, the original owner of the subject property, and therefore occupy the same as the true owners. They averred that petitioners failed to describe in detail the alleged acts of tolerance with respect to their possession thereof. Finally, they insisted that an ejectment case is not always necessarily decided in favor of the party who has a certificate of title, as the issue involved is only physical possession.[39]

**The CA Ruling**

In a Decision[40] dated December 14, 2017, the CA reversed and set aside the RTC issuances and instead, dismissed the complaint altogether. The CA held that it was grossly erroneous for the RTC to affirm the MTCC's recall of its June 14, 2013 Order dismissing the case for failure of petitioners and their former counsel to appear during the first scheduled preliminary conference.[41]

The CA took exception to the MTCC's liberality premised on the principle that courts have the prerogative to relax compliance with procedural rules. It reasoned that even if Atty. Amores's justification for his failure to appear at the preliminary conference was acceptable to the courts *a quo,* it did not excuse the absence of petitioners themselves, as Atty. Amores's reasons were personal and exclusively pertained to him.[42]

Furthermore, the CA stressed that the summary nature of the proceedings in ejectment cases expressly prohibits dilatory motions for postponements without justifiable cause and makes the appearance of the parties and their counsel during the

---

[39] *Id.* at 12-30.

[40] *Rollo,* pp. 37-51.

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

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

preliminary conference mandatory. It declared that concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to at least promptly explain his failure to comply with the rules, none of which was forthcoming in this case. The MTCC even failed to inquire into the reason for petitioners' absence during the preliminary conference. The CA even opined that it was reasonable to presume that petitioners were well aware of the scheduled date of preliminary conference, as Atty. Amores was served with notice thereof. Therefore, having been charged with notice of the preliminary conference and for their failure to heed the same, the MTCC's order of dismissal must be affirmed.[43]

Aggrieved, petitioners moved for reconsideration, averring that they had authorized Atty. Amores to represent them in the preliminary conference on June 14, 2013, as evidenced by a Special Power of Attorney[44] (SPA) dated November 28, 2012 duly offered and attached[45] to the records of the MTCC. They pleaded that the circumstances in this case do not illustrate a pattern or scheme to delay the disposition of the case or a wanton disregard of the rules, as in fact their new counsel, Atty. Palmares, also armed with a written authority, appeared on their behalf on the rescheduled preliminary conference on October 4, 2013. Likewise, Atty. Amores promptly moved for the reconsideration of the order of dismissal and they filed their position paper when required by the MTCC. As regards their failure to file a pre-trial brief, they asserted that the MTCC only required the appearance of the parties, not the filing of a pre-trial brief, in the Notice of Preliminary Conference.[46]

---

[43] *Id.* at 49-50.

[44] *Id.* at 342.

[45] *Id.* at 343.

[46] CA *rollo,* pp. 309-331.

In a Resolution[47] dated March 23, 2018, the CA denied petitioners' motion for reconsideration; hence, this petition.

## The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in reversing and setting aside the courts *a quo's* issuances recalling the June 14, 2013 Order and in dismissing the complaint for unlawful detainer based on purely procedural considerations.

## The Court's Ruling

The petition is partly meritorious.

### I.

Section 7 of the Revised Rules on Summary Procedure states:

> Section 7. *Preliminary conference; appearance of parties.* – Not later than thirty (30) days after the last answer is filed, a preliminary conference shall be held. The rules on pre-trial in ordinary cases shall be applicable to the preliminary conference unless inconsistent with the provisions of this Rule.
>
> **The failure of the plaintiff to appear in the preliminary conference shall be a cause for the dismissal of his complaint.** The defendant who appears in the absence of the plaintiff shall be entitled to judgment on his counterclaim in accordance with Section 6 hereof. All cross-claims shall be dismissed.
>
> If a sole defendant shall fail to appear, the plaintiff shall be entitled to judgment in accordance with Section 6 hereof. This Rule shall not apply where one of two or more defendants sued under a common cause of action who had pleaded a common defense shall appear at the preliminary conference. (Emphasis supplied)

Relative thereto, Section 4, Rule 18 of the Revised Rules of Court, which apply suppletorily insofar as not inconsistent with the Rules on Summary Procedure, states:

---

[47] *Rollo,* pp. 52-59.

Section 4. *Appearance of parties.* – It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents. (Emphasis and underlining supplied)

In this case, petitioners executed an SPA[48] dated November 28, 2012 in favor of their former counsel, Atty. Amores, expressly granting him full authority to represent them during the preliminary conference as well as to enter into a compromise agreement or submit to alternative modes of dispute resolution, *inter alia.* The SPA has been offered before the MTCC and attached to the records of the case as page 43,[49] thereby negating any suggestions of a belated execution in order to excuse petitioners' absence during the first scheduled preliminary conference. In accordance with the provisions of Section 4, Rule 18 of the Revised Rules of Court as above-quoted, the Court finds the SPA to be sufficient written authorization in favor of petitioners' counsel that excused the non-appearance of petitioners at the preliminary conference. In fact, it would appear that the existence of said SPA was the reason why Atty. Amores did not bother to explain the non-appearance of petitioners and why the MTCC no longer found it necessary to inquire into the same.

On the other hand, Atty. Amores, in his motion for reconsideration, had distinctly explained the reason for his absence thereat, which the MTCC deemed well-taken. Indeed, what constitutes a valid ground to excuse litigants and their counsels at the pre-trial is subject to the sound discretion of a judge. Unless and until a clear and manifest abuse of discretion is committed by the judge, his appreciation of a party's reasons for his non--appearance will not be disturbed.[50]

---

[48] *Id.* at 342.

[49] See Certification dated January 17, 2018 issued by Atty. Dennis L. Pacas, Branch Clerk of Court; *id.* at 343.

[50] *Daaco v. Yu,* 761 Phil. 161, 168 (2015).

On this note, the motion for reconsideration filed by Atty. Amores is not a prohibited motion, contrary to respondents' refutations. True, Section 19 (c)[51] of the Rules on Summary Procedure and Section 13 (3)[52] of Rule 70 of the Revised Rules of Court consider a motion for reconsideration a prohibited pleading. However, the motion for reconsideration contemplated thereunder is one seeking reconsideration of a judgment rendered on the merits,[53] not from an order of dismissal on the ground of non-appearance at the preliminary conference, as in this case. The MTCC's June 14, 2013 Order dismissing petitioners' case was not an adjudication on the merits; as such, reconsideration thereof was correctly sought by Atty. Amores, which was not a *pro forma* motion and therefore, tolled the running of the prescriptive period to make an appeal.

Finally, while it is true that failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial,[54] and therefore, shall be a cause for dismissal of the action

---

[51] Section 19. *Prohibited pleadings and motions.* – The following pleadings, motions, or petitions shall not be allowed in the cases covered by this Rule:

x x x x x x x x x

(c) Motion for new trial, or for reconsideration of a judgment, or for reopening of trial;

x x x x x x x x x

[52] Section 13. Prohibited pleadings and motions. – The following petitions, motions, or pleadings shall not be allowed:

x x x x

3. Motion for new trial, or for reconsideration of a judgment, or for reopening of trial;

x x x x x x x x x

[53] *Lucas v. Fabros,* 381 Phil. 1, 6 (2000); *Joven v. CA,* 287 Phil. 777, 787 (1992). See also *Spouses Edillo v. Spouses Dulpina,* 624 Phil. 587, 599-600 (2010).

[54] Section 6. *Pre-trial brief.* – The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

save for justifiable reasons or the existence of a written authority in favor of a party's representative, it is likewise true that cases governed by the Rules on Summary Procedure may be resolved on the basis of the pleadings, affidavits of witnesses, and position papers filed by the parties. Further, as aptly pointed out by the MTCC, its Notice of Preliminary Conference[55] did not require the filing of the parties' pre-trial briefs; all that was required was their appearance thereat. As such, petitioners cannot be faulted in this regard.

