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OF THE

PHILIPPINES

FOR THE PERIOD

SEPTEMBER 16 - 25, 2019

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.C. No. 6560. September 16, 2019]

MIKE A. FERMIN, *complainant, vs.* **ATTY. LINTANG H. BEDOL,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; A LAWYER IS EXPECTED TO PROMOTE RESPECT FOR THE LAW AND LEGAL PROCESSES. — [T]he declaration of failure of election and the calling of special elections shall be decided by the majority vote of the members of the COMELEC *en banc*. In this case, the COMELEC *en banc* issued a Resolution dated July 27, 2004 declaring the failure of election and the holding of a special election on July 28, 2004. However, prior to the issuance of the said Resolution, respondent, as the Provincial Election Supervisor of Maguindanao, had already issued the following, to wit: Notice dated July 23, 2004 of the special election to be done on July 28, 2004; Invitation dated July 25, 2004 for conference at his office in Cotabato City; and Notice dated July 26, 2004 informing that the canvassing of votes shall be held in Shariff Aguak, Maguindanao. Respondent's act of issuing those notices ahead of the issuance of the COMELEC *en banc* Resolution calling for a special election was not in compliance with the procedures under the law and the COMELEC rules. In so doing, he breached his duty to obey the laws and the legal orders of the duly constituted authorities, thus, violating Canon 1 of the Code of Professional Responsibility. x x x

Respondent's claim that he issued those notices as there was no more time to prepare for the special elections has no basis in law. To stress, the notices were issued even prior to the COMELEC Resolution for the holding of a special election. Members of the Bar are reminded that their first duty is to comply with the rules of procedure, rather than seek exceptions as loopholes. Respondent is expected to promote respect for the law and legal processes.

2. ID.; ID.; AS SERVANTS OF THE LAW AND OFFICERS OF THE COURT, LAWYERS ARE REQUIRED TO BE AT THE FOREFRONT OF OBSERVING AND MAINTAINING THE RULE OF LAW. — Canon 1 clearly mandates the obedience of every lawyer to laws and legal processes. To the best of his ability, a lawyer is expected to respect and abide by the law and, thus, avoid any act or omission that is contrary thereto. A lawyer's personal deference to the law not only speaks of his character but it also inspires respect and obedience to the law, on the part of the public. As servants of the law and officers of the court, lawyers are required to be at the forefront of observing and maintaining the rule of law. They are expected to make themselves exemplars worthy of emulation. This, in fact, is what a lawyer's obligation to promote respect for law and legal processes entails. Moreso, a lawyer who is occupying a public office.

3. ID.; ID.; GOVERNMENT LAWYERS; A GOVERNMENT LAWYER IS A KEEPER OF PUBLIC FAITH AND IS BURDENED WITH A HIGH DEGREE OF SOCIAL RESPONSIBILITY, HIGHER THAN HIS BRETHREN IN PRIVATE PRACTICE. — Lawyers in public office, such as respondent who was then a Provincial Election Supervisor of Maguindanao, are expected not only to refrain from any act or omission which tend to lessen the trust and confidence of the citizenry in government but also uphold the dignity of the legal profession at all times and observe a high standard of honesty and fair dealing. A government lawyer is a keeper of public faith and is burdened with a high degree of social responsibility, higher than his brethren in private practice.

R E S O L U T I O N

PERALTA, *J.*:

Before the Court is an administrative complaint for disbarment filed by complainant Mike A. Fermin against respondent Atty. Lintang H. Bedol for violation of Canon 1 of the Code of Professional Responsibility.

Complainant averred that one of his opponents and defeated candidate for the mayoralty post of Kabuntalan, Maguindanao, Bai Susan Samad, filed with the COMELEC *en banc* a petition to declare a failure of election in Precinct No. 25A/26A of Barangay Guiawa, and the subsequent holding of a special election, which was docketed as Case No. 04-403; and that the COMELEC issued its Resolution dated July 27, 2004 declaring a failure of election and the holding of the special election on July 28, 2004. However, before the issuance of the COMELEC Resolution, the respondent, in his capacity as the Provincial Election Supervisor III of Maguindanao, had already issued a Notice[1] dated July 23, 2004 to all candidates, which included him, political parties and registered voters of Barangay Guiawa, Kabuntalan, Maguindanao, informing them of the scheduled special election for Barangay Guiawa on July 28, 2004; that he issued another notice[2] informing the candidates and political parties of a conference on July 25, 2004 to be held in his office; and that on July 26, 2004, he again issued a notice[3] that the canvassing of votes shall be held in Shariff Aguak Maguindanao.

Complainant alleged that respondent, without basis in law and in fact, issued the above-mentioned premature notices of special election which highlighted his shameless disregard of the truth and brazen disrespect for the rule of law which is his foremost duty as a member of the Bar; and that those false and illegal notices showed his dishonest ways and predilection to

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[1] *Rollo*, p. 12.

[2] *Id.* at 13.

[3] *Id.* at 14.

wrongdoings and his natural susceptibility to the culture of corruption and deception which renders him totally unfit to remain as an honorable member of the Bar.[4] Complainant prays for respondent's disbarment to protect future clients from falling prey to his corrupt and evil deeds.[5]

In his Comment,[6] respondent argued that the notice dated July 23, 2004 was to apprise, alert and notify all candidates concerned that, in a short period of time, a special election would be conducted on July 28, 2004; that election personnel in the province cannot afford to have only a day before election to notify the parties and to prepare for the election the next day. As to the conference held, it was done to do away with violation of the Fair Elections Act and the parties' duties respecting the special election. He claimed that all the cases filed by complainant against him with the COMELEC were dismissed on the ground of complete absence of cause of actions.

The Court referred the case to the Integrated Bar of the Philippines (*IBP*) for investigation, report and recommendation/ decision within 90 days from receipt of the record.[7]

After due proceedings, Commissioner Wilfredo E.J.E. Reyes of the IBP Commission on Bar Discipline (*CBD-IBP*) issued a Report and Recommendation[8] dated February 2, 2009, finding respondent guilty of violation of Canon 1 of the Code of Professional Responsibility, to wit:

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

and recommended that he be penalized with reprimand, with a stern warning that a repetition of the same shall be dealt with

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[4] *Id.* at 5.

[5] *Id.* at 7.

[6] *Id.* at 19-24.

[7] Resolution dated April 18, 2005, *id*. at 27.

[8] *Rollo*, pp. 121-129.

more severely.[9] In so ruling, the Commissioner found that respondent started issuing notices of special election and invitation to prepare for the special election even before the COMELEC had issued its Resolution on the need for a special election which was highly irregular if not totally wrong.

In Resolution No. XIX-2010-313[10] dated April 16, 2010, the IBP Board of Governors unanimously adopted and approved with modification the Report and Recommendations of the Investigating Commissioner, thus:

> RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A" and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's issuance of Notice of Special Election even before the Comelec had decided on the need for one, is highly irregular and in violation of Canon 1 of the Code of Professional Responsibility, Atty. Lintang H. Bedol is hereby SUSPENDED from the practice of law for a period of one year.

Both parties did not file any motion for reconsideration.

In a Resolution[11] dated February 9, 2011, the Court took note of the IBP's Resolution and required respondent to inform the Court when he started serving his suspension, within five (5) days from notice. As respondent failed to comply, we reiterated our Resolution dated February 9, 2011.[12] However, per Deputy Clerk of Court and Bar Confidant, Atty. Ma. Cristina B. Layusa, respondent has yet to comply with the Resolution.[13]

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[9] *Id.* at 129.

[10] *Id.* at 120.

[11] *Id.* at 130-131.

[12] Per Resolution dated August 28, 2013; *id*. at 135.

[13] *Rollo*, p. 136.

We concur with the findings and conclusions of the IBP that respondent should be held administratively liable in this case.

Section 4 of Republic Act No. 7166,[14] provides:

> Section 4. *Postponement, Failure of Election and Special Elections*.— The postponement, declaration of failure of election and the calling of special elections as provided in Sections 5, 6 and 7 of the Omnibus Election Code shall be decided by the Commission sitting en banc by a majority vote of its members. The causes for the declaration of a failure of election may occur before or after the casting of votes or on the day of the election.

Based on the foregoing provision of law, the declaration of failure of election and the calling of special elections shall be decided by the majority vote of the members of the COMELEC *en banc*. In this case, the COMELEC *en banc* issued a Resolution dated July 27, 2004 declaring the failure of election and the holding of a special election on July 28, 2004. However, prior to the issuance of the said Resolution, respondent, as the Provincial Election Supervisor of Maguindanao, had already issued the following, to wit: Notice dated July 23, 2004 of the special election to be done on July 28, 2004; Invitation dated July 25, 2004 for conference at his office in Cotabato City; and Notice dated July 26, 2004 informing that the canvassing of votes shall be held in Shariff Aguak, Maguindanao.

Respondent's act of issuing those notices ahead of the issuance of the COMELEC *en banc* Resolution calling for a special election was not in compliance with the procedures under the law and the COMELEC rules. In so doing, he breached his duty to obey the laws and the legal orders of the duly constituted authorities, thus, violating Canon 1 of the Code of Professional Responsibility.

Canon 1 clearly mandates the obedience of every lawyer to laws and legal processes. To the best of his ability, a lawyer is

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[14] *An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and For Other Purposes.*

expected to respect and abide by the law and, thus, avoid any act or omission that is contrary thereto.[15] A lawyer's personal deference to the law not only speaks of his character but it also inspires respect and obedience to the law, on the part of the public.[16] As servants of the law and officers of the court, lawyers are required to be at the forefront of observing and maintaining the rule of law. They are expected to make themselves exemplars worthy of emulation.[17] This, in fact, is what a lawyer's obligation to promote respect for law and legal processes entails. Moreso, a lawyer who is occupying a public office.[18]

Lawyers in public office, such as respondent who was then a Provincial Election Supervisor of Maguindanao, are expected not only to refrain from any act or omission which tend to lessen the trust and confidence of the citizenry in government but also uphold the dignity of the legal profession at all times and observe a high standard of honesty and fair dealing.[19] A government lawyer is a keeper of public faith and is burdened with a high degree of social responsibility, higher than his brethren in private practice.[20]

Respondent's claim that he issued those notices as there was no more time to prepare for the special elections has no basis in law. To stress, the notices were issued even prior to the COMELEC Resolution for the holding of a special election. Members of the Bar are reminded that their first duty is to comply with the rules of procedure, rather than seek exceptions as

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[15] *Jimenez v. Atty. Francisco*, 749 Phil. 551, 565 (2014).

[16] *Id.*

[17] See *Re: Report on the Financial Audit Conducted on the Books of Accounts of Atty. Raquel G. Kho, Clerk of Court IV, Regional Trial Court, Oras, Eastern Samar*, A.M. No. P-06-2177, April 19, 2007, 521 SCRA 25, 28-29, citing See Agpalo, *Comments on the Code of Professional Responsibility and the Code of Judicial Conduct* 18 (2001 ed.).

[18] *Id.* at 29.

[19] *Ramos v. Atty. Imbang*, 557 Phil. 507, 516 (2007).

[20] *Id.*, citing *Atty. Vitrolio v. Atty. Dasig*, 448 Phil. 199, 209 (2003).

loopholes.[21] Respondent is expected to promote respect for the law and legal processes.

WHEREFORE, the Court **ADOPTS** and **APPROVES** the Resolution of the Integrated Bar of the Philippines Board of Governors, dated April 16, 2010. Accordingly, Atty. Lintang H. Bedol is found **GUILTY** of violating Canon 1 of the Code of Professional Responsibility and he is hereby ordered **SUSPENDED** from the practice of law for a period of one (1) year, with a **STERN WARNING** that a repetition of the same or a similar offense will warrant the imposition of a more severe penalty.

Respondent's suspension from the practice of law shall take effect immediately upon receipt. He is **DIRECTED** to immediately **INFORM** the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Resolution be furnished the Integrated Bar of the Philippines for distribution to all its chapters; the Office of the Court Administrator for dissemination to all courts in the country; and the Office of the Bar Confidant, to be attached to respondent's personal record as a lawyer.

SO ORDERED.

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

Hernando, J., on leave.

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[21] *Guarin v. Atty. Limpin*, 750 Phil. 435, 440 (2015), citing *Suico Industrial Corp., et al. v. Judge Lagura-Yap, et al.*, 694 Phil. 286, 303 (2012).

THIRD DIVISION

[A.M. No. RTJ-11-2281. September 16, 2019]
(Formerly OCA IPI-10-3372-RTJ)

ATTY. MARSHA B. ESTURAS, *complainant, vs.* **JUDGE AGAPITO S. LU, Regional Trial Court, Branch 88, Cavite City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; PERIODS FOR DECISIONS; LOWER COURTS; JUDGES MUST RESOLVE MOTIONS OR INCIDENTS PENDING BEFORE THEM WITHIN THE PERIOD OF NINETY DAYS. — The Constitution "fixes a reglementary period of 90 days within which judges must resolve motions or incidents pending before them." Consonantly, "Rules 1.02 of Canon 1 and 3.05 of Canon 3 of the Code of Judicial Conduct direct judges to administer justice impartially and without delay and to dispose of the court's business promptly and decide cases within the required periods." In line therewith, Supreme Court Administrative Circular No. 1-88 provides: 6.1 All Presiding Judges must endeavor to act promptly on all motions and interlocutory matters pending before their courts. In this case, respondent admitted to have incurred delay in resolving the Motion to Serve Summons by Publication filed by plaintiff on June 10, 2009 in the x x x civil case. Per Atty. Teaño's affidavit, which the Investigating Justice quoted in her report, the motion was resolved only on April 16, 2010. We note that while there was an exchange of papers between the parties in the civil case subsequent to the filing of the subject motion, plaintiff finally filed on October 26, 2009 a Motion to Resolve Immediately the Motion to Serve Summons by Publication.

2. LEGAL ETHICS; JUDGES; CANNOT BE ALLOWED TO USE THEIR STAFF AS SHIELDS TO EVADE RESPONSIBILITY FOR MISTAKES OR MISMANAGEMENT COMMITTED IN THE COURSE OF THE PERFORMANCE OF THEIR DUTIES. — By way of an excuse, respondent attributes the delay to complainant, whom

he alleged to have been negotiating for the settlement of the case with Atty. Espiritu, and to his Branch Clerk, Atty. Teaño, whom he claimed to have kept the records of the case and failed to forward them to him. Respondent's proferred excuse is not persuasive. Judges cannot be allowed to use their staff as shields to evade responsibility for mistakes or mismanagement committed in the course of the performance of their duties. Court management is ultimately the judges' responsibility. Moreover, as held by the Investigating Justice, respondent could have, at least, issued an order deferring the resolution of plaintiff's motion on the basis of complainant's request to defer it. This way, he could have avoided being accused of delaying the resolution thereof. Even if it were true that the records of the case were not forwarded to him by his Branch Clerk, to our mind, however, this only shows that there was something irregular about the way respondent managed his court. This is bolstered by his own admission that during the inventory of cases before his court to check the statuses thereof, among others, he would sign the records, but scan them only "sometimes."

3. REMEDIAL LAW; RULES OF COURT; CHARGES AGAINST JUDGES; UNDUE DELAY IN RENDERING A DECISION OR ORDER; FAILURE TO DECIDE A CASE OR RESOLVE A MOTION WITHIN THE REGLEMENTARY PERIOD CONSTITUTES GROSS INEFFICIENCY; PENALTY. — It is true that the public's faith and confidence in the judicial system largely depend on the judicious and prompt disposition of cases and other matters pending before the courts. The judges' "failure to do so decide a case or resolve a motion within [the] reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanctions against the erring magistrate." Under Section 9, Rule 140 of the Rules of Court, undue delay in rendering a decision or order is a less serious charge. Under Section 11 of the same rule, the charge is punishable by either: (a) suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or (b) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. In light of the attendant facts of the case, it appearing that this is respondent's first infraction, and, more importantly, respondent had already retired from service, we hereby find the fine of ₱11,000.00 as sufficient sanction to be imposed on respondent.

D E C I S I O N

INTING, *J.*:

Before the Court is an administrative Complaint[1] dated February 4, 2010 filed by complainant Atty. Marsha B. Esturas with the Office of the Court Administrator (OCA). In the Complaint, complainant charged respondent Judge Agapito S. Lu (now retired) with Conduct Unbecoming a Judge and Delay in the Disposition of a Case.

Complainant alleged that respondent was the Presiding Judge of the Regional Trial Court, Branch 88, Cavite City, before whose court Civil Case No. N-8004, entitled *"MRS. AGNES RAFOLS-DOMINGO, Widow of ELIODORO S. DOMINGO and representative of the legal heirs MARIA ANGELA, JOHANNA, JOSEPH all surnamed Domingo, plaintiffs vs. FLORANTE GLORIANI and GLORIA G. REYEL, defendants,"* was pending. Complainant is plaintiff's counsel in the civil case. Subsequent to the filing of plaintiff's complaint on February 4, 2009, defendants moved to dismiss it on the ground of improper mode of service of summons, among others. On June 10, 2009, plaintiff filed a Manifestation with Motion to Serve Summons by Publication. On October 26, 2009, plaintiff filed a Motion to Resolve Immediately the Motion to Serve Summons by Publication.

According to complainant, respondent had been delaying the proceedings of the case as plaintiff's motion to serve summons by publication had been pending for almost seven months as of the writing of the administrative complaint.

For his part, respondent alleged the following in his Comment and Counter-Complaint:[2]

Sometime during the last quarter of 2009, Atty. Marsha B. Esturas came to the office of undersigned's Branch Clerk of Court, Atty.

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[1] *Rollo,* pp. 10-13.

[2] *Id.* at 37-40.

Jordan J. Teaño and personally requested that action or resolution of the pending motions in Civil Case No. N-8004 entitled Mrs. Agnes Rafols-Domingo etc., et al. vs. Florante Gloriani, et al. for Specific Performance (obviously referring to the Motion to Dismiss filed by the defendants and the Motion to Serve Summons by Publication filed by her) be deferred or held in abeyance because she was then negotiating with Atty. Arnel G. Espiritu (counsel of would-be intervenors in the case) for a possible amicable settlement of the case.

x x x x x x x x x

That because of the request for deferment made personally by Atty. Marsha B. Esturas, Branch Clerk of Court Atty. Jordan J. Teaño kept the records of the case in his possession while awaiting word from either Atty. Marsha B. Esturas or Atty. Arnel G. Espiritu as to the outcome of their negotiations for the amicable settlement of the case;

That during this period of waiting, my Branch Clerk of Court, Atty. Jordan J. Teaño did not submit the records of the case to me, hence I did not have the opportunity to resolve the pending motions;

That it was only on April 16, 2010, after Atty. Jordan J. Teaño received word from Atty. Arnel G. Espiritu that the negotiations for amicable settlement did not prosper; that the records of the case was submitted to me;

That the undersigned immediately resolved plaintiffs' motion and Atty. Jordan J. Teaño accordingly prepared new summons, however, neither the plaintiffs nor their counsel took any action until now to effect service of summons on the defendants[.][3]

As a counter-charge, respondent sought the disbarment of complainant for violating Rule 1.01, Canon 1;[4] Rule 10.01, Canon 10;[5] and Rule 12.04, Canon 12[6] of the Code of Professional Responsibility.

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[3] *Id*. at 37-38.

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

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

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

Through the Notice[7] dated June 13, 2011, the Court resolved to re-docket the complaint as a regular administrative matter and refer it to the Presiding Justice of the Court of Appeals to be raffled among the associate justices for investigation, report, and recommendation.

Thereafter, the Investigating Justice, Associate Justice Agnes Reyes-Carpio, submitted her Report and Recommendation[8] finding merit in the Complaint. She was unconvinced of respondent's passing of blame on complainant and the Branch Clerk of Court, Atty. Jordan J. Teaño (Atty. Teaño). Moreover, the Investigating Justice found unmeritorious respondent's claim that complainant tried to negotiate the case with Atty. Arnel G. Espiritu (Atty. Espiritu) and his clients, the "would-be" intervenors, as the latter persons were not even parties thereto. The Investigating Justice further held that:

> In any event, even assuming that it was complainant herself who requested the deferment of the resolution of the motion, the same should have been placed on record. Ours is a court of record, and all its proceedings must be in writing. Had he advised complainant to put his request on writing, then he would not be facing this administrative charge. Assuming that the request was acceptable, then at least an order to the effect that the resolution of the case is deferred due to the verbal request of the complainant should have been made. No order was ever made, however, as admitted by Atty. Teaño.[9] (Citation omitted.)

The dispositive portion of the Investigating Justice's Report and Recommendation reads:

> WHEREFORE, in view of the foregoing, it is recommended that respondent Judge Agapito S. Lu be FINED in the amount of Ten Thousand (₱10,000.00) Pesos. The Branch Clerk of Court, Atty. Jordan J. Teaño be advised to be more circumspect in his duties as Branch Clerk of Court.

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

[8] *Id*. at 59-75.

[9] *Id*. at 68.

On the other hand, it is recommended that the Counter-Complaint against Atty. Marsha B. Esturas be referred to the Office of the Bar Confidant.[10]

The OCA, in its Memorandum[11] dated January 28, 2019, agreed with the findings of the Investigating Justice, except as to the countercharge against complainant. Thus, it recommended as follows:

2. Respondent Judge Agapito S. Lu (Ret.), Branch 88, Regional Trial Court, Cavite City, Cavite, be found GUILTY of the less serious offense of undue delay in rendering a decision or order relative to Civil Case No. N-8004, entitled *Rafols-Domingo, et al. v. Gloriane, et al*, and be FINED in the amount of Ten Thousand Pesos (₱10,000.00);

3. Atty. Jordan J. Teaño, Branch Clerk of Court, Branch 88, Regional Trial Court, Cavite City, Cavite, be REMINDED to be more circumspect in the performance of his duties, with a warning that the repetition of the same or any similar act will be punished more severely; and

4. the Counter-Complaint for disbarment of respondent Judge Agapito S. Lu against complainant Atty. Marsha B. Esturas be DISMISSED for lack of merit.[12]

Ruling of the Court

We agree with the findings of the Investigating Justice with respect to the charge against respondent.

The Constitution "fixes a reglementary period of 90 days within which judges must resolve motions or incidents pending before them."[13]

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[10] *Id*. at 75.

[11] *Id*. at 89-92.

[12] *Id*. at 92.

[13] *Request of Judge Gonzales-Asdala, RTC-Br. 87, Q.C. For Extension to Decide Civil Case No. Q- 02-46950 & 14 Others*, 527 Phil. 20, 23 (2006).

Also, Section 15(1), Article VIII of the 1987 Constitution states: All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme

Consonantly, "Rules 1.02[14] of Canon 1 and 3.05[15] of Canon 3 of the Code of Judicial Conduct direct judges to administer justice impartially and without delay and to dispose of the court's business promptly and decide cases within the required periods."[16] In line therewith, Supreme Court Administrative Circular No. 1-88[17] provides:

> 6.1 All Presiding Judges must endeavor to act promptly on all motions and interlocutory matters pending before their courts.

In this case, respondent admitted to have incurred delay in resolving the Motion to Serve Summons by Publication filed by plaintiff on June 10, 2009 in the earlier mentioned civil case. Per Atty. Teaño's affidavit, which the Investigating Justice quoted in her report, the motion was resolved only on April 16, 2010.[18] We note that while there was an exchange of papers between the parties in the civil case subsequent to the filing of the subject motion, plaintiff finally filed on October 26, 2009 a Motion to Resolve Immediately the Motion to Serve Summons by Publication.[19]

By way of an excuse, respondent attributes the delay to complainant, whom he alleged to have been negotiating for the settlement of the case with Atty. Espiritu, and to his Branch Clerk, Atty. Teaño, whom he claimed to have kept the records of the case and failed to forward them to him.

Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.

[14] Rule 1.02. A judge should administer justice impartially and without delay.

[15] Rule 3.05. A Judge shall dispose of the court's business promptly and decide cases within the required periods.

[16] *Atty. Sesbreño v. Judge Gako, Jr., et al.*, 591 Phil. 380, 388 (2008).

[17] Dated January 28, 1988.

[18] *Rollo*, p. 63.

[19] *Id*. at 60.

Respondent's proferred excuse is not persuasive. Judges cannot be allowed to use their staff as shields to evade responsibility for mistakes or mismanagement committed in the course of the performance of their duties.[20] Court management is ultimately the judges' responsibility.[21]

Moreover, as held by the Investigating Justice, respondent could have, at least, issued an order deferring the resolution of plaintiff's motion on the basis of complainant's request to defer it. This way, he could have avoided being accused of delaying the resolution thereof. Even if it were true that the records of the case were not forwarded to him by his Branch Clerk, to our mind, however, this only shows that there was something irregular about the way respondent managed his court. This is bolstered by his own admission that during the inventory of cases before his court to check the statuses thereof, among others, he would sign the records, but scan them only "sometimes."[22]

The hearing in the administrative case further revealed respondent's failure to carry out the duty to manage efficiently and take control of the court proceedings as far as the civil case is concerned. As quoted by the Investigating Justice, and we herein reproduce:

Justice A. Reyes-Carpio:

The motion to resolve was filed when?

Branch Clerk of Court, Atty. Teaño:

October, but it was set by the movant on November 3, 2009.

Complainant Atty. Esturas:

October 26, 2009, your Honor.

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[20] *Request of Judge Gonzales-Asdala, RTC-Br. 87, Q.C. For Extension to Decide Civil Case No. Q-02-46950 & 14 Others, supra* note 13 at 24.

[21] *Id*.

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

Respondent Judge Lu:

The hearing on the motion was set on November 3.

Justice A. Reyes-Carpio:

And it was set on November 3?

Branch Clerk of Court, Atty. Teaño:

Yes, your Honor.

Justice A. Reyes-Carpio:

What was the order issued on November #3?

Branch Clerk of Court, Atty. Teaño:

There was no hearing that took place on that day.

Justice A. Reyes-Carpio:

Why?

Branch Clerk of Court, Atty. Teaño:

Because Atty. Esturas came to me and asked for the deferment of the motion.

Justice A. Reyes-Carpio:

Because of the alleged possibility of settlement?

Branch Clerk of Court, Atty. Teaño:

Yes.

Justice A. Reyes-Carpio:

But there was no order to that effect upon her motion or manifestation that her motion be deferred considering that there was a possibility of settlement? There was never an order to that effect?

Branch Clerk of Court, Atty. Teaño:

No.

Justice A. Reyes-Carpio:

It was only, let us say, an agreement between you. Atty. Espiritu and Complainant Atty. Esturas?

Branch Clerk of Court, Atty. Teaño:

Yes, your Honor.

Justice A. Reyes-Carpio:

And you never conveyed this matter to the Judge?

Branch Clerk of Court, Atty. Teaño:

I cannot remember.

Justice A. Reyes-Carpio:

Why can you note remember? This is your case.

Branch Clerk of Court, Atty. Teaño:

Yes, your honor.[23]

The following pronouncements in the case entitled *"Re: Compliance of Judge Maxwell S. Rosete"*,[24] thus find relevance:

> Truly, judges play an active role in ensuring that cases are resolved with speed and dispatch so as not to defeat the cause of the litigants. A judge should administer justice impartially and without delay. They must always be in control of proceedings to ensure that the mandatory periods provided in the Rules of Court and several other rules promulgated by the Court are faithfully complied with. A judge shall dispose of the court's business promptly and decide cases within the required periods. It is in this connection that we reiterate the oft-repeated maxim that justice delayed is often justice denied. Thus, any delay in the administration of justice may result in depriving the litigant of his right to a speedy disposition of his case and will ultimately affect the image of the Judiciary. A delay in the disposition of cases amounts to a denial of justice, brings the court into disrepute, and ultimately erodes public faith and confidence in the Judiciary. Inability to decide a case within the required period or unreasonable delay of a judge in resolving a pending incident constitutes gross inefficiency and subjects the judge to administrative sanctions. (Citation omitted.)

It is true that the public's faith and confidence in the judicial system largely depend on the judicious and prompt disposition

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

[24] 479 Phil. 255, 262 (2004).

of cases and other matters pending before the courts.[25] The judges' "failure to do so decide a case or resolve a motion within [the] reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanctions against the erring magistrate."[26]

Under Section 9, Rule 140 of the Rules of Court, undue delay in rendering a decision or order is a less serious charge. Under Section 11 of the same rule, the charge is punishable by either: (a) suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or (b) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. In light of the attendant facts of the case, it appearing that this is respondent's first infraction, and, more importantly, respondent had already retired from service, we hereby find the fine of ₱11,000.00 as sufficient sanction to be imposed on respondent.

With respect to respondent's Counter-Complaint for disbarment against complainant, we adopt the OCA's recommendation that it be dismissed for lack of merit. Indeed, considering the time that has already elapsed from the occurrence of the complained act, pursuing the case might be an exercise in futility. At any rate, there is nothing in the record that sufficiently supports the counter-charge against complainant.

WHEREFORE, we find respondent Judge Agapito S. Lu **LIABLE** for undue delay in rendering decisions and orders and **IMPOSE** upon him a fine of ₱11,000.00 to be deducted from his retirement benefits.

The Counter-Complaint for disbarment against complainant Atty. Marsha B. Esturas is **DISMISSED** for lack of merit.

SO ORDERED.

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

Hernando, J., on leave.

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[25] *Request of Judge Gonzales-Asdala, RTC-Br. 87, Q.C. For Extension to Decide Civil Case No. Q-02-46950 & 14 Others, supra* note 12 at 23.

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

SECOND DIVISION

[G.R. No. 205007. September 16, 2019]

THE MERCANTILE INSURANCE CO., INC., *petitioner, vs.* **DMCI-LAING CONSTRUCTION, INC.,**[•] *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; SURETYSHIP; CONTRACT OF SURETYSHIP, DEFINED; LIABILITY OF THE SURETY IS DIRECT, PRIMARY, AND ABSOLUTE WITH RESPECT TO THE AMOUNT FOR WHICH THE CONTRACT IS ISSUED. — Through a contract of suretyship, one party called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of another party, called the obligee. As a result, the surety is considered in law as being the same party as the debtor in relation to whatever is adjudged touching upon the obligation of the latter, and their liabilities are interwoven as to be inseparable. While the contract of surety stands secondary to the principal obligation, the surety's liability is direct, primary and absolute, albeit limited to the amount for which the contract of surety is issued. The surety's liability attaches the moment a demand for payment is made by the creditor.

2. ID.; ID.; THE SUBJECT PERFORMANCE BOND IS A CONTRACT OF SURETY; BEING CALLABLE ON DEMAND, PETITIONER'S OBLIGATION TO INDEMNIFY RESPONDENT BECAME DUE UPON ITS RECEIPT OF THE FIRST CALL. — Mercantile obligated itself to pay DLCI *immediately* upon demand, notwithstanding any dispute as to the fulfillment of Altech's obligations under the Sub-Contract. The Performance Bond thus stands as a contract of surety contemplated under Article 2047 of the Civil Code[.] x x x While the Performance Bond in this case is "conditioned" upon DLCI's first demand, a close reading of its terms unequivocally

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[•] Also referred to as "DMCI Laing Construction, Inc." in some parts of the *rollo*.

indicates that Mercantile's liability thereunder consists of a *pure* obligation since such liability attaches *immediately* upon demand, and is neither dependent upon any future or uncertain event, nor a past event unknown to the parties. Thus, the Performance Bond is one that is callable on demand, wherein mere demand triggers Mercantile's obligation (as surety) to indemnify DLCI (the obligee) the amount for which said bond was issued, that is, Php90,448,941.60. Accordingly, the requirement of "first demand" in this case should be understood in light of Article 1169, wherein the obligee is deemed to be in delay upon judicial or extra-judicial demand. Clearly, Mercantile's liability became due upon its receipt of the First Call.

3. **ID.; ID.; ID.; RESPONDENT'S FAILURE TO STATE THE VALUE OF ITS CLAIM IS OF NO MOMENT; PETITIONER'S LIABILITY IS NOT CONTINGENT UPON THE DETERMINATION OF ACTUAL AMOUNT FOR WHICH ALTECH IS LIABLE. —** DLCI's alleged failure to state the value of its claim is of no moment. x x x The Performance Bond itself provides that Mercantile's liability is not contingent upon the determination of the actual amount for which Altech is liable. In the event of an overpayment, Mercantile can proceed against DLCI based on the principle of unjust enrichment. Any amount subject to reimbursement would then assume the nature of a forbearance of money, subject to legal interest.

4. **ID.; ID.; ID.; RESPONDENT IS ENTITLED TO CLAIM THE COST IT INCURRED AS A CONSEQUENCE OF ALTECH'S DELAY AND POOR PERFORMANCE. —** Mercantile's Performance Bond guarantees Altech's full and faithful compliance with the Sub-Contract. Accordingly, the scope of the Performance Bond should be understood to cover all costs incurred by DLCI as a result of Altech's failure to comply with its obligations under said agreement. To limit the scope of the Performance Bond only to costs incurred *before* termination of the Sub-Contract would be to create an additional condition for recovery which does not appear on the face of the Performance Bond. To stress, Mercantile's liability is conditioned only upon DLCI's first demand, "notwithstanding any dispute to the effect that the principal has fulfilled its contractual obligation [or] the amount demanded." x x x Due to Altech's delay and poor workmanship, DLCI was constrained

to incur additional expenses to complete the sub-contract works[.] x x x Altech's obligation to perform the specified works under the Sub-Contract constitutes an obligation to do. Obligations to do have as their object a prestation consisting of a performance of a certain activity which, in turn, cannot be exacted without exercising violence against the person of the debtor. Accordingly, the debtor's failure to fulfill the prestation gives rise to the creditor's right to obtain from the latter's assets the satisfaction of the money value of the prestation. As Altech's surety, Mercantile is bound to answer for the costs incurred by DLCI as a consequence of the latter's non-fulfillment, pursuant to Article 1167 of the Civil Code.

5. ID.; ID.; ID.; ARTICLE 2080 OF THE CIVIL CODE DOES NOT APPLY SINCE IT APPLIES ONLY WITH RESPECT TO THE LIABILITY OF A GUARANTOR; SURETY'S LIABILITY STANDS WITHOUT REGARD TO THE DEBTOR'S ABILITY TO PERFORM HIS OBLIGATIONS UNDER THE CONTRACT OF SURETYSHIP. — A plain reading of Article 2080 indicates that the article applies to guarantors. Mercantile's position that the provision applies with equal force to sureties fails to appreciate the fundamental distinctions between the respective liabilities of a guarantor and a surety. x x x In *Bicol Savings & Loan Association v. Guinhawa,* the Court unequivocally ruled that Article 2080 applies only with respect to the liability of a guarantor. x x x Verily, a surety's liability stands without regard to the debtor's ability to perform his obligations under the contract subject of the suretyship. Mercantile's reliance on Article 2080 is thus misplaced.

6. ID.; ID.; ID.; ONLY RESPONDENT MAY BE HELD LIABLE IN THIS CASE; RESPONDENT HOWEVER RETAINS THE RIGHT TO SEEK FULL REIMBURSEMENT FROM ALTECH. — It is a well-settled rule that a judgment binds only those who were made parties to the case[.] x x x [T]he records do not show that the CA had in fact acquired jurisdiction over Altech either by service of summons or voluntary participation. Accordingly, the CA erred when it rendered judgment against Altech which, for all intents and purposes, stands as a non-party to the present case. Nevertheless, the Court deems it necessary to stress that Mercantile retains the right to

seek full reimbursement from Altech on the basis of Article 2066 of the Civil Code in a *separate* case filed for the purpose.

APPEARANCES OF COUNSEL

Antonio I. Senador for petitioner.
Consunji & Bonifacio Law Offices for respondent.

D E C I S I O N

CAGUIOA, *J.*:

This is a petition for review on *certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated July 30, 2012 (Assailed Decision) and Resolution[3] dated January 7, 2013 (Assailed Resolution) rendered by the Court of Appeals (CA) in CA-G.R. SP. No. 80705.

The Assailed Decision and Resolution reverse the Decision[4] promulgated on November 7, 2003 issued by the Construction Industry Arbitration Commission (CIAC) Arbitral Tribunal (Tribunal) in CIAC Case No. 10-2003 which, in turn, dismissed the claim filed by respondent DMCI- Laing Construction, Inc. (DLCI) against Altech Fabrication Industries, Inc. (Altech) and petitioner The Mercantile Insurance Co., Inc. (Mercantile).

The Facts

The facts, as narrated by the CA, are as follows:

On March 17, 1997, Rockwell Land Corporation ("Rockwell"), as the owner and developer, entered into an agreement with [DLCI],

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[1] *Rollo,* pp. 9-49.

[2] *Id.* at 50-74. Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Japar B. Dimaampao and Victoria Isabel A. Paredes concurring.

[3] *Id.* at 161-162.

[4] *Id.* at 75-101. Dated October 27, 2003 and issued by the Arbitral Tribunal consisting of Chairman Alfredo F. Tadiar and Members Joven B. Joaquin and Felicitas A. Pio Roda.

as the General Contractor, for the construction of The Condominium Towers and associated external landscaping works of Hidalgo Place, Rizal Tower, Luna Garden, [and] Amorsolo Square (the "Project") at the Rockwell Center, Makati City. Part of [DLCI's] scope of work in the Project [was] the supply and installation of glazed aluminum and curtain walling. Part of the terms and conditions of the contract between Rockwell and DLCI (the "Main Contract") [was] the appointment of [Altech] as Rockwell's nominated sub[-]contractor to DLCI for the supply and installation of glazed aluminum and curtain walling.

On July 30, 1997, in compliance with the agreement between Rockwell and DLCI, Rockwell sent a Notice of Award to Proceed [(NTP)] to Altech for the supply and installation of the glazed aluminum and curtain walling at the Project. Said [NTP] bears the conformity of DLCI and Altech.

Pursuant to the [NTP] and the Sub-Contract Agreement [(Sub-Contract)] between DLCI and Altech, **Altech secured a Performance Bond from Mercantile for its scope of work in the [P]roject**. On September 5, 1997, Mercantile, as surety, with Altech, as principal, issued Performance Bond No. G(13)-1500/97 in favor of Rockwell and DLCI, as obligee, for the amount of PhP90,448,941.60.

On September 8, 1997, Mercantile issued [B]ond [E]ndorsement No. E-109/97 ST, **correcting the effectivity of the Performance Bond from September 5, 1997 to September 5, 1999**. Thereafter, on September 12, 1997, Mercantile issued [B]ond [E]ndorsement No. E-116/97 ST, **correcting the obligee of the [P]erformance [B]ond to DLCI alone,** and not in favor of Rockwell and DLCI. Subsequently, on August 26, 1999, Mercantile issued [B]ond [E]ndorsement [N]o. E-220/99 ST, **extending the effectivity of the Performance Bond for another six (6) months from September 5, 1999 to March 5, 2000**.[5] (Emphasis supplied)

On November 9, 1998, DLCI called Altech's attention to the poor progress of the works subject of their Sub-Contract in its Letter[6] addressed to Altech's President and General Manager, Nicanor Peña:

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

[6] *Id*. at 229-230.

[W]e detail below a programme status report of your installation works—

Panel installation at Rockwell as [of] [November 7, 1998]

	Total Panels	**Planned %**	**Planned No**	**Actual %**	**Actual No**
Hidalgo	4623	75%	3406	14%	664
Rizal	4830	60%	2919	5%	264
Luna	3100	36%	1110	NIL	NIL
Amorsolo [east and west]	3500	35%	1235	NIL	NIL
Project Total	**16,053**	**54%**	**8670**	**6%**	**928**

We would record that this situation is totally unacceptable, and we hereby request, in compliance with the proposed sub-contract conditions, the submission of your revised sub-contract works programme and recovery proposals identifying the methodology by which the agreed completion dates for your works are to be maintained.

x x x x x x x x x

We would remind you that as a direct consequence of these delays[,] Altech maybe held liable for x x x any costs, losses or expenses caused by the delays, and subsequently suffered by DLCI.[7]

DLCI was constrained, in several instances, to undertake the completion and rectification of unfinished and sub-par works to avert further delay. DLCI apprised Altech of these instances, as well as its intention to charge the corresponding costs against Altech's account.[8]

On September 3, 1999, DLCI sent a letter to Mercantile, demanding "liquidation of the [Performance Bond]" with

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[7] *Id*. at 229-230.

[8] As documented through DLCI's Letters dated November 21, 1998, November 23, 1998, January 13, 1999, April 15, 1999, June 4, 1999, August 24, 1999, September 20, 1999, September 16, 1999 and December 7, 1998; *rollo*, pp. 231-236, 239, 247, 249-250 and 253-254.

interest at the stipulated rate of 2% per month (First Call).[9] DLCI's First Call was reiterated in its subsequent letters dated September 30, 1999,[10] October 18, 1999, [11] and March 3, 2000.[12] The First Call and the reiterative letters sent by DLCI demanded the liquidation of the Performance Bond, but did not indicate the exact amount claimed.[13]

On January 20, 2000, Altech advised DLCI that it had relinquished its major assets to its bank due to financial difficulties.[14] Nevertheless, Altech assured DLCI that it "[would] continue to provide [its] whole hearted support in terms of the logistical needs of the [P]roject."[15]

On February 21, 2000, DLCI terminated its Sub-Contract with Altech effective immediately. The Termination Letter reads, in part:

> This termination is due to [Altech's] failure x x x to perform in accordance with the agreed terms of the sub-contract stipulated in the Notice of Award as well as in the documents referred to therein such as, but not limited to, the [Sub-Contract]. **Despite numerous written communications from us, [Altech has] failed to proceed with the sub-contract works with due diligence and [has] consistently failed to meet the required quality standards**. Furthermore, [Altech has], by [its] own admission, entered into a deed of arrangement with its creditors in which it surrendered its major assets to the latter. The aforementioned acts are clearly events of default falling under [Paragraph] 17 of the [Sub-Contract] which justify [its] immediate termination x x x.
>
> For purposes of record, we will conduct an assessment and evaluation of the sub-contract works on Wednesday[,] [February 23,

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[9] *Rollo,* p. 283.

[10] *Id*. at 284-285.

[11] *Id*. at 286.

[12] *Id*. at 288.

[13] See *id*. at 92.

[14] *Id*. at 296.

[15] *Id*.

2000] before we formally take-over the same. We invite you to send your representatives to witness the assessment.

We reserve the right to claim from [Altech] reimbursement of all costs, as well as compensation for all damages, arising from [Altech's] default, including but not limited to costs of both direct and consequential delays. Likewise, we reserve the right to claim the refund of any payment which, after a review of your accomplishment and records, may be found to have been not due or wrongly paid to [Altech].[16] (Emphasis supplied)

Subsequently, Mercantile advised DLCI that it had referred its demand to Altech for appropriate action through its Letter[17] dated March 13, 2000. On March 28, 2000, Mercantile advised DLCI that since Altech had informed them that negotiations were underway for an amicable settlement, they would hold further evaluation of DLCI's claim in abeyance "to give enough elbow room to [Altech] to settle [the claim] on [its] own."[18]

After negotiations between DLCI and Altech fell through, DLCI reiterated its demand for liquidation on November 28, 2000.[19]

Mercantile denied DLCI's claim on February 26, 2001 on the ground that the Performance Bond expired on March 5, 2000.[20]

Aggrieved, DLCI filed a complaint against Altech and Mercantile before the CIAC (CIAC Complaint) on May 29, 2003,[21] seeking to collect the sum of Php31,618,494.81 representing the costs it allegedly incurred to complete the sub-contracted works, with interest and costs of litigation.[22]

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[16] *Id*. at 287.

[17] *Id*. at 289.

[18] *Id*. at 290.

[19] *Id*. at 53, 291.

[20] *Id*. at 53, 82.

[21] *Id*. at 85.

[22] *Id*. at 75.

Despite earnest efforts to serve the CIAC Complaint upon Altech, DLCI was unable to do so since Altech was no longer holding office at its registered principal address. Its corporate officers refused to respond to the CIAC Complaint.[23]

For its part, Mercantile argued that DLCI failed to file the CIAC Complaint within a "reasonable period of time" as required by the Sub- Contract.[24] In addition, Mercantile challenged the validity of the termination of the Sub-Contract, as well as DLCI's right to claim against the Performance Bond.[25]

CIAC Ruling

In a Decision promulgated on November 7, 2003, the Tribunal dismissed DLCI's Complaint.[26]

The Tribunal ruled that DLCI did not file the CIAC Complaint within a reasonable period, as required by Section 2, Paragraph 25 of the Sub-Contract, which states:

> x x x Notice of the demand for arbitration of a dispute shall be filed in writing with the other party to the Sub-Contractor. The demand for arbitration shall be made within a reasonable time after the dispute has arisen and attempts to settle amicably have failed. In no case, however, shall the demand be made later than the time of final payment, except as otherwise stipulated in the Sub-Contract.[27] (Italics omitted)

According to the Tribunal, DLCI was unable to justify why it waited for more than three (3) years and three (3) months after termination of the Sub-Contract before filing the CIAC Complaint.[28] According to the Tribunal, DLCI's delay amounts to a violation of the Sub-Contract, and triggers the application of laches.[29]

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[23] *Id*. at 76.

[24] *Id*. at 85-86.

[25] See *id*. at 92-97.

[26] *Id*. at 100.

[27] *Id*. at 80.

[28] *Id*. at 86.

[29] See *id*. at 86-89.