At this point, it bears mentioning that petitioners, after Atty. Amores's failure to appear at the first scheduled preliminary conference, causing the dismissal of the case, promptly sought the services of another lawyer, Atty. Palmares, to represent them in subsequent proceedings. For his part, Atty. Amores filed a motion for reconsideration explaining the reasons for his non-appearance. These actions, taken together, show that petitioners had no intention of deliberately delaying or postponing the preliminary conference or trifling with the summary nature of ejectment proceedings; instead, it evinces their legitimate desire to comply with court processes. The lack of efforts to manifest to the court the reason for their absence at the preliminary conference is more apparent than real: the existence of the SPA in the records of the case more than sufficiently explains their non-appearance thereat. Thus, the Court finds no reason for the CA to set aside the courts *a quo's* order recalling its dismissal of the case and allowing it to proceed on its course and resolving the same on the merits.

Verily, the CA erred in completely dismissing petitioners' petition before it on purely procedural grounds. Indeed, "[i]t is well to remember that this Court, in not a few cases, has consistently held that cases shall be determined on the merits, after full opportunity to all parties for ventilation of their causes

---

x x x x x x x x x

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

[55] *Rollo,* p. 86.

and defense, rather than on technicality or some procedural imperfections. In so doing, the ends of justice would be better served. The dismissal of cases purely on technical grounds is frowned upon and the rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice, and thereby defeat their very ends. Indeed, rules of procedure are mere tools designed to expedite the resolution of cases and other matters pending in court. A strict and rigid application of the rules that would result in technicalities that tend to frustrate rather than promote justice must be avoided."[56]

In this instance, court procedure dictates that the present case be remanded to the CA for resolution on the merits. However, when there is already enough basis on which a proper evaluation of the merits may be had, the Court may dispense with the time-consuming procedure of remand in order to prevent further delay in the disposition of the case and to better serve the ends of justice.[57] In view of the foregoing and in light of petitioners' prayer[58] that the decisions rendered by the courts *a quo* in their favor be reinstated, the Court finds it appropriate to proceed with the resolution of the substantive issues of this case.

**II.**

Unlawful detainer involves the defendant's withholding of the possession of the property to which the plaintiff is entitled, after the expiration or termination of the former's right to hold possession under the contract, whether express or implied. A requisite for a valid cause of action of unlawful detainer is that the possession was originally lawful, but turned unlawful only

---

[56] *Malixi v. Baltazar,* G.R. No. 208224, November 22, 2017, 846 SCRA 244, 265, citing *Durban Apartments Corporation v. Catacutan,* 514 Phil. 187, 195 (2005).

[57] See *Cariaga v. Sapigao and Acosta,* 811 Phil. 819, 831 (2017), citing *Sy-Vargas v. The Estate of Ogsos, Sr.,* 796 Phil. 840, 850 (2016).

[58] See Petition, *rollo,* p. 23.

upon the expiration of the right to possess. To show that the possession was initially lawful, the basis of such lawful possession must then be established.[59]

In an action for unlawful detainer based on tolerance, the acts of tolerance must be proved; bare allegations are insufficient. For tolerance to exist, the complainants in an unlawful detainer must prove that they had consented to the possession over the property through positive acts. After all, tolerance signifies permission and not merely silence or inaction as silence or inaction is negligence and not tolerance.[60] The Court explained in *Reyes v. Heirs of Deogracias Forlales*[61] that:

> [. . .] acts merely tolerated are those which by reason of neighborliness or familiarity, the owner of property *allows* his neighbor or another person to do on the property; they are generally those particular services or benefits which one's property can give to another without material injury or prejudice to the owner, who *permits* them out of friendship or courtesy. They are acts of little disturbances which a person, in the interest of neighborliness or friendly relations, *permits* others to do on his property, such as passing over the land, tying a horse therein, or getting some water from a well. And even though this is *continued* for a long time, no right will be acquired by prescription. [. . .]
>
> There is tacit consent of the possessor to the acts which are merely tolerated. Thus, *not every case of knowledge and silence on the part of the possessor can be considered mere tolerance.* **By virtue of tolerance that is considered as an authorization, permission or license, acts of possession are realized or performed. The question reduces itself to the existence or non-existence of the permission.**[62]

The fact of tolerance is of utmost importance in an action for unlawful detainer. Without proof that the possession was legal at the outset, the logical conclusion would be that the

---

[59] *Quijano v. Amante,* 745 Phil. 40, 52 (2014).

[60] See *Lozano v. Fernandez,* G.R. No. 212979, February 18, 2019.

[61] 787 Phil. 541 (2016).

[62] *Id.* at 554-555.

defendant's possession of the subject property will be deemed illegal from the very beginning, for which, the action for unlawful detainer shall be dismissed.[63] Thus, an action for unlawful detainer fails in the absence of proof of tolerance, coupled with evidence of how the entry of the respondents was effected, or how and when the dispossession started.[64]

The Court has meticulously examined the records and finds that petitioners failed to adduce evidence to establish that the respondents' occupation of the subject property was actually effected through their tolerance or permission. There is dearth of evidence to show how and when the respondents entered the subject lot, as well as how and when the permission to occupy was purportedly given by petitioners. Hence, there was no basis for the MTCC and RTC to conclude that respondents' occupation of the subject property was by mere tolerance of petitioners.

Finally, it was error for the courts *a quo* to rule in favor of petitioners merely on the basis of the Torrens title registered in their names. There is no question that the holder of a Torrens title is the rightful owner of the property thereby covered and is entitled to its possession.[65] However, the fact alone that petitioners have a title over the subject property does not give them unbridled authority to immediately wrest possession from its current possessor in the absence of evidence proving the allegations in their unlawful detainer claim. Indeed, even the legal owner of the property cannot conveniently usurp possession against a possessor, through a summary action for ejectment, without proving the essential requisites thereof. Accordingly, should the owner choose to file an action for unlawful detainer, it is imperative for him/her to first and foremost prove that the occupation was based on his/her permission or tolerance. Absent

---

[63] *Quijano v. Amante, supra* note 59, at 53.

[64] See *Javelosa v. Tapus,* G.R. No. 204361, July 4, 2018.

[65] *Quijano v. Amante, supra* note 59, at 51.

which, the owner would be in a better position by pursuing other more appropriate legal remedies.[66]

**WHEREFORE,** the petition is **DENIED.**

**SO ORDERED.**

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

---

**SECOND DIVISION**

[G.R. No. 242413. September 4, 2019]

**THE PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **WENNIE PESPENIAN,** *accused-appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; MURDER; ELEMENTS.—** The elements of murder are sufficiently established that: 1) a person was killed; 2) the accused killed him; 3) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and 4) the killing is not parricide or infanticide.

**2. ID.; AGGRAVATING CIRCUMSTANCES; TAKING ADVANTAGE OF SUPERIOR STRENGTH; CONSIDERED WHENEVER THERE IS NOTORIOUS INEQUALITY OF FORCES BETWEEN THE VICTIM AND THE AGGRESSORS THAT IS PLAINLY AND OBVIOUSLY ADVANTAGEOUS TO THE AGGRESSORS AND PURPOSELY SELECTED OR TAKEN ADVANTAGE OF TO FACILITATE THE COMMISSION OF THE CRIME; CASE**

---

[66] *Javelosa v. Tapus, supra* note 64.

**AT BAR.—** Here, the RTC determined the presence of qualifying circumstance of taking advantage of superior strength. The aggravating circumstance of taking advantage of superior strength is considered whenever there is notorious inequality of forces between the victim and the aggressors that is plainly and obviously advantageous to the aggressors and purposely selected or taken advantage of to facilitate the commission of the crime. It is taken into account whenever the aggressor purposely used excessive force that is "out of proportion to the means of defense available to the person attacked." The victim need not be completely defenseless in order for the said aggravating circumstance to be appreciated. In the instant case, accused, in perpetrating the crime was armed with a knife and his co-accused Ireneo Salili with a gun, while Brigido Colminas had nothing to defend himself. As testified by the witness, accused Wennie was stabbing Brigido many times while his co-accused Ireneo Salili was pointing a gun at Brigido. The two (2) accused therefore took advantage that they were both armed in attacking their unarmed and defenseless victim. Such intention is evidenced by the 18 stab and incised wounds combined, which can be found in the different parts of the body of the accused on account of the attack made. The CA had a similar pronouncement. x x x The Court further observes that the prosecution witnesses testified that Pespenian and Salili ran after them after the stabbing incident. This shows that the assailants knew that they had the upper hand because they were armed, and they demonstrated their superiority by going after the unarmed witnesses.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY; FINDINGS OF FACT OF THE TRIAL COURT, PARTICULARLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE BINDING UPON THE SUPREME COURT.—** Well-settled is the rule that findings of fact of the trial court, particularly when affirmed by the CA, are binding upon this Court. We have reviewed the case and we see no compelling reason to reverse the conviction. The trial court and the appellate court were unanimous in their findings of fact and conclusions of law. Their rulings were based on evidence on record, law, and jurisprudence.

**APPEARANCES OF COUNSEL**

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

## D E C I S I O N

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

Two armed assailants as against an unarmed victim and companions constitute taking advantage of superior strength.

### The Case

This is an ordinary appeal from the June 22, 2018 Court of Appeals (CA) Decision[1] in CA-G.R. CR-HC No. 02160, affirming the January 22, 2015 Regional Trial Court (RTC) Decision[2] in Criminal Case No. DNO-2932, finding the accused guilty beyond reasonable doubt of murder.

### The Facts

In an Information[3] dated February 4, 2003, accused Wennie Pespenian[4] (Pespenian) and Ireneo Salili (Salili) were charged with Murder. Pespenian was arrested and detained, while Salili

---

[1] Penned by Associate Justice Gabriel R. Robeniol, with Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap, concurring; *rollo*, pp. 4-18.

[2] Penned by Presiding Judge Jerry B. Dicdican; CA *rollo*, pp. 46-51.

[3] That on or about the 2nd day of January, 2003, at about 7:30 o'clock in the evening, more or less, at Barangay Cawit, Municipality of Pilar, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife and a handgun of unknown caliber, conspiring, confederating and mutually helping with one another, with deliberate intent to kill, by means of treachery and evident premeditation and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and stab Brigido Colminas with the use of a knife, hitting the latter on the different parts of his body, thereby resulting to the instantaneous death of the said victim; records, p. 1.

[4] Also referred to as "Wenie Pespenian" in some parts of the *rollo*.

remains at large.[5] During arraignment, Pespenian pleaded not guilty.[6] A warrant of arrest was issued for the arrest of Salili.[7] Thereafter, pre-trial and trial followed.

The prosecution presented three witnesses: 1) Alejandro Pilota (Pilota), the victim's companion; 2) Neri Valenzona (Valenzona), another companion of the victim; and 3) Dr. Eufemia P. Maratas (Dr. Maratas), Municipal Health Officer of Pilar, Camotes.[8]

Pilota testified that at 7 p.m. of January 2, 2003, he was at Joel Manza's (Manza) house with Brigido Colminas (Colminas), Valenzona, and many others to have dinner as it was the last night of prayers for Manza's late wife. After dinner, Pilota, Colminas and Valenzona left. Pilota and Valenzona accompanied Colminas on his way home, because they heard from the other guests that Pespenian and Salili were planning to take Colminas' life.[9]

On their way, they met the two accused. Pespenian stabbed Colminas several times on the left and right chest down to his foot using an eight-inch knife, while Salili was holding a pistol and stayed behind Pespenian.[10]

Pilota saw the whole incident and the identity of the assailants as he was holding a flashlight four meters away from Colminas. He and Valenzona were stunned with the attack and were unable to help Colminas. Thereafter, Pespenian and Salili chased them, prompting them to ran away.[11]

Valenzona corroborated Pilota's testimony. The attack happened about 15 meters away from Colminas' house. He

---

[5] Records, pp. 10-14.

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

[7] *Id*. at 24.

[8] *Id*. at 160.

[9] Transcript of Stenographic Notes (TSN), September 3, 2004, pp. 3-11.

[10] *Id*.

[11] *Id*.

saw Pespenian stabbed Colminas while Salili pointed a gun at the latter. When Colminas fell, Pespenian and Salili went after him and Pilota. They ran away and hid to avoid getting assaulted.[12]

The last prosecution witness was Dr. Maratas, who testified that she conducted a post mortem examination on Colminas' body on January 3, 2003, and issued a post mortem report. She confirmed that Colminas had multiple stab wounds which caused massive bleeding that led to his death. Colimas had 18 wounds all over his body, found on his cheeks, forearm, chest, abdomen, right knee, and right foot.[13]

For his defense, Pespenian testified that at around 7:30 p.m. on January 2, 2003, he was with Salili fishing. Once done, they went home. On their way, they encountered Colminas, who was holding a knife. Salili and Colminas grappled for the knife. Pespenian feared for his life and left to go home. The following day, he learned that Colminas died, and he was arrested instead of Salili, because he had fled. He said there were no other witnesses to the incident.[14]

**The RTC Decision**

On January 22, 2015, the RTC convicted Pespenian of Murder, imposed the penalty of *reclusion perpetua*, and ordered him to pay Colminas' heirs ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱30,000.00 as exemplary damages.[15]

The RTC ruled the presence of aggravating circumstance of taking advantage of superior strength, which pertains to the inequality of forces between the victim and the aggressors. It was purposely selected to facilitate the commission of the crime. Here, the accused were armed with a knife and a gun, while Colminas had nothing to defend himself. The accused took

---

[12] TSN, April 15, 2005, pp. 4-9.

[13] TSN, April 8, 2005, pp. 3-8.

[14] TSN, October 1, 2010, pp. 4-12.

[15] CA *rollo*, p. 51.

advantage of their weapons and their number against an unarmed victim, which is an aggravating circumstance.[16]

Aggrieved, Pespenian appealed to the CA.

**The CA Decision**

On June 22, 2018, the CA affirmed with modification the RTC's decision. The CA increased the award of moral damages to ₱75,000.00, exemplary damages to ₱75,000.00, and temperate damages to ₱50,000. The CA retained the ₱75,000.00 civil indemnity. All monetary awards shall earn an interest of 6% per annum from the date of finality of the decision until fully paid.[17]

Unsuccessful, Pespenian appealed his conviction before the Court.

**The Issue Presented**

The sole issue for resolution is whether or not the CA erred in affirming Pespenian's conviction for murder.

**The Court's Ruling**

The Court affirms the conviction.

In his Brief, Pespenian alleges that the prosecution witnesses failed to identify him as Colminas' assailant because the place of incident was dark and there was no showing that the witnesses saw his face.[18]

The Court is not convinced.

*First*, Pespenian admitted during his direct examination that he and Salili encountered the victim, Colminas, on their way home. He narrated that Colminas was holding a knife, and fought over it with Salili. However, he left them out of fear.[19]

---

[16] *Id*. at 50.

[17] *Rollo*, p.17.

[18] CA *rollo*, pp. 37-39.

[19] TSN, October 1, 2010, pp. 8-10.

**Direct Examination of Pespenian – TSN dated October 1, 2010, pp. 8-10**

Q: You mentioned awhile ago that after fishing you went home, did you arrive to your house?

A: No.

Q: Why?

A: We met the victim there at the road.

Q: Meaning to say, you met Brigido Colminas at the road when you were on your way home?

A: Yes, ma'am.

Q: And when you met, what happened next?

A: He approached us.

Q: And after that what happened?

A: That's the time that the incident happened because he approached us.

Q: What did he do when he [approached] you and Ireneo Salili?

A: I saw Brigido Colminas was carrying a knife.

Q: You mentioned awhile ago that Brigido Colminas approached you and he was then during that time carrying a knife. So, when [he] approached you, what happened next?

A: Ireneo Salili and Brigido Colminas were grappling each other [for] the knife.

x x x x x x x x x

Q: What did you do when you saw them grappling with each other with a knife?

A: I left them and I proceeded my way to my home.

Q: You did not bother to pacify?

A: No, I did not because I was already afraid.

Pespenian's admission puts him on the crime scene while a crime was being committed. His admission contradicts his

claim that the prosecution witnesses did not see him because it was dark.

*Second*, it was established during the examination of the prosecution witnesses that the place where the incident took place was not totally dark. There was illumination coming from the flashlight, which helped the witnesses see the attackers. The witnesses were only four meters away from Colminas as he was being assaulted. The witnesses knew the accused as they lived near each other. Pespenian even admitted during his cross examination that he knew Pilota and Valenzona as they were neighbors.[20] In sum, the light, the distance, and the familiarity with the accused aided the prosecution witnesses to identify them.

The following excerpts support the conviction of the accused. The details narrated below prove that the witnesses saw the faces of the accused, the weapons used, and their participation in the crime.