Moreover, the Tribunal held that Mercantile should be released from its obligations under the Performance Bond pursuant to Article 2080 of the Civil Code,[30] since DLCI's delay had deprived it of the opportunity to exercise its right of subrogation against Altech.[31] It held:

> It is not controverted that when [DLCI] filed its claim with CIAC on [May 29, 2003], [Altech] could no longer be found and efforts to serve it with the letter request for arbitration proved futile. As already held x x x [DLCI] is found guilty of inexcusable delay in filing this claim for arbitration. The consequence of this delay is to deprive [Mercantile] of its right to go after [Altech] on a cross-claim in this suit. This surely deprives [Mercantile] of its right of subrogation against Altech as [i]ndemnitor in the Performance Bond. x x x [I]n accordance with the provisions of Article 2080 x x x [Mercantile] is "released from its obligation" under the [P]erformance [B]ond.[32]

The Tribunal also ruled that DLCI's First Call was not a valid demand since it did not indicate the specific amount DLCI sought to recover from Mercantile.[33] Consequently, the Tribunal concluded that DLCI's claim is already barred, since the Performance Bond had already expired two (2) years before DLCI finally ascertained the total amount of its claim.[34]

In addition, the Tribunal found the termination of the Sub-Contract unjustified, as DLCI's own Project Financial Manager John O'Connor admitted that Altech achieved 95% accomplishment as of the month of termination. According to the Tribunal, 95% work accomplishment qualifies as substantial completion under the Uniform General Conditions of Contract for Private Construction prescribed by the Construction Industry Authority of the Philippines (CIAP) in CIAP Document 102.[35]

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[30] *Id*. at 91.

[31] *Id*.

[32] *Id*.

[33] *Id*. at 92.

[34] *Id*.

[35] *Id*. at 93-95.

In any case, the Tribunal held that DLCI is not entitled to reimbursement for costs it had incurred in order to complete the Project, since its claims consist of expenses incurred *after* the unilateral termination of the Sub-Contract; it emphasized that the term "cost to complete" assumes a definite meaning in the construction industry, and relates to "the right of the owner (or in this case, the main contractor) to collect damages against the contractor (in this case, the sub-contractor) for the latter's failure to complete the work as stipulated, prompting the former to take-over the project and complete the work by administration or by a different contractor."[36]

Aggrieved, DLCI filed a petition for review before the CA, insisting on its right to claim against the Performance Bond.

CA Ruling

The CA granted DLCI's petition for review through the Assailed Decision, the dispositive portion of which reads:

> WHEREFORE, the instant petition is GRANTED. The [CIAC Decision] is REVERSED and SET ASIDE. **[Altech] and [Mercantile] are jointly and solidarily liable to pay [DLCI] the amount of Php31,618,494.81 representing the costs incurred by [DLCI] in completing the project and an interest at the rate of 2% per month on the said amount due from September 3, 1999 until the amount of Php31,618,494.81 is fully paid.** Furthermore, a 12% interest *per annum* shall be imposed on the award upon the finality of this Decision until the payment thereof.[37] (Emphasis supplied; emphasis in the original omitted)

The CA observed that negotiations between and among DLCI, Altech and Mercantile continued after the termination of the Sub-Contract, and that DLCI served its final written demand[38] upon Altech and Mercantile on January 20, 2003. **A meeting between DLCI and Mercantile's representatives followed**

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[36] *Id*. at 96.

[37] *Id*. at 73.

[38] *Id*. at 292-294.

on January 27, 2003, where said parties mutually agreed that attempts to arrive at an amicable settlement have failed.[39]

Considering the foregoing, the CA ruled that the filing of the CIAC Complaint four (4) months later, or on May 29, 2003, was done within a reasonable time.[40]

The CA further held that Mercantile cannot invoke laches to evade liability in this case since the CIAC Complaint was brought within the prescriptive period of ten (10) years for filing an action upon a written contract *(i.e.*, the Performance Bond),[41] inasmuch as DLCI's right of action only arose on January 27, 2003, when negotiations between the parties ceased.

Ultimately, the CA found Mercantile liable under the Performance Bond. Citing Article 2047 of the Civil Code governing suretyship, it held:

> By executing the [P]erformance [B]ond, Mercantile, as surety, guaranteed the performance and completion by Altech of its sub-contracted works, and in case of Altech's failure to complete the [P]roject according to the terms of the Sub-Contract x x x, Mercantile's liability, as surety, sets in.
>
> A careful review of the record[s] of the case revealed that Altech has reneged on its undertaking under the Sub-Contract before DLCI asked Mercantile for the liquidation of the [P]erformance [B]ond on September 3, 1999. On various dates, DLCI sent letters to Altech concerning the latter's continued poor performance and delays which seriously affected the progress of DLCI' s programmed work. DLCI mentioned that it may have no other alternative but to seek recourse through the terms of the Sub-Contract and that repair works, as well as, associated costs as a result of damage to other contractors' works due to Altech's delay shall be charged to Altech's account.
>
> **Apparently, Altech had already been in default even prior to DLCI's call on the [P]erformance [B]ond. By reason of said default, liability attached to Altech and as a consequence, the liability of**

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[39] *Id*. at 295.

[40] *Id*. at 59.

[41] See *id*.

Mercantile as surety had arisen. By the language of the bond issued by Mercantile, it guaranteed the full and faithful compliance by Altech of its obligations set forth in its Sub-Contract with DLCI. This guarantee made by Mercantile gave DLCI the right to proceed against the former following Altech's default or non-compliance with its obligation.[42] (Emphasis supplied)

Contrary to the Tribunal's findings, the CA held that DLCI's First Call was valid despite its failure to reflect the specific amount claimed. While DLCI's exact monetary claim was still undetermined at the time of the First Call, it was already understood, by the terms of the Performance Bond, that such amount would not exceed Php90,448,941.60.[43] In addition, the CA ruled that Mercantile cannot escape its liability under the Performance Bond due to its alleged expiration, considering that it was Mercantile's own inaction which delayed the evaluation of DLCI's claim.[44]

Further, the CA ruled that the termination of the Sub-Contract was justified by Altech's consistent delay and poor workmanship, regardless of the level of its accomplishment at the time of termination.[45] As a result, Mercantile is liable for the costs of completion claimed by DLCI having guaranteed the full and faithful compliance of Altech's obligations under the Sub-Contract.[46]

Finally, while the CA found Mercantile liable to pay DLCI's claim, it found no basis to hold it liable for costs of litigation and attorney's fees there being no evidence that the former acted in bad faith.[47]

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

[43] *Id*. at 52, 63-64.

[44] *Id*. at 65.

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

[46] *Id*. at 70.

[47] *Id*. at 72.

Mercantile's motion for reconsideration was denied by the CA through the Assailed Resolution, which Mercantile received on January 10, 2013.[48]

On January 17, 2013, Mercantile filed a Motion for Extension of Time[49] praying that it be granted a period of thirty (30) days, or until February 24, 2013[50] to file its Petition, which the Court granted.[51]

Mercantile filed the present Petition on February 20, 2013.[52]

The Court directed DLCI to file its comment on the Petition in its Resolution[53] dated March 18, 2013.

DLCI filed its Comment[54] on July 2, 2013, to which Mercantile filed its Reply.[55]

The Issue

The Court is called upon to determine whether the CA erred when it directed Mercantile to pay DLCI the sum of Php31,618,494.81 on the basis of the Performance Bond, with stipulated interest at the rate of 2% per month.

The Court's Ruling

The Petition is denied for lack of merit. The Assailed Decision and Resolution are affirmed, with modification.

The CIAC Complaint was timely filed.

Foremost, Mercantile insists that the CIAC Complaint should have been dismissed outright since DLCI failed to file it within

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[48] *Id*. at 10.

[49] *Id*. at 3-7.

[50] See *id*. at 8.

[51] See Resolution dated March 18, 2013, *id*. at 157.

[52] *Id*. at 8, 9.

[53] *Id*. at 157.

[54] *Id*. at 168-218.

[55] *Id*. at 303-315.

a reasonable time. A plain reading of Section 2, Paragraph 25 of the Sub-Contract belies this claim.

Section 2, Paragraph 25 of the Sub-Contract requires that any demand for arbitration between and among the parties shall be made within a reasonable time after the dispute has arisen and **attempts to settle amicably have failed**.[56]

Mercantile does not dispute that all efforts to arrive at an amicable settlement proved futile on January 27, 2003,[57] following its refusal to heed DLCI's final demand for payment. Verily, the filing of the CIAC Complaint four (4) months later, that is, on May 29, 2003, was done within a reasonable time from the reckoning date set by Section 2, Paragraph 25 of the Sub-Contract.

DLCI's demand for liquidation through the First Call was valid.

It is a well-established rule that a contract stands as the law between the parties for as long as it is not contrary to law, morals, good customs, public order, or public policy.[58] Hence, to determine the validity of DLCI's demand for liquidation, reference to the conditions of the Performance Bond is proper.

On the conditions for recovery, the Performance Bond states:

[T]his bond is conditioned x x x upon the OBLIGEE's [DLCI's] first demand, the SURETY [(Mercantile)] shall immediately indemnify [DLCI] notwithstanding any dispute to the effect that the principal has fulfilled its contractual obligation, the amount demanded; PROVIDED however, that the liability of [Mercantile] under this bond shall in no case exceed the x x x sum [of Php90,448,941.60]. [Mercantile] further agrees to pay [DLCI] interest at the rate of 2% per month on the amount due **from the date of**

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[56] *Id*. at 80.

[57] *Id*. at 58.

[58] See CIVIL CODE, Arts. 1159, 1305-1306. See also *Enriquez v. The Mercantile Insurance Co., Inc.*, G.R. No. 210950, August 15, 2018, accessed at < http://elibrary.judiciary.gov.ph/thebookshelf/shodowcs/1/64474 >.

rece[i]pt by [Mercantile] of [DLCI's] first demand letter up to the date of actual payment.[59] (Emphasis supplied; italics omitted)

By these terms, Mercantile obligated itself to pay DLCI *immediately* upon demand, notwithstanding any dispute as to the fulfillment of Altech's obligations under the Sub-Contract. The Performance Bond thus stands as a contract of surety contemplated under Article 2047 of the Civil Code which states:

> ART. 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.
>
> **If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book**[60] **shall be observed. In such case the contract is called a suretyship.** (Emphasis supplied)

Through a contract of suretyship, one party called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of another party, called the obligee.[61] As a result, the surety is considered in law as being the same party as the debtor in relation to whatever is adjudged touching upon the obligation of the latter, and their liabilities are interwoven as to be inseparable.[62]

While the contract of surety stands secondary to the principal obligation, the surety's liability is direct, primary and absolute, albeit limited to the amount for which the contract of surety is issued.[63]

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

[60] Section 4, Chapter 3, Title I of Book IV to which Article 2047 refers contains the provisions on joint and solidary obligations.

[61] *People's Trans-East Asia Insurance Corp. v. Doctors of New Millennium Holdings, Inc.*, 741 Phil. 149, 161 (2014), citing *Stronghold Insurance Company v. Tokyu Construction Company, Ltd.*, 606 Phil. 400, 411 (2009).

[62] *Trade and Investment Development Corporation of the Philippines v. Asia Paces Corporation,* 726 Phil. 555, 565 (2014).

[63] See *People's Trans-East Asia Insurance Corp. v. Doctors of New Millennium Holdings, Inc., supra* note 61, at 161, citing *American Home Insurance Co. of New York v. F.F. Cruz* & Co., *Inc.*, 671 Phil. 1, 14 (2011).

The surety's liability attaches the moment a demand for payment is made by the creditor. The Court's ruling in *Trade and Investment Development Corporation of the Philippines v. Asia Paces Corporation*[64] lends guidance:

> x x x **[S]ince the surety is a solidary debtor, it is not necessary that the original debtor first failed to pay before the surety could be made liable; it is enough that a demand for payment is made by the creditor for the surety's liability to attach.** Article 1216 of the Civil Code provides that:
>
> > Article 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously.The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected.[65] (Emphasis supplied)

While the Performance Bond in this case is "conditioned" upon DLCI's first demand, a close reading of its terms unequivocally indicates that Mercantile's liability thereunder consists of a *pure* obligation since such liability attaches *immediately* upon demand, and is neither dependent upon any future or uncertain event, nor a past event unknown to the parties.[66] Thus, the Performance Bond is one that is callable on demand, wherein mere demand triggers Mercantile's obligation (as surety) to indemnify DLCI (the obligee) the amount for which said bond was issued, that is, Php90,448,941.60.[67]

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[64] *Supra* note 62.

[65] *Id.* at 565.

[66] See CIVIL CODE, Art. 1179.

[67] In *Philippine Charter Insurance Corp. v. Central Colleges of the Philippines*, 682 Phil. 507, 523-524 (2012), the surety and performance bonds bearing the following terms were characterized as being callable on demand:

> The liability of [the surety] under this bond will expire on x x x; Furthermore, it is hereby agreed and understood that [the surety] will not be liable for any claim not presented to it in writing within FIFTEEN (15) DAYS from the expiration of this bond, and that the Obligee hereby waives

Accordingly, the requirement of "first demand" in this case should be understood in light of Article 1169,[68] wherein the obligee is deemed to be in delay upon judicial or extra-judicial demand. Clearly, Mercantile's liability became due upon its receipt of the First Call.

In this respect, DLCI's alleged failure to state the value of its claim is of no moment. As astutely observed by the CA:

x x x [The Tribunal] makes much out of DLCI's failure to state the specific amount that it is claiming. It must be emphasized that at the time of the call on the bond, Mercantile's obligation guaranteeing

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its right to claim or file any court action against the surety after the termination of FIFTEEN (15) DAYS from the time its cause of action accrues.

x x x x x x x x x

The liability of [the surety] under this bond will expire on x x x; Furthermore, it is hereby agreed and understood that [the surety] will not be liable for any claim not presented to it in writing within TEN (10) DAYS from the expiration of this bond or from the occurrence of the default or failure of the Principal, whichever is the earliest, and the Obligee hereby waives its right to file any claims against the Surety after termination of the period of ten (10) DAYS above mentioned after which time this bond shall definitely terminate and be deemed absolutely cancelled. *Id*. at 521-522.

[68] CIVIL CODE, Article 1169 provides:

ART. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declares; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

project completion already arose and it is understood that the exact amount, while still undetermined, shall not exceed the amount of the bond [Php90,448,941.60].[69]

The Tribunal appears to have overlooked the fact that the First Call demanded for the *liquidation* of the Performance Bond, that is, the payment of the entire amount for which it was issued. Payments made in response to DLCI's demand for liquidation would have then been subject to *subsequent* adjustment following the final settlement of Altech and DLCI's respective accounts. This much is clear from the terms of the Performance Bond.[70]

The Performance Bond itself provides that Mercantile's liability is not contingent upon the determination of the actual amount for which Altech is liable. In the event of an overpayment, Mercantile can proceed against DLCI based on the principle of unjust enrichment.[71] Any amount subject to reimbursement would then assume the nature of a forbearance of money, subject to legal interest.

In any case, it bears stressing that Mercantile made no mention of the purported defect in DLCI's First Call at any time prior to the CIAC proceedings. To recall, Mercantile premised its refusal to evaluate DLCI's claim *solely* on the pending negotiations between DLCI and Altech. Mercantile's objection regarding the validity and completeness of the First Call, which it belatedly raised during the CIAC proceedings, appears to have been an afterthought.

For these reasons, the Court finds Mercantile's refusal to evaluate DLCI's claim unjustified.

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[69] *Rollo,* pp. 63-64.

[70] The relevant proviso states:

x x x [T]he SURETY [(Mercantile)] shall immediately indemnify the OBLIGEE [(DLCI)] notwithstanding any dispute to the effect that the principal has fulfilled its contractual obligation, the amount demanded[.] *Rollo,* p. 80.

[71] See CIVIL CODE, Art. 22.

DLCI is entitled to claim the costs it incurred as a consequence of Altech's delay and poor workmanship.

Under the Performance Bond, Altech and Mercantile jointly and severally bound themselves "for the payment of the [Performance] Bond in the event that Altech [should] fail to fully and faithfully undertake and complete its scope of work in strict compliance with the general conditions, plans and specifications, bill of quantities and other documents, which were [furnished to] Altech x x x and which [were] incorporated in said Performance Bond x x x by reference."[72]

In turn, the general conditions of the Sub-Contract between DLCI and Altech provide:

6. Commencement [and] Completion

x x x x x x x x x

(12) **Time is an essential feature of the [Sub-Contract]. If [Altech] shall fail to complete the Sub-Contract Works within the time or times required by its obligations hereunder[, Altech] shall indemnify [DLCI] for any costs, losses or expenses caused by such delay,** including but not limited to any liquidated damages or penalties for which [DLCI] may become liable under the Main Contract as a result wholly or partly of [Altech's] default x x x.

x x x x x x x x x

17. [Altech's] Default

x x x x x x x x x

(f) **[If Altech] fails to execute the Sub-Contract works or to perform his other obligations in accordance with the Sub-Contract after being required in writing so to do by [DLCI];** x x x

x x x x x x x x x

(3) [DLCI] may in lieu of giving a notice of termination x x x take part only of the Sub-Contract Works out of the hands of [Altech]

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[72] *Rollo,* p. 81.

> and may[,] by himself, his servants or agents execute such part and in such event [DLCI] may recover his reasonable costs of so doing from [Altech], or deduct such costs from monies otherwise becoming due to [Altech].[73] (Emphasis supplied; italics omitted)

The records show that Altech failed to accomplish its work in a timely and satisfactory manner. This is apparent from the correspondences,[74] which DLCI submitted as evidence. Mercantile had the full opportunity to contest the truthfulness and veracity of these correspondences and the matters to which they pertain. Instead of doing so, Mercantile merely argued that DLCI's failure to "pray for Liquidated Damages and Cost for Rectification of work" belies its claim of delay and poor workmanship.[75]

Mercantile's undue reliance on nomenclature does not support its cause. To recall, the CIAC Complaint prayed for the payment of costs incurred to complete the sub-contract works.[76] These costs represent those incurred as a consequence of Altech's delay and poor workmanship. Verily, these costs are chargeable against the Performance Bond, inasmuch as the latter stands as a guarantee for Altech's full and faithful compliance with the Sub-Contract.

Mercantile further attempts to evade liability on the Performance Bond by drawing a distinction *between first,* costs incurred before *and* after termination of the Sub-Contract and *also,* between costs incurred to complete the project and those which are claimed due to overpayment. However, these distinctions are irrelevant to Mercantile's liability under the Performance Bond.

At the risk of being repetitive, Mercantile's Performance Bond guarantees Altech's full and faithful compliance with the

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

[74] See *id*. at 223-275.

[75] *Id*. at 38.

[76] *Id*. at 75.

Sub-Contract. Accordingly, the scope of the Performance Bond should be understood to cover all costs incurred by DLCI as a result of Altech's failure to comply with its obligations under said agreement. To limit the scope of the Performance Bond only to costs incurred *before* termination of the Sub- Contract would be to create an additional condition for recovery which does not appear on the face of the Performance Bond. To stress, Mercantile's liability is conditioned only upon DLCI's first demand, "notwithstanding any dispute to the effect that the principal has fulfilled its contractual obligation [or] the amount demanded."[77]

It is likewise erroneous for Mercantile to argue that DLCI's claim is a mere request for reimbursement for overpayment which falls outside of the scope of the Performance Bond.

Reference to DLCI's breakdown of claims is proper, thus:

1. Total sub-contract amount		
Aluminum works	361,451,520.00	
Glazing works	90,793,188.00	
		452,244,708.00
2. Adjustment		
Additional works/dollar fluctuation	107,532,754.60	
Less: [Rockwell Debit Memo][78]	(168,773,746.89)	
		(61,240,992.29)
		391,003,715.71
3. DLCI's liabilities to date		
Payment on Altech's letter of credit and telegraphic transfers[79]	36,930,126.62	
Payment in favor of Altech's local suppliers	5,485,386.43	
Interest expense[80]	240,709.94	
Payment to Fuji Reynolds[81]	1,763,819.91	

[77] *Id*. at 80.

[78] See *id*. at 126.

[79] Advances made by DLCI to Altech's foreign suppliers, see *rollo*, p. 127.

[80] Interest expense incurred on advances made in favor of Altech, see *id*.

[81] Supplementary sub-contractor employed by DLCI, see *id*. at 123, 127.

Payment to J.A. Shillinglaw[82]	80,000.00	
Contra-charges[83]	1,236,609.26	
		(45,736,652.16)
4. Total amount paid by DLCI to Altech		
Measured works less charges	**297,125,482.52**	
Additional works/dollar fluctuation	**74,221,471.20**	
		(371,346,953.72)
Balance currently remaining on Altech's estimated final account		(26,079,890.17)
5. Future support/DLCI liabilities[84]		(28,150,840.04)
Retention amount earlier withheld from Altech[85]		22,612,235.40
Altech's Liability		(31,618,494.81)[86]

Based on DLCI's breakdown of claims, the sub-contract price, after due adjustment,[87] amounts to Php391,003,715.71.

Due to Altech's delay and poor workmanship, DLCI was constrained to incur additional expenses to complete the sub-contract works, which, in turn, amounted to Php73,887,492.20.[88] These expenses, when charged against Altech's account, bring down the total sub-contract price to Php317,116,223.51.

It appears, however, that Altech was able to previously bill and receive payment for accomplished work in the amount of

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[82] Supplementary sub-contractor employed by DLCI, see *id*. at 127.

[83] Represents charges against Altech's account for maintenance, administrative and power charges, as well as penalties for violations of safety rules, see *id*.

[84] Represents other expenses incurred by DLCl for and in behalf of Altech, including advances made to Altech's suppliers, payments made in favor of supplementary sub-contractors, and cost of replacement materials, see *id*.

[85] See *rollo*, p. 128.

[86] See *id*. at 282. Emphasis supplied.

[87] For dollar fluctuation, inclusion of additional works, and deduction on account of owner-incurred damage, see *rollo*, pp. 126-127.

[88] Php45,736,652.16 + Php28,150,840.04 = Php73,887,492.20.

Php371,346,953.72[89] — an amount evidently more than what Altech is entitled to after taking DLCI's additional expenses for completion into account.

Thus, DLCI's claim of Php31,618,494.81 represents the difference between the adjusted sub-contract price of Php317,116,223.51 and DLCI's previous payments of Php371,346,953.72, *less* the retention amount which remains with DLCI. The fact that DLCI paid in excess of what Altech is now entitled to under the Sub-Contract does not place the claim beyond the scope of the Performance Bond, inasmuch as the claim results from additional expenses incurred by DLCI to complete the sub-contract works — expenses which DLCI would not have otherwise incurred had Altech fully and faithfully complied with its obligations under the Sub-Contract.

Altech's obligation to perform the specified works under the Sub-Contract constitutes an obligation to do. Obligations to do have as their object a prestation consisting of a performance of a certain activity which, in turn, cannot be exacted without exercising violence against the person of the debtor.[90] Accordingly, the debtor's failure to fulfill the prestation gives rise to the creditor's right to obtain from the latter's assets the satisfaction of the money value of the prestation.[91]

As Altech's surety, Mercantile is bound to answer for the costs incurred by DLCI as a consequence of the latter's non-fulfillment, pursuant to Article 1167 of the Civil Code:

> ART. 1167. If a person obliged to do something fails to do it, the same shall be executed at his cost.
>
> This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone.

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[89] See *rollo*, p. 127.

[90] IV Eduardo P. Caguioa, *COMMENTS AND CASES ON CIVIL LAW* 84-85 (2nd Rev. Ed. 1983).

[91] *Id*. at 49-50.

It is well to note that Mercantile had the opportunity to contest the costs claimed by DLCI, but again, did not do so. Accordingly, the sum payable, as computed by DLCI, stands.

Article 2080 of the Civil Code does not apply.

In a last ditch effort to escape liability, Mercantile maintains that it should be deemed released from its obligations under the Performance Bond as it had been deprived of the opportunity to exercise its right of subrogation against Altech due to DLCI's "inexcusable delay" in filing the CIAC Complaint. Mercantile bases this assertion on Article 2080 of the Civil Code.

It has already been settled that no delay may be attributed to DLCI with respect to the filing of the CIAC Complaint. Nevertheless, even if it is assumed, for the sake of argument, that DLCI was in fact guilty of inexcusable delay, Mercantile's argument still fails.

A plain reading of Article 2080 indicates that the article applies to guarantors. Mercantile's position that the provision applies with equal force to sureties fails to appreciate the fundamental distinctions between the respective liabilities of a guarantor and a surety.

A surety is an insurer of the debt, whereas a guarantor is an insurer of the solvency of the debtor. A suretyship is an undertaking that the debt shall be paid; a guaranty, an undertaking that the debtor shall pay. Stated differently, a surety promises to pay the principal's debt if the principal will not pay, while a guarantor agrees that the creditor, after proceeding against the principal, may proceed against the guarantor if the principal is unable to pay. **A surety binds himself to perform if the principal does not, without regard to his ability to do so.** A guarantor, on the other hand, does not contract that the principal will pay, but simply that he is able to do so. **In other words, a surety undertakes directly for the payment and is so responsible at once if the principal debtor makes default, while a guarantor contracts to pay if, by the use of due diligence, the**

debt cannot be made out of the principal debtor. x x x[92] (Emphasis supplied; emphasis and underscoring in the original omitted)

In *Bicol Savings & Loan Association v. Guinhawa*,[93] the Court unequivocally ruled that Article 2080 applies only with respect to the liability of a guarantor. The Court reiterated this ruling in the subsequent case of *Ang v. Associated Bank*,[94] where it held:

> As petitioner acknowledged it to be, the relation between an accommodation party and the accommodated party is one of principal and surety — the accommodation party being the surety. As such, he is deemed an original promisor and debtor from the beginning; he is considered in law as the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter since their liabilities are interwoven as to be inseparable. Although a contract of suretyship is in essence accessory or collateral to a valid principal obligation, the surety's liability to the creditor is *immediate, primary* and *absolute;* he is *directly* and *equally* bound with the principal. **As an equivalent of a regular party to the undertaking, a surety becomes liable to the debt and duty of the principal obligor even without possessing a direct or personal interest in the obligations nor does he receive any benefit therefrom.**
>
> **Contrary to petitioner's adamant stand, however, Article 2080 of the Civil Code does not apply in a contract of suretyship.** [Article] 2047 of the Civil Code states that if a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I, Book IV of the Civil Code must be observed. Accordingly, Articles 1207 up to 1222 of the Code (on joint and solidary obligations) shall govern the relationship of petitioner[-surety] with the bank.[95] (Emphasis supplied; italics in the original and citations omitted)

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[92] *Trade and Investment Development Corp. of the Phils. v. Asia Paces Corp., supra* note 62, at 566, citing *Palmares v. Court of Appeals*, 351 Phil. 664, 680-681 (1998).

[93] 266 Phil. 703,709 (1990).

[94] 559 Phil. 29 (2007).

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

Verily, a surety's liability stands without regard to the debtor's ability to perform his obligations under the contract subject of the suretyship. Mercantile's reliance on Article 2080 is thus misplaced.

DLCI is entitled to reimbursement for litigation expenses.

The records show that DLCI claimed the amount of Php200,000.00 representing litigation expenses incurred in connection with the present case. The Tribunal denied the claim, Mercantile being the prevailing party therein.[96]

The CA also denied DLCI's claim for reimbursement, as it found Mercantile's position "not so untenable as to amount to gross and evident bad faith."[97]

The Court disagrees.

Article 2208 of the Civil Code entitles the plaintiff to an award of attorney's fees and expenses of litigation when "the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim."[98]

To recall, the Performance Bond explicitly required Mercantile to **immediately indemnify DLCI notwithstanding any dispute as to Altech's fulfillment of its contractual obligations under the Sub-Contract**.[99] Mercantile's refusal to heed DLCI's demand for liquidation to purportedly await Altech's action thereon despite the clear and unequivocal terms of the Performance Bond defeated the very purpose for which the said bond had been procured. Mercantile's unjust refusal to evaluate DLCI's claim appears to have been a deliberate attempt to delay action thereon until the expiration of the Performance Bond. Such gross and evident bad faith on the part of Mercantile warrants the award of litigation expenses in DLCI's favor.

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[96] *Rollo,* pp. 99-100.

[97] *Id*. at 72.

[98] CIVIL CODE, Art. 2208(5).

[99] *Rollo,* p. 80.

Only Mercantile may be held liable in this case.

It is a well-settled rule that a judgment binds only those who were made parties to the case, thus:

> In relation to the rules of civil procedure, it is elementary that a judgment of a court is conclusive and binding only upon the parties and their successors-in-interest after the commencement of the action in court. A decision rendered on a complaint in a civil action or proceeding does not bind or prejudice a person not impleaded therein, for no person shall be adversely affected by the outcome of a civil action or proceeding in which he is not a party. The principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he has not been made a party conforms to the constitutional guarantee of due process of law.[100]

While the CA petition was docketed as *"DMCI Laing Construction, Inc. v. Construction Industry Arbitration Commission, Altech Fabrication Industries, Inc. and Mercantile Insurance, Co., lnc."*[101] the records do not show that the CA had in fact acquired jurisdiction over Altech either by service of summons or voluntary participation.[102]

Accordingly, the CA erred when it rendered judgment against Altech which, for all intents and purposes, stands as a non-party to the present case. Nevertheless, the Court deems it necessary to stress that Mercantile retains the right to seek full reimbursement from Altech on the basis of Article 2066[103] of the Civil Code in a *separate* case filed for the purpose.

WHEREFORE, premises considered, the petition for review on *certiorari* is **DENIED**. The Decision dated July 30, 2012 and

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[100] *KT Construction Supply, Inc. v. Philippine Savings Bank*, 811 Phil. 626, 634-635 (2017), citing *Guy v. Gacott*, 778 Phil. 308, 320 (2016).

[101] As indicated by the case title docketed before the CA; see *rollo*, p. 50.

[102] On acquisition of jurisdiction in civil cases, see *Guy v. Gacott*, *supra* note 100, at 318-319.

[103] Article 2066 states:

Resolution dated January 7, 2013 rendered by the Court of Appeals in CA-G.R. SP. No. 80705 are **AFFIRMED WITH MODIFICATION**.

Petitioner The Mercantile Insurance, Co. Inc. is liable to pay respondent DMCI-Laing Construction, Inc. the following amounts as surety, pursuant to the terms of Performance Bond No. G (13)-1500/97 dated September 5, 1997:

1. Php31,618,494.81, representing the costs incurred by respondent as a result of the delay and poor workmanship of petitioner's principal, Altech Fabrication Industries, Inc. (Principal Award);

2. Interest applied on the Principal Award, at the rate of two percent (2%) per month as stipulated under Performance Bond No. G (13)-1500/97, reckoned from September 3, 1999, the date petitioner received respondent's first demand (Stipulated Interest) until full payment;

3. Litigation expenses amounting to Php200,000.00.

This pronouncement shall be without prejudice to all legal remedies which petitioner The Mercantile Insurance, Co., Inc. may pursue against its principal, Altech Fabrication Industries, Inc.

SO ORDERED.

Carpio[*] *Acting C.J. (Chairperson*), *Reyes, J. Jr., Lazaro-Javier,* and *Zalameda, JJ.,* concur.

ART. 2066. The guarantor who pays for a debtor must be indemnified by the latter.

The indemnity comprises:

(1) The total amount of the debt;

(2) The legal interests thereon from the time the payment was made known to the debtor, even though it did not earn interest for the creditor;

(3) The expenses incurred by the guarantor after having notified the debtor that payment had been demanded of him;

(4) Damages, if they are due.

In *Escaño v. Ortigas, Jr.*, 553 Phil. 24, 43-44 (2007), the Court held that the rights to indemnification as established and granted to the guarantor by Article 2066 extends as well to sureties as defined under Article 2047.

[*] Designated as Acting Chief Justice per Special Order No. 2703 dated September 10, 2019.

SECOND DIVISION

[G.R. No. 205618. September 16, 2019]

ELFLEDA, ALBERT, NAPOLEON, EDEN, SEVERIANO, CELIA and LEO, all surnamed MARCELO, represented by SPOUSES SEVERINO[*] [deceased] and CELIA C. MARCELO, *petitioners, vs.* **SAMAHANG MAGSASAKA NG BARANGAY SAN MARIANO, represented by GODOFREDO ERMITA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW); EXEMPTION FROM COVERAGE UNDER THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP); THE APPLICANT BEARS THE BURDEN OF PROVING THAT THE PROPERTY IS EXEMPT, SINCE COVERAGE UNDER THE CARP IS THE GENERAL RULE. — Coverage under the CARP is the general rule, therefore, the applicant bears the burden of proving that the property is exempt. x x x [P]etitioners fail to discharge the burden of proving that the properties were classified in the zoning ordinance and land use plan as residential, and that such zoning ordinance and land use plan were approved by the HLURB prior to June 15, 1988. At the very least, petitioners ought to have established that the subject properties were classified or reclassified as residential by any authorized government agency prior to June 15, 1988. But even this, petitioners fails to discharge. This leads to the inevitable conclusion that the subject properties remain to be agricultural and are therefore, not exempt from the coverage of the CARL.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; FACTUAL ISSUES CANNOT BE RAISED THEREIN; EXCEPTION. — The rule is that factual issues are beyond the province of this Court in a Rule 45 petition. By way of exception, the Court may re-examine the facts based

[*] Also referred to as "Severiano" in the pleadings.

on the evidence presented by the parties when, among others, the factual findings of the government agency and the CA are conflicting, as in the instant case.

3. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW); EXEMPTION FROM COVERAGE UNDER THE CARP; TO EXEMPT A PROPERTY FROM THE AMBIT OF THE CARP, THE LAND SHOULD HAVE BEEN CLASSIFIED IN TOWN PLANS AND ZONING ORDINANCES AS RESIDENTIAL, COMMERCIAL OR INDUSTRIAL, AND THE TOWN PLAN AND ZONING ORDINANCE EMBODYING THE LAND CLASSIFICATION SHOULD HAVE BEEN APPROVED BY THE HOUSING AND LAND USE REGULATORY BOARD (HLURB) OR ITS PREDECESSOR AGENCY PRIOR TO JUNE 15, 1988. — R.A. No. 6657 took effect on June 15, 1988. Chapter II, Section 4 of R.A. No. 6657, details the coverage of the CARP x x x. "Agricultural land" is, in turn, defined under Section 3(c) of R.A. No. 6657 as "land devoted to agricultural activity as defined in this Act and not classified as mineral, forest, residential, commercial or industrial land." In accordance with its power to issue rules and regulations to carry out the purposes of R.A. No. 6657, DAR issued A.O. No. 01, series of 1990 providing for the *Revised Rules and Regulations Governing Conversion of Private Agricultural Lands to Non-Agricultural Uses* and elaborating on the definition of agricultural lands x x x. From this, the concurrence of two conditions: *first*, the land has been classified in town plans and zoning ordinances as residential, commercial or industrial; and *second*, the town plan and zoning ordinance embodying the land classification has been approved by the HLURB or its predecessor agency prior to June 15, 1988, must be satisfied to exempt a property from the ambit of the CARP. x x x Ultimately, in applications for exemption, the question to be resolved is whether the property was, in fact, classified or reclassified as residential (or as mineral, forest, commercial, or industrial) by an authorized government agency before June 15, 1988. After all, an exemption clearance is issued because the CARL itself, from the beginning, has exempted the property from coverage, and the DAR Secretary is merely affirming this fact. x x x [T]he burden of proof that a property is exempt falls on the applicant.

4. ID.; ID.; ID.; ID.; APPLICATION FOR EXEMPTION; THE APPLICANT FOR EXEMPTION IS REQUIRED TO SUBMIT THE DOCUMENTARY REQUIREMENTS, AND OF THESE REQUIREMENTS THE MORE IMPORTANT ONES ARE THE CERTIFICATIONS FROM THE HLURB AND THE ZONING ADMINISTRATOR. — When petitioners' application for exemption was filed in 2006, the governing rules are that provided for under DAR A.O. No. 04, series of 2003 or the *2003 Rules on Exemption of Lands from CARP Coverage under Section 3(c) of Republic Act No. 6657 and Department of Justice (DOJ) Opinion No. 44, Series of 1990*. The documentary requirements under DAR A.O. No. 04, series of 2003, are substantially similar to those imposed under DAR A.O. No. 6, series of 1994 x x x. Of these requirements, the Court, in *Heirs of Luis A. Luna v. Afable*, explains that the more important ones are the certifications from the HLURB and the zoning administrator x x x. Petitioners x x x anchor their application for exemption on the issuances of three government agencies that purportedly reclassified the properties as residential: the NHA, the *Sangguniang Bayan*, and the HLURB. Unfortunately, none of these pieces of documentary evidence prove that the properties were classified or reclassified as residential prior to June 15, 1988.

APPEARANCES OF COUNSEL

The Law Firm of Ranion & Associates for petitioners.
The Law Firm of Talampas and Associates for respondents.

D E C I S I O N

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

Through this Petition for Review[1] under Rule 45 of the Rules of Court, petitioners challenge the Court of Appeals (CA) Decision[2]

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[1] Dated March 6, 2013, *rollo*, pp. 9-30.

[2] *Id.* at 31-48. Penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Magdangal M. De Leon and Francisco P. Acosta.

dated June 28, 2012 and Resolution[3] dated February 4, 2013. The assailed CA Decision and Resolution reversed the ruling of the Office of the President (OP), and instead, reinstated the order of the Department of Agrarian Reform (DAR) Secretary which denied petitioners' application for exemption of their landholdings from the coverage of Republic Act (R.A.) No. 6657 or the Comprehensive Agrarian Reform Law (CARL).

Facts

Subject of the instant controversy are the following parcels of land located at Barangay San Mariano, Muncipality of San Antonio, Nueva Ecija, and registered under the names of Elfleda, Albert, Napoleon, Eden, Severiano, Celia, and Leo, all surnamed Marcelo, (herein represented by their parents, spouses Severiano and Celia Marcelo, and collectively referred to as petitioners):

TCT No.	Lot No.	Area (Ha)	Date of Registration
NT-47472	3346	0.1675	August 2, 1963
NT-47472	3340	8.9955	August 2, 1963
NT-47473	1222	11.9882	August 2, 1963
NT-47473	3345	1.3080	August 2, 1963
NT-47473	3344	0.0495	August 2, 1963
NT-216355	1-I	92.1943	March 14, 1991
TOTAL 114.7030			

On March 14, 1989, petitioners voluntarily offered to sell these properties to the government for redistribution pursuant to the Comprehensive Agrarian Reform Program (CARP).[4] Notices of Coverage under the Compulsory Acquisition scheme were nonetheless sent to petitioners on August 28, 1991, and on September 6, 1991.[5]

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[3] *Id*. at 49-50.

[4] *Id*. at 286.

[5] *Id*. at 33.

On July 3, 1997, petitioners formally withdrew and cancelled their Voluntary Offer to Sell (VOS).[6] They manifested that they opted to continue the development of the landholdings.[7] This was followed on March 15, 2000, by another Notice of Coverage sent by the Municipal Agrarian Reform Office (MARO) of the Municipality of San Antonio.[8] Eighty-one farmer beneficiaries were identified by the DAR. The Landbank of the Philippines thereafter, issued a separate Memoranda of Valuation on the 47.2904 hectares which is a portion of the 92.1934 hectares of land covered by TCT No. NT-216355 and on the 13.344 hectares of land covered by TCT No. 47473. Collective Certificate of Land Ownership Awards (CLOAs) were then issued to the farmer-beneficiaries.[9]

Subsequently, petitioners filed an action for the cancellation of the CLOAs before the DAR Adjudication Board (DARAB), Region III, raising the ground, among others, that the properties were classified and approved as residential in 1977, and are therefore, exempt from CARP coverage.[10]

The DARAB, Region III, found that the properties are residential in nature as evidenced by the 2004 tax declaration receipts and the certificate of registration and license to sell issued by the National Housing Authority (NHA) in 1977. It further found that the CLOAs issued to the beneficiaries were fatally infirm as they were not signed by the DAR Secretary.[11]

Thus, the DARAB, Region III, ordered the cancellation of the CLOAs and disposed as follows:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

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[6] *Id.* at 32.

[7] *Id.* at 66.

[8] *Id.*

[9] *Id.* at 33.

[10] *Id.* at 93.

[11] *Id.* at 98.

1. Ordering the RECALL and CANCELLATION of Certificate of Land Ownership Award (CLOA[s]) Nos. 006261 (TCT-CLOA-CA2116), 00626177 (TCT-CLOA-CA-2117), and 00626396 (TCT-CLOA-CA-22213) issued in the name of private respondents being NULL and VOID.

2. Ordering, the Register of Deeds for the Province of Nueva Ecija to cause the Cancellation of Certificate of Land Ownership Award (CLOA[s]) issued in favor of the private respondents and declaring the same of no legal force and effect.

3. Directing the Department of Agrarian Reform to protect the rights of the legitimate title holders and the rest of the unaffected areas must remain undisturbed.

4. Enjoining Private Respondents to cease and [desist] from entering and conducting any activity inside the subject property specifically Celia Village located at San Mariano, San Antonio, Nueva Ecija.

5. No pronouncement as to cost.

SO ORDERED.[12]

The farmer-beneficiaries then appealed to the DARAB. The records do not disclose the result of this appeal.

While this appeal was pending, petitioners filed on April 8, 2005, a Petition for Non-coverage of Landholding before the Office of the Regional Director of DAR, Region III (DAR Regional Office).[13]

Petitioners alleged that the properties are not agricultural lands as defined under R.A. No. 6657, but residential lands. They alleged that on April 28, 1977, the NHA approved the conversion of the landholdings as Celia Subdivision and that a certificate of registration and license to sell were issued. In support, petitioners submitted a Certification of confirmation and recognition of the validity of the conversion dated

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[12] *Id*.

[13] *Id*. at 34.

June 17, 2005, issued by the Housing and Land Use Regulatory Board (HLURB).[14]

Finding that petitioners' cause of action is to exempt the landholdings from the coverage of the CARL, the DAR Regional Office issued an Order[15] dated November 17, 2005, directing petitioners to file their application for exemption before the DAR Secretary, disposing thus:

> WHEREFORE, premises considered, an Order is hereby issued DIRECTING the protestants Elfleda Marcelo, et al., as represented by Sps. Severiano Marcelo and Celia Marcelo, to file their Application for Exemption pursuant to Administrative Order No. 4, Series of 2003, pertaining to landholdings embraced by TCT Nos. NT 216355 [and] 47473, with an area of 92.1943 and 13.3447 hectares, more or less, respectively, situated in Brgy. San Mariano, San Antonio, Nueva Ecija.
>
> SO ORDERED.[16]

Consequently, on April 11, 2006, petitioners filed a Sworn Application for Exemption Clearance[17] before the DAR Center for Land Use Policy Planning and Implementation (CLUPPI) Office. In support of their application, petitioners submitted the following documents:

(a) Order[18] dated November 17, 2005, issued by the DAR Regional Office directing petitioners to file their Application for exemption;

(b) Certification[19] dated September 12, 2005, issued by the HLURB confirming that there exists a valid certificate

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[14] *Id*. at 66.

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

[16] *Id*. at 68.

[17] *Id*. at 57-65.

[18] *Supra* note 15.

[19] *Id*. at 69.

of registration and license to sell issued by the NHA covering the landholdings;

(c) Certification[20] dated March 22, 2006, issued by the HLURB stating that the landholdings are within the urban residence and reclassified as residential properties prior to June 15, 1988;

(d) Certification[21] dated April 10, 2006, issued by the Office of the Municipal Planning and Development Coordinator (MPDC) stating that the landholdings are Within the urban residence pursuant to *Sangguniang Bayan* Resolution No. 2006-004;

(e) Certificate of Registration[22] of Celia Subdivision and License to Sell[23] issued by the NHA;

(f) Resolution No. 2006-004[24] dated March 15,2006, issued by the *Sangguniang Bayan* of San Antonio, Nueva Ecija ratifying the landholdings as urban and residential under the Comprehensive Land Use Plan and Zoning Ordinance;

(g) Certification[25] dated April 18, 2006, issued by the Department of Agriculture (DA) certifying that the landholdings are not suitable for agricultural production;

(h) Certification[26] dated September 21, 2005, issued by the National Irrigation Administration (NIA) stating that the landholdings are already partially developed and not included in its programmed area;

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[20] *Id*. at 70.

[21] *Id*. at 71.

[22] *Id*. at 72.

[23] *Id*. at 73.

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

[25] *Id*. at 76.

[26] *Id*. at 77.

(i) Certifications dated January 9, 1998[27] and November 27, 2005 issued by the DAR Municipal Agrarian Reform Office (MARO) stating that the landholdings were untenanted;

(j) Certification[28] dated April 6, 2006, issued by the DAR Provincial Agrarian Reform Office (PARO) stating that the landholdings have no farmworkers or actual tillers;

(k) Affidavit of Undertaking[29] executed on April 4, 2006, by petitioners in support of their application for exemption; and

(l) Various pictures[30] and location map of the landholdings showing the development undertaken therein.

An opposition to the application for exemption was filed by herein respondents *Samahang Magsasaka ng Barangay* San Mariano. They argued that the landholdings were never reclassified as residential as there was no zoning ordinance approved by the HLURB prior to June 15, 1988, containing such reclassification.

Respondents also averred that petitioners committed grave misrepresentation when they submitted the certificate of registration and license to sell issued by the NHA as purportedly covering the subject properties. In refutation, respondents submitted an HLURB Certification[31] dated August 15, 2006, certifying that the certificate of registration and license to sell issued by the NHA in 1977, covered only a total area of 66,375 square meters which is a consolidation subdivision of 3 parcels of lot, namely: (a) Lot No. 1225 covered by TCT-29809 with an area of 5,036 square meters; (b) Lot No. 1226 covered by TCT No. NT-43300 with an area of 1,693 square meters; and (c)

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[27] *Id*. at 78.