**Direct Examination of Pilota – TSN dated September 3, 2004, pp. 5-11**

Pros. Macias: Did you and your companion reach the house of Brigido Colminas?

Witness: We did not reach the house of Brigido Colminas, Ma'am.

Pros. Macias: What was the reason why you and your companion did not reach the house of Brigido Colminas?

Witness: Because Wennie Pespenian and Ireneo Salili waylaid us.

Pros. Macias: After that, what happened?

Witness: Wennie Pespenian kept on stabbing.

Pros. Macias: Who was being stabbed by Wennie Pespenian?

---

[20] TSN, November 5, 2013, p. 4.

Witness: Brigido Colminas.

Pros. Macias: What part of the body of Brigido Colminas was stabbed by Wennie Pespenian?

Witness: He had many wounds.

Court Interpreter: The witness is pointing to his left and right chest down to his foot.

Pros. Macias: Did you see how many times Wennie Pespenian stabbed Brigido Colminas?

Witness: I saw him [stab] Brigido Colminas but I was not able to count, how many times.

Pros. Macias: While Wennie Pespenian stabbed Brigido, where was Ireneo Salili?

Witness: He was there following Wennie Pespenian.

Pros. Macias: What do you mean when you say that Ireneo Salili was following Wennie Pespenian?

Witness: Because they were walking together... (The answer of witness was interrupted by Pros. Macias.)

Pros. Macias: My question is: where was Ireneo Salili when Wennie Pespenian kept on stabbing Brigido Colminas?

Witness: He was very near him and following him.

Pros. Macias: What was the distance of Ireneo Salili when Wennie Pespenian stabbed Brigido Colminas?

Witness: One meter distance.

Pros. Macias: What was he doing that time?

Witness: He was there following Wennie Pespenian because while the victim was being stabbed, he was retreating.

Court to the Witness: What was Ireneo Salili doing when he saw Wennie Pespenian stabbed Brigido Colminas?

Witness: He was behind Wennie Pespenian.

Court to the Witness: What was he doing?

Witness: I did not see him do anything.

Pros. Macias: Did you see the weapon used by Wennie Pespenian in stabbing Brigido Colminas?

Witness: I saw it.

Pros. Macias: What was it?

Witness: A knife.

Pros. Macias: Can you tell the Honorable Court the length of that knife?

Witness: Around 8 inches.

Pros. Macias: When Wennie Pespenian was stabbing Brigido, what happened to Brigido?

Witness: He fell down.

Pros. Macias: How far were you from Wennie Pespenian and Brigido Colminas when the incident happened?

Witness: Around 4 meters distance.

Pros. Macias: How about your other companion? What was his distance from Brigido?

Witness: Around that distance also.

x x x x x x x x x

Pros. Macias: How were you able to recognize that it was Wennie Pespenian who stabbed Brigido Colminas?

Witness: We had a flashlight that time.

Pros. Macias: Since there were two of you who accompanied Brigido Colminas, who among the two of you held the flashlight?

Witness: I was the one, Ma'am.

Pros. Macias: Aside from a knife, were there any other weapons that you saw being brought by the accused?

Witness: We saw Ireneo held a pistol.

Pros. Macias: Is the accused Wennie Pespenian and accused Ireneo Salili here today?

Witness: Only Wennie Pespenian is here, Ma'am.

**Cross Examination of Pilota – TSN dated March 18, 2005, pp. 6-8**

Atty. Atillo: Such that you cannot easily ascertain the identities of persons you see there unless you are very near the person.

Witness: I recognized them because we are bringing a flashlight.

Atty. Atillo: Who among the three of you brought flashlight?

Witness: Me, Sir.

x x x x x x x x x

Atty. Atillo: That flashlight you used in illuminating the place did not clearly illuminate the place because you were behind them.

Witness: I directed the light at the sides.

Atty. Atillo: Why did you direct the light at the sides not at the front?

Witness: Because they were walking [ahead] at the side.

Atty. Atillo: Have you met Ireneo Salili prior to January 2, 2003 incident?

Witness: Yes Sir, because he is living near our house.

x x x x x x x x x

Atty. Atillo: Are you also a friend of Wennie Pespenian, one of the accused in this case?

Witness: We know each other, Sir. Unlike Brigido Colminas, we are not so close associates.

**Direct Examination of Valenzona – TSN dated April 15, 2005, pp. 4-8**

Q: Did Brigido Colminas reach his house?

A: No, Ma'am.

Q: What was the reason, if you know, why Brigido Colminas was not able to reach his house?

A: He was waylaid by Wenie Pespenian.

Q: Aside form Wenie Pespenian, who else waylaid him?

A: Ireneo Salili.

x x x x x x x x x

Q: Can you please tell the Honorable Court what actually happened at that time while you were on your way to the house of Brigido Colminas?

A: He was waylaid by Wenie Pespenian.

Q: You said that Brigido Colminas was waylaid by the accused in this case, will you please tell this Honorable Court how the accused Wenie Pespenian waylaid him?

A: He stabbed him many times.

Q: Who stabbed him?

A: Wenie Pespenian stabbed Brigido Colminas.

Q: Can you still remember how many times did Wenie Pespenian stab Brigido Colminas?

A: Many times.

Q: How about Ireneo Salili, what was his participation?

A: He pointed a gun.

Q: To whom?

A: To Brigido Colminas.

x x x x x x x x x

Q: After Brigido Colminas was stabbed by Wenie Pespenian several times, what happened to Brigido Colminas?

A: He fell to the ground.

x x x x x x x x x

Q: How did you recognize Wenie Pespenian and [Ireneo] Salili at that time?

A: Because they were beamed with a flashlight.

Q: Are you familiar with them, Wenie Pespenian and Ireneo Salili?

A: Yes, Ma'am.

Q: Is Wenie Pespenian present in this courtroom today?

A: Yes, Ma'am.

x x x x x x x x x

Q: What about Ireneo Salili, is he present in the courtroom today?

A: No, Ma'am, he is not present.

Q: Mr. Witness, what was the instrument used by Wenie Pespenian in stabbing Brigido Colminas?

A: A knife.

Q: Can you still remember the length of that knife?

A: More or less, eight (8) inches in length.

Q: Can you please tell the Honorable Court what part of the body of Brigido Colminas was hit?

A: He was hit on his arm, breast, and leg, but I could not recall if left or right.

From the foregoing stenographic notes and the Post Mortem Examination Report,[21] the elements of murder are sufficiently established that: 1) a person was killed; 2) the accused killed him; 3) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and 4) the killing is not parricide or infanticide.[22]

Here, the accused Pespenian was positively identified by the two prosecution witnesses to have stabbed Colminas that resulted to his death. The killing was not parricide as the victim and the accused were not ascendants or descendants of each other, and neither is it infanticide as the victim is an adult.

The only element left for discussion is whether the killing was attended by the qualifying circumstance of taking advantage of superior strength in Article 248 of the Revised Penal Code.

---

[21] Records, p. 79; Folder of Exhibits, p. 3, Exhibit "B".

[22] *People v. Gervero*, G.R. No. 206725, July 11, 2018.

In his Brief, Pespenian avers that the prosecution failed to adduce evidence to prove that he purposely sought the advantage or deliberately used it, in the attack. He asserts that Colminas was not defenseless as he had two companions who were supposed to protect him.[23]

The Court is not persuaded.

Here, the RTC determined the presence of qualifying circumstance of taking advantage of superior strength.

> The aggravating circumstance of taking advantage of superior strength is considered whenever there is notorious inequality of forces between the victim and the aggressors that is plainly and obviously advantageous to the aggressors and purposely selected or taken advantage of to facilitate the commission of the crime. It is taken into account whenever the aggressor purposely used excessive force that is "out of proportion to the means of defense available to the person attacked." The victim need not be completely defenseless in order for the said aggravating circumstance to be appreciated.
>
> In the instant case, accused, in perpetrating the crime was armed with a knife and his co-accused Ireneo Salili with a gun, while Brigido Colminas had nothing to defend himself.
>
> As testified by the witness, accused Wennie was stabbing Brigido many times while his co-accused Ireneo Salili was pointing a gun at Brigido. The two (2) accused therefore took advantage that they were both armed in attacking their unarmed and defenseless victim. Such intention is evidenced by the 18 stab and incised wounds combined, which can be found in the different parts of the body of the accused on account of the attack made.[24]

The CA had a similar pronouncement.

> There is abuse of superior strength when the perpetrators of a crime deliberately used excessive force, thereby rendering the victim incapable of defending himself. The notorious inequality of forces creates an unfair advantage for the aggressor.

---

[23] CA *rollo*, p. 42.

[24] *Id*. at 50.

In the case at bench, accused-appellant and his co-accused evidently armed themselves with deadly weapons. Accused-appellant used a knife and with it stabbed Colminas inflicting no less than eighteen (18) wounds upon the latter. Co-accused Salili, for his part, held a gun, which he pointed towards Colminas' direction. On the other hand, Colminas was unarmed. While Colminas had companions at that time, they were similarly unarmed and were overwhelmed by fear of assailants. Accused-appellant and co-accused clearly exploited their superior advantage in number and weapons to ensure the attainment of their hideous plan, *i.e.*, death to Colminas.[25]

The Court further observes that the prosecution witnesses testified that Pespenian and Salili ran after them after the stabbing incident. This shows that the assailants knew that they had the upper hand because they were armed, and they demonstrated their superiority by going after the unarmed witnesses.

Well-settled is the rule that findings of fact of the trial court, particularly when affirmed by the CA, are binding upon this Court.[26] We have reviewed the case and we see no compelling reason to reverse the conviction. The trial court and the appellate court were unanimous in their findings of fact and conclusions of law. Their rulings were based on evidence on record, law, and jurisprudence.

**WHEREFORE,** premises considered, the June 22, 2018 Court of Appeals Decision in CA-G.R. CR-HC No. 02160 is **AFFIRMED**.

**SO ORDERED.**

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

---

[25] *Rollo*, pp. 14-15.

[26] *People v. Urmaza y Torres,* G.R. No. 219957, April 4, 2018.

# CITATION

Page

## I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page



## II. FOREIGN CASES

Page

Page

Page

Page

## REFERENCES

## I. LOCAL AUTHORITIES

### A. CONSTITUTION

Page



## B. STATUTES

Page

Page

Page

Page

Page

Page

Page

Page

Page



**C. OTHERS**



**D. BOOKS**
(Local)

Page

Eduardo P. Caguioa, Comments and Cases on Civil Law, Civil Code of the Philippines, 3rd Ed., 1966, Vol. II, pp. 31-32 ..... 953
Isagani A. Cruz, Constitutional Law, 2015 Ed., p. 129 ..... 949
Isagani A. Cruz, Philippine Political Law, 259 (2002 Ed.) ..... 665
7 Vicente J. Francisco, The Revised Rules of Court in the Philippines, Evidence (Part II, Rules 131-134), 2-4, 542-543 (1973) ..... 729
J. Neil C. Garcia, Nativism or Universalism: Situating LGBT Discourse in the Philippines, 20 Kritika Kultura 48, 52-53 (2013) ..... 468-469
Martin, Legal and Judicial Ethics, p. 102 (1988) ..... 743
Edgardo L. Paras, Civil Code of the Philippines Annotated, 17th Ed., 2013, Vol. II, p. 40 ..... 952
Pineda, Legal and Judicial Ethics, p. 266 (1994) ..... 743
Alicia V. Sempio-Diy, Handbook on the Family Code of the Philippines 333 (1995) ..... 373
1 Arturo M. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines 603 (1990) ..... 373

## II. FOREIGN AUTHORITIES

### B. BOOKS

131 Am. J. Psychiatry 497 (1974) ..... 600
43 Am. Jur. p. 22 ..... 199
53 Am. Jur. 2d. Mentally Impaired Persons §127, p. 576-577 ..... 384
76 Am. Dec. p. 259 ..... 745
2 Bouvier's Law Dictionary, P. 2407 ..... 199
Black's Law Dictionary 9th (Ed.) 441 ..... 378
Black's Law Dictionary, 4th ( Ed.) 590, 616 ..... 195, 949
6 C. J. S., pp. 643, 646-648 ..... 745-746
7 C. J. S. pp. 899-900 ..... 746
67A C.J.S. 188-189 ..... 374, 378

Page

Page

# INDEX

# INDEX

— Without proof of AAA's age, R.A. No. 7610 cannot be made to apply as the said law applies only when the victim is below 18 years old; it must be clarified, however, that the Court still convicts XXX for Acts of Lasciviousness despite the failure of the prosecution to prove the victim's age, because all the elements of the crime are still present. (*Id*.)

**ADMINISTRATIVE LAW**

*Administrative liability* — Administrative liability will not attach absent proof of actual act or omission constituting neglect of duty; in the absence of substantial evidence of gross neglect, administrative liability could not be based on the principle of command responsibility; the negligence of the superior's subordinates is not tantamount to his own negligence. (Nacino *vs*. Office of the Ombudsman, G.R. Nos. 234789-91, Sept. 3, 2019) p. 602

**AGENCY**

*Contract of* — Ratification is a voluntary and deliberate confirmation or adoption of a previous unauthorized act; it converts the unauthorized act of an agent into an act of the principal; it cures the lack of consent at the time of the execution of the contract entered into by the representative, making the contract valid and enforceable; it is, in essence, consent belatedly given through express or implied acts that are deemed a confirmation or waiver of the right to impugn the unauthorized act." (Vive Eagle Land, Inc. *vs*. Nat'l.Home Mortgage Finance Corp., G.R. No. 230817, Sept. 4, 2019) p. 986

**AGGRAVATING CIRCUMSTANCES**

*Taking advantage of superior strength*—It is taken into account whenever the aggressor purposely used excessive force that is "out of proportion to the means of defense available to the person attacked"; the victim need not be completely defenseless in order for the said aggravating circumstance to be appreciated. (People *vs*. Pespenian, G.R. No. 242413, Sept. 4, 2019) p. 1080

done in the presence or within the view of the arresting officer."(Villasana *y* Cabahug *vs*. People, G.R. No. 209078, Sept. 4, 2019) p. 789

— In the warrantless arrest made pursuant to Section 5(a), supra, the concurrence of two circumstances is necessary, namely: (a) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is done *in the presence* or *within the view* of the arresting officer; on the other hand, Section 5(b), supra, requires that at the time of the warrantless arrest, an offense has just been committed and the arresting officer has *personal knowledge* of facts indicating that the accused had committed it; in both instances, the essential basis for the warrantless arrest is the arresting officer's personal knowledge of the fact of the commission of an offense. (People *vs*. Gardon-Mentoy, G.R. No. 223140, Sept. 4, 2019) p. 871

— Inspections at checkpoints are confined to visual searches; an extensive search of the vehicle is permissible only when the officer conducting the search had probable cause to believe *prior to the search* that he will find inside the vehicle to be searched the instrumentality or evidence pertaining to the commission of a crime. (*Id*.)

— It is settled that "reliable information" provided by police assets alone is not sufficient to justify a warrantless arrest; there must be independent circumstances perceivable by the arresting officers suggesting that a criminal offense is being committed to comply with the exacting requirements of Rule 113, Section 5 of the Rules of Court; an accused must perform some overt act within plain view of the police officers indicating that she or "he has just committed, is actually committing, or is attempting to commit a crime." (Villasana *y* Cabahug *vs*. People, G.R. No. 209078, Sept. 4, 2019) p. 789

— One such exception relates to arrests, searches and seizures made at a police checkpoint; indeed, routine inspections made at checkpoints have been regarded as permissible

custody from the moment the drugs are seized up to their presentation in court as evidence of the crime; the Court has repeatedly held that Section 21,Article II of R.A. No. 9165, the applicable law at the time of the commission of the alleged crime, strictly requires that (1) the seized items be inventoried and photographed immediately after seizure or confiscation: and (2) the physical inventory and photographing must be done in the presence of: (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ). (*Id.*)

— Mere statements of unavailability of the required witnesses, by themselves do not excuse non-compliance with Section 21, R.A. No. 9165; it is still necessary for the prosecution to establish that earnest efforts were made to secure the presence of the required witnesses. (People *vs*. Garcia *y* Ancheta, G.R. No. 230983, Sept. 4, 2019) p. 1027