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

[29] *Id*. at 81.

[30] *Id*. at 82-89.

[31] *Id*. at 149.

Lot No. 1227 covered by TCT No. NT-15456 with an area of 59,646 square meters.

In rebuttal, petitioners submitted new evidence in the form of an Affidavit[32] executed by a retired MPDC to the effect that the properties are within the residential area.

The Order of the DAR Secretary

Because of the HLURB Certification dated August 15, 2006, the CLUPPI Committee recommended the denial of the application for exemption. Approving the CLUPPI Committee's recommendation, the DAR Secretary denied petitioners' application for exemption in his Order dated March 21, 2007, and disposed as follows:

> **WHEREFORE,** premises considered the application for Exemption Clearance pursuant to DAR Administrative Order No. 4, Series of 2003, involving six (6) parcels of land with an aggregate area of 114.7030 hectares, located in Barangay San Mariano, San Antonio Nueva Ecija is hereby **DENIED.** The Municipal and the Provincial Agrarian Reform Officers are hereby directed to continue with the documentation of the said landholdings pursuant to pertinent and applicable agrarian laws, and thereafter to cause the immediate distribution of the same to the qualified Beneficiaries.
>
> **SO ORDERED.**[33]

Petitioners moved for reconsideration on the grounds that the HLURB's Certification dated August 15, 2006, pertained to other landholdings likewise registered in the names of petitioners, and that the respondents had no personality to oppose. Thus, in rebuttal, petitioners submitted an HLURB Certification dated March 29, 2007, stating that the lands described in its Certification dated August 15, 2006, are different from the lands sought to be exempted from CARP coverage. It is also therein stated that the subject landholdings are within the urban residence and were reclassified as residential by the NHA prior to June 15,

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[32] *Id.* at 141.

[33] *Id.* at 107.

1988, as ratified and approved by the *Sangguniang Bayan* of San Antonio, Nueva Ecija in its Resolution No. 2006-004.

Respondents opposed the motion for reconsideration and submitted another HLURB Certification dated April 25, 2007, stating that the town plan and zoning ordinance of San Antonio, Nueva Ecija was not yet approved by the HLURB, and reiterating that the certificate of registration and license to sell covered only an area of 66,375 square meters. The HLURB Certification dated April 25, 2007, further nullified inconsistent HLURB issuances previously issued, specifically the HLURB Certification dated September 12, 2005, (to the effect that there exists a valid NHA-issued certificate of registration and license to sell covering the properties) and HLURB Certification dated March 29, 2007 (stating that the lands were reclassified as residential by the NHA prior to June 15, 1988, as ratified under *Sangguniang Bayan* Resolution No. 2006-004).

Petitioners' motion for reconsideration was denied by the DAR Secretary in his Order dated February 4, 2008.[34] This prompted an appeal to the OP.

The OP's Decision

In a Decision[35] dated March 1, 2010, the OP reversed the Orders of the DAR Secretary, and, instead granted petitioners' application for exemption.

According to the OP, the HLURB Certification dated August 15, 2006, is not fatal to petitioners' application because while said certification confirms that only 66,375 square meters of the Celia Subdivision was issued a certificate of registration and license to sell, such does not necessarily mean that the subject properties are no longer urban and residential.[36]

The OP also reasoned that the HLURB Certification dated August 15, 2006, by itself, is not conclusive evidence to warrant

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[34] *Id*. at 143-148.

[35] *Id*. at 150-158.

[36] *Id*. at 155.

the denial of petitioners' application for exemption. It pointed out that DAR Administrative Order (A.O.) No. 4, series of 2003, prescribing the rules on exemption of lands from the coverage of CARL, enumerates other documents that must be submitted when applying for exemption.

Thus, the OP gave weight to the *Sangguniang Bayan* Resolution No. 2006-004 dated March 15, 2006, as proof that the properties were classified as residential lands; the Field Inspection Report of the CLUPPI showing that the properties adjoin residential lands, near the hospital and connected to the municipal and provincial roads; Certifications from the MARO and PARO attesting that the landholdings are untenanted; Certifications from NIA stating that the properties are not irrigated nor included in the area with programmed irrigation; and Certification from the DA stating that the properties are not viable for agricultural development.[37]

The OP also relied on the observations contained in the DARAB Decision dated October 14, 2004, that the properties are residential in nature.[38] In all, the OP held that petitioners have satisfactorily proven by substantial evidence that the subject properties are residential and not agricultural lands, and ruled:

WHEREFORE, premises considered, the assailed Orders dated 21 March 2007 and 4 February 2008 of the Department of Agrarian Reform are hereby **REVERSED** and **SET ASIDE** and, in lieu thereof, a new judgment rendered **GRANTING** appellants' application for exemption of their titled landholdings from the coverage of the Comprehensive Agrarian Reform Law (CARL).

SO ORDERED.[39]

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[37] *Id.* at 157.

[38] *Id*.

[39] *Id.* at 157-158.

Respondents moved for reconsideration but this was denied by the OP in a Resolution dated May 27, 2010.[40] With this denial, respondents elevated the case to the CA.

The CA's Decision

The CA narrowed the issue to be resolved as to whether the subject properties were classified as residential before June 15, 1988, or the effectivity of the CARL, and are therefore, exempt from its coverage.

The CA noted discrepancies in the documents submitted by petitioners to support their application for exemption. It observed that the HLURB Certification dated September 12, 2005, (stating that the NHA issued a certificate of registration and license to sell over the subject properties) was inconsistent with the HLURB Certification dated August 15, 2006 (stating that the certificate of registration and license to sell covered other lots).

Further, the CA doubted the veracity of *Sangguniang Bayan* Resolution No. 2006-004, purportedly ratifying the reclassification of the subject properties as residential because the *Sangguniang Bayan* itself issued a Certification dated August 2, 2010, denying the existence of such Resolution. Likewise, the Office of the Vice-Governor of the Province of Nueva Ecija issued a Certification dated July 21, 2010, stating that *Sangguniang Bayan* Resolution No. 2006-004 pertained to the riprapping of the Along-Along creek.

The CA also considered respondents' documentary evidence consisting of the HLURB Certification dated April 25, 2007, which nullified the previous HLURB Certifications presented by petitioners and the letter[41] dated September 6, 2006, issued by the MPDC stating that there was no record as to the classification of the subject properties prior to June 15, 1988, and that said properties were classified as agricultural based on the Comprehensive Land Use Plan and Zoning Ordinance

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[40] *Id*. at 170-171.

[41] *Id*. at 176.

approved by the *Sangguniang Bayan* and the *Sangguniang Panlalawigan* on July 22, 2002, and September 23, 2002, respectively.[42]

Given these, the CA concluded that petitioners failed to prove by substantial evidence that the subject properties were classified as residential prior to the effectivity of the CARL, and are therefore, not exempt from its coverage.

In disposal, the CA held:

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed Decision dated March 1, 2010 and Resolution dated May 27, 2010 are hereby **REVERSED** and **SET ASIDE** and the Order dated March 21, 2007 issued by the DAR Secretary is hereby **REINSTATED.**

SO ORDERED.[43]

Petitioners' motion for reconsideration met similar denial from the CA. Thus, resort to the instant petition raising the following:

Issues

I

THE HONORABLE COURT OF AP[P]EALS ERRED WHEN IT DECLARE[D] THAT THERE [WERE] DISCREPANCIES AND INCONSISTENCIES ON THE DOCUMENTARY EVIDENCE SUBMITTED BY HEREIN PETITIONERS; AND

II

THE SAID HONORABLE COURT COMMITTED REVERSIBLE ERROR WHEN IT SUSTAINED THE CLAIMS AND ARGUMENTS OF HEREIN RESPONDENTS THAT THE LAND IN DISPUTE REMAINS TO BE AGRICULTURAL DESPITE SUBSTANTIAL EVIDENCE TO PROVE OTHERWISE.[44]

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[42] *Id*. at 46.

[43] *Supra* note 2 at 47.

[44] *Rollo*, p. 21.

Essentially disputing the factual findings of the CA, petitioners reiterate their claim that as early as April 28, 1977, the NHA had issued a certificate of registration and license to sell over the entire subject properties which was recognized by the HLURB. According to petitioners, there is no discrepancy caused by the HLURB Certification dated August 15, 2006, as this pertains to a different set of lots.

In any case, petitioners assert that there are other documentary evidence proving that the subject properties were reclassified as agricultural prior to June 15, 1988, such as the *Sangguniang Bayan* Resolution No. 2006-004, the Certification dated April 10, 2006, issued by the Office of the MPDC, and the Affidavit dated September 7, 2005, executed by the retired MPDC.[45]

As regards the discrepancy in the *Sangguniang Bayan* Resolution, petitioners explain that they pertain to Resolution No. 2006-004 which was dated March 15, 2006, and not March 6, 2006.[46] In support of the existence of *Sangguniang Bayan* Resolution No. 2006-004 dated March 15, 2006, petitioners point to the Certification[47] issued by the *Sangguniang Panlalawigan* Secretary manifesting that the latter received a copy of said Resolution on November 14, 2007. Petitioners also clarify that Resolution No. 2006-004 dated March 15, 2006, is in fact different from Resolution No. 2006-004 dated January 2, 2006, (although bearing the same resolution number) which pertains to the riprapping of the Along-Along creek.

At any rate, petitioners invite attention to Resolution No. 2002-054[48] dated July 22, 2002 of the *Sangguniang Bayan* of San Antonio and Resolution No. 265-Ss-2002[49] dated September 23, 2002 of the *Sangguniang Panlalawigan* of Nueva

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[45] *Id*. at 23.

[46] *Id*. at 24.

[47] *Id*. at 209.

[48] *Id*. at 207.

[49] *Id*. at 208.

Ecija, City of Palayan, which approved the Comprehensive Development Plan and Zoning Ordinance for San Antonio, Nueva Ecija.

For their part, respondents seek the dismissal of the petition for having raised factual issues improper in a petition for review on *certiorari* under Rule 45.[50]

In a Resolution dated February 19, 2014, the Court resolved to deny the instant petition for petitioners' failure to file the required reply.[51] The petition was nevertheless, reinstated on petitioners' motion for reconsideration.[52]

Ruling of the Court

Coverage under the CARP is the general rule, therefore, the applicant bears the burden of proving that the property is exempt. Petitioners fail to discharge this burden of proof, consequently, their application for exemption fails. For this reason, the Court denies the petition.

Conflicting findings warrants a factual review

The rule is that factual issues are beyond the province of this Court in a Rule 45 petition.[53] By way of exception,[54] the Court

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[50] *Id*. at 214-221.

[51] *Id*. at 225.

[52] *Id*. at 252-253.

[53] See *Liberty Construction & Development Corp. v. Court of Appeals*, 327 Phil. 490, 495 (1996).

[54] Over time, exceptions to this rule have expanded as enumerated in *Pascual v. Burgos*, 776 Phil. 167, 182-183(2016), these are:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is 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

may re-examine the facts based on the evidence presented by the parties when, among others, the factual findings of the government agency and the CA are conflicting, as in the instant case.

CARL Coverage and Exemption

R.A. No. 6657 took effect on June 15, 1988. Chapter II, Section 4 of R.A. No. 6657, details the coverage of the CARP as follows:

> **SEC. 4. *Scope.*** — The Comprehensive Agrarian Reform Law of 1989 shall cover, regardless of tenurial arrangement and commodity produced, **all public and private agricultural lands,** as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture.
>
> More specifically the following lands are covered by the Comprehensive Agrarian Reform Program:
>
> (a) All alienable and disposable lands of the public domain devoted to or suitable for agriculture. No reclassification of forest or mineral lands to agricultural lands shall be undertaken after the approval of this Act until Congress, taking into account ecological, developmental and equity considerations, shall have determined by law, the specific limits of the public domain.
>
> (b) All lands of the public domain in excess of the specific limits as determined by Congress in the preceding paragraph;
>
> (c) All other lands owned by the Government devoted to or suitable for agriculture; and
>
> **(d) All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon.** (Emphases supplied)

"Agricultural land" is, in turn, defined under Section 3(c) of R.A. No. 6657 as "land devoted to agricultural activity as

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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. (Internal citations omitted)

defined in this Act and not classified as mineral, forest, residential, commercial or industrial land."

In accordance with its power to issue rules and regulations to carry out the purposes of R.A. No. 6657,[55] DAR issued A.O. No. 01, series of 1990[56] providing for the *Revised Rules and Regulations Governing Conversion of Private Agricultural Lands to Non-Agricultural Uses* and elaborating on the definition of agricultural lands as follows:

> [T]hose devoted to agricultural activity as defined in [R.A. No.] 6657 and not classified as mineral or forest by the Department of Environment and Natural Resources (DENR) and its predecessor agencies and **not classified in town plans and zoning ordinances as approved by the Housing and Land Use Regulatory Board (HLURB) and its preceding authorities prior to 15 June 1988 for residential, commercial or industrial use.** (Emphasis supplied)

From this, the concurrence of two conditions: *first*, the land has been classified in town plans and zoning ordinances as residential, commercial or industrial; and *second*, the town plan and zoning ordinance embodying the land classification has been approved by the HLURB or its predecessor agency prior to June 15, 1988, must be satisfied to exempt a property from the ambit of the CARP.[57]

Prior to DAR A.O. No. 1, series of 1990, then Secretary Franklin M. Drilon of the Department of Justice (DOJ) issued DOJ Opinion No. 044, series of 1990,[58] addressed to then

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[55] Section 49 of R.A. No. 6657 provides:

> ***Rules and regulations.*** – The PARC and the DAR shall have the power to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of this Act. Said Rules shall take effect ten (10) days after publication in two (2) national newspapers of general circulation.

[56] Dated March 22, 1990. See also *Heirs of Luis A. Luna v. Afable*, 702 Phil. 146, 166-167 (2013).

[57] See *Heirs of Luis A. Luna v. Afable*, *supra* at 167.

[58] Dated March 16, 1990.

Secretary Florencio B. Abad of the DAR, opining that while under the laws preceding R.A. No. 6657, the DAR had the authority to authorize conversion of agricultural lands to other uses, such authority was always exercised in coordination with other concerned agencies.[59]

Congruently, in 1993, the Court promulgated its ruling in *Natalia Realty v. Department of Agrarian Reform*,[60] where it held that lands previously converted by government agencies, other than DAR, to non-agricultural uses prior to the effectivity of R.A. No. 6657 were outside the coverage of said law.

DOJ Opinion No. 044 was later on implemented by the DAR through its A.O. No. 06, series of 1994[61] or the *Guidelines for the Issuance of Exemption Clearance Based on Section 3(c) of R.A. No. 6657 and the DOJ Opinion No. 044, series of 1990.* Item II, 2nd paragraph of DAR A.O. No. 06, series of 1994 provides:

> The [DOJ Opinion No. 044] has ruled that with respect to the conversion of agricultural lands covered by R.A. No. 6657 to non-agricultural uses, the authority of the DAR to approve such conversion may be exercised from the date of its effectivity, on June 15, 1988. Thus, **all lands are [sic] already classified as commercial, industrial or residential before 15 June 1988 no longer need any conversion clearance.** (Emphasis supplied)

Further, Section 3.4 of DAR A.O. No. 1, series of 2002, or the *Comprehensive Rules on Land Use Conversion* provides:

> SEC. 3. *Applicability of Rules.* —These guidelines shall apply to all applications for conversion, from agricultural to non-agricultural uses or to another agricultural use, such as:

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[59] Such as the National Planning Commission under R.A. No. 3344, as amended by R.A. No. 6389, by the Human Settlements Commission under P.D. Nos. 583, 815 and 946, and by the Department of Local Government and Community Development. See *Junio v. Garilao,* 503 Phil. 154, 1563-164 (2005).

[60] 296-A Phil. 271 (1993).

[61] Dated March 27, 1994.

x x x x x x x x x

3.4. Conversion of agricultural lands or areas that have been reclassified by the LGU or by way of a Presidential Proclamation, to residential, commercial, industrial, or other non-agricultural uses on or after the effectivity of R.A. No. 6657 on 15 June 1988, pursuant to Section 20 of R.A. No. 7160, and other pertinent laws and regulations, and are to be converted to such uses. **However, for those reclassified prior to 15 June 1988, the guidelines in securing an exemption clearance from the DAR shall apply.** (Emphasis supplied)

The Court's ruling in *Natalia Realty* was also applied to real estates, although not located within townsite reservations, but were converted to non-agricultural uses prior to the effectivity of R.A. No. 6657.[62] In *Pasong Bayabas Farmers Association v. Court of Appeals*,[63] the Court affirmed the authority of the Municipal Council of Carmona to issue a zoning classification and to reclassify the property from agricultural to residential as approved by the Human Settlements Regulatory Commission (now HLURB). Unequivocally, in *Buklod Nang Magbubukid sa Lupaing Ramos, Inc. v. E.M. Ramos and Sons, Inc. (Buklod Nang Magbubukid)*,[64] the Court simply held that "[t]o be exempt from CARP, all that is needed is one valid reclassification of the land from agricultural to non-agricultural by a duly authorized government agency before June 15, 1988, when the CARL took effect." In *Ong v. Imperial*,[65] the Court held that the operative fact is the valid reclassification from agricultural to non-agricultural prior to the effectivity of the CARL, and not by how or whose authority it was reclassified.[66]

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[62] *Junio v. Garilao, supra* note 59 at 165 citing *Advincula-Velasquez v. Court of Appeals, et al.*, 475 Phil. 45 (2004) and *National Housing Authority v. Allarde*, 376 Phil. 147 (1999).

[63] 473 Phil. 64 (2004).

[64] 661 Phil. 34, 88 (2011).

[65] 764 Phil. 92 (2015).

[66] *Id.* at 125, citing *Buklod Nang Magbubukid sa Lupaing Ramos, Inc. v. E.M. Ramos and Sons, Inc., supra* at 85-89.

Ultimately, in applications for exemption, the question to be resolved is whether the property was, in fact, classified or reclassified as residential (or as mineral, forest, commercial, or industrial) by an authorized government agency before June 15, 1988. After all, an exemption clearance is issued because the CARL itself, from the beginning, has exempted the property from coverage, and the DAR Secretary is merely affirming this fact.[67] As earlier stressed, the burden of proof that a property is exempt falls on the applicant.

Requirements for Application for Exemption

When petitioners' application for exemption was filed in 2006, the governing rules are that provided for under DAR A.O. No. 04, series of 2003 or the *2003 Rules on Exemption of Lands from CARP Coverage under Section 3(c) of Republic Act No. 6657 and Department of Justice (DOJ) Opinion No. 44, Series of 1990*.

The documentary requirements under DAR A.O. No. 04, series of 2003, are substantially similar to those imposed under DAR A.O. No. 6, series of 1994, such that an applicant for exemption is required to submit the following:

2.1 Official receipt showing proof of payment of filing and inspection fees.

2.2 Sworn application for CARP Exemption or Exclusion xxx

x x x x x x x x x

2.3 True copy, of the Original Certificate of Title (OCT) or Transfer Certificate of Title (TCT) of the subject land, certified by the Register of Deeds not earlier than thirty (30) days prior to application filing date.

x x x x x x x x x

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[67] *Heirs of Luis A. Luna v. Afable, supra* note 57.

2.4 Land classification certification:

2.4.1 Certification from the [HLURB] Regional Officer on the Actual zoning or classification of the subject land in the approved comprehensive land use plan, citing the municipal or city zoning ordinance number, resolution number, and date of its approval by the HLURB or its corresponding board resolution number.

x x x x x x x x x

2.5 Certification of the [NIA] that the area is not irrigated nor scheduled for irrigation rehabilitation nor irrigable with firm funding commitment.

2.6 Certification of the [MARO] attesting compliance with the public notice requirement xxx and its corresponding report x x x.

2.7 Photographs x x x, using color film, and taken on the subject land under sunlight. x x x

2.8 Proof of receipt of payment of disturbance compensation or a valid agreement to pay or waive payment of disturbance compensation.

2.9 Affidavit/Undertaking x x x

2.10 Lot plan prepared by a duly-licensed geodetic engineer indicating the lots being applied for and their technical descriptions.

2.11 Vicinity or directional map x x x[68] (Emphases supplied)

Of these requirements, the Court, in *Heirs of Luis A. Luna v. Afable*,[69] explains that the more important ones are the certifications from the HLURB and the zoning administrator, thus:

The exemption order of Secretary Pagdanganan found petitioners' application to have fully complied with the documentary requirements for exemption set forth under AO No. 6, the more important of which are the Certifications from the Deputized Zoning Administrator and

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[68] *Id*.

[69] *Supra* note 57.

the HUDCC stating that petitioners' property falls within the Light Intensity Industrial Zone of Calapan City.

x x x x x x x x x

In contrast to the exemption order issued by Secretary Pagdanganan, the resolution and order, respectively, of OIC Secretaries Ponce and Pangandaman — which the CA cited with approval — relied mainly on certifications declaring that the property is irrigated or has a slope of below 18% and on an ocular inspection report stating that the property is generally covered with rice and that the surrounding areas are still agricultural, as bases for their conclusion that subject land is agricultural and, therefore, covered by the CARL. These matters, however, no longer bear any significance in the light of the certifications of the Deputized Zoning Administrator and the HUDCC testifying to the non-agricultural nature of the landholding in question.

The CARL, as amended, is unequivocal that only lands devoted to agricultural activity and not classified as mineral, forest, residential, commercial or industrial land are within its scope. Thus, the slope of the land or the fact of its being irrigated or non-irrigated becomes material only if the land is agricultural, for purposes of exempting the same from the coverage of the agrarian law. However, if the land is non-agricultural — as is the case of the property here under consideration — the character and topography of the land lose significance.

It must likewise be emphasized that, since zoning ordinances are based not only on the present, but also on the future projection of needs of a local government unit, when a zoning ordinance is passed, the local legislative council obviously takes into consideration the prevailing conditions in the area where the land subject of reclassification is situated. Accordingly, when the then *Sangguniang Bayan* of Calapan enacted Ordinance No. 21, there is reasonable ground to believe that the district subject of the reclassification, including its environs, was already developing. Thus, as found by the Office of the President: "we find that the area where subject property is situated was really intended to be classified not as agricultural, as in fact it was declared as a residential, commercial and institutional in 1998."[70] (Emphasis supplied)

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[70] *Id*. at 170-172.

Here, petitioners principally rely on the following documents as purportedly showing that the properties were reclassified as residential prior to June 15, 1988:

1. Certificate of Registration and License to Sell, issued by the NHA in favor of Celia Subdivision;
2. HLURB Certification dated September 12, 2005, confirming that there is a valid certificate of registration and license to sell issued by the NHA covering the properties;
3. HLURB Certification dated March 22, 2006, stating that the properties are within the urban residence and reclassified as residential properties prior to June 15, 1988;
4. *Sangguniang Bayan* Resolution No. 2006-004 dated March 15, 2006, issued by the Municipality of San Antonio, Nueva Ecija; and
5. MPDC Certification dated April 10, 2006, stating that the properties are within the urban residence pursuant to *Sangguniang Bayan* Resolution No. 2006-004.

Petitioners, therefore, anchor their application for exemption on the issuances of three government agencies that purportedly reclassified the properties as residential: the NHA, the *Sangguniang Bayan,* and the HLURB. Unfortunately, none of these pieces of documentary evidence prove that the properties were classified or reclassified as residential prior to June 15, 1988.

The NHA Registration Certificate and License to Sell

It is uncontroverted that the certificate of registration and license to sell cover properties *other than* those being applied for exemption. Petitioners themselves vehemently pound that the properties being applied for exemption are *different* from the properties which were registered with the NHA and for which a license to sell was issued. The Court fails to see how this argument could possibly work to petitioners' advantage.

Quite incongruently, petitioners insist that the subject properties form part of the Celia Subdivision for which a certificate of registration and license to sell were issued. This allegation, however, is neither supported by a copy of the subdivision plan as approved by the NHA and by the Bureau of Lands. Thus, the logical conclusion is that the subject properties are not registered as residential subdivision with the NHA.

The Sangguniang Bayan Resolution

Confusion is apparently caused by the resolutions issued by the Municipal Council of San Antonio, Nueva Ecija which bore the same number but were issued on different dates for different purposes. We find satisfactory petitioners' explanation tending to prove the existence of *Sangguniang Bayan* Resolution No. 2006-004 which "ratified and recognized" Celia Subdivision, and need not further dwell thereon.

Nevertheless, *Sangguniang Bayan* Resolution No. 2006-004 is not a zoning ordinance or a comprehensive land use plan adopted by the Municipal Council of San Antonio, Nueva Ecija and approved by the HLURB prior to June 15, 1988.

Buklod Nang Magbubukid[71] extensively explains what a zoning ordinance is, thus:

> *Zoning classification* is an exercise by the local government of police power, not the power of eminent domain. **A zoning ordinance is defined as a local city or municipal legislation which logically arranges, prescribes, defines, and apportions a given political subdivision into specific land uses as present and future projection of needs.**
>
> The Court gave a more extensive explanation of zoning in *Pampanga Bus Company, Inc. v. Municipality of Tarlac*, thus:
>
> The appellant argues that Ordinance No. 1 is a zoning ordinance which the Municipal Council is authorized to adopt. McQuillin in his treaties on Municipal Corporations (Volume 8, 3rd ed.) says:

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[71] *Supra* note 62.

> Zoning is governmental regulation of the uses of land and buildings according to districts or zones. It is comprehensive where it is governed by a single plan for the entire municipality and prevails throughout the municipality in accordance with that plan. It is partial or limited where it is applicable only to a certain part of the municipality or to certain uses. Fire limits, height districts and building regulations are forms of partial or limited zoning or use regulation that are antecedents of modern comprehensive zoning.
>
> The term "zoning," ordinarily used with the connotation of comprehensive or general zoning, refers to governmental regulation of the uses of land and buildings according to districts or zones. This regulation must and does utilize classification of uses within districts as well as classification of districts, inasmuch as it manifestly is impossible to deal specifically with each of the innumerable uses made of land and buildings. Accordingly, (zoning has been defined as the confining of certain classes of buildings and uses to certain localities, areas, districts or zones.) It has been stated that zoning is the regulation by districts of building development and uses of property, and that the term "zoning" is not only capable of this definition but has acquired a technical and artificial meaning in accordance therewith. (Zoning is the separation of the municipality into districts and the regulation of buildings and structures within the districts so created, in accordance with their construction, and nature and extent of their use. It is a dedication of districts delimited to particular uses designed to subserve the general welfare.) Numerous other definitions of zoning more or less in accordance with these have been given in the cases.[72] (Internal citations omitted and emphasis supplied)

The Local Autonomy Act of 1959, the precursor of the Local Government Code of 1991, provides for the power of municipal councils to adopt zoning and planning ordinances as follows:

SEC. 3. *Additional Powers of Provincial Boards, Municipal Boards or City Councils and Municipal and Regularly Organized Municipal District Councils.—*

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[72] *Id*. at 67-68.

x x x x x x x x x

Power to adopt zoning and planning ordinances.— Any provision of law to the contrary notwithstanding, Municipal Boards or City Councils in cities, and Municipal Councils in municipalities are hereby authorized to adopt zoning and subdivision ordinances or regulations for their respective cities and municipalities subject to the approval of the City Mayor or Municipal Mayor, as the case may be. Cities and municipalities may, however, consult the National Planning Commission on matters pertaining to planning and zoning.

The Local Government Code of 1991 mirrors the power of the municipal council, as the legislative body of the municipality, to adopt a comprehensive land use plan for the general welfare of the municipality and its inhabitants.[73] Thus, Section 447 of the Local Government Code of 1991, provides:

(2) Generate and maximize the use of resources and revenues for the development plans, program objectives and priorities of the municipality as provided for under Section 18 of this Code with particular attention to agro-industrial development and countryside growth and progress, and relative thereto, shall:

x x x x x x x x x

(vii) **Adopt a comprehensive land use plan for the municipality:** *Provided*, That the formulation, adoption, or modification of said plan shall be in coordination with the approved provincial comprehensive land use plan;

(viii) **Reclassify land within the jurisdiction of the municipality subject to the pertinent provision of this Code;**

(ix) **Enact integrated zoning ordinances in consonance with the approved comprehensive land use plan, subject to existing laws, rules and regulations;** establish fire limits or zones, particularly in populous centers; and regulate the construction, repair or modification of buildings within said fire limits or zones in accordance with the provisions of the Fire Code[.] (Emphases supplied)

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[73] See *United B.F. Homeowners Association, Inc. v. The City Mayor of Parañaque City*, 543 Phil. 684, 693 (2007).

Likewise, the municipal council has the authority to reclassify agricultural lands. Section 20 of the Local Government Code of 1991, provides:

SEC. 20. *Reclassification of Lands.*— (a) **A city or municipality may, through an ordinance passed by the sanggunian after conducting public hearing for the purpose, authorize the reclassification of agricultural lands and provide for the manner of their utilization or disposition in the following cases: (1) when the land ceases to be economically feasible and sound for agricultural purposes as determined by the Department of Agriculture or (2) where the land shall have substantially greater economic value for residential, commercial, or industrial purposes, as determined by the sanggunian concerned: *Provided,* That such reclassification shall be limited to the following percentage of the total agricultural land area at the time of the passage of the ordinance:**

(1) For highly urbanized and independent component cities, fifteen percent (15%);

(2) For component cities and first to the third class municipalities, ten percent (10%); and

(3) For fourth to sixth class municipalities, five percent (5%): *Provided, farther,* That agricultural lands distributed to agrarian reform beneficiaries pursuant to Republic Act Numbered Sixty-six hundred fifty-seven (R.A. No. 6657), otherwise known as "The Comprehensive Agrarian Reform Law", shall not be affected by the said reclassification and the conversion of such lands into other purposes shall be governed by Section 65 of said Act.

(b) The President may, when public interest so requires and upon recommendation of the National Economic Development Authority, authorize a city or municipality to reclassify lands in excess of the limits set in the next preceding paragraph.

(c) The local government units shall, in conformity with existing laws, continue to **prepare their respective comprehensive land use plans enacted through zoning ordinances** which shall be the primary and dominant bases for the future use of land resources: *Provided,* That the requirements for food production, human

settlements, and industrial expansion shall be taken into consideration in the preparation of such plans.

(d) When approval by a national agency is required for reclassification, such approval shall not be unreasonably withheld. Failure to act on a proper and complete application for reclassification within three (3) months from receipt of the same shall be deemed as approval thereof.

(e) Nothing in this Section shall be construed as repealing, amending, or modifying in any manner the provisions of R.A. No. 6657. (Emphases supplied)

Petitioners offer *Sangguniang Bayan* Resolution No. 2006-004 as a municipal ordinance that purportedly reclassified the subject properties as residential. Quoted are the pertinent portions of said Resolution:

WHEREAS, spouses [Marcelo], registered co-owners and duly authorized representatives of the titled owners of said CELIA SUBDIVISION, located at San Mariano, San Antonio, Nueva Ecija, submitted and filed on February 17, 2006 copies of documents and pertinent papers with the Office of the Sangguniang Bayan of San Antonio, **asking for a Resolution to ratify and recognize said subdivision as already a residential zone even prior to June 15, 1988,** the affectivity [sic] of [R.A. No. 6657];

WHEREAS, **to support their request,** the following documentary evidences [sic] were submitted: (a). Xerox copies of the titles; (b). Tax declarations; (c). Tax clearance; (d). Approval of the Comprehensive Development Plan and Zoning Ordinance of the Sangguniang Panlalawigan; (e). Special Power of Attorney; (f). Certified Xerox copy of the Certificate of Registration; (g). Certified Xerox copy of License to Sell; (h). Original copy of the certification of the [HLURB]; (i). Pictures taken on the subject properties; (j). MARO's certification that the subject properties are untenanted, and (k). Certification from Chief District III, NIA that said properties are not included in the program area of District III, NIA, UPRIIS, and not irrigated;

WHEREAS, it is true that the existence of the subdivision made it possible for the urbanization of the locality leading to the construction of infrastructures like schools, hospitals and residential houses which now abound in the area. It is also a public knowledge that the lot on

which San Mariano High School was built and constructed – which has been donated by spouses Marcelo – forms part and parcel of subject landholdings;

x x x x x x x x x

WHEREAS, spouses Marcelo's request partakes the nature of exemption pursuant to see3 [sic] par. C of [R.A. No. 6657] and [DOJ Opinion No. 044] and **they alleged that subject properties had been classified and converted into subdivision for residential purpose by the [NHA] prior to June 15, 1988,** the effectivity of [R.A. No. 6657][;]

WHEREAS, **it appears upon the certification of the MARO, that no agricultural tenancy exists, coupled with certification of the [NHA][74] that Certificate of Registration and License to sell is still valid and subsisting on subject landholding, hence these [sic] exists no impediment to classify subject landholding into a residential zone.**

NOW THEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED BY THE SANGGUNIANG BAYAN OF SAN ANTONIO, NUEVA ECIJA, BY VIRTUE OF POWERS VESTED IN IT BY LAW, IN SESSION ASSEMBLED, to ratify and approve, on the basis of documentary evidences [sic] submitted, a RESOLUTION ratifying CELIA SUBDIVISION, located at San Mariano, San Antonio Nueva Ecija, as a residential subdivision and classified as URBAN and RESIDENTIAL in the Comprehensive Land Use Plan and Zoning Ordinance.[75] (Emphases supplied)

By its terms, *Sangguniang Bayan* Resolution No. 2006-004 does not purport to delineate an area or district in the municipality as residential pursuant to the municipal council's power under Section 3 of the Local Autonomy Act of 1959 or under Section 447 of the Local Government Code of 1991. It is not even a comprehensive land use plan as it is curiously property-specific. The Resolution does not even purport to be an ordinance approving petitioners' application for subdivision and development of the subject properties for non-agricultural use.

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[74] Should have been the HLURB according to the facts of the case.

[75] *Supra* note 24.

Instead, *Sangguniang Bayan* Resolution No. 2006-004, appears to be, is an acquiescence to the request made by the petitioners to ratify and recognize their properties as residential. These "ratification" and "recognition" are in turn, speciously predicated upon a MARO certification that there is no agricultural tenancy over the properties and upon the NHA-issued certificate of registration and license to sell which, as established, covered a different property.

Also, *Sangguniang Bayan* Resolution No. 2006-004 was passed only in 2006. Obviously, the land use plan or the zoning ordinance contemplated under DAR A.O. No. 04, series of 2003, must be in existence prior to June 15, 1988, and not one which was passed on or after the effectivity of the CARL. Notably, as well, the Resolution seems to refer to a purported land use plan and zoning ordinance already adopted by the Province and the Municipality. The existence of such land use plan and zoning ordinance is, however, directly contravened by the MPDC letter dated September 6, 2006, certifying that there is no record as to the classification of the properties prior to June 15, 1988, and that the Comprehensive Land Use Plan and Zoning Ordinance was approved by the *Sangguniang Bayan* and the *Sangguniang Panlalawigan* only in 2002.

While petitioners also seem to rely on the land use plan and zoning ordinance approved in 2002, they fail to present such ordinance for the Court's appreciation. In any case, the Court assumes that such zoning ordinance could not help petitioners' cause in view of the uncontroverted MPDC's certification that the properties were classified as agricultural under the adopted land use plan and zoning ordinance.

The HLURB Certifications

In similar vein, the HLURB Certifications dated September 12, 2005, and March 22, 2006, are not proof that the properties were classified as residential prior to June 15, 1988.

The HLURB Certification dated September 12, 2005, provides:

This is to certify that CELIA SUBDIVISION, subdivision project covered by LRC Plan Pcs-3160 located at San Mariano, San Antonio,

Nueva Ecija has been issued a CERTIFICATE OF REGISTRATION (CR No.) RS-0272 and LICENSE TO SELL (LS No.) 0239 by the [NHA] on 28 April 1977 which is covered [sic] Transfer Certificate of Title No. 47474 (now NT-216355)[,] NT-47473 and NT-47472 with an area of 92.1943 hectares more or less, 13.3457 hectares more or less and 9.1630 hectares more or less respectively.

Furthermore, said CR and LS issued by the NHA is still valid and recognized by this Board.[76]

In similar tenor, the HLURB Certification dated March 22, 2006, provides:

This is to certify that CELIA SUBDIVISION, a subdivision project with Certificate of Registration (CR No.) RS-0272 and License to Sell (LS No.) 0239 by the [NHA] on 28 April 1977 under Title Nos. 47472, 47473 and NT-216355 which is covered by LRC Plan Pcs-3160 (Lot 3340, 3346, 1222, 3343, 3344 and lot 1-I of the subdivision plan Psd-03-042455, being a portion of Lot 1 II 3960 LRC Rec. No. (situated at Brgy. San Mariano, San Antonio, Nueva Ecija, containing an area of 1,547,030 square meters registered in the name of Elfleda Marcelo et.al.) is found to be within the URBAN RESIDENCE and partakes the nature of EXEMPTION pursuant to Sec. 3, par. c of [R.A. No. 6657] and [DOJ Opinion No. 044], that the subject properties had been classified and converted into subdivision for residential purpose by the NHA prior to June 15, 1988, the effectivity of [R.A. No. 6657] and further ratified and approved by the Sangguniang Bayan (SB) Resolution No. 2006-004.

Furthermore, said Certificate of Rgistration [sic] and License to Sell issued by the NHA is valid and recognized by the Board.[77]

To emphasize, what is required under DAR A.O. No. 4, series of 2003, is an HLURB approval of the town plan and zoning ordinance embodying the land classification, which approval must have been made prior to June 15, 1988. Here, both HLURB certifications merely confirm the existence of a certificate of registration and license to sell issued by the NHA which, as aforesaid, cover an entirely different set of properties.

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[76] *Supra* note 19.

[77] *Supra* note 20.

Other Documentary Evidence

It bears mentioning that the OP also relied on the DARAB decision which ordered the cancellation of the CLOAs issued to the farmer-beneficiaries on the finding that the properties are residential. Notably, this finding was based on the 2004 tax declaration receipts and the registration certificate and license to sell issued by the NHA. Reliance upon this finding is misplaced. For one, the NHA issuances, as explained, have no bearing to the subject properties. For another, it is settled that a tax declaration is not conclusive of the nature of the property for zoning purposes as it is the classification made by the local government that prevails.[78] Also, the cancellation of the CLOAs was ordered not only because the subject properties were found to be residential but also because the CLOAs were improvidently issued. As to whether these findings are correct for justifying the cancellation of the CLOAs is another matter which the Court does not presently delve upon.

Petitioners also rely upon the Certification dated April 10, 2006, issued by the MPDC stating that the properties are residential. This certification, is however, predicated upon *Sangguniang Bayan* Resolution No. 2006-004 which, as established, is not a zoning ordinance or a comprehensive land use plan.

Finally, the Affidavit dated August 5, 2006 of a retired MPDC could not have worked to petitioners' advantage as it merely states that the properties were included in the proposed issuance of a certificate of eligibility for conversion. In any case, it is not within the power of a local government unit to convert agricultural lands to non-agricultural uses; its power is to reclassify lands into uses within their jurisdiction subject to certain limitations.[79]

Indubitably, petitioners fail to discharge the burden of proving that the properties were classified in the zoning ordinance and

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[78] *Junio v. Garilao, supra* note 59 at 169.

[79] *Ong v. Imperial, supra* note 65 at footnote 34.

land use plan as residential, and that such zoning ordinance and land use plan were approved by the HLURB prior to June 15, 1988. At the very least, petitioners ought to have established that the subject properties were classified or reclassified as residential by any authorized government agency prior to June 15, 1988. But even this, petitioners fail to discharge. This leads to the inevitable conclusion that the subject properties remain to be agricultural and are therefore, not exempt from the coverage of the CARL.

WHEREFORE, the petition is **DENIED.** The Decision dated June 28, 2012 and the Resolution dated February 4, 2013 of the Court of Appeals are **AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 206795. September 16, 2019]

FOODBEV INTERNATIONAL and LUCILA S. DELA CRUZ, *petitioners, vs.* **NOLI C. FERRER, JEVER BELARDO, FELIX GALELA, ROMEO SISCAR, MICHAEL BALDESCO, RICO ACADEMIA, EDUARDO DELA CRUZ, RYAN AQUINO, GAUDENCIO PARIO, MARK TRAPAGO, MAIR GOMEZ, NAGKAKAISANG MANGGAGAWA NG FOODBEV INTERNATIONAL, RICHARD EROLES and BERNADETTE BELARDO,** *respondents.*

[**] Acting Chief Justice per Special Order No. 2703 dated September 10, 2019.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTION.— The general rule in a petition for review on *certiorari* under Rule 45, as amended, is that only questions of law should be raised. In *Republic v. Heirs of Santiago*, the Court enumerated that one of the exceptions to the general rule is when the CA's findings are contrary to those of the trial court. Considering the different findings of fact and conclusions of law of the labor arbiter, the NLRC and the CA, the Court shall entertain this petition, which involves a re-assessment of the evidence presented.

2. ID.; PROCEDURAL RULES; SHOULD BE TREATED WITH UTMOST RESPECT AND DUE REGARD, BUT IT HAS BEEN THE PRACTICE OF THE COURT TO SET ASIDE TECHNICAL RULES TO GIVE WAY TO SUBSTANTIAL JUSTICE, ESPECIALLY OF THOSE WHO ARE UNDERPRIVILEGED OR THE DISADVANTAGED. — It is true that the Court is strict in dismissing a case when lawyers and/or litigants commit forum shopping. In *CMTC International Marketing Corp. v. Bhagis International Trading Corp.*, the Court emphasized that "procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice." However, it is likewise true that strict imposition of technical rules can result to miscarriage of substantial justice. The *CMTC* case recognized exceptions to the Rules, but only for the most compelling reasons where stubborn obedience to the Rules would defeat rather than serve the ends of justice. x x x Substantial justice is of paramount importance to the Court and it is our duty to uphold it. It has been the practice of the Court to set aside technical rules to give way to substantial justice, especially of those who are underprivileged or the disadvantaged, such as the workers. Here, the respondents are at risk of losing their jobs after they were terminated from the service without factual basis and/or due process of law. Their years of service may be thrown away without getting a well-deserved compensation if the Court would favor technicality

over resolving the substantive issues. Further, an employer may get away with unfair labor practice of union busting due to technicality. The framers of our Constitution recognized the fragile position of workers in our society given their economic status. Thus, they drafted Article XIII to protect labor and the rights of workers. x x x The Court has the duty to uphold the Constitution and safeguard the rights it embodies. Here, the rights of workers to self-organization, security of tenure, and a living wage are at stake. A dismissal of the complaints due to technicalities would defeat these valuable rights of complaining workers, which the Constitution protects.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; SUBSTANTIVE AND PROCEDURAL REQUIREMENTS; A VALID DISMISSAL MANDATES COMPLIANCE WITH SUBSTANTIVE AND PROCEDURAL REQUIREMENTS, AND IT IS UNJUST TO BASE A TERMINATION ON A FINDING THAT HAD NOT UNDERGONE NOTICE AND HEARING. — It is settled that a valid dismissal mandates compliance with substantive and procedural requirements. In *Mantle Trading Services, Inc. and/or Del Rosario v. NLRC*, the Court emphasized, "(a) there be just and valid cause as provided under Article 282 (now Art. 297) of the Labor Code; and (b) the employee be afforded an opportunity to be heard and to defend himself." The Court further discussed the two facets of procedural due process in *New Puerto Commercial v. Lopez*. x x x In *King of Kings Transport, Inc. v. Mamac*, the twin requirements of notice and hearing were further clarified x x x. The records reveal that Ferrer, Aquino, Trapago, and Pario were individually served with a show cause memo notifying them of their violation of company rules with order to explain in writing. x x x The Court observes several flaws in the show cause memo. x x x Foodbev sent individual memo to respondents for a scheduled administrative hearing on the charge of gross negligence in cleaning the ice cream machine. x x x This memo sufficiently satisfies the requirement of affording due process to the respondents in defending their side. However, this memo applies only to the charge of gross negligence, and does not include the charge of habitual absence, serious misconduct, and willful disobedience. x x x The *King of Kings Transport* case requires that the termination notice should state 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. x x x The inconsistencies in the charges, findings, and ground for termination make the termination notice substantially and procedurally defective. Since respondents were not formally charged of serious misconduct, fraud, and willful breach of trust and confidence causing serious damage and prejudice to the company, they were unable to defend their side and present evidence on their behalf. It is unfair and unjust to base a termination on a finding that had not undergone notice and hearing. The termination notice clearly violates respondents' rights to due process.

4. ID.; ID.; ID.; ID.; REQUIREMENT OF NOTICE AND HEARING; AN ADMINISTRATIVE HEARING INVOLVES SORTING OF FACTS, EVALUATION OF EVIDENCE, AND ASSESSMENT OF THE ARGUMENTS PRESENTED BY BOTH MANAGEMENT AND EMPLOYEES, AND IT IS TIME CONSUMING CONSIDERING THE NUMBER OF PARTIES INVOLVED. — Noticeably, there are inconsistencies on the dates of the administrative hearing. x x x The discrepancies in the administrative hearing's date put doubt on Foodbev's claim that the date appearing on the termination notice was a typographical error. More so, when respondents alleged that they were served with the termination notice shortly after the administrative hearing. These observations lead the Court to ask whether the termination notices were prepared ahead of the administrative hearing with a decision to terminate respondents' employment, and whether the administrative hearing was a sham and was conducted only for compliance purposes. An administrative hearing involves sorting of facts, evaluation of evidence, and assessment of the arguments presented by both management and employee/s. The actual hearing in the presence of both management and employee/s is time consuming. At times, it can take days to finish considering the number of parties involved. Moreover, there should be an actual deliberation by a panel or committee of persons who heard the charge/s and defense/s. With all the work that comes in an administrative hearing, it is hardly possible to finish the inquiry and decision-making process in one day. Applying this to the case at hand, the Court is suspicious of the integrity of the administrative hearing conducted on the charges against

the respondents. It is unclear whether the respondents were assisted by a counsel or representative in the presentation of their defenses, or whether they waived such right.