— The Court has ruled that it is a grave error to trivialize the necessity of the number and identity of the witnesses enumerated in the law; the police officers' cavalier attitude towards adherence to procedure and protection of the rights of the accused is contrary to what is expected from our servants and protectors; the non-observance of the three-witness rule, coupled with the prosecution's failure to offer any explanation or justification for its non-compliance, is a clear violation of Section 21 of R.A. No. 9165, as amended, and its implementing rules and warrants the acquittal of appellant from the offenses charged for failure to prove his guilt beyond reasonable doubt. (People *vs*. Labini *y* Grajo @ "Jerry", G.R. No. 229212, Sept. 4, 2019) p. 973

— The Court ruled that absent any testimony on the management, storage, and preservation of the seized illegal drug, the fourth link in the chain of custody could not be reasonably established. (People *vs*. Garcia *y* Ancheta, G.R. No. 230983, Sept. 4, 2019) p. 1027

examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court. (People *vs*. Garcia *y* Ancheta, G.R. No. 230983, Sept. 4, 2019) p. 1027

(People *vs*. Dizon @ "Jingle",G.R. No. 223562, Sept. 4, 2019) p. 886

— Under the IRR, if the immediate physical inventory and photographing are not practicable, the buy-bust team should conduct the same as soon as it reaches the nearest police station, or the nearest office of the apprehending officer or team; the inventory must be done in the presence of the accused or his representative or counsel, a representative of the DOJ, the media, and an elected public official, who shall be required to sign the copies of the inventory and be given a copy thereof. (People *vs*. Labini *y* Grajo @ "Jerry", G.R. No. 229212, Sept. 4, 2019) p. 973

— Under varied field conditions, strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible; and the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of R.A. No. 9165 does not *ipso facto* render the seizure and custody over the items void, this has *always* been with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved; however, in this case, it is evident that the police officers blatantly disregarded the requirements laid down under Section 21 and they had no valid excuse for their deviation from the rules. (People *vs*. De Castro *y* Santos *alias* "Dacoy", G.R. No. 243386, Sept. 2, 2019) p. 92

*Illegal possession of dangerous drugs* — The *corpus delicti* in the prosecution for illegal possession of dangerous drugs consists in the dangerous drug itself, without which no conviction of the accused can be obtained; it is indispensable for the State to establish the identity of

**CORPORATIONS**

*Board of directors* — It is a fundamental principle in corporate law that a juridical entity cannot act or give its consent except through its board of directors as a collective body, which is vested with the power and responsibility to decide whether the corporation should enter into a contract that will bind the corporation, subject to the Articles of Incorporation, By-Laws, or relevant provisions of law. (Vive Eagle Land, Inc. *vs*. Nat'l.Home Mortgage Finance Corp., G.R. No. 230817, Sept. 4, 2019) p. 986

**CRIMINAL PROCEDURE**

*Prosecution of criminal cases* — The crimes of adultery, concubinage, seduction, abduction, acts of lasciviousness,and defamation cannot be prosecuted except at the instance of certain persons; Rule 110, Section 5 of the Revised Rules of Criminal Procedure enumerates crimes that require the intervention of specific individuals before criminal proceedings can be had: As to offenses punished under special laws, their prosecution would be governed by the relevant provisions of the special law violated. (Versoza *vs*. People, G.R. No. 184535, Sept. 3, 2019) p. 230

— The prosecution of criminal offenses begins with the filing of a complaint or an information; ordinarily, a complaint is subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated; on the other hand, an information is subscribed by a prosecutor; it is usually the offended party or a law enforcer who commences the case's prosecution; this is the traditional concept of the prosecution of criminal offenses; however, the rule is different in cases involving private crimes and those punishable under special laws. (*Id*.)

**COURTS**

*Doctrine of hierarchy of courts — Diocese of Bacolod* recognized transcendental importance as an exception to the doctrine of hierarchy of courts; in cases of transcendental importance, imminent and clear threats

*Doctrine of command responsibility* —To hold someone liable under the doctrine of command responsibility, the following elements must obtain: a) the existence of a superior-subordinate relationship between the accused as superior and the perpetrator of the crime as his subordinate; b) the superior knew or had reason to know that the crime was about to be or had been committed; and c) the superior failed to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof. (Nacino *vs*. Office of the Ombudsman, G.R. Nos. 234789-91, Sept. 3, 2019) p. 602

**EXPROPRIATION**

*Action for* — According to Section 4, Rule 67 of the Rules of Court, if the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first. (PNOC Alternative Fuels Corp.*vs*. Nat'l. Grid Corp. of the Phils.,G.R. No. 224936, Sept. 4, 2019) p. 932

— It is clear from the foregoing that the proper remedy of a defendant in an expropriation case who wishes to contest an order of expropriation is not to file a *certiorari* petition and allege that the RTC committed grave abuse of discretion in issuing the order of expropriation; the remedy is to file an appeal of the order of expropriation. (*Id*.)

— Sec. 4 of Rule 67 further states that a final order sustaining the right to expropriate the property, such as the assailed Order of Expropriation, may be appealed by any party aggrieved thereby; such appeal, however, shall not prevent the court from determining the just compensation to be paid. (*Id*.)

— Facial challenges are only allowed as a narrow exception to the requirement that litigants must only present their own cases, their extant factual circumstances, to the courts. (*Id.*)

— Facial invalidation of laws is considered as "manifestly strong medicine," to be used "sparingly and only as a last resort," and is "generally disfavored"; the reason for this is obvious; embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a law may be applied will not be heard to challenge a law on the ground that it may conceivably be applied unconstitutionally to others, *i.e.*, in other situations not before the Court. (*Id.*)

— For there to be a real conflict between the parties, there must exist actual facts from which courts can properly determine whether there has been a breach of constitutional text. (*Id.*)

— For this Court to exercise the immense power that enables it to undo the actions of the other government branches, the following requisites must be satisfied: (1) there must be an actual case or controversy involving legal rights that are capable of judicial determination; (2) the parties raising the issue must have standing or *locus standi* to raise the constitutional issue; (3) the constitutionality must be raised at the earliest possible opportunity, thus ripe for adjudication; and (4) the matter of constitutionality must be the very *lis mota* of the case, or that constitutionality must be essential to the disposition of the case. (*Id.*)

— Founded on the principle of supremacy of law, judicial review is the courts' power to decide on the constitutionality of exercises of power by the other branches of government and to enforce constitutional rights. (*Id.*)

— In a proper case, a good opportunity may arise for this Court to review the scope of Congress' power to statutorily define the scope in which constitutional provisions are effected. (*Id.*)

— It is the parties' duty to demonstrate actual cases or controversies worthy of judicial resolution; pleadings before this Court must show a violation of an existing legal right or a controversy that is ripe for judicial determination. (*Id.*)

— Legal standing is a party's "personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement"; interest in the case "means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest." (*Id.*)

— Much like the requirement of an actual case or controversy, legal standing ensures that a party is seeking a concrete outcome or relief that may be granted by the courts. (*Id.*)

— The scrutiny on the existence of actual facts becomes most necessary when the rights of marginalized, minority groups have been thrust into constitutional scrutiny by a party purporting to represent an entire sector. (*Id.*)

— There must be an actual case, "a contrast of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. (*Id.*)

— This Court's constitutional mandate does not include the duty to answer all of life's questions; no question, no matter how interesting or compelling, can be answered by this Court if it cannot be shown that there is an "actual and an antagonistic assertion of rights by one party against the other in a controversy wherein judicial intervention is unavoidable. (*Id.*)

— When an act of the legislative department is seriously alleged to have infringed the Constitution, settling the controversy becomes the duty of this Court; by the mere enactment of the questioned law or the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt

act. Indeed, even a singular violation of the Constitution and/or the law is enough to awaken judicial duty. (*Id*.)

— While this Court has withheld the application of facial challenges to strictly penal statutes, it has expanded its scope to cover statutes not only regulating free speech, but also those involving religious freedom, and other fundamental rights; the underlying reason for this modification is simple. For unlike its counterpart in the U.S., this Court, under its expanded jurisdiction, is mandated by the Fundamental Law not only to settle actual controversies involving rights which are legally demandable and enforceable, but also to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (*Id*.)

**JURISDICTION**

*Jurisdiction over the subject matter* — Whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed; this defense may be interposed at any time, during appeal or even after final judgment; such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside. (MR Holdings, Inc. *vs*. De Jesus, G.R. No. 217837, Sept. 4, 2019) p. 845

**LACHES**

*Principle of* — Laches is defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which by the exercise of due diligence could or should have been done earlier; its elements are: (1) conduct on the part of the defendant, or of one under whom the defendant claims, giving rise to the situation which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct as having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that

for a writ of possession is *ex parte* and summary in nature; as one brought for the benefit of one party only and without notice by the court to any person adverse of interest, it is a judicial proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard. (*Id*.)

— The issuance of the writ of possession is, in turn, a ministerial function in the exercise of which trial courts are not granted any discretion; since the judge to whom the application for writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure, it has been ruled that the ministerial duty of the trial court does not become discretionary upon the filing of a complaint questioning the mortgage. (*Id*.)

— To be sure, a pending action for annulment of mortgage or foreclosure does not stay the issuance of a writ of possession; the trial court does not need to look into the validity of the mortgage or the manner of its foreclosure; the purchaser is entitled to a writ of possession without prejudice to the outcome of the pending annulment case; In *Nagtalon v. United Coconut Planters Bank*, however, the Court recognized a few exceptions to the abovementioned rule, to wit: *(1) Gross inadequacy of purchase price;* In *Cometa v. Intermediate Appellate Court* which involved an execution sale, the court took exception to the general rule in view of the unusually lower price (P57,396.85 in contrast to its true value of P500,000.00) for which the subject property was sold at public auction; the Court perceived that injustice could result in issuing a writ of possession under the given factual scenario and upheld the deferment of the issuance of the writ; *(2) Third party claiming right adverse to debtor/mortgagor;* in *Barican v. Intermediate Appellate Court*, consistent with Section 35, Rule 39 of the Rules of Court, the Court held that the obligation of a court to issue a writ of possession in favor of the purchaser in a foreclosure of mortgage case ceases to be ministerial when a third-party *in possession of the property* claims a right adverse

to that of the debtor-mortgagor; *(3) Failure to pay the surplus proceeds of the sale to mortgagor;* We also deemed it proper to defer the issuance of a writ in *Sulit v. Court of Appeals* in light of the given facts, particularly the mortgagee's failure to return to the mortgagor the surplus from the proceeds of the sale (equivalent to an excess of approximately 40% of the total mortgage debt). (*Id*.)

**MURDER**

*Commission of* — The elements of murder are sufficiently established that: 1) a person was killed; 2) the accused killed him; 3) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and 4) the killing is not parricide or infanticide. (People *vs*. Pespenian, G.R. No. 242413, Sept. 4, 2019) p. 1080

— To successfully prosecute the crime of Murder, the following elements must be established, namely: (a) that a person was killed; (b) the accused killed him or her; (c) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (d) the killing is not Parricide or Infanticide; if the foregoing qualifying circumstances are not present or cannot be proven beyond reasonable doubt, the accused may only be convicted of Homicide, as defined and penalized under Article 249 of the RPC. (People *vs*. Vicente *y* Jaurigue, G.R. No. 232380, Sept. 4, 2019) p. 1048

**NOTARY PUBLIC**

*Duties* — A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein; the presence of the parties to the deed will enable the notary public to verify the genuineness of the signature of the affiant. (Sambile *vs*. Atty. Ignacio, A.C. No. 8249 [Formerly CBD Case No. 05-1429], Sept. 2, 2019) p. 1

— The *Philippine Mining Act IRR* also specifically states that "any adverse claim, protest or opposition shall be filed directly, within ten (10) days from the date of publication or from the last date of posting/radio announcement, with the Regional Office concerned or through any PENRO or CENRO concerned for filing in the Regional Office concerned for purposes of its resolution by the Panel of Arbitrators pursuant to the provisions of the Act and these implementing rules and regulations";The Panel of Arbitrators is mandated to decide on the dispute within 30 days after the case is submitted for decision; the decision of the Panel of Arbitrators is appealable to the Mines Adjudication Board, and in turn, the decision of the Mines Adjudication Board is appealable to the Court; it is only when the dispute is settled with finality, as certified by the Panel of Arbitrators, will the Regional Director then issue the Exploration Permit. (*Id*.)

— Upon the filing of the application for an exploration permit, the concerned Regional Office (RO) or the MGB shall check the control maps if the area applied for is free or open for mining applications; if there are specific claims or conflicts or complaints of overlaps from landowners, non-government organizations, local government units, and other concerned stakeholders, the Regional Director is directed to exert all efforts to resolve the same; after resolving any issues, the RO or the MGB shall issue the Area Clearance; once the Area Clearance is issued, the RO shall issue a Notice of Application for Exploration Permit to the applicant for publication and radio announcement and for posting; the Notice shall be published in two newspapers, one of general circulation published in Metro Manila and another one published in the municipality or province where the proposed permit area is located; the Notice shall also be posted in bulletin boards for one week in the province, municipality and barangay where the proposed permit area is located; radio announcements of the notice shall also be done every day for one week; within five working days from the last date of posting and radio announcement,

certifications shall be issued by the concerned officers on the compliance with the posting and radio announcement requirement; the affidavit of the publisher will also be submitted as proof of the publication. (*Id*.)

**PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION – STANDARD EMPLOYMENT CONTRACT (POEA-SEC)**

*Disability benefits* — A final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such; otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered. (Talaugon *vs*. BSM Crew Service Centre Phils.,G.R. No. 227934, Sept. 4, 2019) p. 962

— Total disability refers to an employee's inability to perform his or her usual work; it does not require total paralysis or complete helplessness; permanent disability, on the other hand, is a worker's inability to perform his or her job for more than 120 days, or 240 days if the seafarer required further medical attention justifying the extension of the temporary total disability period, regardless of whether or not he loses the use of any part of his body. (*Id*.)

— Two (2) requisites must concur for a determination of a seafarer's condition: 1) an assessment must be issued within the 120/240 window, and 2) the assessment must be final and definitive. (*Id*.)

*Disability compensation* — In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity. (Talaugon *vs*. BSM Crew Service Centre Phils.,G.R. No. 227934, Sept. 4, 2019) p. 962

**PRESCRIPTION**

*Principle of* — An action based on a written contract, an obligation created by law, and a judgment must be brought within 10 years from the time the right of action accrues;

— Inalienability is an inherent characteristic of property of the public dominion; this characteristic necessarily clashes with an express declaration of alienability and disposability, in that when public land is explicitly declared by the State to be subject to disposition, it ceases to be land of the public dominion; necessarily, as lands of public dominion are inalienable, they cannot be acquired through prescription and cannot be registered under the Land Registration Law and be the subject of a Torrens Title. (*Id*.)

— There are certain defining characteristics of properties of the public dominion that distinguish them from private property; land of the public domain is outside the commerce of man and, thus, cannot be leased, donated, sold, or be the object of any contract, except insofar as they may be the object of repairs or improvements and other incidental things of similar character; hence, they cannot be appropriated or alienated. (*Id*.)

*Patrimonial property* — Even if patrimonial property refers to land owned by the State or any of its instrumentalities, such is still deemed private property as it is property held by the State in its private and proprietary capacity, and not in its public capacity, in order to attain economic ends. (PNOC Alternative Fuels Corp. *vs*. Nat'l. Grid Corp. of the Phils., G.R. No. 224936, Sept. 4, 2019) p. 932

— Examples of patrimonial property of the State are those properties acquired by the government in execution or tax sales and mangrove lands and mangrove swamps; even public agricultural lands that are made alienable and disposable by the State are considered patrimonial properties. (*Id*.)

— In *Republic v. Spouses Alejandre*, patrimonial property are either: (1) "by nature or use" or those covered by Article 421, which are *not* property of public dominion or imbued with public purpose based on the State's current or intended use; or (2) "by conversion" or those covered by Article 422, which previously assumed the nature of property of public dominion by virtue of the State's use,

but which are no longer being used or intended for said purpose; the aforesaid case holds that "upon the declaration of alienability and disposability, the land ceases to possess the characteristics inherent in properties of public dominion that they are outside the commerce of man, cannot be acquired by prescription, and cannot be registered under the land registration law, and accordingly assume the nature of patrimonial property of the State that is property owned by the State in its private capacity." (*Id*.)