5. ID.; ID.; ID.; JUST CAUSES; GROSS AND HABITUAL NEGLIGENCE; NOT DULY ESTABLISHED WHEN THERE IS NO SHOWING THAT THE EMPLOYEE HAD DELIBERATE AND THOUGHTLESS DISREGARD OF HIS DUTIES; CASE AT BAR. — Article 297 (formerly Art. 282) of the Labor Code listed gross and habitual neglect of duties by the employee as a ground for termination of his/her services. In *Publico v. Hospital Managers, Inc.*, the Court declared that "gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances." The notice of the administrative hearing and the respondents' written explanation reveal that respondents were tasked to clean and install an ice cream machine at Don Bosco Makati, which reported to Foodbev that cockroaches were found in the machine. x x x From the narration, respondents did not exhibit acts constituting gross negligence, nor did Foodbev cite other instances when respondents failed to perform assigned task, signifying habitual negligence. There was no showing that respondents had deliberate or thoughtless disregard for the cleaning procedure. Foodbev failed to demonstrate gross and habitual negligence on the part of respondents. If at all, respondents are liable of simple negligence for failing to use robby vapor in sanitizing the machine. x x x While the Court understands that Foodbev is engaged in the food service industry, which is imbued with public interest, the penalty of dismissal from the service is too harsh as it involves the loss of income for the respondents, who are rank and file employees. A less severe penalty of suspension should have been imposed considering that the respondents have been in the service for several years. The Court also observes that this is the first time in the long years of service that respondents failed to follow the cleaning procedure. Thus, a more compassionate penalty of suspension is deemed appropriate. x x x The Court finds that respondent's dismissal from employment is illegal due to several violations of procedural and substantive requirements of the Labor Code and its Implementing Rules.

6. ID.; ID.; ID.; SUBSTANTIVE AND PROCEDURAL REQUIREMENTS; VERBAL NOTICE OF TERMINATION CANNOT BE CONSIDERED AS VALID OR LEGAL.— Both Foodbev and respondents Jever, Galela, Gomez, Siscar, Farne, Baldesco, Dela Cruz, Jimenez, and Academia admit that a verbal and physical altercation erupted between them and Foodbev's corporate officials. x x x Foodbev claims that they served notice to explain and notice of administrative hearing. However, the notices are futile because respondents were verbally dismissed from employment and were no longer reporting for work. Thus, it is not surprising that respondents did not submit their answers to the notice to explain and did not attend the supposed administrative hearing. In *Reyes v. Global Beer Below Zero, Inc.*, the Court held that "verbal notice of termination can hardly be considered as valid or legal." x x x [T]he employer should comply with the substantive and procedural requirements in dismissing employees from the service. Here, Foodbev failed to abide by these requirements in dismissing Jever, Galela, Gomez, Siscar, Farne, Baldesco, Dela Cruz, Jimenez, and Academia. Thus, their termination from employment is illegal.

7. ID.; ID.; ID.; JUST CAUSES; DISMISSAL OF AN EMPLOYEE DUE TO HER SPOUSE'S MEMBERSHIP IN THE UNION AND PARTICIPATION IN UNION ACTIVITIES ARE NOT AMONG THE JUST CAUSES OF TERMINATION; CASE AT BAR.— Bernadette complained of illegal dismissal because she was unceremoniously terminated from employment without just or authorized cause and due process. x x x The Court observes that in its petition, Foodbev did not deny that there was an encounter between Bernadette, Carpio and Brosas, and claims that the meeting was cordial. The CA determined that "there is nothing in the records that would show that Bernadette was given any notice of termination or any chance to defend her side in a proper hearing." x x x The Court does not consider Bernadette to have abandoned her work because her absences were a direct result of Carpio and Brosas' conduct. There was no clear reason for her dismissal. It can only be inferred that her dismissal was due to her husband's membership in the union and participation in union activities. But that is not among the just causes of termination under Article 294 of the Labor Code. Bernadette's verbal termination from employment is a violation of her right to security of tenure,

and was done without just cause and due process under Articles 294 and 297 of the Labor Code. Thus, the Court rules that Bernadette's dismissal from the service is illegal.

8. ID.; ID.; ID.; CONSTRUCTIVE DISMISSAL; EXISTS WHEN THE EMPLOYER'S ACTS HAVE CREATED A HOSTILE WORKING ENVIRONMENT AND THE OPTIONS GIVEN TO THE EMPLOYEE ARE NOT FAVORABLE TO HIM AND PUSHES HIM INSTEAD TO SACRIFICE HIS EMPLOYMENT. — It is a rule that before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. Here, there is no evidence on record that Eroles was directly terminated from the service. He simply failed to report for work after his suspension. But what prompted Eroles to stop reporting for work? The records show that in a meeting between him and Lucila on August 19, 2008, Eroles was told to resign at Foodbev in exchange for a job in Greentech. The Court observes that Foodbev did not deny the job offer, which has no specific position, rank, or salary. Eroles mentioned that once he accepts the job offer, his years of service in Foodbev would be worthless. These observations do not reflect Foodbev's sincere effort to provide job security for Eroles. They also failed to acknowledge his years of service in the company. Eroles was placed in a tight situation wherein he had to choose between staying in Foodbev and risk suffering the ire of management, or transfer to Greentech with an unspecified position and salary and forego his years of service at Foodbev. Neither of the options were favorable to him and pushed him instead not to report for work. This is constructive dismissal. x x x Here, Eroles is susceptible to being transferred to another branch or company in the guise of training or company practice, or verbal harassment similar to his dismissed co-workers. The insinuations to resign and the successive termination from employment of union members had created a hostile working environment, which convinced him to sacrifice his employment and tantamount to constructive dismissal.

9. ID.; ID.; LABOR RELATIONS; UNFAIR LABOR PRACTICES; UNION BUSTING; COMMITTED WHEN THE EMPLOYER INTERFERES AND RESTRAINS THE EMPLOYEES' RIGHT TO SELF-ORGANIZATION, AND

DISCRIMINATE THEIR TERMS AND CONDITIONS OF EMPLOYMENT; CASE AT BAR. — Articles 258 and 259 of the Labor Code state the concept of unfair labor practice and enumerate the unfair labor practices committed by employers. x x x The records reveal several instances to support unfair labor practice, specifically union busting x x x. The discussions x x x demonstrate Foodbev's unfair labor practices, which create an unpleasant working atmosphere for respondent union members and officers. They were targeted to take part in a written examination, or prone to being transferred to another company or to another branch. They were urged to file for resignation and accept a measly compensation and goods, instead of full benefits under the law. If these will not work, their employment will be terminated in order to dissolve the union. The facts undeniably point to interference and restraining respondents' right to self-organization, and discriminate their terms and conditions of employment, as enumerated in paragraphs (a) and (e) of Article 259 of the Labor Code.

CAGUIOA, *J.*, *separate opinion*:

CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTEREST; ONCE A JUDGMENT BECOMES FINAL AND EXECUTORY, ALL MONETARY CLAIMS THAT COULD NOT PREVIOUSLY EARN INTEREST BECAUSE THEY WERE UNLIQUIDATED AND UNKNOWN, ARE ESTABLISHED WITH REASONABLE CERTAINTY AND THUS BECOME DUE AND DEMANDABLE, AND THE SAID AMOUNTS SHOULD BEGIN TO EARN INTEREST NOT BECAUSE THE INTERIM PERIOD IS A FORBEARANCE OF CREDIT, BUT BECAUSE THE NON-PAYMENT OF A FINAL AND EXECUTORY DECISION CONSTITUTES DELAY. — As to the rate of legal interest due on the monetary judgments, I note that paragraph II.3 of the guidelines laid down in *Nacar v. Gallery Frames*, which was cited by the *ponencia*, has been superseded by *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc*. Nevertheless, I reiterate my position in my *Concurring & Dissenting Opinion* in *Lara's Gifts & Decors, Inc.* that contrary to the aforesaid paragraph of *Nacar*, the interim period between the finality of the judgment and its full satisfaction is **not a forbearance of credit**. **Once a judgment becomes final and executory**, all

monetary claims that could not previously earn interest because they were unliquidated and unknown, are established with reasonable certainty and thus become due and demandable. Hence, said amounts should begin to earn interest **not because the interim period is a forbearance of credit, but because the non-payment of a final and executory decision constitutes delay under Article 2209 of the Civil Code**. *Nakpil v. Court of Appeals* is unequivocal that "[i]t is delay in the payment of such final judgment, that will cause the imposition of the interest." For the foregoing reasons, the monetary awards constituting respondents' separation pay, backwages, moral damages, exemplary damages and attorney's fees, which were previously unliquidated, should bear interest at the 6% legal rate under Article 2209 of the Civil Code from the time the decision becomes final and executory until full payment.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioners.
Ryan M. Celino for respondents.

D E C I S I O N

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

This case is about four consolidated labor complaints of illegal dismissal, unfair labor practice, non-payment of salary and other benefits, and claims for damages and attorney's fees filed by union members.

The Facts

Petitioner Foodbev International (Foodbev) is a partnership engaged in the food service industry by providing after-sales support for specialized equipment, like hot and cold dispensers and displays. Foodbev hires skilled technicians to ensure that its specialized equipment are installed and maintained properly.[1]

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[1] *Rollo*, pp. 19-20.

Respondents Noli C. Ferrer (Ferrer), Jever N. Belardo (Jever),[2] Felix Galela (Galela),[3] Romeo Siscar, Jr. (Siscar), Michael Baldesco (Baldesco), Rico Academia (Academia), Eduardo Dela Cruz (Dela Cruz), Ryan Aquino (Aquino), Gaudencio Pario III (Pario), Mark Trapago (Trapago), Mair Gomez (Gomez), and Reynaldo B. Eroles, Jr.[4] (Eroles), are Foodbev rank and file employees and members of Samahan ng Nagkakaisang Manggagawa ng Foodbev International Central (Samahan), a labor union established on May 31, 2008.

Respondent Bernadette Belardo (Bernadette) is a managerial employee and spouse of respondent Jever.[5] She filed a complaint for illegal dismissal, which was consolidated with the other cases.

From July 3 to 9, 2008, meetings were held between the union members, Foodbev managers, and petitioner Lucila Dela Cruz (Lucila), Foodbev president. Lucila asked their grievances and reasons in establishing a union, and threatened to close Foodbev if the union activities persist. In a general meeting of all Foodbev workers, union members were made to stand in front of everyone. Foodbev's Quality Assurance Manager Malou Espeña (Espeña) shared her husband's experience with a union. She relayed that the management closed the company, filed for bankruptcy, and no one got paid. Lucila reiterated to stop union activities and to withdraw from the union for the sake of their jobs. Espeña and Operations Manager Mila Gatchalian (Gatchalian) asked for the union members' voluntary resignation in exchange for one month salary, proportional 13th month pay, one sack of rice, and one dozen canned corned beef, but without separation pay. Those who refused to resign were told to submit an apology letter for establishing a union.[6]

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[2] Also "Jever N. Elardo" in some parts of the records.

[3] Also "Felix Galera" in some parts of the records.

[4] Also "Richard B. Eroles" in some parts of the records.

[5] *Rollo*, p. 137.

[6] *Id*. at 137-138 (CA Decision); at 631-638 (Minutes of the Meeting)s; at 891-893 (Labor Arbiter Decision), and at 1059 (NLRC Decision).

Most of the union members did not resign, so Foodbev castigated them by conducting a written examination exclusively for union members. The examination was difficult as it involved questions on machines that were unrelated to their duties. It was only after Galela complained that other non-union-member employees were made to take the examination. Those who failed the examination were considered guilty of violating Article VI, Section C4 of Foodbev's Code of Discipline on slowing down, dragging or limiting out.[7]

Gatchalian issued a July 18, 2008 memorandum (memo) to Ferrer, Aquino, Trapago, Pimentel, and Pario, who are ice cream machine technicians. They were required to explain why they should not be given disciplinary action after finding that the ice cream machine that they installed at Don Bosco, Makati on July 11, 2008,[8] was infested with cockroaches. An administrative hearing was conducted, and shortly thereafter, they were served with termination notices for gross negligence resulting to loss, which caused grave damage to the company's reputation and image.[9]

On July 21, 2008, Ferrer, Aquino, Jever, Galela, and Pario filed a complaint for unfair labor practice with the National Labor Relations Commission (NLRC), docketed as NLRC NCR 07-10332-08. The following day, July 22, 2008, another complaint for unfair labor practice was filed by Eroles, Baldesco, Gomez, Farne, Dela Cruz, Academia, Siscar, Jimenez, and Trapago in the NLRC, docketed as NLRC NCR 07-10360-08. The complaints were consolidated and assigned to Labor Arbiter (LA) Virginia Azarraga (LA Azarraga).[10]

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[7] *Id.* at 639 (office memo); at 893-894 (Labor Arbiter Decision); and at 1059 (NLRC Decision).

[8] CA *rollo*, Vol. 1, p. 355.

[9] *Rollo*, pp. 138-139 (CA Decision); pp. 647-661 (office memo and answers); and pp. 1059-1060 (NLRC Decision).

[10] *Id.* at 37 (Petition), 139 (CA Decision); CA *rollo*, pp. 111-117 (Complaints).

Thereafter, the respondents started receiving memoranda. Academia received his July 23, 2008 memo, requiring him to explain why he should not be subject of a disciplinary action for negligence of duty and for failing in the examination for the second time.[11]

Eroles received two memoranda both dated July 23, 2008. One temporarily assigning him to Isabela branch effective July 25, 2008. Another ordering him to explain his July 22, 2008[12] absence, when he filed a complaint for unfair labor practice with the NLRC.[13]

Ferrer, Pario, Galela, and Aquino received a similar memo regarding their July 21, 2008 absence when they filed their complaint.[14]

On July 28, 2008, the five ice cream machine technicians filed a complaint for illegal dismissal and money claims with the NLRC, docketed as NLRC NCR 07-10721-08, which was assigned to LA Thomas T. Que, Jr. (LA Que).[15] On July 31, 2008, Foodbev offered them one month salary and goods should they sign a quitclaim, but they refused.[16]

On July 29, 2008, Foodbev managers, Bernadette and Espeña, verbally instructed several respondents to report to Equipment Masters International (EMI), another Dela Cruz owned corporation. Galela followed the instruction but was told that he was not in the list of employees required to report at EMI. He went to Foodbev's head office and inquired if he was being transferred to EMI. Foodbev's managers, Espeña and Gatchalian, asked him "*Gaano ka ka-solid sa grupo, 50 percent ba o 100*

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[11] *Rollo*, p. 139 (CA Decision).

[12] *Id*. at 366.

[13] *Id*. at 385.

[14] *Id*. at 140 (CA Decision); at 894 (Labor Arbiter Decision).

[15] *Id*. at 141 (CA Decision); at 897 (Labor Arbiter Decision), and CA *rollo*, pp. 118-120 (Complaint).

[16] *Rollo*, p. 897 (Labor Arbiter Decision).

percent? "He answered "*Ma'am hindi naman percentage ang pinaguusapan, kung ano yung nararapat at tama, dun po ako*." Espeña and Gatchalian included him in the list of technicians who would report to EMI.[17]

At EMI, the other respondents were confused as they were made to wait for work instruction coming from Foodbev. Respondents feared that they were being removed from Foodbev and transferred to EMI, and so, they requested to formalize the verbal order given them.[18] On August 2, 2008, Foodbev posted a July 29, 2008 memo at the gate reassigning to EMI 11 technicians, nine of whom are union members.[19]

Also on August 2, 2008, Foodbev issued a memo to Jever, Galela, Gomez, Baldesco, Academia, Siscar, Dela Cruz, Jimenez, and Piad informing them that they "can go home since there is no more work schedule that can be given" to them for that day. Respondents noticed that non-union members were not sent home. Still, they went home as directed.[20] Upon reporting for work on August 4, 2008, they were told to wait at Foodbev's gate as they were to receive another memo. Foodbev's chairman and Lucila's husband, Elmo Dela Cruz (Elmo) confronted them. The following conversation transpired:[21]

SIR ELMO	:	Ikaw si Jever?
JEVER	:	Opo
SIR ELMO	:	Ikaw ang leader nila?
JEVER	:	Hindi po.

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[17] *Id*. at 898 (Labor Arbiter Decision).

[18] *Id*. at 898-899 (Labor Arbiter Decision).

[19] *Id*. at 141 (CA Decision); at 899 (Labor Arbiter Decision), 1531 (Comment).

[20] *Id*. at 142 (CA Decision); at 899 (Labor Arbiter Decision), 1060 (NLRC Decision).

[21] *Id*. at 899-900 (Labor Arbiter Decision); at 599-600 (Consolidated Position Paper for Complainants); and at 1539 (Comment).

x x x x x x x x x

SIR ELMO	:	So huwag mong iniinfluence itong mga tao na to.
JEVER	:	Ah di po Sir, kagustuhan po nila yan kahit kasusapin niyo po sila.
SIR ELMO	:	Ah, kagustuhan nila. Okay, basta't you follow instructions, and walang maa, walang maaano sa inyo. Sundin niyo lang ang instructions sa opisina. Hindi kayo pwedeng magmatigas.

x x x x x x x x x

SIR ELMO	:	Di ka na naawa [sa] asawa mo, ikaw e, sinasayang mo lang yung papel ng asawa mo...
JEVER	:	Di naman po ganun ung usapan Sir.
SIR ELMO	:	Ano?
JEVER	:	Di naman po ganun ung usapan.
SIR ELMO	:	Di naman ganun ang usapan? You talk to your wife and mag-usap kayong dalawa. Kasi, [sayang] yung asawa mo, siya pa naman ang manager dito. And you are jeopardizing her position.
JEVER :		Di naman po ganun ung usapan.
SIR ELMO	:	You are! I'm telling you. Sa amin, sa pag-uusap namin, talagang naaapektuhan ... Useless... It's useless. It's non sense.[22]

The memo served to them placed them on preventive suspension for 48 hours pending an administrative hearing for insubordination for not proceeding to their designated work assignments.[23]

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[22] *Id*. at 600 (Consolidated Position Paper for Complainants).

[23] *Id*. at 142 (CA Decision).

Around past 12 p.m. of August 4, 2008, Dela Cruz, Baldesco, Frederick Jimenez (Jimenez) and Angelito Farne (Farne) were prevented from entering Foodbev's gate and were told to time-in instead at EMI. They suspected that they were being transferred to EMI, and so they decided to take their lunch and report for work later.[24]

About 1 p.m. of the same day, Dela Cruz and Baldesco returned to Foodbev's office when Lucila's daughters, Merlinda Dela Cruz Carpio (Carpio) and Michelle Dela Cruz Brosas (Brosas), who are part of Foodbev's management, met them at the gate and angrily told them *"Kasama ba kayo sa mga sira ulo? Hindi na [namin] kayo kailangan dito! Ano pa ang ginagawa niyo dito! Tutal hindi naman kayo sumusunod sa amin, bakit nabili ninyo ang Foodbev at gusto niyo kami ang sumunod sa inyo?"Carpio further asked "Ikaw anong pangalan mo?" Dela Cruz answered "Ako po si Eduardo Dela Cruz po." Carpio commented "Dela Cruz ka pa naman, kapal ng mukha mo!"* Then Brosas told them to move away.[25]

Around 1:30 p.m., another incident occurred with a different group of respondents. While Jever, Galela, Gomez, Siscar, and Academia were having lunch at a restaurant, Carpio and Brosas barged in and hurled invectives at them. Carpio angrily shouted "*Mga putang ina niyo, ang kakapal ng mukha niyo at wala kayong utang na loob!...Binastos niyo ang papa ko! Wala kayong karapatan magsuot ng uniporme na yan."* Then Carpio forcibly removed their polo jacket uniform. Brosas told them *"Wag na kayong magpakita sa kumpanya hindi naming kayo kailangan! Mga putang ina niyo! Tutal nagmurahan na tayo dito, ano bang gusto niyo!"*[26]

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[24] *Id*. at 900 (Labor Arbiter Decision).

[25] *Id*. at 601-602 (Consolidated Position Paper for Complainants); at 900-901 (Labor Arbiter Decision); and at 1060 (NLRC Decision).

[26] *Id*. at 602-603 (Consolidated Position Paper for Complainants), 901 (Labor Arbiter Decision); at 1060 (NLRC Decision), 142-143 (CA Decision).

Galela responded that may God forgive them for what they had done. This further angered Carpio and retorted expletives at him. She grabbed a chair to hit him, but Brosas stopped her. The restaurant owner intervened and told Carpio and Brosas to leave. The respondents reported the incident to the *barangay* officials of Barangay Sta. Cruz and Barangay Tejeros, Makati.[27]

Still on August 4, 2008, when Bernadette returned from her lunch break, she found her personal belongings at the company's reception desk. Bernadette was told to wait for Carpio and Brosas. Upon their arrival, they began cursing her and told her that her husband, Jever, disrespected their father. Despite her explanations, Bernadette was fired, prompting her to file a complaint for illegal dismissal with money claims on August 11, 2008, docketed as NLRC NCR 08-11324-08. The case was assigned to LA Melquiades Sol D. Del Rosario, and was later consolidated with the complaints assigned to LA Que.[28]

The following day, August 5, 2008, Jever, Galela, Gomez, Siscar, Farne, Baldesco, Dela Cruz, Jimenez, and Academia filed a complaint for illegal dismissal with money claims, docketed as NLRC NCR 08-11081-08, and was assigned to LA Patricio P. Libo-on. It was also consolidated with the complaint pending with LA Que.[29]

On August 12, 2008, Eroles returned from Isabela and reported for work at Foodbev's office in Makati. He requested that his absence on August 11, 2008 be counted against his leave credits, and that he be permitted to go on leave on August 13, 2008 to attend a hearing on the unfair labor practice case before LA Azarraga. During the hearing, LA Azarraga advised the respondents to secure the services of a lawyer, move for the

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[27] *Id*. at 603 (Consolidated Position Paper for Complainants), 902 (Labor Arbiter Decision).

[28] *Id*. at 143 (CA Decision); at 902-903 (Labor Arbiter Decision); and CA *rollo*, pp. 125-128, Vol. 1 (Complaint and Motion for Consolidation).

[29] *Id*. at 142-143 (CA Decision); at 902 (Labor Arbiter Decision); *id*. at 252-256 (blotter report), 121-124, Vol. 1 (Complaints and Motion for Consolidation).

dismissal of the case before her, and to pursue the action filed before LA Que. On August 13, 2008, respondents filed a Notice of Dismissal or Withdrawal of Complaint without Prejudice.[30]

When Eroles returned to work on August 14, 2008, he was given a memo requiring him to explain his insubordination for being absent despite the disapproval of his application for leave.[31]

On August 19, 2008, Eroles filed his explanation stating that his absence on August 11, 2008, was due to exhaustion from his Isabela trip, while his absence on August 13, 2008 was because of a hearing before the LA.[32]

On the same day, Lucila summoned Eroles and told him to hand in his resignation, because he would be appointed at Greentech Inter-Phils., (Greentech) another Dela Cruz-owned company. He was offered two months salary, two sacks of rice, and two boxes of canned corned beef.[33] Eroles recounted the following:

> Ang offer sa akin, wala naman daw ginagawa sa Foodbev, **magkakaroon daw ako ng appointment letter sa Greentech, at magresign na ako sa Foodbev**. Bale wala na daw as per mam Sonie ang length of service ko kasi bagong kumpanya na daw ito, at **tinatanong ko kung ano ang option ko kung hindi ako papayag, wala daw tumingin daw ako sa salamin at magmunimuni**.(Emphases supplied)[34]

Foodbev drew up a written offer of wage, sack of rice, and canned corned beef to the 13 union members in exchange for

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[30] *Id*. at 143-144 (CA Decision); at 903 (Labor Arbiter Decision).

[31] *Id*. at 144 (CA Decision); at 903 (Labor Arbiter Decision), 1060 (NLRC Decision).

[32] *Id*. at 144-145 (CA Decision); at 904 (Labor Arbiter Decision); and at 1060 (NLRC Decision).

[33] *Id*. at 904 (Labor Arbiter Decision); at 1060 (NLRC Decision); and at 1532 (Comment).

[34] *Id*. at 1532.

a waiver. Lucila instructed Eroles to take the day off the next day to convince the 13 respondents to accept their offer.[35]

On August 21, 2008, Eroles informed Foodbev that their offer was rejected.[36] Later that day, Foodbev issued a memo to Eroles informing him that the reasons for his absences do not constitute sufficient justification and that he was being suspended from work for 7 days.[37] After the lapse of the suspension period, he did not report back to work.[38]

On August 22, 2008, Eroles and the Samahan filed a complaint for unfair labor practice, illegal dismissal, and money claims with the NLRC, docketed as NLRC NCR 08-11868-08, and was assigned to LA Felipe T. Garduque II. The complaint was consolidated with the three other cases assigned to LA Que.[39] On the same day, the complaint docketed as NLRC NCR 07-10721-08 was amended to include unfair labor practice.[40]

On September 18, 2008, LA Azarraga dismissed the two complaints for unfair labor practice, namely: NLRC NCR 07-10332-08 and NLRC NCR 07-10360-08, as prayed for by respondents in their Notice of Dismissal or Withdrawal of Complaint without Prejudice.[41]

The Labor Arbiter's Decision

On July 16, 2009, LA Que rendered a decision dismissing the four consolidated complaints for violation of the rule against

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[35] *Id*. at 904 (Labor Arbiter Decision).

[36] *Id*. at 904 (Labor Arbiter Decision); and at 1533 (Comment).

[37] *Id*. at 145 (CA Decision); and at 904 (Labor Arbiter Decision); and at 1061 (NLRC Decision).

[38] *Id*. at 23 (Petition); at 172 (Foodbev's Position Paper).

[39] *Id*. at 904 (Labor Arbiter Decision), 1061 (NLRC Decision), 1533 (Comment); CA *rollo*, pp. 137-139, Vol. 1 (Complaint and Motion for Consolidation).

[40] *Id*. at 1541.

[41] *Id*. at 915-916 (Labor Arbiter Decision), 1061, 1065-1066; CA *rollo*, pp. 142-143, Vol. 1.

forum shopping.[42] The labor arbiter explained that while the filing of consolidated cases before his branch initially involved dissimilar causes of action from the cases filed before LA Azarraga, the subsequent amendment of the complaints to include unfair labor practice, and the failure to inform his branch of the status of the pending complaints was a violation of the rule against forum shopping.[43]

The LA pointed out that the respondents knew the pendency of the unfair labor practice case before LA Azarraga, and by not informing his branch of such pendency was an indication of their intention to trifle with the proceedings before his branch. This led to the dismissal of the four consolidated complaints: NLRC NCR 07-10721-08, NLRC NCR 08-11081-08, NLRC NCR 08-11324-08, and NLRC NCR 08-11868-08.[44]

The NLRC Decision

The respondents appealed to the NLRC, which rendered a decision on September 17, 2009, affirming the dismissal of the complaints with modification as to Michael Pimentel's (Pimentel) complaint.[45]

The NLRC established that respondents failed to disclose in their verification that there were other pending cases before LA Azarraga, which is a violation of the rule against forum shopping. The NLRC affirmed the dismissal of the four complaints.[46]

As for Eroles' complaint on behalf of the union, the NLRC determined that the complaint was filed not for the union but for the same union members, who earlier filed the complaints. The NLRC observed that the respondents merely changed the name into the Samahan to make it appear that the case did not

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[42] *Id*. at 918.

[43] *Id*. at 917.

[44] *Id*.

[45] *Id*. at 1068.

[46] *Id*. at 1066.

involve the same parties, and added unfair labor practice as a new cause of action, but the allegations were the same as the earlier cases. Nevertheless, the NLRC concluded that the allegations against Foodbev did not constitute unfair labor practice.[47]

As for Bernadette's complaint, the NLRC held that she was not dismissed from the service but she abandoned her work, and that she filed a complaint to get hold of separation pay and not to regain her employment. The NLRC decided that her termination was warranted and she was not entitled to separation pay.[48]

As for Pimentel's complaint, the NLRC ruled in his favor. The NLRC ascertained that although he was negligent in the installation of the ice cream machine, his negligence could not be characterized as gross and habitual to justify dismissal from the service. There was no showing that he committed other infractions, and this single act could not be considered as habitual neglect of duty. Further, Foodbev's claim that Pimentel was guilty of habitual absences was not proven with substantial evidence. The NLRC declared that Pimentel's termination from employment was without valid or just cause. Considering that he was not interested in reinstatement, but only for separation pay, the NLRC awarded the same to him equivalent to one month salary for every year of service.[49]

The respondents moved for reconsideration, which the NLRC denied in its November 17, 2009 Resolution.[50]

The Court of Appeals Decision

Aggrieved, respondents elevated the case to the Court of Appeals (CA) through a petition for *certiorari* under Rule 65,

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[47] *Id*.

[48] *Id*. at 1066-1067.

[49] *Id*. at 1067-1068.

[50] *Id*. at 1074.

as amended, alleging grave abuse of discretion on the part of the NLRC.

On November 28, 2012, the CA rendered a decision partly granting the petition.[51] The CA affirmed the labor tribunal's finding that respondents committed forum shopping. However, it deemed appropriate to resolve the substantial issues presented as a dismissal on pure technicalities was frowned upon.[52]

On the claim of unfair labor practice, the CA determined that Foodbev was discouraging the formation of a union, and committed acts constituting unfair labor practice based on the following evidence: the union's application for registration, the minutes of the meeting between Foodbev's president and/or managers and union members, the affidavits of Aquino and Pario, the acts of Carpio and Brosas, the blotter report, the transfer of the union president to Isabela, the show cause memo, and the notices of termination. The CA ruled that the NLRC arbitrarily pronounced that there was no unfair labor practice despite the lack of factual and legal bases.[53]

On the claim of illegal dismissal, the CA resolved the issue individually.

As for Bernadette, the CA explained that a managerial employee married to a rank and file employee created issues within the company and was enough reason to dismiss her. However, there was nothing in the records that would show that she was given any termination notice or any chance to defend her side in a proper hearing. Foodbev was unable to support its allegation that Bernadette refused to receive the notice sent to her. The CA concluded that Foodbev failed to overcome the burden to prove that the dismissal was done in accordance with law.[54]

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[51] *Id.* at 159.

[52] *Id.* at 149.

[53] *Id.* at 149-153.

[54] *Id.* at 153-155.

As for Aquino, Ferrer, Pario, and Trapago, the CA held that there was nothing in the records that would reflect any habitual and gross negligence on their part, and the NLRC did not cite any incident to support the same. The CA elucidated that it was incorrect to conclude that only the four technicians were grossly negligent and not Pimentel as they were part of same team with the task of installing the same machine at the same place. The CA stated that the NLRC could not justifiably single out Pimentel as having been illegally dismissed without any facts that would make his situation different from that of his teammates.[55]

As for the rest of the respondents, the CA resolved that the burden to prove the validity of the dismissal rests on the employer, and the proof must be based on substantial evidence. The CA found that there was a dearth of evidence to prove that respondents refused to follow instructions for their transfer to EMI. It was further revealed that nine of the 11 employees transferred to EMI were union members, which led the CA to believe that the transfer was made to prevent them from conducting union activities.[56]

In partly granting the petition, the CA reversed the September 17, 2009 NLRC Decision and November 17, 2009 NLRC Resolution, and ordered reinstatement or payment of separation benefits, as the case may be. The CA also awarded ₱50,000.00 as moral damages, ₱25,000.00 as exemplary damages to each respondent, and attorney's fees equivalent to 10% of the total amount awarded.[57]

Foodbev moved for reconsideration, which the CA denied in its April 8, 2013 Resolution.[58] Undaunted, Foodbev filed this petition before the Court. A summary of its arguments are as follows.

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[55] *Id*. at 155-156.

[56] *Id*. at 156-157.

[57] *Id*. at 157-158.

[58] *Id*. at 161-162.

Whether or not the CA erred:

1. In not dismissing the complaint due to forum shopping;
2. In finding that the ice cream machine technicians were illegally dismissed from employment;
3. In finding Foodbev guilty of unfair labor practice; and
4. In awarding money claims, damages and attorney's fees to respondents.[59]

In their Comment, respondents enumerated the instances of union busting in support of the unfair labor practice allegation: the meetings between Foodbev president and/or managers and respondents were aimed on hindering union activities, Foodbev's directive to resign, the written examination initially given to union members only, the temporary transfer of union president to Isabela, the transfer of the rest of the respondents to EMI, and the termination from employment of union president, union officers (such as the ice cream machine technicians), union members, and Bernadette Belardo as spouse of a union member. Respondents narrated the circumstances surrounding their respective termination.[60]

In their Reply, petitioners reiterated their arguments in the Petition.

The Issue to be Resolved

The issue to be resolved is whether or not the CA committed a reversible error in partly reversing the September 17, 2009 NLRC Decision and November 17, 2009 NLRC Resolution.

The Court's Ruling

The petition is denied.

The general rule in a petition for review on *certiorari* under Rule 45, as amended, is that only questions of law should be

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

[60] *Id*. at 1525-1540.

raised. In *Republic v. Heirs of Santiago*,[61] the Court enumerated that one of the exceptions to the general rule is when the CA's findings are contrary to those of the trial court. Considering the different findings of fact and conclusions of law of the labor arbiter, the NLRC and the CA, the Court shall entertain this petition, which involves a re-assessment of the evidence presented.

I. Procedural Issue: Forum Shopping

It is true that the Court is strict in dismissing a case when lawyers and/or litigants commit forum shopping. In *CMTC International Marketing Corp. v. Bhagis International Trading Corp.*,[62] the Court emphasized that "procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice."

However, it is likewise true that strict imposition of technical rules can result to miscarriage of substantial justice. The *CMTC* case recognized exceptions to the Rules, but only for the most compelling reasons where stubborn obedience to the Rules would defeat rather than serve the ends of justice.

The Court reiterates its pronouncement in *National Power Corp. v. Court of Appeals*:[63]

> Notwithstanding the procedural lapse in this case, We opt not to deny the case based on merely technical grounds. We must be reminded that deciding a case is not a mere play of technical rules. If we are to abide by our mandate to provide justice for all, we should be ready to set aside technical rules of procedure when the same hampers justice rather than to serve the same.

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[61] *Republic v. Heirs of Santiago*, 808 Phil. 1, 9-10 (2017).

[62] *CMTC International Marketing Corp. v. Bhagis International Trading Corp.*, 700 Phil. 575, 581 (2012).

[63] *National Power Corp. v. Court of Appeals*, G.R. No. 206167, March 19, 2018.

Substantial justice is of paramount importance to the Court and it is our duty to uphold it. It has been the practice of the Court to set aside technical rules to give way to substantial justice, especially of those who are underprivileged or the disadvantaged, such as the workers.

Here, the respondents are at risk of losing their jobs after they were terminated from the service without factual basis and/or due process of law. Their years of service may be thrown away without getting a well-deserved compensation if the Court would favor technicality over resolving the substantive issues. Further, an employer may get away with unfair labor practice of union busting due to technicality.

The framers of our Constitution recognized the fragile position of workers in our society given their economic status. Thus, they drafted Article XIII to protect labor and the rights of workers.

ARTICLE XIII

x x x x x x x x x

LABOR

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production

and the right of enterprises to reasonable returns on investments, and to expansion and growth.[64]

The Court has the duty to uphold the Constitution and safeguard the rights it embodies. Here, the rights of workers to self-organization, security of tenure, and a living wage are at stake. A dismissal of the complaints due to technicalities would defeat these valuable rights of complaining workers, which the Constitution protects.

In *Nueva Ecija I Electric Cooperative, Inc. v. NLRC*,[65] the Court explained the effect of unfair labor practice in the society.

> Unfair labor practices violate the constitutional rights of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect; and disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations. As the conscience of the government, it is the Court's sworn duty to ensure that none trifles with labor rights.

Therefore, the CA was correct in setting aside technical rules on forum shopping to give way to the more important Constitutional and statutory rights of respondent workers.

II. Substantive Issues

A. The dismissal of ice cream machine technicians

One of the technicians, Pimentel, obtained a favorable decision in the NLRC and has moved for its execution.[66] The case now proceeds as to the four other technicians, Ferrer, Aquino, Trapago, and Pario, who complained of illegal dismissal with money claims.

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[64] 1987 CONSTITUTION.

[65] *Nueva Ecija I Electric Cooperative, Inc. v. National Labor Relations Commission*, 380 Phil. 57-58 (2000).

[66] *Rollo*, p. 24.

Foodbev alleges that respondents' failure to follow the cleaning procedure of ice cream machine and habitual absences amount to gross negligence, serious misconduct, and willful disobedience, which compel a dismissal from the service.[67] Pario has an additional infraction of gambling inside work premises.[68]

It is settled that a valid dismissal mandates compliance with substantive and procedural requirements. In *Mantle Trading Services, Inc. and/or Del Rosario v. NLRC*,[69] the Court emphasized, "(a) there be just and valid cause as provided under Article 282 (now Art. 297) of the Labor Code; and (b) the employee be afforded an opportunity to be heard and to defend himself."

The Court further discussed the two facets of procedural due process in *New Puerto Commercial v. Lopez*:[70]

> [P]rocedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. The requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted, x x x.

In *King of Kings Transport, Inc. v. Mamac*,[71] the twin requirements of notice and hearing were further clarified below:

> (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

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[67] *Id*. at 26, 79, 85-86, 90, 95 (Petition).

[68] *Id*. at 26 (Petition), 210 (Foodbev's Position Paper); 258 (Affidavit of Susan Ramos Mercado).

[69] 611 Phil. 570, 579 (2009).

[70] 639 Phil. 437, 445 (2010).

[71] 553 Phil. 108, 115-116 (2007).

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. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(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.

1. 1st Notice - Notice of violation and order to explain

The records reveal that Ferrer, Aquino, Trapago, and Pario were individually served with a show cause memo notifying them of their violation of company rules with order to explain in writing. Ferrer, as supervisor and head of the installation team, received the following memo dated July 18, 2008.

x x x x x x x x x

It has been found out that MSS Machine with serial no. 20050 installed at Don Bosco Makati has **sightings of pest (cockroach), an indication that the machine was not properly cleaned and checked in the shop before it was installed.**

You are the head of the MSS Team and one of those who cleaned the unit. As the Supervisor, it is your main responsibility to ensure that the machine to be installed is in good condition and passes [the] quality standards prior to installation and before leaving the outlet.

Please take note that this created an aggravating issue against us in terms of quality service.

In this regard, **you are found guilty of violating the FBI Code Article VI Section 13 (Gross Negligence resulting to loss...which causes grave damage to our company's reputation and image)** subject to penalty of Dismissal for first time offenders.

Please explain in writing within **48 hours** why you should not be given disciplinary action on this regard.[72] (Emphases supplied)

On the other hand, Aquino, Trapago, and Pario, as members of the installation team, received a similar memo also dated July 18, 2008.

x x x x x x x x x

It has been found out that MSS Machine with serial no. 20050 installed at Don Bosco Makati has **sightings of pest (cockroach), an indication that the machine was not properly cleaned and checked in the shop before it was installed.**

You were one of those who installed the unit. This is to remind you that our SOP is to ensure that the machine to be installed is in good condition prior to installation and before leaving the outlet.

Please take note that this created an aggravating issue against us in terms of quality service.

In this regard, **you are found guilty of violating the FBI Code Article VI Section 13 (Gross Negligence resulting to loss...which causes grave damage to our company's reputation and image)** subject to penalty of Dismissal for first time offenders.

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[72] *Rollo*, p. 299.

Please explain in writing within **48 hours** why you should not be given disciplinary action on this regard.[73] (Emphasis supplied)

The Court observes several flaws in the show cause memo. *First*, the memo contains a general statement that a cockroach was found in the ice cream machine that respondents installed at Don Bosco Makati. It does not indicate when and how the pest was discovered, and/or in which part of the machine was it found.

Second, the memo draws a conclusion that the fault lies on the respondents in the absence of a proper investigation. It states that *sightings of pest (cockroach), an indication that the machine was not properly cleaned and checked in the shop before it was installed. xxx. In this regard, you are found guilty of violating the FBI Code Article VI Section 13 (Gross Negligence resulting to loss . . . which causes grave damage to our company's reputation and image) subject to penalty of Dismissal for first time offenders.* The purpose of the first notice is to inform the employee of his/her violation and to afford him/her of an opportunity to explain, and not to pass judgment.

Third, the memo failed to specify how the supposed negligence gravely damaged Foodbev's reputation and image. It does not declare a detailed narration of the facts and circumstances as basis for the charge of gross negligence resulting to loss and damage to the company's reputation and image.

Fourth, respondents were given 48 hours or two days to explain their side, which is too short compared to the 5-day period enunciated in the *King of Kings Transport* case.

Lastly, the memo does not include the charge of serious misconduct and willful disobedience, which Foodbev accuses respondents of, in this petition. Respondents only replied to the charge of gross negligence since it is the only charge they were informed of. By raising new charges in this petition, respondents were deprived of the opportunity to defend themselves at the first instance on the administrative level.

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[73] *Id.* at 295.

In sum, the memo does not comply with the requirements laid down by the *King of Kings Transport* case. The respondents' dismissal due to gross negligence resulting to loss and damage to the company's reputation and image, lacks factual foundation and disregards due process.

As for the allegation of habitual absences, the petition fails to specifically state the dates or circumstances constituting habitual absence. The petition states:

> 35. After concluding the administrative hearing on 26 July 2008, and considering further the habitual absences and infractions committed against petitioner Foodbev rules, [*e.g.*] gambling inside petitioner Foodbev's premises, and the fact that they were not able to satisfactorily explain their failure to strictly adhere and abide with the standard operating procedures, petitioner Foodbev decided to dismiss the employment of respondents Trapago, Pario, Pimentel, Aquino and Ferrer.[74]

While the records show that Pario, Ferrer, and Aquino were served with individual memo dated July 23, 2008, for their absence on July 21, 2008, it is unclear if this is the particular absence that Foodbev is referring to as habitual absence.

> To : Gaudencio Pario III
>
> x x x x x x x x x
>
> This refers to your absence last July 21, 2008. You have been issued the memo regarding the MSS case last July 19, Saturday. It has been noted with regret that all of those who have been issued the memo absented after the memo was received. Total number of absences on that day has been very detrimental to our operations.
>
> In view of the above, you are construed to have violated FBI Code of Discipline Article VI B13 (*Engaging in sabotage or other acts inimical to the security or interest of the company*) a type A offense subject to Dismissal.
>
> Please explain in writing within 48 hours why you should not be given the disciplinary action cited above.[75]

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[74] *Id*. at 26 (Petition).

[75] *Id*. at 642.

To : Noli Ferrer

x x x x x x x x x

This refers to your absences, which as of today, you have accumulated 3 days absences.

You have been issued the memo regarding the MSS case last July 19, Saturday. On July 21, 2008, you were absent. It has been noted with regret that all of those who have been issued a memo absented on the same day which has been very detrimental to our operations.

In view of the above, you are construed to have violated FBI Code of Discipline Article VI, Section A1(AWOL - *incurring two absences without leave whether consecutive or not*) a type B offense subject to penalty of 10-15 days suspension for 1st time offenders.

FBI Code of Discipline Article VI B13 (*Engaging in sabotage or other acts inimical to the security or interest of the company*) a type A offense subject to Dismissal.

Please explain in writing within 48 hours why you should not be given the disciplinary action cited above.[76]

To : Ryan Aquino

x x x x x x x x x

This refers to your absences, which as of today, you have accumulated 3.5 days absences.

You have been issued the memo regarding the MSS case last July 19, Saturday. On July 21, 2008, you were absent, which is an unauthorized leave. It has been noted with regret that all of those who have been issued a memo absented on the same day which has been very detrimental to our operations.

In view of the above, you are construed to have violated FBI Code of Discipline Article VI, Section A1(AWOL - *incurring two absences without leave whether consecutive or not*) a type B offense subject to penalty of 15-20 days suspension for 2nd time offenders.

FBI Code of Discipline Article VI B13 (*Engaging in sabotage or other acts inimical to the security or interest of the company*) a type A offense subject to Dismissal.

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[76] *Id.* at 643.

Please explain in writing within 48 hours why you should not be given the disciplinary action cited above.[77]

The memo stated that the three respondents were absent on July 21, 2008. Ferrer and Aquino's memo stated their accumulated number of absences without indicating specific dates to establish habitual absence. As for Trapago, there is no record that he was served with a memo regarding his absence. The Court finds Foodbev's claim of habitual absences against Pario, Ferrer, Aquino, and Trapago to be too general and unsupported by evidence. The 48-hour period to explain is too short compared to the 5-day period as previously discussed. The memo failed to comply with the requirements of law and jurisprudence. The respondents' dismissal on the ground of habitual absence lacks factual basis and violates procedural requirements.

As for respondent Pario, who was caught gambling inside the work premises, it appears that the same is true as there was sufficient documentary evidence to support the charge. The records disclose that Foodbev sent a memo to Pario informing him of his violation, and after Pario admitted his misdeed in his written explanation, Foodbev issued another memo finding him guilty of violating the company rules and suspended him from work for three days. However, the Court will not rule on the validity of the Pario's suspension as the issue to be resolved is the legality of his dismissal.

2. 2nd Notice - Notice of opportunity to be heard

Foodbev sent individual memo to respondents for a scheduled administrative hearing on the charge of gross negligence in cleaning the ice cream machine. The memo reads:

As you maybe aware, the installation of MSS Machine bearing Serial No. 20050 at Don Bosco Makati had caused great damage to the prestige and reputation of the company to its client, because cockroach and other pests were sighted on the said machine.

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[77] *Id.* at 644.

The incident only showed your **gross negligence** in not checking and cleaning the machine prior to its installation, thus in violation of the company's policy of which you are very much aware of.

Consequently, your attention was called through a memorandum sent to you of which, you favor the company with a reply.

However, the company deems it proper to conduct an administrative hearing to determine your culpability on the charge against you. In this regard, you are invited to appear on **July 24, 2008** at the Executive Office in the afternoon before the administrative body who will conduct the investigation. This hearing could likewise be the best avenue for you to air out your side as the truthfulness of the matter.

Your presence on the hearing is very important and is therefore highly appreciated. On the contrary, failure to appear on the scheduled hearing will constitute a waiver on your part to introduce evidence to exonerate or free you from possible liability.[78] (Emphases supplied)

This memo sufficiently satisfies the requirement of affording due process to the respondents in defending their side. However, this memo applies only to the charge of gross negligence, and does not include the charge of habitual absence, serious misconduct, and willful disobedience.

3. 3rd Notice - Termination notice with grounds

The *King of Kings Transport* case requires that the termination notice should state 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.

The termination notices, addressed separately to respondents, are similarly worded as follows:

Date : **July 26, 2008**

x x x x x x x x x

This refers to the memo dated July 18, 2008 regarding your alleged negligence in your duty as evidenced by cockroaches found in the soft serve ice cream machine which you cleaned and installed at Don Bosco Makati.

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[78] *Id.* at 305.

In this regard an administrative consultation was held last **July25-26, 2008** to thresh out all issues. The totality of evidences gathered during the administrative investigation most especially your unequivocal admission that you, together with other technicians were indeed the one who prepared and installed the soft serve ice cream machines sufficiently established that you are guilty of serious misconduct, fraud and willful breach of trust and confidence causing serious damage and prejudice to the company. Our company, being in the Food and Beverage [I]ndustry should always see to it that above average due diligence be practiced lest the consumer public would suffer. Per our QA department, the most susceptible to food poisoning would be the school age children and the elderly. Our client's (Nestle) primary customers in Don Bosco Makati are school age children.

Thus effective upon receipt of this letter, your employment is hereby terminated for violating Foodbev International Code of Discipline Article VI Section 13 (**Gross Negligence resulting to loss...which causes grave damage to our company's reputation and image**), a type A violation with penalty of Dismissal for first time offenders. Please return immediately all company documents and materials that may have come into your possession as a consequence of your employment.[79] (Emphasis supplied)

Foodbev avers in this petition that management dismissed respondents because of gross negligence, habitual absence, infractions, serious misconduct, and willful disobedience. However, the first notice only charged respondents of gross negligence resulting to loss, which caused grave damage to the company's reputation and image. Subsequently, the termination notice stated that Foodbev found respondents "*guilty of serious misconduct, fraud and willful breach of trust and confidence causing serious damage and prejudice to the company*." The same notice indicated that the ground for termination is a violation of Foodbev International Code of Discipline Article VI Section 13 (Gross Negligence resulting to loss...which causes grave damage to our company's reputation and image).

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[79] *Id.* at 536.

The inconsistencies in the charges, findings, and ground for termination make the termination notice substantially and procedurally defective. Since respondents were not formally charged of serious misconduct, fraud, and willful breach of trust and confidence causing serious damage and prejudice to the company, they were unable to defend their side and present evidence on their behalf. It is unfair and unjust to base a termination on a finding that had not undergone notice and hearing. The termination notice clearly violates respondents' rights to due process.

In addition, the termination notice does not state habitual absence, and in Pario's case, his gambling activity as additional ground for dismissal from the service.

Noticeably, there are inconsistencies on the dates of the administrative hearing. In the July 22, 2008 notice of hearing, the administrative hearing was set on July 24, 2008. In the July 26, 2008, termination notice, the date of administrative hearing in the body of the letter is July 25-26, 2008. The petition also contains different dates of administrative hearing:

> 31. Notices of administrative investigation were then subsequently sent to the respondents and an administrative hearing was then conducted on **24 July 2008** at the Executive Office of petitioner Company.
>
> x x x x x x x x x
>
> 35. After concluding the administrative hearing on **26 July 2008**, and considering further the habitual absences and infractions committed against petitioner Foodbev rules, [*e.g.*] gambling inside petitioner Foodbev's premises, and the fact that they were not able to satisfactorily explain their failure to strictly adhere and abide with the standard operating procedures, petitioner Foodbev decided to dismiss the employment of respondents Trapago, Pario, Pimentel, Aquino and Ferrer.[80] (Emphasis supplied)

The discrepancies in the administrative hearing's date put doubt on Foodbev's claim that the date appearing on the

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[80] *Id.* at 25-26.

termination notice was a typographical error. More so, when respondents alleged that they were served with the termination notice shortly after the administrative hearing. These observations lead the Court to ask whether the termination notices were prepared ahead of the administrative hearing with a decision to terminate respondents' employment, and whether the administrative hearing was a sham and was conducted only for compliance purposes.

An administrative hearing involves sorting of facts, evaluation of evidence, and assessment of the arguments presented by both management and employee/s. The actual hearing in the presence of both management and employee/s is time consuming. At times, it can take days to finish considering the number of parties involved. Moreover, there should be an actual deliberation by a panel or committee of persons who heard the charge/s and defense/s. With all the work that comes in an administrative hearing, it is hardly possible to finish the inquiry and decision-making process in one day. Applying this to the case at hand, the Court is suspicious of the integrity of the administrative hearing conducted on the charges against the respondents. It is unclear whether the respondents were assisted by a counsel or representative in the presentation of their defenses, or whether they waived such right. The numerous procedural violations alone make respondents' dismissal against the law. Yet, the Court has to determine if the charge of gross negligence against the respondents has merit.

4. <u>Just and Valid Cause for Termination</u>

Article 297[81] (formerly Art. 282) of the Labor Code listed gross and habitual neglect of duties by the employee as a ground for termination of his/her services. In *Publico v. Hospital Managers, Inc.*,[82] the Court declared that "gross negligence connotes want of care in the performance of one's duties. Habitual

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[81] LABOR CODE OF THE PHILIPPINES, Presidential Decree No. 442 (Amended & Renumbered), July 21, 2015.

[82] 797 Phil. 356, 367 (2016).

neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances."

The notice of the administrative hearing and the respondents' written explanation reveal that respondents were tasked to clean and install an ice cream machine at Don Bosco Makati, which reported to Foodbev that cockroaches were found in the machine. Respondents cleaned the machine on July 7, 2008, and later wrapped and sealed it in plastic. The machine remained at Foodbev's office for 3 days before delivering it to Don Bosco Makati on July 11, 2008. On site, respondents tested the machine for two hours to ensure that it was functioning well. During the test run, no cockroach was found in the machine, thus respondents believed that they accomplished their work. Respondents mentioned that the machine should have passed through the Quality Assurance Department for checking before installation of the unit. Ferrer, as supervisor and head of the team, declared that it was the first time that he learned of the use of "robby vapor" on the machine, but it was not endorsed to him.[83]

From the narration, respondents did not exhibit acts constituting gross negligence, nor did Foodbev cite other instances when respondents failed to perform assigned task, signifying habitual negligence. There was no showing that respondents had deliberate or thoughtless disregard for the cleaning procedure. Foodbev failed to demonstrate gross and habitual negligence on the part of respondents. If at all, respondents are liable of simple negligence for failing to use robby vapor in sanitizing the machine.

In dismissing respondents, Foodbev cannot invoke the principle of totality of infractions considering that respondents' alleged previous acts of misconduct, such as habitual absence and gambling, serious misconduct, and willful disobedience, were not established in accordance with the requirements of procedural due process.[84]

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[83] *Rollo*, pp. 300-304, 310-318.

[84] *Maula v. Ximex Delivery Express, Inc.*, 804 Phil. 365, 381 (2017).

While the Court understands that Foodbev is engaged in the food service industry, which is imbued with public interest, the penalty of dismissal from the service is too harsh as it involves the loss of income for the respondents, who are rank and file employees. A less severe penalty of suspension should have been imposed considering that the respondents have been in the service for several years.[85] The Court also observes that this is the first time in the long years of service that respondents failed to follow the cleaning procedure. Thus, a more compassionate penalty of suspension is deemed appropriate.

In *Philippine Long Distance Company v. Teves*,[86] the Court stressed that while it is the prerogative of the management to discipline its employees, it should not be indiscriminate in imposing the ultimate penalty of dismissal as it not only affects the employee concerned, but also those who depend on his livelihood.

While management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers, pursuant to company rules and regulations, however, such management prerogatives must be exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws and valid agreements. **The Court is wont to reiterate that while an employer has its own interest to protect, and pursuant thereto, it may terminate an employee for a just cause, such prerogative to dismiss or lay off an employee must be exercised without abuse of discretion**. Its implementation should be tempered with compassion and understanding. The employer should bear in mind that, in the execution of said prerogative, what is at stake is not only the employee's position, but his very livelihood, his very breadbasket.

Dismissal is the ultimate penalty that can be meted to an employee. Even where a worker has committed an infraction, a penalty less punitive may suffice, whatever missteps maybe

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[85] Trapago has been working in Foodbev since November 7, 2005; Pario since May 8, 2003; Aquino since October 1, 2000; and Ferrer since August 8, 1997; *Rollo* at 257, Affidavit of Susan Ramos Mercado.

[86] 649 Phil. 39 (2010); as cited in *Universal Robina Sugar Milling Corp. v. Ablay*, 783 Phil. 512, 523 (2016).

committed by labor ought not to be visited with a consequence so severe. This is not only the laws concern for the workingman. There is, in addition, his or her family to consider. Unemployment brings untold hardships and sorrows upon those dependent on the wage-earner.[87] (Emphases supplied)

The Court finds that respondent's dismissal from employment is illegal due to several violations of procedural and substantive requirements of the Labor Code and its Implementing Rules.

B. The verbal dismissal of respondents transferred to EMI

Both Foodbev and respondents Jever, Galela, Gomez, Siscar, Farne, Baldesco, Dela Cruz, Jimenez, and Academia admit that a verbal and physical altercation erupted between them and Foodbev's corporate officials. Foodbev specifically admitted the incident in its petition.

49. This untoward incident caused Mr. Elmo Dela Cruz' (sic) daughters, Mesdames Carpio and Brosas, extreme emotional anguish as they felt that their father was undeserving of respondent Belardo's disrespectful attitude and treatment. They then met with respondent Belardo and his group composed of respondents Gomez, Siscar, Academia and Galela, to demand an explanation for the said unpleasant incident. (Underscoring in the original)[88]

The tenor of Carpio and Brosas' statements (*Hindi na namin kayo kailangan dito! Ano pa ang ginagawa niyo dito! Wag na kayong magpakita sa kumpanya hindi naming kayo kailangan!*) during the confrontation in a restaurant leave no room for interpretation other than a verbal dismissal from the service.

Foodbev claims that they served notice to explain and notice of administrative hearing. However, the notices are futile because respondents were verbally dismissed from employment and were no longer reporting for work. Thus, it is not surprising that respondents did not submit their answers to the notice to explain and did not attend the supposed administrative hearing.

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[87] 649 Phil. 39, 51-52(2010).

[88] *Rollo*, p. 29.

In *Reyes v. Global Beer Below Zero, Inc.*[89] the Court held that "verbal notice of termination can hardly be considered as valid or legal." As previously discussed, the employer should comply with the substantive and procedural requirements in dismissing employees from the service. Here, Foodbev failed to abide by these requirements in dismissing Jever, Galela, Gomez, Siscar, Farne, Baldesco, Dela Cruz, Jimenez, and Academia. Thus, their termination from employment is illegal.

C. The verbal dismissal of managerial employee, Bernadette Belardo, who was married to a union member

Foodbev avers in this petition that Bernadette's claim of unfair labor practice is unfounded because a managerial employee like her is prohibited from joining a union. Contrarily, the records show that Bernadette never joined the Samahan. Bernadette complained of illegal dismissal because she was unceremoniously terminated from employment without just or authorized cause and due process.

Foodbev alleges that: (1) Bernadette was not dismissed from the service, but rather she abandoned her job. (2) they served her with a notice to explain her absence, but she refused to receive it, and (3) they sent another notice through registered mail.

Bernadette narrated a different story of her dismissal on August 4, 2008, at Foodbev's office.

30.1 She was surprised to find out that her bag and jacket — items she left inside her table at the 2nd floor where she worked — were at the reception area of the building, at the ground floor;

30.2 Petitioner Bernadette was told to wait for Carpio and Brosas at the reception area. Minutes later, Carpio and Brosas arrived. Carpio began shouting: *Putang ina ng tarantado mong asawa! Binastos niya ang papa ko, walang galang sa matanda!*

30.3 Petitioner Bernadette tried to explain that she talked to her husband and who said that he (Jever) did not disrespect Sir Elmo;

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[89] *Reyes v. Global Beer Below Zero, Inc.*, G.R. No. 222816, October 4, 2017.

30.4 Carpio and Brosas didn't believe Bernadette. Carpio countered that Jever was disrespectful even to managers. "*Naglilider lideran*!" Petitioner Bernadette denied that Jever was a leader in the union;

30.5 Carpio then proceeded to insult petitioner Bernadette by saying: *["]* ***Tapos ko nang murahin yung tarantado mong asawa sa kainan... "Wala kayong kwentang mag-asawa, wala kayong utang na loob..." San ba galing ang pinapakain mo sa pamilya mo!.'" And, told Bernadette: "Ano pa ang ginagawa mo ditto!"***

30.6 Brosas said that petitioner Bernadette Belardo was a problem because of the union activities of her husband. By then petitioner Bernadette was crying, even as she was being insulted in front of her co-workers;

30.7 Petitioner Bernadette Belardo later came to know that earlier during lunch break of August 4, 2008, **Carpio** (VP for Finance, Foodbev) **was shouting inside the office where Bernadette worked and ordered that Bernadette's things be thrown out of the premises as she will no longer report to work starting the next day**.[90] (Emphasis supplied.)

The Court observes that in its petition, Foodbev did not deny that there was an encounter between Bernadette, Carpio and Brosas, and claims that the meeting was cordial.[91]

The CA determined that "there is nothing in the records that would show that Bernadette was given any notice of termination or any chance to defend her side in a proper hearing."[92]

The Court agrees with the CA's findings. Carpio's own words (*Tapos ko nang murahin yung tarantado mong asawa sa kainan. Wala kayong kwentang mag-asawa, wala kayong utang na loob. Saan ba galing ang pinapakain mo sa pamilya mo! Ano pa ang ginagawa mo dito?*) convey a clear intent to sever employment ties with Bernadette. Carpio also ordered that Bernadette's things be thrown out of the premises because she would no longer

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[90] *Rollo*, p. 1109.

[91] *Id.* at 32, 73.

[92] *Id.* at 154.

report for work. Her actuations demonstrate that Bernadette was terminated from employment.

The Court does not consider Bernadette to have abandoned her work because her absences were a direct result of Carpio and Brosas' conduct. There was no clear reason for her dismissal. It can only be inferred that her dismissal was due to her husband's membership in the union and participation in union activities. But that is not among the just causes of termination under Article 294 of the Labor Code. Bernadette's verbal termination from employment is a violation of her right to security of tenure, and was done without just cause and due process under Articles 294[93] and 297[94] of the Labor Code. Thus, the Court rules that Bernadette's dismissal from the service is illegal.

D. The dismissal of union president, Reynaldo Eroles

Eroles complained that he was illegally dismissed from the service, and that Foodbev is guilty of unfair labor practice. He

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[93] ARTICLE 298. [279] *Security of Tenure*. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered), [July 21, 2015])

[94] ARTICLE 297. [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. (Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered), [July 21, 2015])

claimed that Foodbev assigned him to their Isabela branch to isolate him from the union.[95] He alleged that Lucila asked him to resign at Foodbev in exchange for appointment at Greentech.[96]

For its part, Foodbev avers that Eroles' temporary transfer to Isabela was part of management practice to bring provincial employees for training in Makati, where the proper equipment and trainers are located. Then, an employee in Makati would be sent to the provincial branch to take over the trainee's job.[97]

Foodbev admits that in July 2008, there was an offer to its employees for voluntary resignation in exchange for pecuniary benefits in order to save the company from severe economic losses.[98] In August 2008, there was another offer for several months of pay and food supply.[99]

It is a rule that before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service.[100]

Here, there is no evidence on record that Eroles was directly terminated from the service. He simply failed to report for work after his suspension. But what prompted Eroles to stop reporting for work? The records show that in a meeting between him and Lucila on August 19, 2008, Eroles was told to resign at Foodbev in exchange for a job in Greentech.[101]

The Court observes that Foodbev did not deny the job offer, which has no specific position, rank, or salary. Eroles mentioned

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[95] *Rollo*, p. 1529 (Comment); 366 (Memo No. 1905 PMO8 351).

[96] *Id*. at 1532 (Reply).

[97] *Id*. at 21 (Petition).

[98] *Id*. at 34.

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

[100] *Reyes v. Global Beer Below Zero, Inc.*, G.R. No. 222816, October 4, 2017.

[101] *Rollo*, p. 36 (Petition).

that once he accepts the job offer, his years of service in Foodbev would be worthless. These observations do not reflect Foodbev's sincere effort to provide job security for Eroles. They also failed to acknowledge his years of service in the company. Eroles was placed in a tight situation wherein he had to choose between staying in Foodbev and risk suffering the ire of management, or transfer to Greentech with an unspecified position and salary and forego his years of service at Foodbev. Neither of the options were favorable to him and pushed him instead not to report for work. This is constructive dismissal.

In *Doble, Jr. v. ABB, Inc.*,[102] the Court explained constructive dismissal.

> To begin with, **constructive dismissal is defined as quitting or cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay and other benefits. It exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment. There is involuntary resignation due to the harsh, hostile, and unfavorable conditions set by the employer. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his employment/position under the circumstances.** (Emphasis ours)

Here, Eroles is susceptible to being transferred to another branch or company in the guise of training or company practice, or verbal harassment similar to his dismissed co-workers. The insinuations to resign and the successive termination from employment of union members had created a hostile working environment, which convinced him to sacrifice his employment and tantamount to constructive dismissal.

E. Unfair Labor Practice

Articles 258 and 259 of the Labor Code state the concept of unfair labor practice and enumerate the unfair labor practices committed by employers.

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[102] *Doble, Jr. v. ABB, Inc.*, 810 Phil. 210, 229 (2017).

ART. 258. [247] *Concept of Unfair Labor Practice and Procedure for Prosecution Thereof.* — Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations. (Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered), [July 21, 2015])

x x x x x x x x x

ART. 259. [248] *Unfair Labor Practices of Employers.* — It shall be unlawful for an employer to commit any of the following unfair labor practices:

(a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;

x x x x x x x x x

(e) To discriminate in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. x x x (Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered), [July 21, 2015])

The records reveal several instances to support unfair labor practice, specifically union busting, such as:

1. Lucila's statements during the meetings in July 2008, discouraging employees from joining and engaging in union activities, and embarrassing union members by requiring them to stand in front of the employees during a meeting;
2. Conducting written examinations on union members;
3. Transferring the union president, Eroles, to the provincial branch to isolate him from the union;
4. Transferring union members to another company;

5. Company managers inquiring about loyalty of employees to the union as a factor whether to transfer the employee or not;

6. Termination from employment of union members and union officers (Ferrer as Vice President, Aquino as Treasurer, Galela as Auditor, Academia as Sgt.-at-arms, and Pario, Gomez, Jever, and Dela Cruz as Board Members);[103]

7. Foodbev President's (Elmo) statements during a confrontation with some respondents, inquiring about leadership in the union and discouraging them from influencing other employees to join the union; and

8. Encouraging union members to voluntarily resign from the company in exchange for a measly salary and goods.

Foodbev argues that they became aware of the existence of the union sometime in August 2008, when they received summons in one of the complaints before the labor arbiter.[104] However, the Minutes of the Meetings[105] disclose that as early as July 2008, Lucila and Espeña had been discouraging the employees from joining the union and in participating in union activities. These evidence on record belie Foodbev's claim of ignorance on the existence of the union.

Foodbev alleges that all employees, both union and non-union members, were required to take the written examination. This was true only after Galela complained why the examination was limited to union members. He added that the examination involved questions on machines, which were unrelated to their duties, and those who failed were considered guilty of violating Foodbev's Code of Discipline. Foodbev avers that no employee was sanctioned due to failure in the examination.[106] This is untrue,

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[103] CA *rollo*, Vol. 1, p. 190.

[104] *Rollo*, p. 36 (Petition).

[105] *Id*. at 630-634 (Annexes C-F).

[106] *Id*. at 35 (Petition).

because the records show that Academia received a July 23, 2008 memo requiring him to explain why he failed in the exam for the second time.[107] The fact that the examination was at first limited to union members is in itself an unfair labor practice because it is discriminatory.

Foodbev claims that they announced the conduct of the written examination in May 2008, and that it is regularly done. This allegation is unsubstantiated as Foodbev failed to prove that the conduct of written examination is a customary company activity. The timing of the examination together with the respondents' complaints cast doubt on the truthfulness of Foodbev's justification.

The Court likewise, doubts the purpose for Eroles' transfer to Isabela. The memo informing him of his temporary assignment does not indicate a definite period. If indeed he was to temporarily take over the duties of employees in Isabela Branch undergoing training in Makati, the memo should have reflected the duration of the training. However, the memo sent to him only specified the effectivity of his transfer on July 25, 2008, without a completion date. This gives the employer the discretion to extend his assignment on the ground of management prerogative.

x x x x x x x x x

This is to inform you that you will be temporarily assigned to Isabel branch effective Friday, July 25, 2008.

All Isabela branch personnel will have to report to Manila on Saturday as they will be scheduled for assessment and training.

All turnover procedures will have to be conducted prior to departure of Isabela personnel.

Please coordinate with provincial branch coordinators for further instructions.[108]

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[107] *Id*. at 139 (CA Decision); CA *rollo*, Vol. 1 at 203 (office memo).

[108] *Id*. at 366.

The Court is also skeptical of Foodbev's reason for reassigning respondents to EMI. Foodbev maintains that it had been a company policy to direct its employees to receive work instructions at its extension office. However, Foodbev failed to present proof that it is an established company policy. Foodbev's explanation appears to be made out of convenience rather than legitimate and valid company policy. Once again, the timing of the instructions and the series of complaints are not in favor of Foodbev's case.

Foodbev avers that the company suffered loss of substantial revenue when one of its clients terminated its contract. Thus, prompting it to propose voluntary resignation to its employees.[109] However, the allegation of loss of revenue remains unsubstantiated and cannot stand against the corroborated complaints of respondents. Article 298[110] of the Labor Code mandates the payment of separation pay to an employee terminated from the service. Here, Foodbev's offer does not include separation pay, which is contrary to law.

Lastly, the statements of Foodbev's chairman, Elmo, against Jever and his group show an intention to meddle with their right to organize.

The discussions above demonstrate Foodbev's unfair labor practices, which create an unpleasant working atmosphere for respondent union members and officers. They were targeted to take part in a written examination, or prone to being transferred to another company or to another branch. They were urged to file for resignation and accept a measly compensation and goods,

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[109] *Id*. at 20-21 (Petition).

[110] Article 298, Labor Code, x x x In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year. (Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered), [July 21, 2015])

instead of full benefits under the law. If these will not work, their employment will be terminated in order to dissolve the union. The facts undeniably point to interference and restraining respondents' right to self-organization, and discriminate their terms and conditions of employment, as enumerated in paragraphs (a) and (e) of Article 259 of the Labor Code.

In addition, the Court observes that Foodbev did not charge Roseller Gabutero Semense with gross negligence along with the ice cream machine technicians, since he admitted in his affidavit that it is his responsibility to supervise the technicians' work/service of food dispensing machines. This further supports respondents' allegation that they were targeted because of their union membership, and confirms that Foodbev is liable for union busting.

In his sworn statement, Semense made the following declaration:

x x x x x x x x x

1. I am a Supervisor for processes in FoodBev International, x x x. As a Supervisor, I am responsible for, among others, the supervision of the Company's technicians with respect to their work/service of food dispensing machines, including soft serve machines, and ensuring that these technicians perform their tasks strictly in accordance with the procedures required by the Company.[111]

The numerous pieces of evidence prove that Foodbev is guilty of unfair labor practice.

III. CONCLUSION

In sum, the Court finds that the CA did not commit a reversible error in overturning the September 17, 2009 NLRC Decision and November 17, 2009 Resolution. The CA's findings of facts were based on record, and the ruling based on law and jurisprudence.

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[111] *Rollo*, pp. 418-420.

As for the rate of legal interest due on the monetary judgments, *Nacar v. Gallery Frames*,[112] provides that —

> 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.[113]

WHEREFORE, the petition is **DENIED**. The Court of Appeals Decision[114] dated November 28, 2012 and Resolution[115] dated April 8, 2013 in CA G.R. SP No. 112620 are **AFFIRMED.**

SO ORDERED.

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

Caguioa, J., see separate opinion.

SEPARATE OPINION

CAGUIOA, *J.*:

As to the rate of legal interest due on the monetary judgments,[1] I note that paragraph II.3 of the guidelines laid down in *Nacar*

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[112] 716 Phil. 267 (2013).

[113] *Id*.

[114] Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla, concurring; *id*. at 136-160.

[115] *Id*. at 161-162.

[*] Acting Chief Justice per Special Order No. 2703 dated September 10, 2019.

[1] *Ponencia*, p. 33.

v. Gallery Frames,[2] which was cited by the *ponencia*, has been superseded by *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc*.[3]

Nevertheless, I reiterate my position in my *Concurring & Dissenting Opinion* in *Lara's Gifts & Decors, Inc.* that contrary to the aforesaid paragraph of *Nacar*, the interim period between the finality of the judgment and its full satisfaction is **not a forbearance of credit**.[4]

Once a judgment becomes final and executory , all monetary claims that could not previously earn interest[5] because they were unliquidated and unknown, are established with reasonable certainty and thus become due and demandable. Hence, said amounts should begin to earn interest **not because the interim period is a forbearance of credit, but because the non-payment of a final and executory decision constitutes delay under Article 2209 of the Civil Code**. *Nakpil v. Court of Appeals*[6] is unequivocal that "[i]t is delay in the payment of such final judgment, that will cause the imposition of the interest."[7]

For the foregoing reasons, the monetary awards constituting respondents' separation pay, backwages, moral damages, exemplary damages and attorney's fees, which were previously unliquidated, should bear interest at the 6% legal rate under Article 2209 of the Civil Code from the time the decision becomes final and executory until full payment.

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[2] 716 Phil. 267 (2013).

[3] G.R. No. 225433, August 28, 2019.

[4] See *Kay Lewis Enterprises v. Lewis-Marshall Joint Venture*, 59 Misc. 2d 862.

[5] See CIVIL CODE, Art. 2213.

[6] 243 Phil. 489 (1988).

[7] *Id.* at 498.

THIRD DIVISION

[G.R. No. 234618. September 16, 2019]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **MATEO A. LEE, JR.,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; EXTINCTION OF CRIMINAL LIABILITY; PRESCRIPTION; CONSIDERED AS ONE OF THE MODES OF TOTALLY EXTINGUISHING CRIMINAL LIABILITY; PRESCRIPTION OF A CRIME AND PRESCRIPTION OF THE PENALTY, DISTINGUISHED. — Prescription is one of the modes of totally extinguishing criminal liability. Prescription of a crime or offense is the loss or waiver by the State of its right to prosecute an act prohibited and punished by law. On the other hand, prescription of the penalty is the loss or waiver by the State of its right to punish the convict. For felonies under the Revised Penal Code, prescription of crimes is governed by Articles 90 and 91 x x x. While prescription for violations penalized by special acts and municipal ordinances is governed by Act 3326, otherwise known as "*An Act to Establish Periods of Prescription for Violations Penalized By Special Laws and Municipal Ordinances, and to Provide When Prescription Shall Begin to Run*," as amended Act 3763.

2. ID.; REPUBLIC ACT NO. 7877 (THE ANTI-SEXUAL HARASSMENT ACT OF 1995); THE PRESCRIPTIVE PERIOD FOR VIOLATIONS OF THE LAW IS THREE YEARS, AND IT IS INTERRUPTED BY THE INSTITUTION OF PROCEEDINGS FOR PRELIMINARY INVESTIGATION AGAINST THE ACCUSED. — Here, it was undisputed that the respondent stands charged with violation of R.A. No. 7877, a special law otherwise known as the *Anti-Sexual Harassment Act of 1995*. The prescriptive period for violations of R.A. No. 7877 is three (3) years. The Affidavit-Complaint for sexual harassment against him was filed before the Office of the Ombudsman on April 1, 2014. The Information against the respondent was, subsequently, filed before the

Sandiganbayan on March 21, 2017. It alleged respondent's unlawful acts that were supposedly committed "from February 14, 2013 to March 20, 2014, or sometime prior or subsequent thereto." x x x The issue of when prescription of a special law starts to run and when it is tolled was settled in the case of *Panaguiton, Jr. v. Department of Justice, et al.,* wherein the Court had the occasion to discuss the set-up of our judicial system during the passage of Act 3326 and the prevailing jurisprudence at that time which considered the filing of the complaint before the justice of peace for preliminary investigation as sufficient to toll period of prescription. *Panaguiton* also cited cases subsequently decided by this Court involving prescription of special laws where *We* categorically ruled that the prescriptive period is interrupted by the institution of proceedings for preliminary investigation against the accused. The doctrine in the *Panaguiton* case was subsequently affirmed in *People v. Pangilinan.* x x x In the case at bar, it was clear that the filing of the complaint against the respondent with the Office of the Ombudsman on April 1, 2014 effectively tolled the running of the period of prescription. Thus, the filing of the Information before the Sandiganbayan on March 21, 2017, for unlawful acts allegedly committed on February 14, 2013 to March 20, 2014, is well within the three (3)-year prescriptive period of R.A. No. 7877.

3. REMEDIAL LAW; RULES OF PROCEDURE; AN INORDINATE FIXATION ON TECHNICALITIES CANNOT DEFEAT THE NEED FOR A FULL, JUST, AND EQUITABLE LITIGATION OF CLAIMS, SINCE THE RULES OF PROCEDURE ARE DESIGNED TO PROMOTE AND FACILITATE THE ORDERLY ADMINISTRATION OF JUSTICE. — In one case, the Court laid down the following guidelines with respect to non-compliance with the requirements on or submission of a defective verification and certification against forum shopping, *viz.:* 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping. 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such

that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby. 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct. 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons." 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule. 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf. x x x [T]here is a need to relax the requirements imposed by the Rule on certification against forum shopping and verification in the present Petition. The substantive issue in this case far more outweighs whatever defect in the certification against forum shopping and in the verification. Procedural rules must be faithfully followed and dutifully enforced. Still, their application should not amount to "placing the administration of justice in a straight jacket." An inordinate fixation on technicalities cannot defeat the need for a full, just, and equitable litigation of claims. After all, the rules of procedure were designed to promote and facilitate the orderly administration of justice. It was never meant to subvert the ends of justice.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Avila Galisanao Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

In this Petition for Review under Rule 45 of the Rules of Court, the People of the Philippines, as petitioner, thru the Office of the Special Prosecutor *(OSP)* of the Office of the Ombudsman, seeks the reversal of the Sandiganbayan's Resolution[1] dated September 6, 2017, which granted Mateo Acuin Lee, Jr.'s *(Lee)* Motion for Reconsideration and ordered the dismissal of the case against him on the ground of prescription, and Resolution[2] dated October 6, 2017, which denied petitioner's Motion for Reconsideration.

Lee was charged with Violation of Republic Act *(R.A.)* No. 7877[3] before the Sandiganbayan under an Information that was filed on March 21, 2017. The Information alleged:

> That from February 14, 2013 to March 20, 2014, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, accused MATEO A. LEE, JR. a public officer, being the Deputy Executive Director of the National Council on Disability Affairs, committing the offense in relation to this official functions and taking advantage of his position, did then and there willfully, unlawfully, criminally demand, request or require sexual favor from Diane Jane M. Paguirigan, an Administrative Aide VI in the same office and who served directly under the supervision of accused, thus, accused has authority, influence or moral ascendancy over her, by asking Ms. Paguirigan in several instances, when they would check in a hotel, sending her flowers, food and messages of endearment and continuing to do so even after several protests from her, visiting her house and church and inquiring about her from her family, relatives and friends, and even following her on her way home, which sexual demand, request or requirement resulted in an intimidating, hostile or offensive working environment to Ms. Paguirigan.

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[1] *Rollo,* pp. 65-68.

[2] *Id.* at 70.

[3] *Anti-Sexual Harassment Act of 1995.*

CONTRARY TO LAW.[4]

On March 30, 2017, Lee filed a Motion for Judicial Determination of Probable Cause and Prescription Extinguishing Criminal Liability with Prayer for Outright Dismissal of the Case which drew a Comment/Opposition dated April 17, 2017, from the OSP. Lee's motion was denied by the Sandiganbayan in its Resolution dated June 2, 2017.

Lee's counsel, thereafter, filed an Entry of Appearance and Motion for Reconsideration of the June 16, 2017 (sic) Resolution dated June 29, 2017, seeking reconsideration of the Sandiganbayan's Resolution dated June 2, 2017. The OSP filed a Comment/Opposition to Accused Lee's Motion for Reconsideration dated June 29, 2017.

In the assailed Resolution dated September 6, 2017, the Sandiganbayan resolved to reconsider and set aside its earlier Resolution dated June 2, 2017 and ordered the dismissal of the case against Lee on the ground that the offense charged had already prescribed. On September 18, 2017, the OSP filed a Motion for Reconsideration of the Honorable Court's Resolution dated September 8, 2017 (sic), which was subsequently denied by the Sandiganbayan in a minute Resolution dated October 6, 2017.

Hence, this petition.

Petitioner contends that the Sandiganbayan seriously erred in ordering the dismissal of the case against Lee on the ground of prescription. It asserts that the Sandiganbayan's reliance on the case of *Jadewell v. Judge Nelson Lidua, Sr.*[5] is not on all fours with Lee's case. Unlike the *Jadewell* case, which resolved the issue concerning the reckoning point for the running of the period of prescription of actions for violation of a city ordinance, the offense involved in Lee's case was for violation of R.A. No. 7877, a special law. Citing the case of *People v. Pangilinan*,[6]

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[4] *Id.* at 41-42.

[5] 719 Phil. 1 (2013).

[6] 687 Phil. 95 (2012).

where this Court tackled the issue of prescription of action pertaining to violation of Batas Pambansa *(B.P.)* Blg. 22, also a special law, petitioner insists that the filing of the complaint with the prosecutor's office interrupts the prescription period.

While admitting that *Jadewell* is the most recent case law on the contentious issue of prescription of actions, petitioner nevertheless posits that it cannot be deemed to have abandoned earlier jurisprudences and the *Pangilinan* case which categorically ruled that it is the filing of the complaint with the prosecution's office that tolls the running of the prescription period for actions involving violations of special penal laws. It explained that *Jadewell* merely adopted, insofar as violations of ordinances are concerned, the doctrine in *Zaldivia v. Reyes, Jr.,* that it is the filing of the information in court that interrupts the running of the prescriptive period not the filing of the complaint with the prosecutor's office.

In his Comment,[7] Lee asserts that the Petition has no clear statement of the material dates of receipt of the assailed Resolution dated September 6, 2017 and the filing of petitioner's motion for reconsideration and motion for extension of time. He also contends that the certification against forum shopping did not contain an undertaking that petitioner shall promptly inform the courts and other tribunal or agency of the filing or pendency of the same or similar action or proceeding. The signatories to the Verification likewise lacked proof of authority from the Ombudsman that they were authorized to initiate the present petition.

The Petition is meritorious.

Prescription is one of the modes of totally extinguishing criminal liability.[8] Prescription of a crime or offense is the loss or waiver by the State of its right to prosecute an act prohibited and punished by law. On the other hand, prescription of the

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[7] *Rollo,* pp. 187-191.

[8] RPC, Art. 89.

penalty is the loss or waiver by the State of its right to punish the convict.[9]

For felonies under the Revised Penal Code, prescription of crimes is governed by Articles 90 and 91, which read as follows:

Art. 90. Prescription of crimes.— Crimes punishable by death, *reclusion perpetua* or *reclusion temporal* shall prescribe in 20 years.

Crimes punishable by other afflictive penalties shall prescribe in 15 years.

Those punishable by a correctional penalty shall prescribe in 10 years; with the exception of those punishable by *arresto mayor*, which shall prescribe in 5 years.

The crime of libel or other similar offenses shall prescribe in 1 year.

The offenses of oral defamation and slander by deed shall prescribe in 6 months.

Light offenses prescribe in 2 months.

When the penalty fixed by law is a compound one, the highest penalty shall be made the basis of the application of the rules contained in the first, second, and third paragraphs of this article.

Art. 91. The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.

The term of prescription shall not run when the offender is absent from the Philippine Archipelago.

While prescription for violations penalized by special acts and municipal ordinances is governed by Act 3326, otherwise known as *"An Act to Establish Periods of Prescription for*

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[9] The Revised Penal Code, 1997 Edition, Vol. 1, by Ramon C. Aquino and Carolina C. Griño-Aquino, p. 840.

Violations Penalized By Special Laws and Municipal Ordinances, and to Provide When Prescription Shall Begin to Run," as amended by Act 3763. The pertinent provisions provide that:

> Sec. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceeding for its investigation and punishment.
>
> The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
>
> Sec. 3. For purposes of this Act, special acts shall be acts defining and penalizing violations of the law not included in the Penal Code.

Here, it was undisputed that the respondent stands charged with violation of R.A. No. 7877, a special law otherwise known as the *Anti-Sexual Harassment Act of 1995*. The prescriptive period for violations of R.A. No. 7877 is three (3) years. The Affidavit-Complaint for sexual harassment against him was filed before the Office of the Ombudsman on April 1, 2014. The Information against the respondent was, subsequently, filed before the Sandiganbayan on March 21, 2017. It alleged respondent's unlawful acts that were supposedly committed "from February 14, 2013 to March 20, 2014, or sometime prior or subsequent thereto." Thus, the issue confronting this Court is whether the filing of the complaint against the respondent before the Office of the Ombudsman for the purpose of preliminary investigation halted the running of the prescriptive period.

The issue of when prescription of a special law starts to run and when it is tolled was settled in the case of *Panaguiton, Jr. v. Department of Justice, et al.*,[10] wherein the Court had the occasion to discuss the set-up of our judicial system during the passage of Act 3326 and the prevailing jurisprudence at that time which considered the filing of the complaint before the justice of peace for preliminary investigation as sufficient to toll period of prescription. *Panaguiton* also cited

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[10] 592 Phil. 286 (2008).

cases[11] subsequently decided by this Court involving prescription of special laws where *We* categorically ruled that the prescriptive period is interrupted by the institution of proceedings for preliminary investigation against the accused.

The doctrine in the *Panaguiton* case was subsequently affirmed in *People v. Pangilinan.*[12] In this case, the affidavit-complaint for estafa and violation of B.P. Blg. 22 against the respondent was filed before the Office of the City Prosecutor *(OCP)* of Quezon City on September 16, 1997. The complaint stems from respondent's issuance of nine (9) checks in favor of private complainant which were dishonored upon presentment and refusal of the former to heed the latter's notice of dishonor which was made sometime in the latter part of 1995. On February 3, 2000, a complaint for violation of BP Blg. 22 against the respondent was filed before the Metropolitan Trial Court *(MeTC)* of Quezon City, after the Secretary of Justice reversed the recommendation of the OCP of Quezon City approving the "Petition to Suspend Proceedings on the Ground of Prejudicial Question" filed by the respondent on the basis of the pendency of a civil case for accounting, recovery of commercial documents and specific performance which she earlier filed before the Regional Trial Court of Valenzuela City. The issue of prescription reached this Court after the Court of Appeals *(CA)*, citing Section 2 of Act 326, sustained respondent's position that the complaint against her for violation of B.P. Blg. 22 had prescribed.

In reversing the CA's decision, We emphatically ruled that "(t)here is no more distinction between cases under the RPC (Revised Penal Code) and those covered by special laws with respect to the interruption of the period of prescription" and reiterated that the period of prescription is interrupted by the filing of the complaint before the fiscal's office for purposes of preliminary investigation against the accused.

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[11] *Ingco v. Sandiganbayan,* 338 Phil. 1061 (1997); *Sanrio Company Limited v. Lim,* 569 Phil. 630 (2008); *Securities and Exchange Commission v. Interport Resources Corporation, et al.,* 588 Phil. 651 (2008).

[12] *Supra* note 6.

In the case at bar, it was clear that the filing of the complaint against the respondent with the Office of the Ombudsman on April 1, 2014 effectively tolled the running of the period of prescription. Thus, the filing of the Information before the Sandiganbayan on March 21, 2017, for unlawful acts allegedly committed on February 14, 2013 to March 20, 2014, is well within the three (3)-year prescriptive period of R.A. No. 7877. The court *a quo's* reliance on the case of *Jadewell v. Judge Nelson Lidua, Sr.,*[13] is misplaced. *Jadewell* presents a different factual milieu as the issue involved therein was the prescriptive period for violation of a city ordinance, unlike here as well as in the *Pangilinan and other above-mentioned related cases,* where the issue refers to prescription of actions pertaining to violation of a special law. For sure, *Jadewell* did not abandon the doctrine in *Pangilinan* as the former even acknowledged existing jurisprudence which holds that the filing of complaint with the Office of the City Prosecutor tolls the running of the prescriptive period.

Finally, We note in the attachments to the present Petition that the petitioner's Motion for Reconsideration before the Sandiganbayan was filed on September 18, 2017. While the Petition failed to clearly indicate the date of receipt of the Sandiganbayan's Resolution dated September 6, 2017, it can be deduced, however, that the resolution was presumptively received by the petitioner, at the latest, on the date when it was issued. It could not have been received prior to the date of the resolution. Hence, the filing of the Motion for Reconsideration on September 18, 2017 is well within the period to file the same.

In one case, the Court laid down the following guidelines with respect to non-compliance with the requirements on or submission of a defective verification and certification against forum shopping, *viz.:*

1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and

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[13] *Supra* note 5.

non-compliance with the requirement on or submission of defective certification against forum shopping.

2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."

5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.[14]

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[14] *Fernandez v. Villegas, et al.*, 741 Phil. 689, 697-698 (2014).

As discussed earlier, the dismissal of the complaint against the respondent based on prescription was a result of the court *a quo's* erroneous interpretation of Our ruling in *Jadewell*. The error, if not corrected, would certainly result to a travesty of justice. Aggrieved parties, especially those who do not sleep on their rights and actively pursue their causes, should not be allowed to suffer unnecessarily further simply because of circumstances beyond their control, like the accused's delaying tactics or the delay and inefficiency of the investigating agencies.[15] It is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under his control. The only thing the offended must do to initiate the prosecution of the offender is to file the requisite complaint.[16]

Clearly, there is a need to relax the requirements imposed by the Rule on certification against forum shopping and verification in the present Petition. The substantive issue in this case far more outweighs whatever defect in the certification against forum shopping and in the verification. Procedural rules must be faithfully followed and dutifully enforced. Still, their application should not amount to "placing the administration of justice in a straight jacket."[17] An inordinate fixation on technicalities cannot defeat the need for a full, just, and equitable litigation of claims.[18] After all, the rules of procedure were designed to promote and facilitate the orderly administration of justice. It was never meant to subvert the ends of justice.

WHEREFORE, in view of the foregoing, the instant Petition is **GRANTED.** The Sandiganbayan's Resolutions, dated September 6, 2017 and October 6, 2017, are hereby **REVERSED** and **SET ASIDE**. The Sandiganbayan is **ORDERED** to

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[15] *People v. Pangilinan, supra* note 6.

[16] *People v. Olarte,* 125 Phil. 895, 902 (1967).

[17] *Spouses Marcelo v. PCIB,* 622 Phil. 813, 828 (2009).

[18] *Cortal v. Inaki Larrazabal Enterprises,* G.R. No. 199107, August 30, 2017, 838 SCRA 255, 259.

PROCEED WITH DISPATCH the trial of respondent Mateo Acuin Lee, Jr.

SO ORDERED.

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

Hernando, J., on leave.

SECOND DIVISION

[G.R. No. 242101. September 16, 2019]

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

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PROOF BEYOND REASONABLE DOUBT; THE PROSECUTION SUFFICIENTLY ESTABLISHED PETITIONER'S GUILT BEYOND REASONABLE DOUBT THROUGH THE CREDIBLE TESTIMONY OF THE VICTIM; INCONSISTENCIES IN THE TESTIMONY REFER ONLY TO TRIVIAL MATTERS WHICH DO NOT AFFECT THE CENTRAL FACT OF THE CRIME. — In the Court's view, however, the inconsistencies referred to, if indeed they exist, pertain to trivial matters which do not affect the central fact of the crime. x x x [T]he Court holds that AAA's testimony on

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[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.

the material aspects of the crime are believable, credible, and worthy of full faith and credence. x x x [N]o matter what she did subsequent to the events narrated above is immaterial to the fact that the crime was already committed. In addition, it is worth emphasizing that sexual abuse is a painful experience which is oftentimes not remembered in detail. Such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving. Rather, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget. Thus, a victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone. Thus, the inconsistencies, if any, pointed out by XXX would not exculpate him from the crime. x x x All told, the evidence at hand establishes beyond reasonable doubt that XXX did the acts imputed against him.