— In *Republic v. Spouses Alejandre,* the Civil Code classifies property of private ownership into three categories: (1) patrimonial property of the State under Articles 421 and 422 of the Civil Code; (2) patrimonial property of Local Government Units under Article 424; and (3) property belonging to private individuals under Article 425; the mere fact that a parcel of land is owned by the State or any of its instrumentalities does not necessarily mean that such land is of public dominion and not private property; if land owned by the State is considered patrimonial property, then such land assumes the nature of private property. (*Id*.)

— Patrimonial properties are properties owned by the State in its *private or proprietary capacity*; as explained by recognized Civil Law Commentator, former CA Justice Eduardo P. Caguioa, "over this kind of property, the State has the same rights and has the same power of disposition as private individuals in relation to their own property, but of course, subject to rules and regulations; the purpose of this property is in order that the State may attain its economic ends, to serve as a means for its subsistence and preservation and in that way to be able to better fulfill its primary mission." (*Id*.)

— The subject property, though owned by a State instrumentality, is considered patrimonial property that assumes the nature of private property; it is admitted by all parties that the subject property, sitting within the Petrochemical Industrial Park, is an industrial zone. (*Id*.)

— When the subject property therein was classified by the government as an industrial zone, the subject property therein "had been declared *patrimonial* and it is only then that the prescriptive period began to run." (*Id.*)

**PUBLIC OFFICERS**

*Government lawyers* — Jurisdiction over administrative cases against government lawyers relating to acts committed in the performance of their official functions, lies with the Ombudsman which exercises administrative supervision over them. (Segura *vs.* Pros. Garachico-Fabila, A.C. No. 9837, Sept. 2, 2019) p. 11

**QUALIFYING CIRCUMSTANCES**

*Evident premeditation* — The circumstance of evident premeditation can be taken into account only when there has been a cold and deep meditation, and a tenacious persistence in the accomplishment of the criminal act; its essence is that the execution of the criminal act be preceded by cool thought and reflection upon the resolve to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment. (People *vs.* Vicente *y* Jaurigue, G.R. No. 232380, Sept. 4, 2019) p. 1048

— The requisites for the appreciation of evident premeditation are: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused had clung to his determination to commit the crime; and (c) the lapse of a sufficient length of time between the determination and execution to allow him to reflect upon the consequences of his act. (*Id.*)

*Treachery* — Case law explains that the essence of treachery is that the attack was deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. (People *vs.* Vicente *y* Jaurigue, G.R. No. 232380, Sept. 4, 2019) p. 1048

— For treachery to exist, two (2) conditions must be present: (a) at the time of the attack, the victim was not in a

until full payment of the purchase price; in a contract of sale, the vendee's non--payment of the price is a negative resolutory condition, while in a contract to sell, the vendee's full payment of the price is a positive suspensive condition to the coming into effect of the agreement; in the first case, the vendor has lost and cannot recover the ownership of the property unless he takes action to set aside the contract of sale; in the second case, the title simply remains in the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract. (Vive Eagle Land, Inc. *vs*. Nat'l.Home Mortgage Finance Corp., G.R. No. 230817, Sept. 4, 2019) p. 986

— In a contract to sell, the fulfillment of the suspensive condition will not automatically transfer ownership to the buyer although the property may have been previously delivered to him; the prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale; conversely, in a conditional contract of sale, the fulfillment of the suspensive condition renders the sale absolute and the previous delivery of the property has the effect of automatically transferring the seller's ownership or title to the property to the buyer. (*Id*.)

— In a contract to sell, the prospective vendor binds himself to sell the property subject of the agreement exclusively to the prospective vendee upon fulfilment of the condition agreed upon which is the full payment of the purchase price but reserving to himself the ownership of the subject property despite delivery thereof to the prospective buyer. (*Id*.)

**SEARCHES AND SEIZURE**

*Exclusionary rule* — To enforce such inviolable right, Section 3(2), Article III of the Constitutions enunciates the exclusionary rule by unqualifiedly declaring that "any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding"; the exclusionary rule is intended to deter the violation of the right to be protected from unreasonable

initiate criminal proceedings, namely: (a) Offended party; (b)Parents or guardians; (c) Ascendant or collateral relative within the third degree of consanguinity; (d) Officer, social worker or representative of a licensed child-caring institution; (e) Officer or social worker of the Department of Social Welfare and Development; (f) Barangay chairman; or (g) At least three (3) concerned responsible citizens where the violation occurred. (Versoza *vs*. People, G.R. No. 184535, Sept. 3, 2019) p. 230

— Section 3(a) of R.A. No. 7610 recognizes a distinction between a person's chronological age and mental age, such that someone with cognitive disability, regardless of his or her chronological age, would automatically be entitled to the protective mantle of the law; a person's mental age and chronological age were differentiated in *People v. Quintos*, a case involving the rape of a person with intellectual disability; this Court defined "twelve (12) years of age" under Article 266-A(l)(d) of the Revised Penal Code as either the chronological age of a child or the mental age if a person has intellectual disability: In light of this interpretation, and based on the distinction set forth in Section 3(a), a person who has a cognitive disability would be considered a child under R.A. No. 7610 based on his or her mental age, not chronological age. (*Id*.)

*Lascivious conduct* — "Lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person. (People *vs*. ZZZ, G.R. No. 224584, Sept. 4, 2019) p. 907

*Sexual abuse*— "Sexual abuse" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation,

**SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS (R.A. NO. 7166)**

*Section 13* — Section 13 of R.A. No. 7166 merely sets the current allowable limit on expenses of candidates and political parties for election campaign; it does not (whether by intention or operation) require a financial requirement for those seeking to run for public office, such that failure to prove capacity to meet the allowable expense limits would constitute ground to declare one a nuisance candidate. (Marquez *vs.* COMELEC, G.R. No. 244274, Sept. 3, 2019) p. 667

**UNLAWFUL DETAINER**

*Action for* — In an action for unlawful detainer based on tolerance, the acts of tolerance must be proved; bare allegations are insufficient; for tolerance to exist, the complainants in an unlawful detainer must prove that they had consented to the possession over the property through positive acts; after all, tolerance signifies permission and not merely silence or inaction as silence or inaction is negligence and not tolerance. (Sps. Su *vs.* Bontilao, G.R. No. 238892, Sept. 4, 2019) p. 1061

— The fact alone that petitioners have a title over the subject property does not give them unbridled authority to immediately wrest possession from its current possessor in the absence of evidence proving the allegations in their unlawful detainer claim; indeed, even the legal owner of the property cannot conveniently usurp possession against a possessor, through a summary action for ejectment, without proving the essential requisites thereof. (*Id.*)

— Unlawful detainer involves the defendant's withholding of the possession of the property to which the plaintiff is entitled, after the expiration or termination of the former's right to hold possession under the contract, whether express or implied; a requisite for a valid cause of action of unlawful detainer is that the possession was originally lawful, but turned unlawful only upon the expiration of the right to possess; To show that the

of compliance reports from the respondent government agencies as well as avail of other means to monitor compliance with its decision." (*Id*.)

**WRIT OF *KALIKASAN***

*Defined* — Writ of *kalikasan* is an extraordinary remedy that "covers environmental damages the magnitude of which transcends both political and territorial boundaries"; the damage must be caused by an unlawful act or omission of a public official, public employee, or private individual or entity; it must affect the inhabitants of at least two (2) cities or provinces. (Abogado *vs*. DENR, G.R. No. 246209, Sept. 3, 2019) p. 703

*Petition for* — A writ of *kalikasan* cannot and should not substitute other remedies that may be available to the parties, whether legal, administrative, or political; mere concern for the environment is not an excuse to invoke this Court's jurisdiction in cases where other remedies are available. (Abogado *vs*. DENR, G.R. No. 246209, Sept. 3, 2019) p. 703

— Parties that seek the issuance of the writ of *kalikasan*, whether on their own or on others' behalf, carry the burden of substantiating the writ's elements; before private parties or public interest groups may proceed with the case, they must be ready with the evidence necessary for the determination of the writ's issuance. (*Id*.)

— The imminence or emergency of an ecological disaster should not be an excuse for litigants to do away with their responsibility of substantiating their petitions before the courts; as with any special civil action for extraordinary writs, parties seeking the writ of *kalikasan* must be ready with the evidence required to prove their allegations by the time the petition is filed; hasty slipshod petitions, filed in the guise of environmental advocacy, only serve to undermine that advocacy. (*Id*.)