2. CRIMINAL LAW; REVISED PENAL CODE (RPC) IN RELATION TO REPUBLIC ACT NO. 7610; THE COURT MODIFIED THE NOMENCLATURE OF THE CRIME FROM ACTS OF LASCIVIOUSNESS UNDER THE RPC TO LASCIVIOUS CONDUCT UNDER RA 7610 AND IMPOSED THE PENALTY THEREUNDER IN VIEW OF THE *TULAGAN* RULING. — The penalty to be imposed upon XXX should, however, be modified in accordance with the Court *en banc*'s Decision in the case of *People v. Tulagan* (*Tulagan*), which held that: x x x 3. **If the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age**, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, **the crime should be designated as "Lascivious Conduct under Section 5(b) of R.A. No. 7610," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua***. x x x [T]he Decision x x x and Resolution x x x are hereby **AFFIRMED WITH MODIFICATION**. The petitioner XXX is found **GUILTY** beyond reasonable doubt of the crime of Lascivious Conduct under Section 5(b) of Republic Act No. 7610. He is sentenced to suffer the

indeterminate penalty of imprisonment of fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum.

3. ID.; ID.; ID.; CIVIL LIABILITY; AWARD OF DAMAGES LIKEWISE ADJUSTED IN CONSONANCE WITH *TULAGAN*. — With regard to the amount of damages, the Court likewise deems it proper to adjust the award of damages in consonance also with *Tulagan*. Thus, XXX is hereby ordered to pay AAA, the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages, and Fifty Thousand Pesos (₱50,000.00) as 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.

APPEARANCES OF COUNSEL

R.C. Narag & Partners Law Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[2] filed by the petitioner XXX assailing the Decision[3] dated April 24, 2018 and Resolution[4] dated August 29, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39824, which affirmed the Decision[5] dated April 10, 2017 of the Regional Trial Court of

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[2] *Rollo*, pp. 12-23.

[3] *Id*. at 51-59. Penned by then CA Associate Justice Ramon Paul L. Hernando (now a member of this Court), with Associate Justices Marlene B. Gonzales-Sison and Pedro B. Corales concurring.

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

[5] *Id*. at 24-37. Penned by Presiding Judge Evangeline M. Francisco.

Valenzuela City (RTC) in Criminal Case No. 1350-V-12, finding XXX guilty beyond reasonable doubt of Acts of Lasciviousness, defined and punished under Article 336 of the Revised Penal Code (RPC).

The Facts

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

> That on or about August 3, 2012, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, being then the step-father of complainant-minor AAA[,] 14 years old (DOB: July 18, 1998) with lewd design and malice, by means of force or intimidation, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon complainant-minor, by touching her breast against her will and without her consent.[7]

During the arraignment, XXX pleaded not guilty to the crime charged. Trial on the merits then ensued.

Version of the Prosecution

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

> AAA, the private complainant in this case, was 14 years old then when the subject incident happened on April 28, 2012 in their house located at ABC Street, Valenzuela City. At that time, she lived with her mother BBB, her step-father (herein accused-appellant) and siblings.
>
> At around one o'clock in the afternoon of April 28, 2012, she was about to pick up something from the floor in one of the rooms of their house when without any warning, accused-appellant approached her from the back. When she turned to face him, the accused-appellant grabbed the lower end of her t-shirt, inserted his hands inside and touched her breast while he uttered the words "*pahawak nga*". She immediately parried accused-appellant's hands to resist it. Accused-appellant then tried to pull down her shorts but

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[6] See note 1.

[7] *Id*. at 52.

she held on to the sides of it to prevent him from stripping it off. Thereafter, she ran towards the kitchen where her mother was. She was teary eyed and about to cry when her mother asked her what was wrong. However, she did not say anything because she was afraid that the accused-appellant might kill or hurt them as he had laid his hands on her mother before.

While she was crying and trembling from shock and fear, she went outside and called her boyfriend CCC to tell him about her ordeal. She decided to go to the house of DDD, her biological father, in Bulacan but the latter was not there at that time. She then texted her mother saying "Yung asawa mo, hayup yan, yung ginawa niya sakin". Her mother called her and she narrated what happened between her and the accused-appellant. Her mother cried profusely upon knowing of the incident and advised her to go home so they could file a case against the accused-appellant. Thus, she went home as per her mother's instruction and together, they went to the Valenzuela City Police Station to file a complaint against the accused-appellant.[8]

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

At around one o'clock in the afternoon of April 28, 2012, accused-appellant was in their house located in ABC Street, Valenzuela City where he lived together with his wife BBB, his kids and AAA, his step-daughter and herein private complainant. During that time, his wife, BBB, was in the kitchen cooking food for lunch. However, when they were about to eat, AAA was nowhere to be found. At around 1:30 to 2 o'clock in the afternoon, BBB called private complainant to ask her where she was. Over the phone, private complainant kept on saying "*ang walang hiya mong asawa*" while crying. BBB advised private complainant to go home so that they could file a case against accused-appellant.

Thereafter, when accused-appellant was preparing to go to work, his wife, who was crying, approached him and said "*anong ginawa mo?*" to which he replied that he did nothing wrong to AAA. He denied the allegations of AAA and declared that she made the said accusation only because of a previous misunderstanding as he did not allow private complainant's boyfriend to spend a night in their

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[8] *Id.*

house on April 13, 2012 after their family outing. The said incident angered private complainant and she developed resentment against him.[9]

Ruling of the RTC

After trial on the merits, in its Decision[10] dated April 10, 2017, the RTC convicted XXX of the crime charged. The dispositive portion of the said Decision reads:

> **WHEREOFORE** (*sic*), in the light of the foregoing, judgment is hereby rendered finding accused [XXX] guilty beyond reasonable doubt for Acts of Lasciviousness defined and penalized under Article 336 of the Revised Penal Code and he is hereby sentenced to suffer the penalty of four (4) years, minimum to five years, maximum, imprisonment and to indemnify [AAA] the amount of Php 50,000.00 and to pay moral damages in the amount of Php 50,000.00
>
> SO ORDERED.[11]

The RTC found AAA to be consistent and convincing in her testimony that on the date in question, XXX inserted his hand under her shirt and bra and touched her breast.[12] The RTC held that AAA's positive and categorical testimony could not be overturned by the mere denial of XXX. Further, XXX's allegation that AAA only fabricated the story to be able to live with her boyfriend at the time did not persuade the RTC. The RTC found it unbelievable for a woman of a young age to concoct a story that would bring shame or embarrassment to her, moreso if it would be found later on that the matters she was testifying about were not true.[13]

XXX thereafter appealed his conviction to the CA.

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[9] *Id*. at 53.

[10] *Supra* note 5.

[11] *Rollo*, p. 37.

[12] *Id*. at 35.

[13] *Id*. at 36.

Ruling of the CA

In the questioned Decision[14] dated April 24, 2018, the CA affirmed the RTC's conviction of XXX.

The CA held that the supposed inconsistencies between AAA's *Sinumpaang Salaysay* and her testimony in court relied upon by XXX referred to minor and peripheral details which did not touch upon the central fact of the crime. The CA opined that the minor inconsistencies, instead of weakening AAA's credibility, even strengthened her testimony as they erased suspicion of a rehearsed testimony.[15] The CA likewise ruled against XXX's contention that AAA's demeanor, *i.e.*, the fact that AAA did not scream for help, was inconsistent with "normal human conduct and behavior." It noted that different people react differently to the same situation, and that not every victim could be expected to act in the same manner or in consonance with the expectation of mankind.[16]

With regard to XXX's contention that AAA only concocted the story because he prohibited AAA's boyfriend from staying over at their house one night, the CA stated:

> Furthermore, We must brush aside as flimsy the accused-appellant's insistence that the charge was merely concocted by the private complainant because the latter was mad at him for not letting her boyfriend CCC stay for a night in their house. It is unthinkable for private complainant, who looked up to [accused-appellant as her own father,] to accuse him and to put her life to public scrutiny and expose herself, along with her family, to shame, pity or even ridicule, had she really not have been aggrieved. Nor do We believe that the private complainant would fabricate a sordid story simply because she wanted to exact revenge against her step-father, accused-appellant herein, for allegedly scolding her for insisting to let her boyfriend sleep in their house.[17]

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[14] *Supra* note 3.

[15] *Rollo*, p. 55.

[16] *Id*. at 56.

[17] *Id*.

The CA thus affirmed XXX's conviction for Acts of Lasciviousness, defined and punished under the RPC. The CA, however, modified the penalty imposed on XXX as the RTC erred in applying the Indeterminate Sentence Law. Thus, the dispositive portion of the CA Decision reads:

> **WHEREFORE**, the instant appeal is **DENIED**. The assailed Decision dated April 10, 2017 of the Regional Trial Court (RTC), Branch 270 of Valenzuela City in Criminal Case No. 1350-V-12 is hereby **AFFIRMED** with **MODIFICATION** as to the proper penalty and the amount of damages awarded. The accused-appellant [XXX] is hereby sentenced to suffer an indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. He is likewise ordered to pay private complainant AAA the following: (a) PhP 20,000.00 as civil indemnity; (b) PhP 20,000.00 as moral damages; and (c) PhP 15,000.00 as exemplary damages. The amounts of damages awarded shall earn an interest of 6% *per annum* from the date of finality of judgment until fully paid.
>
> **SO ORDERED**.[18]

XXX filed a motion for reconsideration of the Decision, which was, however, denied by the CA in a Resolution[19] dated August 29, 2018.

Hence, the instant appeal.

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 denied. The Court, however, modifies XXX's conviction from "Acts of Lasciviousness defined and penalized

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[18] *Id*. at 59.

[19] *Supra* note 4.

under Article 336 of the [RPC]"[20] to "Lascivious Conduct under Section 5(b) of Republic Act No. 7610."

The prosecution sufficiently established XXX's guilt beyond reasonable doubt

In professing his innocence, XXX relies heavily on supposed inconsistencies between AAA's *Sinumpaang Salaysay* and her testimony in court. XXX's theory is that because of this inconsistency, AAA's testimony is no longer believable — thereby weakening the case against him — and his alibi and denial therefore already constitute reasonable doubt on his guilt. He argues:

> A perusal of the records would show that that (*sic*) the Salaysay of private complainant and her testimony in court is full of inconsistencies.
>
> Notably, private complainant testified that after the alleged incident, she immediately ran to her mother who was then cooking in the kitchen, but was not able to tell her mother what happened as she allegedly feared that petitioner might hurt her mother. Instead, she allegedly went to her biological father in Bulacan. But still she did not told (*sic*) her mother what happened.
>
> Indeed, during the hearing she only stated that she merely texted her mother but failed to make a detailed narration.[21]

In the Court's view, however, the inconsistencies referred to, if indeed they exist, pertain to trivial matters which do not affect the central fact of the crime. As the CA succinctly explained:

> As regards the alleged inconsistencies in private complainant's *Salaysay* and testimony on whether she called first or texted his mother, We find these to be totally inconsequential. The debate as to whether she called her mother first to narrate the subject incident or texted her "Yung asawa mo, hayup yan, yung ginawa niya sakin" is not

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[20] *Rollo*, p. 37.

[21] *Id*. at 18.

relevant to the unlawful act committed by the accused-appellant. The alleged inconsistencies cannot negate the testimony of the private complainant which has been consistent with respect to the fact that accused-appellant, without her consent, forcefully touched her breasts.

Moreover, discrepancies between the affidavit of a witness and her testimony in court do not necessarily discredit her because it is a matter of judicial experience that [affidavits], being taken *ex-parte* are almost always incomplete and often inaccurate. Minor variances in the details of a witness' account, more frequently than not, are badges of truth rather than *indicia* of falsehood and they often bolster the probative value of the testimony.[22]

The Court held in *People v. Villanueva*:[23]

Indeed, neither inconsistencies on trivial matters nor innocent lapses affect the credibility of witnesses and the veracity of their declarations. On the contrary, they may even be considered badges of truth on material points in the testimony. The testimonies of witnesses must be considered and calibrated in their entirety and not in truncated portions or isolated passages.[24]

In this connection, the Court holds that AAA's testimony on the material aspects of the crime are believable, credible, and worthy of full faith and credence. Her testimony on the act complained of was as follows:

Pros. Fajardo:

> At this point, Your Honor, may I put on record that the witness is crying already.

Q *Okay, tapos, may pinulot ka?*

A Upon picking up the litter, I turned my back and my stepfather was there, Sir.

Q By the way, at that time, what were you wearing?

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[22] *Rollo*, pp. 55-56.

[23] *People v. Villanueva*, 456 Phil. 14 (2003).

[24] *Id*. at 23.

A I was wearing shorts and t-shirt, Sir.

Q *Shirt na may manggas?*

A Yes Sir.

Q *Tapos, short na maikli?*

A Yes, Sir.

Court:

Q How old were you then?

A Thirteen po.

Pros. Fajardo:

Q And then when you turned your back, you noticed that your stepfather was at your back, what was he doing at that time?

May I put on record that the witness at this point is still crying.

A He grabbed my clothes, inserted his hands inside my clothes and reached out for my breast, Sir, but I tried to parry his hands.

Q How did you do that when his hand was already there inside?

Court:

Q Where was he, in front of you or from your back?

A He was in front of me, Your Honor.

Prof. Fajardo:

Q In other words, when you picked up a thing, what was that, *ano yung pinulot mo?*

A *Pinulot ko po tapos po nilagay ko po sa taas ng damitan, pagtalikod ko po nandun na po siya.*

Q *Pagtalikod mo, yun na magkaharap na kayo?*

A Yes, Sir.

Q And then?

Court:

Q From where did he insert his hands, under your shirt or over here?

A Under po.

Pros. Fajardo:

Q And then *paano mo sinalag halimbawa nakapasok na yan?*

A I hit his hand down, Sir.

Q *Sinuntok mo?*

A Yes Sir.

Court:

Q Were you wearing [a] bra?

A Yes, Your Honor.

Pros. Fajardo:

Please compose yourself for a second, *kaya mo na ba magsalita ulit?*

Witness:

Opo

Pros. Fajardo:

Q *Sinalag mo*, you whisked away his hands, and while your stepfather was inserting his hands, what did you say, if any?

A When I was whisking his hands away, he said, "*pahawak nga* " and after that he tried to pull my shorts down.

Q How did he hold your shorts?

A He pulled it down.

Q *Ah ginanun niya...?*

A *Opo, pero hindi naman po niya nababa kasi hinaha[wa]kan ko po.*[25]

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[25] *Rollo*, pp. 30-32.

Verily, no matter what she did subsequent to the events narrated above is immaterial to the fact that the crime was already committed. In addition, it is worth emphasizing that sexual abuse is a painful experience which is oftentimes not remembered in detail.[26] Such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving. Rather, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget.[27] Thus, a victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.[28]

Thus, the inconsistencies, if any, pointed out by XXX would not exculpate him from the crime.

XXX cannot likewise rely on the Affidavit of Desistance[29] dated October 23, 2013 executed by AAA as the basis for his acquittal. It must be noted that, subsequent to the execution of the Affidavit of Desistance, AAA still took the witness stand on July 26, 2016 to testify against XXX.[30] Thus, the Court's ruling in *Madali v. People*[31] finds application:

> x x x **The affidavit of recantation executed by a witness prior to the trial cannot prevail over the testimony made during the trial.** Jovencio **effectively repudiated the contents of the affidavit of recantation**. The recantation would hardly suffice to overturn the trial court's finding of guilt, which was based on a clear and convincing testimony given during a full-blown trial. As held by this Court, an affidavit of recantation, being usually taken *ex parte*, would be considered inferior to the testimony given in open court. A recantation is exceedingly unreliable, inasmuch as it is easily secured

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[26] *People v. Saludo*, 662 Phil. 738, 753 (2011).

[27] *Id*.

[28] *Id*.

[29] *Rollo*, p. 81.

[30] *Id*. at 70.

[31] 612 Phil. 582 (2009).

from a poor and ignorant witness, usually through intimidation or for monetary consideration.[32] (Emphasis and underscoring supplied)

All told, the evidence at hand establishes beyond reasonable doubt that XXX did the acts imputed against him.

Nomenclature of the crime committed and the penalty to be imposed on XXX

From these factual findings, the RTC and the CA convicted XXX only of "Acts of Lasciviousness defined and penalized under Article 336 of the [RPC]," and ultimately imposed on him the "indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum"[33] because Article 336 of the RPC imposes only *prision correccional* as the penalty for Acts of Lasciviousness.

The penalty to be imposed upon XXX should, however, be modified in accordance with the Court *en banc*'s Decision in the case of *People v. Tulagan*[34] (*Tulagan*), which held that:

In *People v. Caoili*, We prescribed the following guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5 (b) of R.A. No. 7610, and in determining the imposable penalty:

1. The age of the victim is taken into consideration in designating or charging the offense, and in determining the imposable penalty.

2. If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610." Pursuant to the second *proviso* in Section 5(b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period.

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[32] *Id*. at 602-603.

[33] *Rollo*, p. 59.

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

3. **If the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age**, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, **the crime should be designated as "Lascivious Conduct under Section 5(b) of R.A. No. 7610," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua***. (Emphasis and underscoring supplied)

Despite the *ponente*'s reservations[35] on the conclusions reached in *Tulagan* on the accused's right to due process, the *ponente* respects that *Tulagan* is the standing doctrine. Thus, the penalty to be imposed on XXX should be modified accordingly.

With regard to the amount of damages, the Court likewise deems it proper to adjust the award of damages in consonance also with *Tulagan*. Thus, XXX is hereby ordered to pay AAA, the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages, and Fifty Thousand Pesos (₱50,000.00) as exemplary damages.[36] 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.[37]

WHEREFORE, in view of the foregoing, the Decision dated April 24, 2018 and Resolution dated August 29, 2018 of the Court of Appeals in CA-G.R. CR No. 39824 are hereby **AFFIRMED WITH MODIFICATION**. The petitioner XXX is found **GUILTY** beyond reasonable doubt of the crime of Lascivious Conduct under Section 5(b) of Republic Act No. 7610. He is sentenced to suffer the indeterminate penalty of imprisonment of fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as minimum, to seventeen (17)

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[35] See Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *People v. Tulagan, id*.

[36] *People v. Tulagan*, G.R. No. 227363, March 12, 2019, *id.*

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

years, four (4) months and one (1) day of *reclusion temporal*, as maximum. He is likewise ordered to pay AAA the amounts of FIFTY THOUSAND PESOS (₱50,000.00) as civil indemnity, FIFTY THOUSAND PESOS (₱50,000.00) as moral damages, and FIFTY THOUSAND PESOS (₱50,000.00) as exemplary damages. Interest at the rate of 6% *per annum* on the monetary awards reckoned from the finality of this Decision until full payment is likewise imposed.

SO ORDERED.

Carpio,[*] *Acting C.J.* (*Chairperson*), *Reyes, J. Jr., Lazaro-Javier,* and *Zalameda, JJ.,* concur.

FIRST DIVISION

[G.R. No. 242817. September 16, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MICHAEL ROXAS *y* CAMARILLO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE AND/OR ILLEGAL POSSESSION OF DANGEROUS DRUGS; THE DANGEROUS DRUG ITSELF FORMS AN INTEGRAL PART OF THE *CORPUS DELICTI* OF THE CRIME, SO IT IS ESSENTIAL THAT THE IDENTITY OF THE DANGEROUS DRUG BE ESTABLISHED WITH MORAL CERTAINTY. — In cases for Illegal Sale and/or

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[*] Acting Chief Justice as per Special Order No. 2703 dated September 10, 2019.

Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.

2. **ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; MARKING, PHYSICAL INVENTORY, AND PHOTOGRAPHY OF SEIZED ITEMS; MARKING UPON IMMEDIATE CONFISCATION CONTEMPLATES EVEN MARKING AT THE NEAREST POLICE STATION OR OFFICE OF THE APPREHENDING TEAM WHICH IS SUFFICIENT COMPLIANCE WITH THE RULES ON CHAIN OF CUSTODY. —** To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.

3. **ID.; ID.; ID.; WITNESS REQUIREMENT; THE PRESENCE OF THE REQUIRED WITNESSES ENSURES THE ESTABLISHMENT OF THE CHAIN OF CUSTODY AND REMOVES ANY SUSPICION OF SWITCHING, PLANTING, OR CONTAMINATION OF EVIDENCE. —** The law x x x requires that the x x x inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media *AND* the DOJ, and any elected public official; or (b)

if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service (NPS) *OR* the media. The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

4. ID.; ID.; ID.; CHAIN OF CUSTODY PROCEDURE; FAILURE TO STRICTLY COMPLY THEREWITH DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE CONFISCATED ITEMS AS VOID AND INVALID, PROVIDED THAT THE PROSECUTION SATISFACTORILY PROVES THAT THERE IS A JUSTIFIABLE GROUND FOR NON-COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED, BUT FOR THE SAVING CLAUSE TO APPLY, THE PROSECUTION MUST DULY EXPLAIN THE REASONS BEHIND THE PROCEDURAL LAPSES AND THE JUSTIFIABLE GROUND FOR NON-COMPLIANCE MUST BE PROVEN AS A FACT. — As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law. This is because "[t]he law has been 'crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.'" Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and 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.

5. ID.; ID.; ID.; WITNESS REQUIREMENT; MERE STATEMENTS OF UNAVAILABILITY, ABSENT ACTUAL SERIOUS ATTEMPTS TO CONTACT THE REQUIRED WITNESSES, ARE UNACCEPTABLE AS JUSTIFIED GROUNDS FOR NON-COMPLIANCE. — Anent the witness requirement, noncompliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. Thus, **mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance**. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule. x x x In this case, an examination of the Inventory of Seized/Confiscated Item/Property would show that the inventory of the seized items was not done in the presence of a DOJ representative, as said inventory form only contains the signatures of an elected public official and a media representative. x x x [W]hen PO3 Dela Cruz and PO3 Almazan testified that there was no DOJ representative available, the prosecution should have inquired whether the arresting officers exerted earnest efforts in securing the presence of such witness. As earlier stated, it is incumbent upon the prosecution to account for the absence of a required witness by presenting a justifiable reason therefor, or at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure his/her presence. Absent such inquiry, there is nothing that would justify the aforementioned procedural lapse. In view of this unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the item seized from Roxas were compromised, which consequently warrants his acquittal.

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.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated December 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08681, which affirmed the Judgment[3] dated September 20, 2016 of the Regional Trial Court of Quezon City, Branch 79 (RTC) in Criminal Case No. R-QZN-13-05557-CR, finding accused-appellant Michael Roxas *y* Camarillo (Roxas) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[5] filed before the RTC accusing Roxas of the crime of Illegal Sale of Dangerous Drugs. The prosecution alleged that in the evening of November 30, 2013, the operatives of the District Anti-Illegal Drugs-Special Operations Task Group (DAID-SOTG) of Camp Karingal in Quezon City successfully implemented a buy-bust operation

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[1] See Notice of Appeal dated January 15, 2018; *rollo*, pp. 14-15.

[2] *Id.* at 2-13. Penned by Associate Justice Ricardo R. Rosario with Associate Justices Edgardo B. Peralta, Jr. and Maria Elisa Sempio Diy, concurring.

[3] CA *rollo*, pp. 57-66. Penned by Presiding Judge Nadine Jessica Corazon J. Fama.

[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," approved on June 7, 2002.

[5] Records, p. 1.

against a certain *alias* "*Sunog*" later identified as Roxas, during which one (1) plastic sachet containing suspected *shabu* was recovered from him. After marking the seized plastic sachet at the place of arrest, the arresting officers proceeded to the nearest barangay hall where the inventory[6] was conducted in the presence of Barangay Captain Raulito R. Datiles[7] and media representative Rey Argana. Thereafter, the buy-bust team proceeded to Camp Karingal for the photographing of Roxas, the marked money, and the suspected *shabu*, as well as the preparation of the necessary paperwork for examination. Subsequently, the seized item was taken to the crime laboratory where, after examination,[8] the contents thereof yielded positive for *methamphetamine hydrochloride*, a dangerous drug.[9]

In defense, Roxas denied the charges against him, claiming instead that in the afternoon of November 30, 2013, he was watching a basketball game with his stepson at the Bugallon Plaza in Quezon City, when four (4) police officers suddenly arrived and arrested him for no reason at all. On cross-examination, Roxas said he neither had any previous quarrel with the police officers, nor did the latter ask money from him. He also claimed that he did not tell the barangay captain about his alleged unlawful arrest as he was not given a chance to defend himself. Lastly, he admitted that he did not file any charges against the police officers for fear that they might do something bad to him and his family if he took action.[10]

In a Judgment[11] dated September 20, 2016, the RTC found Roxas guilty beyond reasonable doubt of the crime charged,

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[6] See Inventory of Seized/ Confiscated Item/ Property dated November 30, 2013; *id.* at 15.

[7] "Aurelio Datiles" in some parts of the records (see CA *rollo*, p. 59).

[8] See Chemistry Report No. D-358-13 dated December 1, 2013; records, p. 50.

[9] See *rollo*, pp. 4-6. See also CA *rollo*, pp. 57-62.

[10] See *rollo*, p. 6. See also CA *rollo*, pp. 62-63.

[11] CA *rollo*, pp. 57-66.

and accordingly, sentenced him to suffer the penalty of life imprisonment, and to pay a fine in the amount of ₱500,000.00.[12] The RTC found that the prosecution, through the testimonial and documentary evidence it presented, had established beyond reasonable doubt that Roxas indeed sold a plastic sachet containing *methamphetamine hydrochloride*, a dangerous drug, for a consideration of ten thousand pesos (₱10,000.00) to the poseur-buyer, resulting in his arrest. The RTC found that the failure of the police officers to immediately inventory and photograph the seized drug, and the absence of a Department of Justice (DOJ) personnel during the inventory-taking, did not render the subject drug inadmissible because the integrity and evidentiary value of the illegal drug were duly preserved.[13] On the other hand, the RTC found Roxas's defense of denial as inherently weak which cannot prevail over the positive testimony of the prosecution's witnesses.[14] Aggrieved, Roxas appealed[15] to the CA.

In a Decision[16] dated December 29, 2017, the CA affirmed the RTC ruling *in toto*.[17] It held that Roxas was caught in *flagrante delicto* of selling 2.34 grams of *methamphetamine hydrochloride* or *shabu* during the buy-bust operation.[18] Furthermore, the CA ruled that the integrity and evidentiary value of the item seized from Roxas were preserved.[19]

Hence, this appeal[20] seeking that Roxas's conviction be overturned.

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[12] *Id*. at 65.

[13] See *id*. at 63-65.

[14] *Id*. at 65.

[15] See Notice of Appeal dated September 20, 2016; records, p. 259.

[16] *Rollo*, pp. 2-13.

[17] *Id*. at 12.

[18] *Id*. at 8.

[19] See *id*. at 11-12.

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

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[21] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[22] 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.[23]

To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[24] As

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[21] The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA, 303, 312-313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015]).

[22] See *People v. Crispo*, *id*.; *People v. Sanchez*, *id*.; *People v. Magsano*, *id*.; *People v. Manansala*, *id*. at 313; *People v. Miranda*, *id*.; and *People v. Mamangon*, *id*. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[23] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

[24] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 21; *People v. Sanchez*, *supra* note 21; *People v. Magsano*, *supra* note 21; *People v. Manansala*, *supra* note 21; *People v. Miranda*, *supra* note 21, at 53; and *People v. Mamangon*, *supra* note 21, at 313. See also *People v. Viterbo*, *supra* note 22.

part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."[25] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[26]

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640,[27] a representative from the media *AND* the DOJ, and any elected public official;[28] or (*b*) if **after** the amendment of RA 9165 by

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[25] *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

[26] See *People v. Tumulak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

[27] Entitled "An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the 'Comprehensive Dangerous Drugs Act of 2002.'" As the Court noted in *People v. Gutierrez* (see G.R. No. 236304, November 5, 2018), RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." RA 10640 was published on July 23, 2014 in The Philippine Star (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and Manila Bulletin (Vol. 499, No. 23; World News section, p. 6). Thus, RA 10640 appears to have become effective on August 7, 2014.

[28] Section 21 (1), Article II of RA 9165 and its Implementing Rules and Regulations.

RA 10640, an elected public official and a representative of the National Prosecution Service[29] (NPS) ***OR*** the media.[30] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[31]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law.[32] This is because "[t]he law has been 'crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.'"[33]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[34] As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items

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[29] The NPS falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled "REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE" [April 11, 1978] and Section 3 of RA 10071, entitled "AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE" otherwise known as the "PROSECUTION SERVICE ACT OF 2010" [lapsed into law on April 8, 2010]).

[30] Section 21 (1), Article II of RA 9165, as amended by RA 10640.

[31] See *People v. Miranda, supra* note 21, at 57. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[32] See *People v. Miranda*, *id*. at 60-61. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, *supra* note 23, at 1038.

[33] See *People v. Segundo*, G.R. No. 205614, July 26, 2017, 833 SCRA 16, 44, citing *People v. Umipang*, *id*.

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

are properly preserved.[35] The foregoing is based on the saving clause found in Section 21 (a),[36] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[37] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[38] and the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[39]

Anent the witness requirement, noncompliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.[40] Thus, **mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance**.[41] These considerations arise from the fact that police

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[35] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[36] Section 21 (a), Article II of the IRR of RA 9165 pertinently states: "***Provided, further,* that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures of and custody over said items**." (Emphasis supplied)

[37] Section 1 of RA 10640 pertinently states: "***Provided, finally,* That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items**." (Emphasis supplied)

[38] *People v. Almorfe*, *supra* note 35.

[39] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[40] See *People v. Manansala*, *supra* note 21.

[41] See *People v. Gamboa*, *supra* note 23, citing *People v. Umipang*, *supra* note 23, at 1053.

officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.[42]

Notably, the Court, in *People v. Miranda*,[43] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, x x x the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[44]

In this case, an examination of the Inventory of Seized/Confiscated Item/Property[45] would show that the inventory of the seized items was not done in the presence of a DOJ representative, as said inventory form only contains the signatures of an elected public official and a media representative.[46] This is confirmed by the respective testimonies of the members of the arresting team, namely Police Officer (PO) 3 Joselito Dela Cruz (PO3 Dela Cruz) and PO3 Joel Almazan (PO3 Almazan), pertinent portions of which read:

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[42] See *People v. Crispo*, *supra* note 21.

[43] *Supra* note 21.

[44] See *id.* at 61.

[45] Records, p. 15.

[46] The arrest was made on November 30, 2013, and hence, the required witnesses are a public elected official, a DOJ representative, and a media representative.

TESTIMONY OF PO3 DELA CRUZ

[ACP Alexis G. Bartolome]

Q: I am showing this Inventory of Seized/Confiscated Items/ Property. What relation has this document with the one you mentioned?

[PO3 Dela Cruz]
A: This is the same document we prepared, sir.

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Q: And there is also a signature of [Raulito] Datiles, Barangay Captain of *Bagumbuhay*, whose signature is that?
A: That is the signature of the Barangay Chairman, sir.

Q: And there is also a signature beside the name of Rey Argana, Police Files Tonite, whose signature is that?
A: That is the signature of the representative from the media, sir.

Q: How did you know that these are their respective signatures?
A: Because I was present when they affixed their signatures.

x x x x x x x x x

Q: Mr. Witness, it appears that there is no representative from the [DOJ]. Why is it that there was no representative from the DOJ?
A: Because nobody came from the [DOJ], sir.[47]

TESTIMONY OF PO3 ALMAZAN

Q: And who were present during the Inventory, Mr. Witness? [PO3 Almazan]

A: The barangay captain and the media personnel, sir.

Q: And there is a signature beside the name Raulito Datiles, whose signature is that?
A: That is the signature of the barangay chairman of Brgy. *Bagumbuhay*, sir.

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[47] TSN, November 11, 2014, pp. 6-7.

Q: And there is also a signature beside the name Rey Argana Police Files Tonite, whose signature is this?
A: The media personnel, sir.

Q: And why is it there is no DOJ representative?
A: Because there was no available, sir.[48]

Verily, when PO3 Dela Cruz and PO3 Almazan testified that there was no DOJ representative available, the prosecution should have inquired whether the arresting officers exerted earnest efforts in securing the presence of such witness. As earlier stated, it is incumbent upon the prosecution to account for the absence of a required witness by presenting a justifiable reason therefor, or at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure his/her presence. Absent such inquiry, there is nothing that would justify the aforementioned procedural lapse. In view of this unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the item seized from Roxas were compromised, which consequently warrants his acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated December 29, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08681 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Michael Roxas *y* Camarillo is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Jardeleza and *Carandang, JJ.*, concur.

Bersamin, C.J. (Chairperson) and *Gesmundo, J.*, on official leave.

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[48] TSN, November 13, 2015, p. 3.

FIRST DIVISION

[G.R. No. 243936. September 16, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VERNIE ANTONIO *y* MABUTI,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL DRUG CASES; THE *CORPUS DELICTI* IS THE DANGEROUS DRUG ITSELF, SO IT IS NECESSARY THAT THE IDENTITY AND INTEGRITY OF THE DANGEROUS DRUG IS ESTABLISHED BEYOND REASONABLE DOUBT. — The *corpus delicti* in this case are: (1) one sachet of *shabu* sold to the poseur buyer; and (2) the two additional sachets confiscated from Vernie. It is, therefore, necessary that the identity and integrity of the dangerous drugs are established beyond reasonable doubt. In other words, the *shabu* presented in court must be the same *shabu* seized from him during the buy-bust operation and the body search after his arrest.

2. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; CHAIN OF CUSTODY RULE; STRICT COMPLIANCE THEREWITH IS ESSENTIAL IN CASES INVOLVING ILLEGAL DRUGS BECAUSE THESE ITEMS ARE HIGHLY SUSCEPTIBLE TO PLANTING, ALTERATION, TAMPERING, CONTAMINATION AND EVEN SUBSTITUTION AND EXCHANGE . — R.A. 9165 provides reasonable safeguards to preserve the identity and integrity of narcotic substances and dangerous drugs seized and/or recovered from drug offenders. Section 21, Article II of the Implementing Rules and Regulations (IRR) of R.A. 9165 clearly outlines the post-seizure procedure in taking custody of seized drugs. Proper procedures to account for each specimen by tracking its handling and storage from point of seizure to presentation of the evidence in court and its final disposal must be observed. Immediately after seizure and confiscation, the apprehending team is required to conduct a physical inventory and to photograph the seized

items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if *prior* to the amendment of R.A. 9165 by R.A. 10640, a representative from the media *and* the DOJ, and any elected public official; or (b) if *after* the amendment of R.A. 9165 by R.A. 10640, an elected public official and a representative of the National Prosecution Service (NPS) *or* the media. Strict compliance with the chain of custody rule is essential in cases involving illegal drugs because these items are highly susceptible to planting, alteration, tampering, contamination and even substitution and exchange. Thus, if chain of custody rule will be strictly followed, there is moral certainty that prosecution would be able to establish the guilt of the accused beyond reasonable doubt.

3. ID.; ID.; ID.; SAVING CLAUSE; MERE LAPSES IN THE PROCEDURES DO NOT INVALIDATE A SEIZURE IF THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS CAN BE SHOWN TO HAVE BEEN PRESERVED, BUT THE PROSECUTION MUST EXPLAIN THE REASONS BEHIND THE PROCEDURAL LAPSES AND THE JUSTIFIABLE GROUND FOR NON-COMPLIANCE MUST BE PROVEN AS A FACT. — Mere lapses in procedures do not invalidate a seizure if the integrity and evidentiary value of the seized items can be shown to have been preserved x x x [, pursuant to] [t]he saving clause found in Section 21(a), Article II of the IRR of R.A. 9165 adopted in Section 1 of R.A. 10640 x x x. Although the Court acknowledges that strict compliance with the chain of custody procedure may not always be possible, it must be stressed that for the saving clause to apply, the prosecution must explain the reasons behind the procedural lapses. Further, 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. This rule especially applies to the witness requirement during inventory of the seized items, as it serves a vital purpose: to protect the accused against the possibility of planting, contamination, or loss of the seized drug.

4. ID.; ID.; ID.; WITNESS RULE; MERE STATEMENTS OF UNAVAILABILITY, ABSENT ACTUAL SERIOUS ATTEMPTS TO SECURE THE REQUIRED WITNESSES, ARE UNACCEPTABLE GROUNDS FOR NON-

COMPLIANCE. — Non-compliance with the three or two-witness rule may be permitted only if the prosecution proves that the apprehending officers exerted genuine, sufficient, and earnest efforts but failed to secure the presence of said witnesses. Mere statements of unavailability, absent actual serious attempts to secure the required witnesses, are unacceptable grounds for non-compliance, since the buy-bust conducted in this case is a planned operation.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARANDANG, *J.*:

On appeal is the Decision[1] dated June 29, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08832, affirming the Decision[2] dated October 26, 2016 of the Regional Trial Court of Makati City, Branch 65 (RTC), convicting accused-appellant Vernie Antonio *y* Mabuti (Vernie) of violating Sections 5 and 11, Article II of Republic Act No. (R.A.) 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The two Information filed against Vernie read:

Criminal Case No. R-MKT-16-01662-CR

On 20th day of August 2016, in the City of Makati, the Philippines, accused, not being lawfully authorized by law and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously sell and distribute one (1) heat-sealed plastic sachet containing methamphetamine hydrochloride with a weight of zero point zero six (0.06) gram, a dangerous drug, in

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[1] Penned by Associate Justice Jose C. Reyes, Jr. (now a Member of this Court), with Associate Justices Henri Paul B. Inting (now a Member of this Court) and Maria Filomena D. Singh, concurring; *rollo,* pp. 2-14.

[2] Penned by Presiding Judge Edgardo M. Caldona; CA *rollo,* pp. 67-73.

consideration of the amount of five hundred (₱500.00) pesos, in violation of the afore-cited law.

CONTRARY TO LAW.[3]

Criminal Case No. R-MKT-16-01663-CR

On 20th day of August 2016, in the City of Makati, the Philippines, accused, not being authorized by law to possess or otherwise use dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, control and direct custody the total of zero point zero nine (0.09) gram of methamphetamine hydrochloride *(shabu)* a dangerous drug, in violation of the afore-cited law.

CONTRARY TO LAW.[4]

When arraigned, Vernie entered the plea of not guilty to both charges. Thereafter, joint trial was conducted.[5]

The prosecution presented the following witnesses: (1) Police Officer (PO) 1 Byron Atilon (PO1 Atilon), the poseur buyer; and (2) PO2 Michelle Gimena (PO2 Gimena), the immediate back-up. The defense of Vernie was based solely on his testimony.[6]

The evidence of the prosecution established that on August 20, 2016, a buy-bust team was formed after a confidential informant reported to the Station Anti-Illegal Drugs Special Operations Task Group (SAID-SOTG) that illegal drug activities were being conducted by a certain Vernie in Brgy. Tejeros, Makati City. PO1 Atilon was assigned as poseur-buyer, while PO2 Gimena was the immediate back-up. A ₱500.00 bill was pre-marked as buy- bust money. The buy-bust team met with the informant in McDonalds PRC, Brgy. Olympia, Makati City.[7]

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[3] *Id.* at 67.

[4] *Id.* at 68.

[5] *Rollo,* p. 3.

[6] CA *rollo,* p. 68.

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

After planning the operation, the team and the informant proceeded where Vernie may be found. The informant pointed to Vernie standing in front of a house along D. Gomez St., Brgy. Tejeros, Makati City. The informant introduced PO1 Atilon to Vernie and said that PO1 Atilon wanted to buy *shabu*. Vernie asked how much and PO1 Atilon answered ₱500.00. PO1 Atilon handed the ₱500.00 marked money to Vernie. Immediately, Vernie took out a small heat-sealed plastic sachet containing suspected *shabu* and handed it to PO1 Atilon.[8]

PO1 Atilon tapped the shoulder of Vernie, the pre-arranged signal to signify the consummation of the transaction, and arrested him. PO2 Gimena rushed to the scene and aided PO1 Atilon in conducting a body search on Vernie. The body search yielded two more sachets of *shabu* and the buy-bust money. Antonio was informed of his constitutional rights and brought to Makati Police Station, Police Community Precinct 1.[9] The marking of the three plastic sachets and inventory was conducted by PO1 Atilon at the Makati Police Station in the presence of Barangay Chairwoman Teresita Brillante (Chairwoman Brillante). The Inventory Receipt[10] states that the following were seized from Vernie: (1) one piece small heat-sealed plastic sachet containing *shabu* marked as "BSA" (subject of sale); (2) two pieces small heat-sealed plastic sachet containing *shabu* marked as "BSA-1" and "BSA-2" (subject of possession); and (3) one piece five hundred peso bill with serial number ET 632616 pre-marked as "BSA" (upper right corner). Photographs were taken during the inventory.[11] The Inventory Receipt, likewise, states that PO1 Atilon turned over the seized items to police investigator PO3 Roque Carlo Paredes II (PO3 Paredes).

The Chain of Custody Form[12] shows that from PO3 Paredes, the seized plastic sachets were received again by PO1 Atilon

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[8] *Id.* at 69.

[9] *Rollo,* pp. 3-4.

[10] Records, p. 13.

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

[12] *Id.* at 19.

for delivery to the Philippine National Police Crime Laboratory. PO1 Atilon delivered the seized plastic sachets to the Southern Police District Crime Laboratory. Forensic Chemist Police Chief Inspector May Andrea Bonifacio (PCI Bonifacio) received the seized plastic sachets from PO1 Atilon. Per Chemistry Report No. D-1219-16[13] signed by PCI Bonifacio, the qualitative examination gave positive result that the three heat-sealed plastic sachets marked as "BSA," "BSA-1," and "BSA-2" contain methamphetamine hydrochloride, a dangerous drug.

Vernie alleged that he was taking a rest beside his tricycle in Barangay Tejeros, Makati City, when a group wearing civilian clothes invited him to their office. He denied the accusation against him.[14]

After evaluating the evidence for the prosecution and the defense, the RTC, in its Decision[15] dated October 26, 2016, found Vernie guilty of violating Sections 5 and 11, Article II of R.A. 9165:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. R-MKT-16-01662-CR, the court finds the accused, Vernie Antonio y Mabuti GUILTY beyond reasonable doubt of the crime of violation of Section 5, Article II, R.A. No. 9165 and sentences him to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

2. In Criminal Case No. R-MKT-16-01663-CR, the court finds the same accused, Vernie Antonio y Mabuti, GUILTY beyond reasonable doubt of the crime of violation of Section II, Article II, R.A. No. 9165 and sentences him to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00).

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[13] *Id*. at 18.

[14] *Id*. at 194-195, 201.

[15] CA *rollo,* pp. 67-73.

The period of detention of the accused should be given full credit.

Let the dangerous drugs subject matter of these cases be disposed of in the manner provided for by law.

The Branch Clerk of Court is directed to transmit the plastic sachets containing *shabu* subject matter of these cases to the PDEA for said agency's appropriate disposition.

SO ORDERED.[16]

In convicting Vernie, the RTC gave credence to the testimonies of the police officers, who were presumed to have performed their duties in a regular manner.[17] The trial court held that all the elements of illegal sale and illegal possession of *shabu* were proven by the prosecution. It also ruled that the prosecution was able to establish an unbroken chain of custody showing that the integrity and evidentiary value of the seized items were not compromised at any stage. The absence of a media or a Department Of Justice (DOJ) Representative during the inventory is not fatal to the case.[18]

Vernie appealed his conviction. In his Appellant's Brief,[19] he argued that the *corpus delicti* (the *shabu)* and all the documents presented by the prosecution to prove his guilt beyond reasonable doubt were never properly identified in open court by the prosecution witnesses:[20]

In the instant case the prosecution, to expedite the proceedings, took the hasty and dangerous short-cut by adopting the Joint Affidavit of Apprehension of PO1 Atilon and PO2 Gimena as part of their direct testimonies and offering in stipulation that they *could* identify the drug evidence and their accompanying documents if presented to them. And in adopting such dangerous short-cut, the prosecution

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[16] *Id*. at 73.

[17] *Id*. at 72.

[18] *Id*.

[19] *Id*. at 40-65.

[20] *Id*. at 47.

dispensed with presenting to them and letting them identify the said drug evidence and accompanying documents in open court.[21]

In affirming the conviction of Vernie, the CA did not give merit to his argument and found nothing irregular in resorting to such procedure done to expedite trial.[22] On the chain of custody rule, the CA explained that links were established by the following: (1) stipulation during the pre-trial conference on the testimony of PO3 Paredes about the Final Investigation Report, Request for Drug Test and Request for Laboratory Examination, and the delivery of the seized items to the PNP Crime Laboratory; (2) that the markings "BSA" on the specimen stand for the poseur-buyer's name "Byron SM Atilon," who bought the illegal drugs from Vernie and confiscated two more sachets from him;[23] (3) PO1 Atilon's testimony during cross-examination that from the time of arrest until inventory, he had possession of the seized drugs, and that the inventory was conducted at the police station due to security reasons;[24] (4) photographs taken during the inventory;[25] and (5) the Chain of Custody Form showing how the seized items passed from PO1 Atilon to PO3 Paredes, and then to PCI Bonifacio.[26]

In its Manifestation (In Lieu of Supplemental Brief)[27] dated June 18, 2019, the Office of the Solicitor General manifested that it will no longer file a Supplemental Brief. Likewise, in his Manifestation In Lieu of Supplemental Brief[28] dated July 3, 2019, Vernie, through the Public Attorney's Office, manifested that he would no longer file a supplemental brief, considering

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[21] *Id*. at 48.

[22] *Rollo,* p. 7.

[23] *Id*. at 10.

[24] *Id*.

[25] *Id*. at 12.

[26] *Id*.

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

[28] *Id*. at 28-31.

that he had exhaustively discussed the assigned errors in the appellant's brief before the CA, hence, he will be adopting the same.

We find the appeal meritorious.

The *corpus delicti* in this case are: (1) one sachet of *shabu* sold to the poseur buyer; and (2) the two additional sachets confiscated from Vernie. It is, therefore, necessary that the identity and integrity of the dangerous drugs are established beyond reasonable doubt. In other words, the *shabu* presented in court must be the same *shabu* seized from him during the buy-bust operation and the body search after his arrest.[29]

R.A. 9165 provides reasonable safeguards to preserve the identity and integrity of narcotic substances and dangerous drugs seized and/or recovered from drug offenders.[30] Section 21, Article II of the Implementing Rules and Regulations (IRR) of R.A. 9165 clearly outlines the post-seizure procedure in taking custody of seized drugs. Proper procedures to account for each specimen by tracking its handling and storage from point of seizure to presentation of the evidence in court and its final disposal must be observed. Immediately after seizure and confiscation, the apprehending team is required to conduct a physical inventory and to photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if *prior* to the amendment of R.A. 9165 by R.A. 10640, a representative from the media *and* the DOJ, and any elected public official; or (b) if *after* the amendment of R.A. 9165 by R.A. 10640, an elected public official and a representative of the National Prosecution Service (NPS) *or* the media.[31]

Strict compliance with the chain of custody rule is essential in cases involving illegal drugs because these items are highly

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[29] *People v. Obmiranis,* 594 Phil. 561, 569-570 (2008).

[30] *Carino v. People,* 600 Phil. 433, 448 (2009).

[31] See *Dimaala v. People,* G.R. No. 242315, July 3, 2019.

susceptible to planting, alteration, tampering, contamination and even substitution and exchange. Thus, if chain of custody rule will be strictly followed, there is moral certainty that prosecution would be able to establish the guilt of the accused beyond reasonable doubt.[32]

Mere lapses in procedures do not invalidate a seizure if the integrity and evidentiary value of the seized items can be shown to have been preserved.[33] The saving clause found in Section 21(a), Article II of the IRR of R.A. 9165 adopted in Section 1 of R.A. 10640 states:

> *Provided, finally,* That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.[34]

Although the Court acknowledges that strict compliance with the chain of custody procedure may not always be possible, it must be stressed that for the saving clause to apply, the prosecution must explain the reasons behind the procedural lapses.[35] Further, 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.[36]

This rule especially applies to the witness requirement during inventory of the seized items, as it serves a vital purpose: to protect the accused against the possibility of planting, contamination, or loss of the seized drug.[37] Non-compliance with the three or two-witness rule may be permitted only if the prosecution proves that the apprehending officers exerted

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[32] *People v. Gum-Oyen,* 630 Phil. 637-653-654 (2010).

[33] *People v. Domado,* 635 Phil. 74, 87 (2010).

[34] Amendment to R.A. 9165, R.A. 10640, approved on July 15, 2014.

[35] *People v. Almorfe,* 631 Phil. 51, 60 (2010).

[36] *People v. Gum-Oyen, supra* note 36 at 649.

[37] See *People v. Orpilla,* G.R. No. 241631, March 11, 2019.

genuine, sufficient, and earnest efforts but failed to secure the presence of said witnesses. Mere statements of unavailability, absent actual serious attempts to secure the required witnesses, are unacceptable grounds for non-compliance,[38] since the buy-bust conducted in this case is a planned operation.

Vernie was arrested *after* the effectivity of R.A. 10640. The witnesses required in this case are: (a) elected public official and (b) a representative of the NPS *or* the media.

It is gathered from the Joint Affidavit of Arrest[39] executed by PO1 Atilon and PO2 Gimena and from the testimony of PO1 Gimena in court, that the inventory was conducted not at the place of seizure and arrest, but in the police community precinct in the presence of Chairwoman Brillante. The police precinct was near the place of the buy-bust operation.

During cross-examination, PO1 Atilon testified that the inventory was conducted at the police station for security reasons. PO2 Gimena explained that there were many onlookers who might prevent the arrest of Vernie. This statement is incredulous as it is admitted that the buy-bust took place near the community police precinct.

While the police officers testified that the inventory was conducted at the police station and not at the place of arrest, the records do not show why Chairwoman Brillante was the only witness present during the inventory. No explanation was given as to the absence of a representative from the NPS or the media. Neither was there any statement to prove that genuine and earnest efforts were exerted to secure their presence.

The police officers received the confidential information about Vernie's illegal activities at around 3:00 a.m., while the arrest of Vernie transpired at 3:00 p.m.[40] The police officers had more or less 12 hours of preparation — from the time they received

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[38] See *People v. Agustin,* G.R. No. 233336, January 14, 2019.

[39] Records, pp. 25-26.

[40] *Id*. at 25.

the information until the arrest of the accused — to comply with the requirements under R.A. 10640.

The prosecution evidence also left unanswered questions about the forensic chemist's handling of the seized plastic sachets. The Chemistry Report No. D-1219-16[41] was admitted in court as Exhibit D as stipulated in the testimony of PO3 Paredes. The report is not authenticated and is therefore hearsay evidence because he had no personal knowledge of the circumstances surrounding the preparation of the Chemistry Report. He did not personally deliver the seized articles to the forensic chemist nor was he present during the physical examination. It was not even clear who obtained the Chemistry Report from PCI Bonifacio. Thus, Exhibit D is inadmissible to prove that the seized articles are dangerous drugs.

All in all, the prosecution did not prove with moral certainty the guilt of the accused-appellant on both charges.

WHEREFORE, the appeal is **GRANTED.** The Decision dated June 29, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08832 is hereby **REVERSED** and **SET ASIDE.** Accused-appellant Vernie Antonio *y* Mabuti is **ACQUITTED** of both charges. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless further detention is lawful for other reasons.

Let entry of judgment be issued immediately.

SO ORDERED.

Perlas-Bernabe[*] (*Acting Chairperson*) and *Jardeleza, JJ.*, concur.

Bersamin, C.J. (Chairperson) and *Gesmundo, J.,* on official business.

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[41] *Id.* at 18.

[*] Acting Chairperson of the First Division per Special Order No. 2704.

EN BANC

[A.C. No. 12154. September 17, 2019]

ATTY. ROGELIO N. VELARDE, *petitioner, vs.* **ATTY. RUBEN M. ILAGAN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARIES PUBLIC; 2004 RULES ON NOTARIAL PRACTICE; NOTARIZATION; NOT A MEANINGLESS MINISTERIAL ACT OF ACKNOWLEDGING DOCUMENTS EXECUTED BY PARTIES WHO ARE WILLING TO PAY THE FEES FOR THE SAME BECAUSE NOTARIZATION CONVERTS A PRIVATE DOCUMENT INTO A PUBLIC DOCUMENT, MAKING IT ADMISSIBLE IN EVIDENCE WITHOUT FURTHER PROOF OF AUTHENTICITY. — We agree with the findings of the IBP-CBD and the IBP-Board of Governors that respondent failed to live up with the duties of a notary public as dictated by the 2004 Rules on Notarial Practice. The pronounced nature of notarization cannot be overemphasized. It is not a meaningless ministerial act of acknowledging documents executed by parties who are willing to pay the fees for the same. For notarization converts a private document into a public document, making the same admissible in evidence without further proof of authenticity; thus, a notarial document is, by law, entitled to full faith and credit upon its face. x x x Once again, we remind the commissioned notaries public that it is their duty not only to preserve the integrity of notarized documents, but also to actively take measures to increase the public's confidence in them. In this light, this Court will not hesitate to impose punishment against an erring lawyer found to have committed any act which diminishes the imagery of these documents as imbued with public interest.

2. ID.; ID.; ID.; ID.; PERSONAL APPEARANCE; THE INDISPENSABLE CHARACTER OF PERSONAL APPEARANCE GUARDS THE PUBLIC AGAINST FRAUD, BECAUSE WHEN A NOTARY PUBLIC

NOTARIZES A DOCUMENT WITHOUT THE APPEARANCE OF THE AFFIANT, HE FAILS TO ASCERTAIN NOT ONLY THE GENUINENESS OF THE AFFIANT'S SIGNATURE BUT ALSO THE DUE EXECUTION OF THE DOCUMENT. — To ensure that the noble consequences of notarization would be achieved while protecting the public, Rule IV, Section 1(b) and (c) of the Notarial Rules provide for x x x guidelines x x x. The importance of personal appearance was highlighted as one of the prohibitions under the Rules x x x. Based on the records of the case, it is apparent that respondent notarized several Deeds of Absolute Sale, purporting to convey several parcels of land by deceased Narciso to several individuals long *after* the former's demise. By notarizing a document without the appearance of the affiant, respondent failed to ascertain not only the genuineness of his signature but also the due execution of the document. In the case of *Dela Cruz-Silano v. Pangan*, we had the occasion to explain the indispensable character of personal appearance so as to guard the public against fraud x x x. In light of respondent's breach of the notarial rules coupled with respondent's downright defiance of the orders by the IBP, the penalty of suspension of two years from the practice of law, revocation of notarial commission, and disqualification from being a commissioned notary public for two years is deemed proper.

3. ID.; ATTORNEYS; CONDUCT UNBECOMING OF A LAWYER; FAILURE TO HEED TO THE ORDERS OF THE INTEGRATED BAR OF THE PHILIPPINES AMOUNTS TO CONDUCT UNBECOMING OF A LAWYER. — Equally deplorable is respondent's disregard of the IBP's authority when he repeatedly failed to attend the mandatory conference hearings. Such conduct is contrary to what the CPR requires x x x. Thus, respondent's failure to heed to the orders of the IBP amounts to conduct unbecoming of a lawyer.

D E C I S I O N

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

In a Complaint-Affidavit,[1] commission of violation of the 2004 Rules on Notarial Practice was imputed against Atty. Ruben M. Ilagan (respondent) for allegedly notarizing several Deeds of Absolute Sale by a deceased affiant.

The Relevant Antecedents

The case stemmed from a parcel of land (subject land), originally dedicated for parks and playgrounds, situated in Ma. Cristina Village covering an area of 1,467 square meters. The subject land was registered in the name of Narciso Salas (Narciso) under Transfer Certificate of Title (TCT) No. NT-229061, but was owned in common by all the lot owners and lot buyers of the village, all of whom held undivided interest thereon. Among the lot owners is Atty. Rogelio N. Velarde (complainant).[2]

On May 6, 2010, Narciso died.[3] However, it appeared that the subject land was successfully subdivided into eight smaller lots three years thereafter. These lots were in the name of Narciso and his surviving spouse Lina Domingo Salas (Lina).[4]

Out of the eight lots, five lots which were covered by TCT Nos. 041-201300813 to 041-2013008117, were allegedly sold by Narciso and Lina to: (1) the spouses Jasper Nagayo and Aprilyn M. Nagayo evidenced by a Deed of Absolute Sale[5] dated December 13, 2013; (2) the spouses Nelson M. Sta. Maria and Marites N. Sta. Maria evidenced by a Deed of Absolute Sale[6] dated February 28, 2014; (3) the spouses Leopoldo G.

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

[2] *Id*. at 114.

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

[4] *Id*. at 114.

[5] *Id*. at 37-38.

[6] *Id*. at 39-40.

Atacador, Jr. and Bebelyn M. Atacador evidenced by a Deed of Absolute Sale[7] dated May 15, 2014; (4) Joshua E. Gonzales evidenced by a Deed of Absolute Sale[8] dated September 1, 2014; and (5) spouses Raynaldy Cruz Marin and Marivic C. Marin evidenced by a Deed of Absolute Sale[9] dated September 1, 2014. It is ostensible that said Deeds were notarized by respondent three to four years after the death of the purported vendor Narciso.[10]

Asserting that respondent violated the 2004 Rules on Notarial Practice, complainant alleged that respondent falsely attested on Narciso's personal appearance before him. As a direct consequence of such act, complainant and his co-owners in Ma. Cristina Village have been deprived of their right and enjoy the benefits derived from the subject land.[11]

In his Answer,[12] respondent offered the defense of general denial and maintained that his signatures in the purported deeds of sale were forged.

The Integrated Bar of the Philippines (IBP) issued a Notice of Mandatory Conference Hearing[13] dated April 17, 2015. However, in an Order[14] dated June 5, 2015, the IBP observed respondent's non-appearance to the hearing.

Consequently, the IBP issued another Notice of Mandatory Conference[15] dated October 29, 2015, requiring once again the attendance of all the parties.

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

[8] *Id*. at 44.

[9] *Id*. at 46.

[10] *Id*. at 4.

[11] *Id*.

[12] *Id*. at 62-71.

[13] *Id*. at 47.

[14] *Id*. at 61.

[15] *Id*. at 72.

In an Order[16] dated December 7, 2015, the IBP noted that only the complainant attended the hearing. It then required the parties to submit their respective position papers.

In his Position Paper,[17] complainant reiterated the allegations in his complaint, *i.e.,* that respondent notarized several deeds of absolute sale by a deceased vendor.

On the other hand, respondent failed to file his Position Paper.

In a Report and Recommendation[18] dated May 23, 2016, the IBP-Commission on Bar Discipline (CBD) found that respondent committed misconduct by certifying under oath several deeds of sale, knowing fully well that one of the vendors was already dead. Thus, the IBP-CBD recommended the penalty of suspension of respondent from the practice of law for a period of two years, revocation of his notarial commission, and disqualification from being a notary public for two years, to wit:

> WHEREFORE, premises considered, it is hereby recommended that Respondent ATTY. RUBEN M. ILAGAN be SUSPENDED from the practice of law for two (2) years, REVOKES his incumbent notarial commission, if any, and DISQUALIFIES him from being commissioned as notary public for two (2) years. Respondent is also STERNLY WARNED that more severe penalties will be imposed for any further breach of the Canons in the Code of Professional Responsibility.
>
> RESPECTFULLY SUBMITTED.

The IBP-Board of Governors adopted the findings of fact and recommendation of the IBP-CBD *in toto* in a Resolution[19] dated June 17, 2017, *viz*.:

> *RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner imposing the penalty of revocation*

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[16] *Id*. at 74.

[17] *Id*. at 75-87.

[18] *Id*. at 114-124.

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

of Notarial Commission, and disqualification from being commissioned as Notary Public for two (2) years; and suspension of two (2) years from the practice of law.

The Issue

Whether or not respondent's conduct warrants an imposition of penalty to be meted out against him.

The Court's Ruling

We agree with the findings of the IBP-CBD and the IBP-Board of Governors that respondent failed to live up with the duties of a notary public as dictated by the 2004 Rules on Notarial Practice.

The pronounced nature of notarization cannot be overemphasized. It is not a meaningless ministerial act of acknowledging documents executed by parties who are willing to pay the fees for the same.[20] For notarization converts a private document into a public document, making the same admissible in evidence without further proof of authenticity; thus, a notarial document is, by law, entitled to full faith and credit upon its face.[21]

To ensure that the noble consequences of notarization would be achieved while protecting the public, Rule IV, Section 1(b) and (c) of the Notarial Rules provide for the following guidelines, among others:

(b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document —

(1) is not in the notary's presence personally at the time of the notarization; and

(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

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[20] *Isenhardt v. Atty. Real*, 682 Phil. 19, 26 (2012), citing *Lanuzo v. Bongon*, 587 Phil. 658, 662 (2008).

[21] *Gonzales v. Atty. Ramos*, 499 Phil. 345, 350 (2005).

The importance of personal appearance was highlighted as one of the prohibitions under the Rules, to wit:

> Section 2. *Prohibitions*.
>
> b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document —
>
> (1) is not in the notary's presence personally at the time of the notarization; and
>
> (2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

Based on the records of the case, it is apparent that respondent notarized several Deeds of Absolute Sale, purporting to convey several parcels of land by deceased Narciso to several individuals long *after* the former's demise. By notarizing a document without the appearance of the affiant, respondent failed to ascertain not only the genuineness of his signature but also the due execution of the document.[22]

In the case of *Dela Cruz-Silano v. Pangan*,[23] we had the occasion to explain the indispensable character of personal appearance so as to guard the public against fraud, to wit:

> The Court is aware of the practice of not a few lawyers commissioned as notary public to authenticate documents without requiring the physical presence of affiants. However, the adverse consequences of this practice far outweigh whatever convenience is afforded to the absent affiants. Doing away with the essential requirement of physical presence of the affiant does not take into account the likelihood that the documents may be spurious or that the affiants may not be who they purport to be. 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. x x x

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[22] *Almario v. Atty. Llera-Agno*, A.C. No. 10689, January 8, 2018, 850 SCRA 1, 10.

[23] 592 Phil. 219, 227 (2008).

Respondent's failure to faithfully discharge his duties as a notary public likewise makes him guilty of violating the CPR, which prohibits him from engaging in unlawful, dishonest, immoral or deceitful conduct and requires him to uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes.[24]

Equally deplorable is respondent's disregard of the IBP's authority when he repeatedly failed to attend the mandatory conference hearings. Such conduct is contrary to what the CPR requires:

> Canon 11 - A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.

Thus, respondent's failure to heed to the orders of the IBP amounts to conduct unbecoming of a lawyer.[25]

For notarizing a document without requiring the affiant's personal appearance, we revoked the respondent lawyer's notarial commission, disqualified him from reappointment as notary public for two years, and suspended him from the practice of law for a period of one year in the case of *Isenhardt v. Atty. Real*.[26]

In light of respondent's breach of the notarial rules coupled with respondent's downright defiance of the orders by the IBP, the penalty of suspension of two years from the practice of law, revocation of notarial commission, and disqualification from being a commissioned notary public for two years is deemed proper.

Once again, we remind the commissioned notaries public that it is their duty not only to preserve the integrity of notarized documents, but also to actively take measures to increase the

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[24] Rule 1.01, Code of Professional Responsibility.

[25] *Heenan v. Atty. Espejo*, 722 Phil. 528 (2013).

[26] 682 Phil. 19 (2012).

public's confidence in them. In this light, this Court will not hesitate to impose punishment against an erring lawyer found to have committed any act which diminishes the imagery of these documents as imbued with public interest.

WHEREFORE, premises considered, Atty. Ruben M. Ilagan is **GUILTY** of violating the Code of Professional Responsibility and the 2004 Rules on Notarial Commission. Accordingly, **SUSPENSION** from the practice of law for a period of two (2) years effective upon the finality of this Decision, **REVOCATION** of his notarial commission, and **DISQUALIFICATION** from being commissioned as Notary Public for a period of two (2) years is hereby imposed upon him.

He is likewise **STERNLY WARNED** that commission of a similar infraction will be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to Atty. Ruben M. Ilagan's personal record. Further, let copies of this Decision be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator, which is directed to circulate them to all courts in the country for their information and guidance.

SO ORDERED.

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

Bersamin, C.J. and *Gesmundo, J.,* on official business.

EN BANC

[G.R. No. 244806. September 17, 2019]

AMANDO M. TETANGCO, JR., ARMANDO L. SURATOS, JUAN D. ZUNIGA, JR., ANTONIO A. BERNARDO, JR., VICTORIA C. BERCILES, TERESA T. MANGILA, and MA. CECILIA N. MARTIN, *petitioners, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT-OWNED OR CONTROLLED CORPORATION, DEFINED; THE PHILIPPINE INTERNATIONAL CONVENTION CENTER INC. IS A GOVERNMENT-OWNED AND CONTROLLED CORPORATION SUBJECT TO THE AUDIT JURISDICTION OF THE COMMISSION ON AUDIT. — The PICCI was incorporated pursuant to P.D. No. 520 x x x. PICCI's sole stockholder is the BSP. The Administrative Code of 1987 defines a GOCC x x x. Verily, a corporation is a government-owned or controlled corporation when the government directly or indirectly owns or controls at least a majority or 51% share of the capital stock. A government-owned or controlled corporation is either a "parent" corporation, *i.e.*, one "created by special law" (Sec. 3 (a), PD 2029) or a "subsidiary" corporation, *i.e.*, one created pursuant to law where at least a majority of the outstanding voting capital stock is owned by the parent government corporation and/or other government-owned subsidiaries. The COA's audit jurisdiction extends not only to government agencies or instrumentalities, but also to "government-owned and controlled corporations with original charters as well as other government-owned or controlled corporations" without original charters. x x x The personality of PICCI as a GOCC subsidiary of BSP has already been settled in ***Singson***[, *et al. v. COA*] x x x.

2. ID.; CONSTITUTIONAL COMMISSIONS; CIVIL SERVICE COMMISSION; PROSCRIPTION AGAINST DOUBLE COMPENSATION; NOT VIOLATED BY THE GRANT OF

PER DIEMS AND THE PAYMENT OF REPRESENTATION AND TRANSPORTATION ALLOWANCE INCREASES WHEN THEY ARE NOT IN EXCESS OF THE AMOUNTS GIVEN TO GOVERNMENT OFFICIALS HOLDING COMPARABLE POSITIONS IN THE NATIONAL GOVERNMENT; CASE AT BAR. — [T]he COA here allowed petitioners' receipt of per diems but not exceeding ₱1,000.00. It, nonetheless, affirmed the total disallowance of the RATA granted them x x x. ***Singson*** pointedly resolved as valid the grant of RATA to members of the PICCI Board of Directors who are also BSP officers x x x. Applying ***Singson*** here, we rule that like the grant of per diems, the payment of RATA to petitioners Tetangco, Suratos and De Zuñiga does not violate the constitutional proscription against double compensation. In any event, the COA contradicted itself when in one breadth, it acknowledged the application of ***Singson*** to this case, but in another, it disallowed the grant of RATA to aforenamed petitioners for supposed lack of valid authority. In truth, ***Singson*** is one such valid authority supporting the grant of RATA to petitioners. The other sources of such authority are MB Resolution No. 34 dated January 12, 1994, No. 665 dated July 3, 1996, No. 1919 dated October 31, 2000, No. 1518 dated December 7, 2006, No. 1901 dated December 29, 2009, and No. 1855 dated December 23, 2010. These resolutions were passed by the PICCI Board of Directors and approved no less by the BSP-MB pursuant to Section 30 [of the] Corporation Code x x x. As a GOCC, the PICCI is governed by compensation and position standards issued by the Department of Budget and Management (DBM) and relevant laws. Among them is Memorandum Order No. 20 directing the suspension of any increases on the benefits of GOCC employees and executives x x x. [T]he proscribed increases under Memorandum Order No. 20 refer only to those in excess of the benefits given to government officials holding comparable positions in the National Government. On this score, the amounts of RATA and per diems granted to officials of the National Government for 2010 were those specified under RA 9770 or the General Appropriations Act of 2010 x x x. Here, the COA disapproved the grant of per diems and RATA increases to its *ex officio* members, without at all considering the foregoing guidelines. As it was, the COA issued a bulk disallowance of the increases,

sans any determination whether the same were indeed in excess of the amounts received by petitioners' counterparts in the National Government. Surely, Memorandum Order No. 20 intends to rationalize the benefits of the government employees, not to discriminate GOCCs.

3. ID.; ID.; ID.; ID.; BONUS; A FORM OF COMPENSATION FOR SERVICES RENDERED WHICH IS THE VERY EVIL SOUGHT TO BE CURBED BY THE CONSTITUTIONAL PROSCRIPTION AGAINST DOUBLE COMPENSATION. — We agree with the COA's pronouncement that the other bonuses granted to petitioners in addition to per diems and RATA were unauthorized. By definition, "bonus" is a gratuity or act of liberality of the giver. It is something given in addition to what is ordinarily received by or strictly due the recipient. It is granted and paid to an employee for his industry and loyalty which contributed to the success of the employer's business and made possible the realization of profits. It is not a gift, but a sum paid for services, or upon some other consideration, but in addition to or in excess of that which would ordinarily be given. Verily, bonus is a form of compensation for services rendered: the very evil sought to be curbed under Section 8, Art. IX-B of the 1987 Constitution x x x.

4. CIVIL LAW; CIVIL CODE; EFFECT AND APPLICATION OF LAWS; LAWS SHALL HAVE NO RETROACTIVE EFFECT, UNLESS THE CONTRARY IS PROVIDED. — The disallowed benefits here were given by the PICCI Board/ BSP-MB between January 2010 [to] February 2011. Executive Order No. 24 requiring the approval of the Philippine President for any increase on the current rate of per diems took effect only on March 21, 2011. Executive Order No. 24, therefore, should not apply to the increases in question which were granted to petitioners before Executive Order No. 24 took effect. Article 4 of the Civil Code ordains that laws shall have no retroactive effect, unless the contrary is provided. x x x Since Executive Order No. 24 does not provide for its retroactive application, the same may not be applied for the purpose of deauthorizing the grant of benefits prior to its effectivity. At most, it may serve as guidelines to acts done upon its effectivity onward.

5. REMEDIAL LAW; RULES OF PROCEDURE; TECHNICAL RULES OF PROCEDURE DO NOT STRICTLY APPLY TO ADMINISTRATIVE CASES, FOR THE PARTIES THEREIN SHOULD BE GIVEN THE AMPLEST OPPORTUNITY TO FULLY VENTILATE THEIR CLAIMS AND DEFENSES, BRUSHING ASIDE TECHNICALITIES IN ORDER TO TRULY ASCERTAIN THE RELEVANT FACTS AND JUSTLY RESOLVE THE CASE ON THE MERITS. — In their appeal first before the COA-Corporate Government Sector, and subsequently before the COA-Proper, petitioners consistently invoked as valid bases for the questioned grant of per diem and RATA, PICCI's amended by-laws and MB Resolution No. 34 dated January 12, 1994, No. 665 dated July 3, 1996, and No. 1919 dated October 31, 2000. x x x In support of their motion for reconsideration below, petitioners attached thereto the following documents — the SEC Certification on PICCI Amended By-Laws; MB Resolution No. 1518 dated December 7, 2006; MB Resolution No. 1901 dated December 29, 2009; and MB Resolution No. 1855 dated December 23, 2010, *etc*. To begin with, there is nothing in the 2009 COA Rules of [P]rocedure which prohibits the parties from presenting or submitting additional documents during the appeal proceedings before the COA proper. At any rate, there is no showing, as none was shown, that the aforesaid public documents were spurious, as to bar them from admission as evidence. In any case, the submission of these documents on motion for reconsideration before COA Proper was simply in direct response to the COA's adverse findings in its assailed decision. Notably, the COA Proper itself did not deny the admission of the documents in question. It is too late in the day for COA to now fault the submission of the documents before it on motion for reconsideration. Suffice it to state that technical rules of procedure do not strictly apply to administrative cases. The parties therein should be given the amplest opportunity to fully ventilate their claims and defenses, brushing aside technicalities in order to truly ascertain the relevant facts and justly resolve the case on the merits. After all, procedural rules are intended to secure, not override, substantial justice. So must it be.

APPEARANCES OF COUNSEL

The Solicitor General for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for *Certiorari*[1] assails the following dispositions of the Commission on Audit (COA):

1. Decision[2] dated February 16, 2017 insofar as it affirmed the ruling of the COA-Corporate Government Sector (COA-CGS) with respect to the increases in the per diems paid to petitioners Amando M. Tetangco, Jr., Armando L. Suratos, and Juan D. De Zuñiga, Jr. and the grant to them of representation and transportation allowance (RATA) and other bonuses, in their capacity as members of the Board of Directors of the Philippine International Convention Center Inc. (PICCI). Its dispositive portion reads:

> WHEREFORE, premises considered, the Petition for Review of Governor Amando M. Tetangco, Jr., et al., Bangko Sentral ng Pilipinas, Manila, of Commission on Audit on Corporate Government Sector-1 Decision No. 2014-01 dated April 30, 2014 is hereby PARTIALLY GRANTED. Accordingly, the payment of ₱1,000.00 per diem for every meeting in the total amount of ₱36,000.00 is LIFTED while the excess thereof in the total amount of ₱358,000.00, and the payment of representation allowances and other bonuses in the total amount of ₱224,500.00 disallowed under Notice of Disallowance (ND) No. 12-001-GF-(10&11) dated February 28, 2012 are AFFIRMED, broken down as follows:

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[1] *Rollo*, pp. 3-22; under Rule 64 of the Revised Rules of Court.

[2] Decision No. 2017-020, *Rollo*, pp. 31-37.

NAME	REPRESENTATION ALLOWANCES AND BONUSES	PER DIEM		
		TOTAL RECEIVED	ALLOWABLE @₱1,000.00/ MEETING	EXCESS OF ₱1,000/ MEETING
Amando M. Tetangco, Jr.	₱155,000.00	₱84,000.00	₱10,000.00	₱74,000.00
Armando L. Suratos	₱51,112.90	₱273,000.00	₱22.000.00	₱251,000.00

The sustained amount shall remain the liability of all persons named liable in the ND.

2. Resolution dated September 27, 2018, denying petitioners' motion for reconsideration.

Antecedents

Pursuant to Presidential Decree 520[3] (PD 520) dated July 23, 1974, the PICCI was established to manage and operate the Philippine International Convention Center known (PICC). The *Bangko Sentral ng Pilipinas* (BSP) (formerly Central Bank of the Philippines) is the PICCI's sole stockholder.[4]

PD 520 provides that the PICCI's Board of Directors shall include the BSP Governor as Chairperson, the Senior Deputy Governor as Vice Chairman, and five (5) other members to be designated by the Monetary Board.[5] Three (3) of herein petitioners: Amando M. Tetangco, Jr. (then BSP Governor; Armando L. Suratos (then BSP Deputy Governor); and Juan D. De Zuñiga, Jr. (then BSP Deputy Governor and General Counsel) served in the PICCI Board from January 2010 to February 2011. As for Suratos, he only served until December 2010.

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[3] Authorizing the Central Bank of The Philippines to construct an International Conference Center Building, acquire a suitable site for the purpose, organize a corporation which will manage and administer the said center and for other purposes.

[4] Sec. 2, PD No. 520.

[5] Sec. 2, PD No. 520.

On October 31, 2000, the Board proposed and the BSP-MB approved MB Resolution No. 1919, amending Section 8, Article III of the PICCI By-Laws, *viz*:[6]

> Compensation. Directors, as such, shall not receive any salary for their services but shall receive a per diem and allowances in such amounts as may be fixed by majority of all members of the board of directors in a regular or special meeting and approved by the Monetary Board. Nothing therein shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Between December 7, 2006 and December 23, 2010, the following resolutions were also approved:

First: MB Resolution No. 1518 dated December 7, 2006, increasing each member's per diem to ₱6,000 for regular meetings and ₱7,000 for executive meetings.[7]

Second: MB Resolution No. 1901 dated December 29, 2009, authorizing each member to receive ₱10,000.00 RATA.[8]

Third: MB Resolution No. 1855 dated December 23, 2010, further increasing each member's per diem to ₱9,000 for regular meetings and ₱9,500.00 for executive meetings.[9]

In the implementation of these resolutions, the PICCI paid petitioners a total of ₱618,500.00.[10]

Meanwhile, on August 9, 2010, the Court's decision in ***Singson, et al. v. COA***[11] came out. The case also involved the grant of per diems and RATA to petitioners' predecessors in the PICCI Board who themselves were BSP officers/members.

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[6] *Rollo*, pp. 11 & 49.

[7] *Id*. at 85.

[8] *Id*. at 89.

[9] *Id*. at 86.

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

[11] 641 Phil. 154, 172 (2010).

In ***Singson***, the Court allowed the payment of ₱1,000.00 per diem and ₱1,500.00 RATA based on the PICCI amended by laws and MB Resolutions. The Court held that these grants did not violate the constitutional proscription against double compensation.

The Notice of Disallowance No. 12-001-GF-(10&11)

On post-audit, Audit Team Leader Lolita Valenzuela and Supervising Auditor Ma. Teresa R. Gojunco issued Notice of Disallowance (ND) No. 12-001-GF-(10&11) dated February 28, 2012 against PICCI's grant of per diems, RATA, and bonuses to petitioners Tetangco, Suratos, and Zuñiga in the total amount of Php618,500.00.

ND No. 12-001-GF-(10&11) contains the following breakdown:

1. Amando M. Tetangco, Jr.	₱239,000.00
2. Armando L. Suratos	₱324,112.90
3. Juan De Zunigo, Jr.	₱55,387.10
Total	₱618,500.00

The Audit Team concluded[12] that the benefits in question violated the rule against double compensation and E.O. No. 24.[13] For these benefits were given to petitioners in their capacity as *ex-officio* members of the PICCI Board, albeit they were already receiving salary from the BSP at the same time. The Audit Team further cited Section 8,[14] Art. IX (B) of the 1987 Constitution

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

[13] Prescribing Rules to Govern the Compensation of Members of The Board of Directors/Trustees in Government-Owned or Controlled Corporations Including Government Financial Institutions.

[14] Section 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government. Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

and the *ratio decidendi* in ***Civil Liberties Union v. Executive Secretary***.[15]

The following persons were consequently directed to return the corresponding amounts they received: a) Amando M. Tetangco, Jr., Chairman and payee; b) Armando L. Suratos, Vice-Chairman and payee; c) Juan De Zuniga, Vice-Chairman and payee; d) Victoria C. Berciles, Director of the Administrative Department who approved the payment for RATA; e) Teresa T. Mangila, Senior Executive Assistant who made the request for payment of RATA, per diems, and bonuses;[16] and f) Ma. Cecilia N. Martin, Junior Executive Asst. who made the request for payment[17] of per diems for board meetings.[18]

Petitioners' Defense

On appeal to the COA-CGS, petitioners essentially asserted:

One. The questioned benefits did not constitute double compensation. They were in fact authorized per MB Resolution No. 34 dated January 12, 1994; No. 665 dated July 3, 1996;

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[15] 272 Phil. 147, 167 (1991):

The Supreme Court in this case declared that in order that such additional duties or functions may not transgress the prohibition embodied in Section 13, Article VII of the 1987 Constitution, such additional duties or functions must *be required by the primary functions of the official concerned, who is to perform the same in an ex-officio capacity as provided by law, without receiving any additional compensation therefor.*

The *ex-officio* position being actually and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive additional compensation for his services in the said position. The reason is that these services are already paid for and covered by the compensation attached to his principal office.

[16] Except for Disbursement Voucher (DV) 2010-11-92 dated November 10, 2010, DV 2010-11-07 to 108 dated November 25, 2010 and DV 2010-12-09 to 020 dated March 12, 2010.

[17] Covered by DV 2010-11 -92 dated November 22, 2010, DV 2010-11 -107 to 108 dated November 25, 2010 and DV 2010-12-019 to 020 dated March 12, 2010.

[18] *Rollo*, p.41.

No. 1919 dated October 31, 2000, Sec. 30 of the Corporation Code, Sec. 8 of the PICCI amended by laws, and the ruling in ***Singson, et al. v. COA***.[19] ***Singson*** ordained that the grant of RATA to *ex officio* members of the PICCI Board who were primarily officers of the BSP did not violate the constitutional proscription against double compensation.[20]

Two. The Audit Team misapplied the ruling in ***Civil Liberties Union***[21] to the present case: True, in ***Civil Liberties Union***, government officers are prohibited from holding more than one government position except those which the official concerned holds in his or her *ex-officio* capacity as an adjunct to his or her main office. He or she has no right to receive additional compensation for his or her services rendered in an *ex officio* capacity. But unlike in *Civil Liberties Union*, their functions and duties here as members of the PICCI Board were far different from nor just an adjunct to their primary positions as BSP officers.

The Dispositions of the COA-Corporate Government Sector

In denying petitioners' appeal under Decision[22] dated April 30, 2014, the COA-CGS basically reasoned:

a) Petitioners never disputed that they (were) ex-officio members of PICCI and they received per diems, RATA, and bonuses in such capacity. Hence, ***Civil Liberties Union*** applied insofar as additional compensation (was) concerned *vis-a-vis* Sections 7 and 8 of Article IX-B of the 1987 Constitution applied to them.

b) Although P.D. No. 520 designated petitioners as ex-officio members of PICCI Board of Directors, the same law did not provide that they shall be entitled to additional compensation. The grant of additional compensation to them was based only on the PICCI By-Laws which (was) by itself cannot be

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[19] *Supra* note 9.

[20] *Rollo*, p. 48.

[21] *Supra* Note 15.

[22] *Rollo*, pp. 101-106.

considered to have sufficiently authorized the grant of the benefit in question. Additional compensation may be given only when specifically authorized by law, not by mere PICCI by laws.

c) ***Singson*** resolved the issue of whether the grant of RATA constituted double compensation. ***Singson*** clarified that although the grant of RATA was permissible the same should not equate to indirect compensation. Also, to be valid, the grant of RATA should be supported by evidence, such as receipts, invoices, or such relevant documents showing that the amount was really used to defray expenses deemed unavoidable in petitioners' discharge of their office in PICCI.

d) Petitioners cannot be deemed in good faith when they received the additional compensation by way of RATA. It cannot bar the government either from recovering what was unduly given them, otherwise, it would constitute unjust enrichment.

The Proceedings Before the COA Proper

On further appeal to the COA Proper, petitioners averred, in the main: a) the benefits did not constitute double compensation; b) they were authorized to receive the benefits from PICCI pursuant to Section 30 of the Corporation Code; and c) the benefits were given them in good faith.[23]

On the other hand, the COA-CGS countered that petitioners' arguments were already addressed in full, hence, should no longer be entertained anew.[24]

Ruling of the COA Proper

By Decision[25] dated February 16, 2017 (Decision No. 2017-020), the COA Proper modified. It ruled that since ***Singson*** allowed the grant of per diem in such amount not exceeding Php 1,000.00, the same should be deducted from petitioners' total liabilities, thus:

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[23] *Id*. at 42-54.

[24] *Id*.

[25] *Id* at 31-37.

WHEREFORE, premises considered, the Petition for Review of Governor Amando M. Tetangco, Jr., et al., Bangko Sentral ng Pilipinas, Manila, of Commission on Audit on Corporate Government Sector-1 Decision No. 2014-01 dated Arpil 30, 2014 is hereby PARTIALLY GRANTED. Accordingly, the payment of ₱1,000.00 per diem for every meeting in the total amount of ₱36,000.00 is LIFTED while the excess thereof in the total amount of ₱358,000.00, and the payment of representation allowances and other bonuses in the total amount of ₱224,500.00 disallowed under Notice of Disallowance (ND) No. 12-001-GF-(10&11) dated February 28, 2012 are AFFIRMED, broken down as follows:

NAME	REPRESENTATION ALLOWANCES AND BONUSES	PER DIEM		
		TOTAL RECEIVED	ALLOWABLE @P1,000.00/ MEETING	EXCESS OF ₱1,000/ MEETING
Amando M. Tetangco, Jr.	₱155,000.00	₱84,000.00	₱10,000.00	₱74,000.00
Armando L. Suratos	₱51,112.90	₱273,000.00	₱22,000.00	₱251,000.00
Juan De Zuniga	₱18,387.10	₱37,000.00	₱4,000.00	₱33,000.00
TOTAL	₱224,500.00	₱394,000.00	₱36,000.00	₱358,000.00

The sustained amount shall remain the liability of all persons named liable in the ND.[26]

Petitioners' motion for reconsideration was denied through Resolution dated September 27, 2018.

The Present Petition

Petitioners now urge the Court to nullify, on ground of lack or excess of jurisdiction, the assailed dispositions. They assert: (1) the amounts of per diems granted to *ex-officio* members of the PICCI Board in excess of ₱1,000.00 were authorized under the PICCI amended by-laws and Board Resolutions; (2) Memorandum Order No. 20 does not apply to PICCI, a private

[26] *Id*. at 35-36.

corporation governed by the Corporation Code; (3) the prohibition under E.O. No. 24 which took effect on March 21, 2011 cannot apply to petitioners' receipt of the benefits in 2010 up until February 2011; and 4) *Singson* squarely applies to the present case.[27]

For its part, the Office of the Solicitor General (OSG), through Solicitor General Jose C. Calida, Senior State Solicitor B. Marc A. Canuto, and Senior State Solicitor Sharon E. Millan-Decano, ripostes: (1) the notice of disallowance was issued in the exercise of the COA's general audit power; (2) petitioners' newly submitted evidence *i.e.*, Board Resolutions and SEC Certificate of Filing of the Amended By-Laws are inadmissible; (3) PICCI is covered by Memorandum Order (MO) No. 20; and (4) ***Singson*** is not applicable here.[28]

Issues

1. Is PICCI a government-owned or controlled corporation, hence, subject to the audit jurisdiction of COA?
2. Were the benefits received by petitioners unauthorized, hence, constitute double compensation?
3. Were the increases in the per diems and RATA validly authorized, hence, should not be disallowed?
    a. Is the PICCI subject to the prohibition under Memorandum Order No. 20?
    b. Was the grant of the benefits subject to the prohibition under E.O. 24?
    c. Were the newly submitted documents *i.e.,* SEC Certificate of Filing of PICCI Amended By-Laws, MB Resolution No. 1518, MB Resolution No. 1855, MB Resolution No. 1901 attached to petitioners' motion for reconsideration before the COA-Proper admissible in evidence?

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[27] *Id*. at 3-21.

[28] *Id*. at 152-168.

4. Are petitioners solidarity liable for the return of the amounts in question?

Ruling

The PICCI is a Government Owned and Controlled Corporation (GOCC).

The PICCI was incorporated pursuant to P.D. No. 520, which provides:

Section 2. In order for the International Conference Center to enjoy autonomy of operation, separate and distinct from that of the Central bank, the latter is hereby authorized to organize a corporation to be known as the Manila International Conference Center which will manage and operate the former, the capital of which shall be fully subscribed by the Central Bank.

The governing powers and authority of the corporation shall be vested in, and exercised by, a Board of Directors composed of the Central Bank Governor as Chairman, the Senior Deputy as Vice Chairman, and five other members to be designated by the Monetary Board.

x x x x x x x x x

PICCI's sole stockholder is the BSP. The Administrative Code of 1987 defines a GOCC in this wise:

(13) government-owned or controlled corporations refer to any agency organized as a stock or non-stock corporation vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the government directly or indirectly through its instrumentalities either wholly, or **where applicable as in the case of stock corporations to the extent of at least 51% of its capital stock**.

Verily, a corporation is a government-owned or controlled corporation when the government directly or indirectly owns or controls at least a majority or 51% share of the capital stock. A government-owned or controlled corporation is either a "parent" corporation, *i.e.*, one "created by special law" (Sec. 3

(a), PD 2029) or a "subsidiary" corporation, *i.e.*, one created pursuant to law where at least a majority of the outstanding voting capital stock is owned by the parent government corporation and/or other government-owned subsidiaries.[29]

The COA's audit jurisdiction extends not only to government agencies or instrumentalities, but also to "government-owned and controlled corporations with original charters as well as other government-owned or controlled corporations" without original charters.[30]

In ***GSIS Family Bank Employees Union v. Villanueva***,[31] the Court clarified that a government-owned or controlled corporation is: (1) established by original charter or through the general corporation law; (2) vested with functions relating to public need whether governmental or proprietary in nature; and (3) directly owned by the government or by its instrumentality, or where the government owns a majority of the outstanding capital stock. Possessing all three (3) attributes is necessary to be classified as a government-owned or controlled corporation. In the case of the PICCI, it may not be an originally chartered corporation, but it is a subsidiary corporation of BSP organized in accordance with the Corporation Code of the Philippines.[32]

The personality of PICCI as a GOCC subsidiary of BSP has already been settled in ***Singson***, *viz*:

> The PICCI is not an originally chartered corporation, but a subsidiary corporation of BSP organized in accordance with the Corporation Code of the Philippines. The Articles of Incorporation of PICCI was registered on July 29, 1976 in the Securities and Exchange Commission. As such, PICCI does not fall within the coverage of NCC No. 67. As a matter of fact, by virtue of P.D. [No.] 520, PICCI is exempt from the coverage of the civil service law and regulations (and Constitution

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[29] *Carandang v. Hon. Desierto*, 654 Phil. 277, 292 (2011).

[30] *Engr. Feliciano v. Commission on Audit*, 464 Phil. 439, 453 (2004).

[31] G.R. No. 210773, January 23, 2019.

[32] *Supra* note 9.

defining coverage of civil service as limited to those with original [charter] (*TUCP v. NHA*, G.R. No. 49677, May 4, 1989, Article IX-B, Sec. 1). Certainly, if PICCI is not part of the National Government, but a mere subsidiary of a government-owned and/or controlled corporation (BSP), its officers, and more importantly, its directors, are not covered by the term "national government officials and employees" to which NCC No. 67 finds application.

Unquestionably, PICCI is a GOCC. Perforce, it is subject to the review and/audit of the COA.

Singson[33] **ordains that the grant of per diems and RATA to BSP officials concurrently holding *ex officio* positions in PICCI does not violate the constitutional proscription against double compensation.**

The Grant of per diems and RATA

To recall, the COA here allowed petitioners' receipt of per diems but not exceeding ₱1,000.00. It, nonetheless, affirmed the total disallowance of the RATA granted them, *viz*:

x x x x x x x x x

Thus, although the grant of per diems finds legal basis in Section 30 of the Corporation Code of the Philippines, only the amount of ₱1,000.00 for every meeting shall be allowed pursuant to the ruling of the Supreme Court in the ***Singson*** case, and pursuant to the suspension of the grant of new increased benefit under MO No. 20.

As to the payment of Representation Allowance and Travel Allowance (RATA), this Commission finds that its grant does not violate the provision against double compensation under Section 8, Article IX-B of the 1987 Constitution,

x x x x x x x x x

However, as pointed out in the above-cited case, although there is no double compensation, the By-Laws of PICCI authorized only

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[33] *Id*.

the payment of per diem to the members of its Board of Directors, and no other compensation. Thus, the payment of representation allowances and bonuses is still in violation of Section 8, IX-B of the 1987 Constitution, as there is no law authorizing its payment.

Singson pointedly resolved as valid the grant of RATA to members of the PICCI Board of Directors who are also BSP officers, *viz*:

x x x x x x x x x

Taking NCC No. 67 as a whole then, what it seeks to prevent is the dual collection of RATA by a national official from the budgets of "more than one national agency." We emphasize that the *other source* referred to in the prohibition is *another national agency*. This can be gleaned from the fact that the sentence "no one shall be allowed to collect RATA from more than one source" (the controversial prohibition) immediately follows the sentence that RATA shall be paid from the budget of the national agency where the concerned national officials and employees draw their salaries. The fact that the other source is another national agency is supported by RA 7645 (the GAA of 1993) invoked by respondent COA itself and, in fact, by all subsequent GAAs for that matter, because the GAAs all essentially provide that (1) the RATA of national officials shall be payable from the budgets of their respective national agencies and (2) those officials on detail with other national agencies shall be paid their RATA only from the budget of their parent national agency:

x x x x x x x x x

Clearly therefore, the prohibition in NCC No. 67 is only against the dual or multiple collection of RATA by a national official from the budgets of two or more national agencies. Stated otherwise, when a national official is on detail with another national agency, he should get his RATA only from his parent national agency and not from the other national agency he is detailed to.[19] (Italics supplied.)

Moreover, Section 6 of Republic Act No. 7653 (The New Central Bank Act) defines that the powers and functions of the BSP shall be exercised by the BSP Monetary Board, which is composed of seven (7) members appointed by the President of the Philippines for a term of six (6) years. MB Resolution No. 15, dated January 5, 1994, as amended by MB Resolution No. 34, dated January 12, 1994, are valid corporate acts of petitioners that became the bases for granting

them additional monthly RATA of ₱1,500.00, as members of the Board of Directors of PICCI. The RATA is distinct from salary (as a form of compensation). Unlike salary which is paid for services rendered, the RATA is a form of allowance intended to defray expenses deemed unavoidable in the discharge of office. Hence, the RATA is paid only to certain officials who, by the nature of their offices, incur representation and transportation expenses. Indeed, aside from the RATA that they have been receiving from the BSP, the grant of ₱1,500.00 RATA to each of the petitioners for every board meeting they attended, in their capacity as members of the Board of Directors of PICCI, in addition to their ₱1,000.00 *per diem*, does not run afoul the constitutional proscription against double compensation.

x x x x x x x x x

The Court upholds the findings of respondent that petitioners' right to compensation as members of the PICCI Board of Directors is limited only to per diem of ₱1,000.00 for every meeting attended, by virtue of the PICCI By-Laws. In the same vein, we also clarify that there has been no double compensation despite the fact that, apart from the RATA they have been receiving from the BSP, petitioners have been granted the RATA of ₱1,500.00 for every board meeting they attended, in their capacity as members of the Board of Directors of PICCI, pursuant to MB Resolution No. 15 dated January 5, 1994, as amended by MB Resolution No. 34 dated January 12, 1994, of the *Bangko Sentral ng Pilipinas*. In this regard, we take into consideration the good faith of petitioners.

Applying ***Singson*** here, we rule that like the grant of per diems, the payment of RATA to petitioners Tetangco, Suratos and De Zuñiga does not violate the constitutional proscription against double compensation.

In any event, the COA contradicted itself when in one breadth, it acknowledged the application of ***Singson*** to this case, but in another, it disallowed the grant of RATA to aforenamed petitioners for supposed lack of valid authority. In truth, ***Singson*** is one such valid authority supporting the grant of RATA to petitioners. The other sources of such authority are MB Resolution No. 34 dated January 12, 1994, No. 665 dated July 3, 1996, No. 1919 dated October 31, 2000, No. 1518 dated December 7, 2006, No. 1901 dated December 29, 2009, and No. 1855 dated

December 23, 2010. These resolutions were passed by the PICCI Board of Directors and approved no less by the BSP-MB pursuant to Section 30 of the Corporation Code, *viz*:

> Sec. 30. *Compensation of Directors.*— In the absence of any provision in the by-laws fixing their compensation, the directors shall not receive any compensation, as such directors, except for reasonable *per diems*; Provided, however, that any such compensation (other than *per diems*) may be granted to directors by the vote of the stockholders representing at least a majority of the outstanding capital stock at a regular or special stockholders' meeting. In no case shall the total yearly compensation of directors, as such directors, exceed ten (10%) percent of the net income before income tax of the corporation during the preceding year.

Other Bonuses

We agree with the COA's pronouncement that the other bonuses granted to petitioners in addition to per diems and RATA were unauthorized.

By definition, "bonus" is a gratuity or act of liberality of the giver. It is something given in addition to what is ordinarily received by or strictly due the recipient. It is granted and paid to an employee for his industry and loyalty which contributed to the success of the employer's business and made possible the realization of profits.[34] It is not a gift, but a sum paid for services, or upon some other consideration, but in addition to or in excess of that which would ordinarily be given.[35]

Verily, bonus is a form of compensation for services rendered: the very evil sought to be curbed under Section 8, Art. IX-B of the 1987 Constitution, *viz*:

> Section 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless

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[34] *Lepanto Ceramics, Inc. v. Lepanto Ceramics Employees Association*, 627 Phil. 691, 699 (2010).

[35] https://thelawdictionary.org/bonus, citing *Kenicott v. Wayne County*, 10 Wall. 452, 21 L. Ed. 319.

specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government. Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

The increases in petitioners' per diems and RATA are valid.

As a GOCC, the PICCI is governed by compensation and position standards issued by the Department of Budget and Management (DBM) and relevant laws.[36] Among them is Memorandum Order No. 20[37] directing the suspension of any increases on the benefits of GOCC employees and executives, thus:

SECTION 1. Immediately suspend the grant of any salary increases and new or increased benefits such as, but not limited to, allowances; incentives; reimbursement of expenses; intelligence, confidential or discretionary funds; extraordinary expenses, and such other benefits ***not in accordance with those granted under SSL***. This suspension shall cover senior officer level positions, including Members of the Board of Directors or Trustees.

Memorandum Order No. 20 aims to rationalize or harmonize the compensation and benefits of senior officers in the government both in the GOCCs and National Government. Its *Whereas Clause* provides:

WHEREAS, the study revealed a much superior pay package in GOCCs, GFIs and subsidiaries exempted from the SSL, such that officers in these entities receive at least twice what comparable positions receive in NGAs, and some heads of said entities even exceed the average salary of their counterpart positions in the private sector in the Philippines and in the ASEAN Region;

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[36] *Supra* note 31.

[37] Implementation of Pay Rationalization Plan in All Senior Officer Positions, Memorandum Order No. 20, June 25, 2001.

WHEREAS, Section 5, Article IX-B of the 1997 Constitution provides for the standardization of compensation of government officials and employees including those in GOCCs with original charters taking into account the nature of the responsibilities pertaining to and the qualifications required for their positions;

WHEREAS, in line therewith ***there is a need to harmonize the pay practices in these entities and place them at a level comparable to positions in NGAs to preclude dichotomy in the bureaucracy brought about by the severe pay imbalance between personnel of these special entities and the rest of the bureaucracy following the SSL;***

In fine, the proscribed increases under Memorandum Order No. 20 refer only to those in excess of the benefits given to government officials holding comparable positions in the National Government. On this score, the amounts of RATA and per diems granted to officials of the National Government for 2010 were those specified under RA 9770 or the General Appropriations Act of 2010, *viz*:

Sec. 47. Representation and Transportation Allowances. The following officials of National Government Agencies, whil in the actual performance of their respective functions, are hereby authorized monthly commutable representation and transportation allowances payable from the programmed appropriations provided for their respective offices at rates indicated below, which shall apply to each type of allowance at:

(a) ₱11,000 for Department Secretaries;

(b) ₱8,700 for Department Undersecretaries;

(c) ₱7,800 for Department Assistant Secretaries;

(d) ₱7,000 for Bureau Directors and Department Regional Directors;

(e) ₱6,500 for Assistant Bureau Directors, Department Assistant Regional Directors Bureau Regional Directors, and Department Service Chiefs;

(f) ₱5,500 for Assistant Bureau Regional Directors; and

(g) ₱4,000 for Chief of Divisions, identified as such in the Personal Services Itemization and Plantilla of Personnel.

The determination of those that are of equivalent ranks with the above cited officials in the government shall be made by the DBM.

x x x x x x x x x

Sec. 49. Honoraria. The respective agency appropriations for honoraria shall only be paid to the following:

(a) Teaching personnel of the DepEd, TESDA, SUCs and other educational institutions, engaged in actual classroom teaching, whose teaching load is outside of the regular office hours or in excess of the regular load;

(b) Those who act as lecturers, resource persons, coordinators and facilitators in seminars, training programs, and other similar activities in training institutions, including those conducted by entities for their officials and employees wherein no seminar fees are collected from participants;

(c) Chairs and members of commissions, boards, councils, and other similar entities, including the personnel thereof who are not paid salaries nor per diems but compensated in the form of honoraria as provided by law, rules and regulations;

The grant of honoraria to the foregoing shall be subject to the *guidelines prescribed under Budget Circular No. 2003-5, as amended by Budget Circular No. 2007-1 and National Budget Circular No. 2007-510, Budget Circular No. 2007-2, and other guidelines issued by the DBM*.

Here, the COA disapproved the grant of per diems and RATA increases to its *ex officio* members, without at all considering the foregoing guidelines. As it was, the COA issued a bulk disallowance of the increases, sans any determination whether the same were indeed in excess of the amounts received by petitioners' counterparts in the National Government. Surely, Memorandum Order No. 20 intends to rationalize the benefits of the government employees, not to discriminate GOCCs.

In line with the declared policy of the national government which is to provide "equal pay for substantially equal work. Sec. 5, IX-B of the Constitution commands:

Section 5. The Congress shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for, their positions.

Executive Order No. 24[38]
applies prospectively.

The disallowed benefits here were given by the PICCI Board/ BSP-MB between January 2010 and February 2011. Executive Order No. 24 requiring the approval of the Philippine President for any increase on the current rate of per diems took effect only on March 21, 2011. Executive Order No. 24, therefore, should not apply to the increases in question which were granted to petitioners before Executive Order No. 24 took effect.

Article 4 of the Civil Code ordains that laws shall have no retroactive effect, unless the contrary is provided. In the recent case of ***Felisa Agricultural Corp. v. National Transmission Corp.,***[39] the Court decreed:

Statutes are generally applied prospectively unless they expressly allow a retroactive application. It is well known that the principle that a new law shall not have retroactive effect only governs rights arising from acts done under the rule of the former law. However, if a right be declared for the first time by a subsequent law, it shall take effect from that time even though it has arisen from acts subject to the former laws, provided that it does not prejudice another acquired right of the same origin.

Since Executive Order No. 24 does not provide for its retroactive application, the same may not be applied for the purpose of deauthorizing the grant of benefits prior to its effectivity. At most, it may serve as guidelines to acts done upon its effectivity onward.

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[38] Prescribing Rules to Govern the Compensation of Members of the Board of Directors/Trustees in Government-Owned or Controlled Corporations Including Government Financial Institutions.

[39] G.R. Nos. 231655 & 231670, July 2, 2018.

The newly submitted evidence before the COA-Proper are admissible.

In their appeal first before the COA-Corporate Government Sector, and subsequently before the COA-Proper, petitioners consistently invoked as valid bases for the questioned grant of per diem and RATA, PICCI's amended by-laws and MB Resolution No. 34 dated January 12, 1994, No. 665 dated July 3, 1996, and No. 1919 dated October 31, 2000.

In its Decision dated February 16, 2017, the COA-Proper allowed the grant of ₱1,000.00 per diem, but disallowed the grant of RATA and the subsequent increases in both per diems and RATA. The COA Proper enumerated the reasons for the disallowance: a) the amended PICCI By-Laws even if approved by the BSP-Monetary Board cannot take effect unless the SEC itself issued the Certification required under Sec. 48 of the Corporation Code; b) the increases in the per diems were not supported by Board Resolutions; and c) the PICCI By-Laws allowed payment of per diems only, not of RATA or other benefits.

In support of their motion for reconsideration below, petitioners attached thereto the following documents — the SEC Certification on PICCI Amended By-Laws; MB Resolution No. 1518 dated December 7, 2006; MB Resolution No. 1901 dated December 29, 2009; and MB Resolution No. 1855 dated December 23, 2010, *etc*.

To begin with, there is nothing in the 2009 COA Rules of Procedure which prohibits the parties from presenting or submitting additional documents during the appeal proceedings before the COA proper. At any rate, there is no showing, as none was shown, that the aforesaid public documents were spurious, as to bar them from admission as evidence.

In any case, the submission of these documents on motion for reconsideration before COA Proper was simply in direct response to the COA's adverse findings in its assailed decision.

Notably, the COA Proper itself did not deny the admission of the documents in question. It is too late in the day for COA

to now fault the submission of the documents before it on motion for reconsideration.

Suffice it to state that technical rules of procedure do not strictly apply to administrative cases. The parties therein should be given the amplest opportunity to fully ventilate their claims and defenses, brushing aside technicalities in order to truly ascertain the relevant facts and justly resolve the case on the merits. After all, procedural rules are intended to secure, not override, substantial justice.[40] So must it be.

Singson is favorable to petitioners.

As earlier stated, ***Singson*** held that the grant of per diems and RATA to petitioners' predecessors in the PICCI Board of Directors who were also officers of BSP did not violate the proscription against double compensation, thus:

> Moreover, Section 6 of Republic Act No. 7653 (The New Central Bank Act) defines that the powers and functions of the BSP shall be exercised by the BSP Monetary Board, which is composed of seven (7) members appointed by the President of the Philippines for a term of six (6) years. MB Resolution No. 15, dated January 5, 1994, as amended by MB Resolution No. 34, dated January 12, 1994, are valid corporate acts of petitioners that became the bases for granting them additional monthly RATA of ₱1,500.00, as members of the Board of Directors of PICCI. The RATA is distinct from salary (as a form of compensation). Unlike salary which is paid for services rendered, the RATA is a form of allowance intended to defray expenses deemed unavoidable in the discharge of office. Hence, the RATA is paid only to certain officials who, by the nature of their offices, incur representation and transportation expenses. ***Indeed, aside from the RATA that they have been receiving from the BSP, the grant of ₱1,500.00 RATA to each of the petitioners for every board meeting they attended, in their capacity as members***

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[40] *Malixi v. Baltazar*, G.R. No. 208224, Nov. 22, 2017, 846 SCRA 244, 262.

of the Board of Directors of PICCI, in addition to their ₱1,000.00 per diem, does not run afoul the constitutional proscription against double compensation.[41]

ACCORDINGLY, the petition for *certiorari* is **GRANTED**. Save for the explicit recognition of the Commission on Audit of petitioners' entitlement to *per diems*, the Decision[42] dated February 16, 2017 and Resolution dated September 27, 2018 of the Commission on Audit are **NULLIFIED.**

SO ORDERED.

Carpio (Acting C.J.), Peralta, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Reyes, J. Jr., Hernando, Carandang, Inting, and *Zalameda, JJ.,* concur.

Bersamin, C.J. and *Gesmundo, J.,* on official business.

THIRD DIVISION

[G.R. No. 152797. September 18, 2019]

FIL-ESTATE PROPERTIES, INC., *petitioner, vs.* **PAULINO REYES, DANILO BAON, PACITA D. VADURIA, JULIE MONTOYA, MERCEDES RAMOS, GERONIMO DERAIN, FELICIANO D. BAON, PACIFICO DERAIN, EUTERIO SEVILLA, MAMERTO B. ESPINELI, CARMELITA GRAVADOS, AVELINO E. PASTOR, ANTONIO BUHAY, TIRZO GULFAN, JR., FELIX SOBREMONTE, ERNESTO SOBREMONTE, BEN PILIIN, PASCUAL V. DISTREZA, JACINTO P.**

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[41] Emphasis supplied and citations omitted.

[42] Decision No. 2017-020, *Rollo*, pp. 31-37.

BACALAG, ADELAIDA BAYANI, ELMERT BAYANI, EGLESIA SOBREMONTE, NICASIO TINAUGISAN, VICENTE VILLALUNA, MEYNARDO VILLALUNA, LEOPOLDO DE JOYA, LENIE DE JOYA, LIBERATO DE JOYA, CRESENCIANA DE JOYA, FRESCO CATAPANG, ROSITA CATAPANG, DOMINGO P. LIMBOC, VIRGILIO A. LIMBOC, VICENTE LIMBOC, MARIO H. PERNO, LAZARITO CABRAL, CARLITO CAPACIA, *respondents.*

[G.R. No. 189315. September 18, 2019]

PAULINO REYES, DANILO BAON, PACITA D. VADURIA, JULIE MONTOYA, BENIGNO BAON, BEATRIZ DERAIN, MARILOU SEVILLA, MAMERTO B. ESPINELLI, CARMELITA GRANADOS, ANTONIO BUHAY, FELIX SOBREMONTE, NICASIO TINAMISAN, CRESCENCIANA DE JOYA, FRESCO CATAPANG, SONNY CATAPANG, MARIO H. PERNO, CARLITO CAPACIA, AQUILINA BAUTISTA, FELECITO BARCELON, LUIS MANGI, BAYANI ORIONDO, BASILISA DERAIN, GUILLERMO BAUTISTA, BEATRIZ SEVILLA, NICOLAS ASAHAN, ROSITA MERCADO, LAMBERTO BAUTISTA, REXIE DINGLES, JOSE QUIROZ, *petitioners, vs.* **FIL-ESTATE PROPERTIES, INC.,** *respondent.*

[G.R. No. 200684. September 18, 2019]

NOLITO G. DEL MUNDO, GABRIEL A. MAULLON, MARIA L. TENORIO, NOEL G. DEL MUNDO, RACQUEL DEL MUNDO-REDUCA, TEODORICO D. AGUSTIN, represented by their attorney-in-fact, NOMER G. DEL MUNDO, *petitioners, vs.* **THE MANILA SOUTHCOAST DEVELOPMENT CORPORATION, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; COMPROMISES; THE VALIDITY OF A COMPROMISE DEPENDS UPON COMPLIANCE WITH THE REQUISITES OF A CONTRACT AND IT IS STRICTLY LIMITED TO OBJECTS EXPRESSLY STATED IN ITS PROVISIONS AND THOSE THAT ARE DEEMED INCLUDED BY NECESSARY IMPLICATION. — Article 2028 of the Civil Code defines a compromise as a "contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced." It can either be judicial or extrajudicial depending on its object or purpose. A judicial compromise is one that puts an end to pending lawsuit, while an extrajudicial compromise is one entered into by the parties to avoid litigation. By its very definition, a compromise is a contract between two (2) or more parties. Just like any other contract, its validity depends upon compliance with the requisites enumerated in Article 1318 of the Civil Code, namely: (1) consent of the contracting parties; (2) object certain, which is the subject matter of the contract; (3) cause of the obligation. Certain matters cannot be the subject of a compromise. Courts should carefully look into the terms and conditions stipulated by the parties, as a compromise must not have provisions that are contrary to "law, morals, good customs, public order or public policy"; otherwise, it shall be deemed void, and shall vest no right in and hold no obligation for either of the parties. A compromise is strictly limited to objects expressly stated in its provisions and those that are deemed included by necessary implication.

2. ID.; ID.; ID.; WHEN A PARTY IS REPRESENTED BY ANOTHER, A SPECIAL POWER OF ATTORNEY IS NECESSARY BUT THE ABSENCE THEREOF DOES NOT RENDER THE COMPROMISE VOID BUT MERELY UNENFORCEABLE, CAPABLE OF BEING RATIFIED BY THE PROPER PARTY.— In cases where a party is represented by another, a special power of attorney is necessary. Article 1878 of the Civil Code is explicit about this requirement. However, the absence of a special power of attorney does not render the compromise void but merely unenforceable, capable of being ratified by the proper party. x x x In this case, the

Compromise Agreement submitted by the parties in G.R. Nos. 152797 and 189315 was only signed by the parties' respective counsels. This Court deferred action on the Joint Motion for Partial Judgment pending the submission of a Compromise Agreement duly signed by the parties or a special power of attorney authorizing the parties' counsels to enter into a Compromise Agreement. On March 11, 2016, Reyes, *et al.* submitted a Sworn Declaration with Instructions to Counsel dated September 18, 2014, individually signed by the parties in G.R. Nos. 152797 and 189315. They also submitted individually executed Special Powers of Attorney.

3. ID.; ID.; ID.; AS A CONTRACT, A COMPROMISE AGREEMENT ONLY HAS BINDING AND OBLIGATORY FORCE BETWEEN THE PARTIES, THEIR HEIRS, AND ASSIGNS. — A perusal of these documents shows that all claimants of Lots 780-12 and 780-13 signed the Sworn Declaration with Instructions to Counsel. Although some parties in G.R. Nos. 152797 and 189315 were not included, their omission cannot be deemed fatal to the validity of the Joint Motion for Partial Judgment. x x x These individuals have no interest over the lots sought to be excluded. In any case, their omission from the Compromise Agreement will not prejudice them. As a contract, a compromise agreement only has binding and obligatory force between the parties, their heirs, and assigns. Non-parties to the agreement cannot be bound by its terms and conditions. This is because there is no "vinculum or juridical tie which is the efficient cause for the establishment of an obligation."

4. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW); LIMITATIONS ON THE TRANSFERABILITY OF AWARDED LANDS; AN AGRARIAN REFORM BENEFICIARY IS PROHIBITED FROM ALIENATING AWARDED LANDS FOR A PERIOD OF TEN YEARS, SAVE IN CERTAIN CASES. — Republic Act No. 6657, as amended by Republic Act No. 9700, places reasonable limitations on the transferability of awarded lands. x x x An agrarian reform beneficiary is prohibited from alienating awarded lands for a period of 10 years, save in certain cases. x x x In this case, the claimants of lots 780-12 and 780-13 are no longer covered by the prohibition under Section 27 of Republic

Act No. 6657, as amended. The Department of Agrarian Reform issued their Certificates of Land Ownership long ago, from 1991 to 1993. With the lapse of more than 10 years, the claimants may now renounce their rights over the two (2) lots in favor of Fil-Estate.

5. ID.; ID.; ID.; COMPREHENSIVE AGRARIAN REFORM PROGRAM; APPLICATIONS FOR EXEMPTION FROM COVERAGE ARE CLASSIFIED AS AGRARIAN LAW IMPLEMENTATION CASES WHICH FALL UNDER THE EXCLUSIVE JURISDICTION OF THE SECRETARY OF AGRARIAN REFORM, AND THE PROPER REMEDY TO ASSAIL THE DECISIONS OF THE SECRETARY IS AN APPEAL TO THE OFFICE OF THE PRESIDENT. — Section 54 Republic Act No. 6657 in relation to Section 61 provides the mode of appeal from the decisions, orders, awards, or rulings of the Department of Agrarian Reform x x x. This Court in *Valencia* [*v. Court of Appeals*] distinguished two (2) modes of appeal that may be taken from the decisions, resolutions, and final orders of the Department of Agrarian Reform depending on the subject matter of the case. For matters falling within the jurisdiction of the Department of Agrarian Reform Adjudication Board, the appeal should be lodged before the Court of Appeals by way of a petition for review on *certiorari* under Rule 43 of the Rules of Court. Otherwise, the case may be elevated to the Office of the President depending on whether the rules provide for such mode of appeal. The distinction made in *Valencia* is consistent with the two-fold nature of the Department of Agrarian Reform's jurisdiction as set forth in Section 50 of Republic Act No. 6657 x x x. This two-fold jurisdiction of the Department of Agrarian Reform has been delineated through various issuances. The Secretary of Agrarian Reform has jurisdiction over all matters involving the administrative implementation of Republic Act No. 6657. At present, these matters are governed by rules outlined in Department of Agrarian Reform Administrative Order No. 03, series of 2017. Applications for exemption from coverage under Section 10 of Republic Act No. 6657 have been classified as Agrarian Law Implementation Cases, which fall under the exclusive jurisdiction of the Secretary of Agrarian Reform. Jurisdiction over agrarian disputes, on the other hand, is lodged before the Department of Agrarian Reform Adjudication Board.

Agrarian Law Implementation Cases are not within its jurisdiction. The Rules for Agrarian Law Implementation Cases, both past and present, provide a mode of appeal from the decisions of the Secretary of Agrarian Reform to the Office of the President. On the other hand, the Rules of Procedure of the Department of Agrarian Reform Adjudication Board states that appeals from the decisions of the Department of Agrarian Reform Adjudication Board may be brought to the Court of Appeals pursuant to the Rules of Court. Here, Fil-Estate applied for exemption from coverage under Section 10 of Republic Act No. 6657. Certainly, this is a matter that fell within the exclusive jurisdiction of Agrarian Reform Secretary Garilao. Moreover, Agrarian Reform Secretary Garilao's March 25, 1998 Order would have depended on the governing rules of procedure at that time. When Reyes, *et al*. received a copy of the Order, the Rules for Agrarian Law Implementation Cases had not yet been promulgated. Nevertheless, Department of Agrarian Reform Memorandum Circular No. 3, which allows parties to appeal the Agrarian Reform Secretary's rulings to the Office of the President, was still in effect. Therefore, Reyes, *et al.* did not err in elevating the case to the Office of the President first before filing a petition for review before the Court of Appeals.

6. REMEDIAL LAW; CIVIL PROCEDURE; RULE ON FORUM SHOPPING; INTENDED TO COVER ONLY INITIATORY PLEADINGS OR INCIPIENT APPLICATIONS ASSERTING A CLAIM FOR RELIEF. — The rule on forum shopping is found in Rule 7, Section 5 of the Rules of Court x x x. The provision is intended to cover only initiatory pleadings or incipient applications "asserting a claim for relief." A claim for relief "that is derived only from, or is necessarily connected with, the main action or complaint" such as an answer with compulsory counterclaim is not covered by the rule requiring a certification against forum shopping. Likewise, a comment to a petition filed before an appellate tribunal, not being an initiatory pleading, does not require a certification against forum shopping. A comment to a petition is not an initiatory pleading or an incipient application asserting a claim for relief as contemplated in Rule 7, Section 5 of the Rules of Court. Thus, Reyes, *et al*. cannot be said to have committed forum shopping when they filed their Comment to Fil-Estate's Petition in CA-G.R. SP No. 47497. Similarly, Reyes, *et al*. are not guilty of

forum shopping when they filed a Petition to Reopen the Case before the Secretary of Agrarian Reform. Forum shopping exists when litigants resort to two (2) different *forums* "for the purpose of obtaining the same relief, to increase the chances of obtaining a favorable judgment." The rules impose sanctions on parties who commit forum shopping, since its practice "trifles with the courts, abuses their processes, degrades the administration of justice and adds to the already congested court dockets." The evil sought to be avoided by the rule on forum shopping is the proliferation of contradictory decisions on the same controversy. This is the critical factor that courts must consider in determining whether forum shopping exists. There is forum shopping when "the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in another."

7. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW); DEPARTMENT OF AGRARIAN REFORM; HAS EXCLUSIVE JURISDICTION OVER ADMINISTRATIVE IMPLEMENTATION OF AGRARIAN LAWS, AND IN CARRYING OUT ITS MANDATE OF RESOLVING DISPUTES AND CONTROVERSIES, IT IS NOT CONSTRAINED BY THE TECHNICAL RULES OF PROCEDURE AND EVIDENCE. —The Comprehensive Agrarian Reform Law recognizes the need of landless farmers and farmworkers to either own the land they till or receive a just share of the fruits. This government initiative is founded upon the history of agrarian reform in the country, which was exhaustively discussed in *Heirs of Nuñez, Sr. v. Heirs of Villanoza* x x x. Republic Act No. 6657 is anchored on the social justice provisions on agrarian reform found in Article XIII of the 1987 Constitution x x x. Republic Act No. 6657, as amended, echoes these social justice provisions. Section 2 lists among the objectives of agrarian reform "the just distribution of all agricultural lands" subject to certain conditions. It also recognizes, among others, the participatory role of all stakeholders by allowing farmers, farmworkers, landowners, cooperatives, and other independent farmer's organizations to "participate in the planning, organization, and management" of the Comprehensive Agrarian Reform Program. Section 50 of Republic Act No. 6657, as amended, vests the Department

of Agrarian Reform with primary jurisdiction over agrarian reform matters and over all matters involving the implementation of agrarian reform. This provision is further reiterated in jurisprudence. In the recent case of *Secretary of Department of Agrarian Reform v. Heirs of Abucay*, for one, this Court held that the "jurisdiction over the administrative implementation of agrarian laws exclusively belongs to the Department of Agrarian Reform Secretary." Thus, in carrying out its mandate of resolving disputes and controversies in the most expeditious manner, the Department of Agrarian Reform is not constrained by the technical rules of procedure and evidence. It may employ "all reasonable means to ascertain the facts of every case in accordance with justice and equity and the merits of the case." Toward this end, it is empowered to issue the necessary rules and regulations. This Court finds that Agrarian Reform Secretary Garilao did not exceed the scope of his jurisdiction in issuing the March 25, 1998 Order. The Department of Agrarian Reform, through its Secretary, has primary jurisdiction over all matters involving the implementation of agrarian reform, including the investigation of acts that he or she believes are directed toward the circumvention of the objectives of the Comprehensive Agrarian Reform Program. A reading of the Comprehensive Agrarian Reform Law, as a social welfare legislation, should be "more than just an inquiry into the literal meaning of the law." In interpreting tenancy and labor legislations, the broad consideration is the ultimate resolution of doubts in favor of the tenant or worker.

8. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITIONS; LIMITED IN SCOPE SUCH THAT ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS. — Section 10 of Republic Act No. 6657 enumerates the types of land excluded from the coverage of the Comprehensive Agrarian Reform Program. Among the lands excluded are those with slopes of 18% and over, except if they are already developed x x x. Both parties believe that the findings of Agrarian Reform Secretary Garilao on the lots' slope and development are erroneous. x x x This Court sees no reason to disturb the factual findings of Agrarian Reform Secretary Garilao in his March 25, 1998 Order, which were affirmed by the Court of Appeals. This Court is not a trier of facts; we do not examine and weigh anew the probative value of the parties' evidence.

As a rule, the factual findings of lower tribunal are "final, binding[,] or conclusive on the parties and upon this [c]ourt[.]" The jurisdiction of this Court in Rule 45 petitions is limited in scope such that only questions of law may be raised. A question of law exists when "doubt or difference arises as to what the law is on a certain state of facts[.]" On the other hand, a question of fact exists when "doubt or difference arises as to the truth or the falsehood of alleged facts[.]" It inquires into the probative value of the parties' evidence. The general rule admits of certain exceptions, which must be alleged and proved by the parties. These exceptions are: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is 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. None of these exceptions are present here.

9. ID.; ID.; ID.; FINDINGS OF ADMINISTRATIVE AGENCIES, WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE, ARE ACCORDED GREAT RESPECT AND EVEN FINALITY ON APPEAL. — [A]s a rule, the findings of administrative agencies, such as the Department of Agrarian Reform, are deemed binding and conclusive upon the appellate courts. Administrative agencies possess special knowledge and expertise on "matters falling under their specialized jurisdiction." Thus, their findings, when supported by substantial evidence, are accorded great respect and even finality, especially when affirmed by the Court of Appeals. x x x The Department of Agrarian Reform's factual findings on the lots' slope and level of development are based on substantial evidence. There is no reason to depart from them.

10. ID.; RULES OF COURT; DISQUALIFICATION OF JUDICIAL OFFICERS; VOLUNTARY INHIBITION; FOR BIAS AND PARTIALITY TO BE CONSIDERED AS VALID REASONS FOR INHIBITION, THERE MUST BE EVIDENCE OF ACTS OR CONDUCT INDICATIVE OF THE CHARGES. — Judges have the duty to render just decisions, which must be done in a manner "completely free from suspicion as to its fairness and as to [their] integrity." The public's faith and confidence in the justice system must always be preserved. Thus, in certain instances, judges may be compelled to inhibit themselves from sitting in a case. Rule 137, Section 1 of the Rules of Court outlines these instances x x x. The first paragraph pertains to compulsory disqualification or inhibition where it is conclusively presumed that a judge's partiality and objectivity might be questioned due to his or her relationship or interest. x x x The second paragraph of Rule 137, Section 1 refers to voluntary inhibition. Unlike the first paragraph, which enumerates specific cases where a judge should inhibit, the rule on voluntary inhibition gives judges the discretion to determine whether they should sit in a case for "just and valid reasons, with only their conscience as guided." Broad as it may seem, the rule on voluntary inhibition "does not give judges the unfettered discretion to decide whether to desist from hearing a case." There must be a just and valid cause or reason. An imputation of bias or partiality will not suffice absent any showing of "acts or conduct clearly indicative of arbitrariness or prejudice." Here, this Court finds no reason for Court of Appeals Associate Justice Gonzales-Sison to inhibit from sitting in CA-G.R. SP No. 111965. Del Mundo, *et al*. simply accused her of bias and partiality for having penned two (2) cases involving the same subject matter as their Petition. This is insufficient; there must be evidence of acts or conduct indicative of the charges.

11. ID.; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; RULE ON COMMUNALITY OF INTEREST; PROVIDES THAT A REVERSAL OF THE JUDGMENT ON APPEAL OPERATES AS A REVERSAL TO ALL THE PARTIES, EVEN TO THOSE WHO DID NOT APPEAL, IF IT IS SHOWN THAT THEIR RIGHTS AND INTERESTS ARE INSEPARABLE OR SO INTERWOVEN AND DEPENDENT OR EACH OTHER, AND WHEN AN INJUSTICE MIGHT RESULT FROM A REVERSAL AS

TO LESS THAN ALL THE PARTIES. — [T]he rule on indispensable parties only applies to original actions, not to appeals. The reversal of the judgment on appeal would only bind the parties in the appealed case but not those who were not made parties. As an exception, however, this Court cited communality of interest among the parties, where a reversal of the judgment on appeal operates as a reversal to all the parties—even to those who did not appeal—if it is shown that their rights and interests are inseparable or so "interwoven and dependent on each other[.]" The rule has also been held to apply in instances when an "injustice might result from a reversal as to less than all the parties." The rule on communality of interest does not apply here. The rule refers to the effect of a reversal of a judgment on parties who did not appeal. Del Mundo, *et al*., cannot rely upon this rule to recover an appeal which they had already lost. Even if the rule were applicable, there is no showing that Del Mundo, *et al.'s* rights and interests are inseparable or so "interwoven and dependent" on the rights and interests of the parties who filed an appeal.

APPEARANCES OF COUNSEL

Public Interest Law Center for Paulino Reyes, *et al.*
Poblador Bautista & Reyes for Fil-Estate Properties, Inc.
Theuntheth S. Javier for Manila Southcoast Dev., Corp., Inc.
Musico Law Office for Nolito G. Del Mundo, *et al.*

D E C I S I O N

LEONEN, *J.*:

The Department of Agrarian Reform is vested with primary jurisdiction to determine and adjudicate agrarian reform matters and has exclusive original jurisdiction over all matters involving the implementation of the Comprehensive Agrarian Reform Law. In carrying out its mandate, the Department of Agrarian Reform, through its Secretary, may investigate acts that are directed toward the circumvention of the law's objectives. Its findings are accorded great weight and respect, especially when supported by substantial evidence.

Before this Court are consolidated Petitions for Review on *Certiorari* involving Hacienda Looc in Nasugbu, Batangas. Portions of the property had previously been awarded to farmer-beneficiaries through Certificates of Land Ownership Award, but these certificates were canceled on the ground that the lands covered were excluded from the Comprehensive Agrarian Reform Program.

The Petition docketed as G.R. No. 152797[1] questions the Decision[2] of the Court of Appeals in CA-G.R. SP No. 47497, which affirmed then Agrarian Reform Secretary Ernesto D. Garilao's (Agrarian Reform Secretary Garilao) Order[3] declaring 70 hectares of the 1,219.0133 hectares of Hacienda Looc as covered land under the Comprehensive Agrarian Reform Program.

The Petition docketed as G.R. No. 189315[4] challenges the Decision[5] and Resolution[6] of the Court of Appeals in CA-G.R. SP No. 60203, which upheld the Office of the President's Decision affirming the same Order[7] issued by Agrarian Reform Secretary Garilao.

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[1] *Rollo* (G.R. No. 152797), pp. 27-97.

[2] *Id*. at 99-114. The March 26, 2002 Decision was penned by Associate Justice Bennie A. Adefuin-De La Cruz and concurred in by Associate Justices Wenceslao I. Agnir, Jr. and Josefina Guevara-Salonga of the Twelfth Division, Court of Appeals, Manila.

[3] *Id*. at 149-159. The Order was dated March 25, 1998.

[4] *Rollo* (G.R. No. 189315), pp. 11-78.

[5] *Id*. at 79-90. The February 27, 2009 Decision was penned by Associate Justice Edgardo P. Cruz and concurred in by Associate Justices Vicente S.E. Veloso and Ricardo R. Rosario of the Seventh Division, Court of Appeals, Manila.

[6] *Id*. at 91-92. The August 25, 2009 Resolution was penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Magdangal M. De Leon and Vicente S.E. Veloso of the Special Former Seventh Division, Court of Appeals, Manila.

[7] *Id*. at 273-282.

Finally, the Petition docketed as G.R. No. 200684[8] assails the Decision[9] and Resolution[10] of the Court of Appeals in CA-G.R. SP No. 111965, which affirmed the Department of Agrarian Reform Adjudication Board's Decision[11] upholding the cancellation of Certificates of Land Ownership Award previously granted to farmer-beneficiaries of Hacienda Looc.

Hacienda Looc is an 8,650.7778-hectare property in Nasugbu, Batangas[12] that is covered by Transfer Certificate of Title No. T-28719[13] and registered in the name of the Development Bank of the Philippines (Development Bank).[14] Development Bank acquired the property from Magdalena Estate, Inc. and the Philippine National Bank.[15]

In 1987, then President Corazon Aquino issued Executive Order No. 14, transferring Development Bank's certain assets and liabilities to the government, including Hacienda Looc. Following the conveyance, the government entered into an agreement with the Asset Privatization Trust, in which the latter was appointed as trustee of the property.[16]

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[8] *Rollo* (G.R. No. 200684), pp. 8-42.

[9] *Id*. at 43-63-A. The September 28, 2011 Decision was penned by Associate Justice Noel G. Tijam (now a retired member of this Court) and concurred in by Associate Justices Marlene Gonzales-Sison and Leoncia R. Dimagiba of the Tenth Division, Court of Appeals, Manila.

[10] *Id*. at 64-67. The February 20, 2012 Resolution was penned by Associate Justice Noel G. Tijam (now a retired member of this Court) and concurred in by Associate Justices Marlene Gonzales-Sison and Leoncia R. Dimagiba of the Former Tenth Division, Court of Appeals, Manila.

[11] *Id*. at 341-390. The January 25, 2005 Order was penned by Assistant Secretary Lorenzo R. Reyes and concurred in by Secretary Rene C. Villa and Undersecretaries Severino T. Madronio and Ernesto G. Ladrido III, as well as Assistant Secretaries Augusto P. Quijano, Edgar A. Igano, and Delfin B. Samson.

[12] *Rollo* (G.R. No. 152797), p. 101.

[13] *Id*. at 31.

[14] *Rollo* (G.R. No. 200684), p. 15.

[15] *Rollo* (G.R. No. 152797), p. 31.

[16] *Id*. at 31.

On June 28, 1990, Asset Privatization Trust, through a Memorandum of Agreement,[17] offered to sell portions of Hacienda Looc to the Department of Agrarian Reform under the Voluntary Offer to Sell scheme of Republic Act No. 6657.[18]

Through this agreement, Asset Privatization Trust transferred the physical possession of Hacienda Looc to the Department of Agrarian Reform. In effect, the Department of Agrarian Reform was allowed to: (1) identify and segregate areas that were covered by the Comprehensive Agrarian Reform Program; (2) purchase the segregated areas; and (3) return portions of the property that were not covered.[19]

From 1991 to 1993, the Department of Agrarian Reform distributed 25 Certificates of Land Ownership Award covering 3,981.2806 hectares of land:

LOT NO.	LOCATION	CLOA NO.	AREA (Has.)
1	LOOC	6639	480.5125
2	LOOC	4795	46.0099
3	LOOC	5514	328.7855
4	LOOC	4796	46.4415
5	CALAYO	4152	117.2230
6	CALAYO	4153	50.6760
8	CALAYO	4154	4.7502
9	CALAYO	4156	21.5041
10	CALAYO	4155	0.7274
11	CALAYO	4157	135.2297
12	CALAYO	4158	133.4841
13	CALAYO	4159	79.4639
14	PAPAYA	4474	113.0728

[17] *Id*. at 169-171.

[18] *Id.* at 101. Otherwise known as the Comprehensive Agrarian Reform Law.

[19] *Id*. at 32.

15	PAPAYA	4476	30.6594
16	PAPAYA	4475	234.3264
17	PAPAYA	4527	79.8230
18	PAPAYA	4526	91.4672
19	PAPAYA	4478	266.8548
20	PAPAYA	4477	43.8803
21	PAPAYA	4995	48.6447
22	PAPAYA	4994	266.5072
23	BULIHAN	5373	720.6063
24	BULIHAN	5513	387.0644
31	PAPAYA	5614	195.5431
32	CALAYO	6662	58.023[20]

Meanwhile, on December 10, 1993, Asset Privatization Trust offered to sell its rights and interests in Hacienda Looc through public bidding. Bellevue Properties, Inc. (Bellevue), which emerged as the winning bidder, then assigned its right to purchase Hacienda Looc to the Manila Southcoast Development Corporation (Manila Southcoast).[21]

By virtue of the assignment, Asset Privatization Trust executed a Deed of Sale[22] transferring all its rights, claims, and benefits over Hacienda Looc to Manila Southcoast.[23] Accordingly, Transfer Certificate of Title No. T-28719 was canceled and a new certificate of title was issued in Manila Southcoast's name.[24] Manila Southcoast was able to register portions of Hacienda Looc in its name.[25]

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[20] *Id*. at 728-729.

[21] *Id*. at 102.

[22] *Id*. at 172-177.

[23] *Id*. at 33-34.

[24] *Rollo* (G.R. No. 200684), pp. 18-19.

[25] *Rollo* (G.R. No. 152797), pp. 732-733.

On April 10, 1995, Manila Southcoast filed a Petition[26] before the Department of Agrarian Reform Adjudication Board Region IV.[27] It sought, among others, the cancellation of the 25 Certificates of Land Ownership Award, the resurvey of Hacienda Looc, and the reconveyance of the excluded areas.[28]

The Petition, which was docketed as DARAB Case No. 3468, was referred to the Provincial Agrarian Reform Adjudication Board of Batangas.[29] Provincial Adjudicator Antonio C. Cabili initially handled the case but later inhibited himself from further hearing the Petition. The case was, thus, elevated to the Regional Agrarian Reform Adjudication Board under Regional Adjudicator Fe Arche-Manalang (Regional Adjudicator Arche-Manalang).[30]

Instead of filing an answer, the farmer-beneficiaries moved for the Petition's dismissal. Manila Southcoast, in turn, opposed the motions.[31] The parties exchanged pleadings,[32] but before the pending incidents could be resolved, several of the farmer-beneficiaries entered into amicable settlements with Manila Southcoast.[33]

Between January and June 1996, Regional Adjudicator Arche-Manalang rendered three (3) Partial Summary Judgments and an Order canceling 15 Certificates of Land Ownership Award:

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[26] *Id*. at 178-201.

[27] *Id*. at 102.

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

[29] *Rollo* (G.R. No. 200684), pp. 271-273.

[30] *Rollo* (G.R. No. 152797), pp. 733-734.

[31] *Rollo* (G.R. No. 200684), pp. 370-378.

[32] *Id*.

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

Judgment/Order	CLOA No.	Lot No.
First Partial Summary Judgment[34] dated January 8, 1996	4152	5
	4153	6
	4157	11
	4158	12
	4159	13
	4474	14
	4475	16
	4476	15
	4478	19
	6662	32
Order[35] dated February 16, 1996	4156	9
	4477	20
Second Partial Summary Judgment[36] dated May 16, 1996	4995	21
	5614	31
Third Partial Summary Judgment[37] dated June 14, 1996	4154	8

The Certificates of Land Ownership Award were canceled based on the waivers allegedly executed by the farmer-beneficiaries.[38]

On October 27, 1997, Agrarian Reform Undersecretary Artemio A. Adasa (Undersecretary Adasa) issued an Order[39]

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[34] *Rollo* (G.R. No. 152797), pp. 202-218.

[35] *Id*. at 219-228.

[36] *Rollo* (G.R. No. 200684), p. 309.

[37] *Rollo* (G.R. No. 152797), pp. 229-233.

[38] *Rollo* (G.R. No. 200684), p. 383.

[39] *Id*. at 300-303.

canceling Certificates of Land Ownership Award Nos. 6639, 5514, 4796, 4155, 4527, 4526, 4994, 5373, and 5513 from the coverage of the Comprehensive Agrarian Reform Program.[40]

Accordingly, these Certificates of Land Ownership Award were canceled by Regional Adjudicator Conchita C. Minas (Regional Adjudicator Minas) in a March 10, 1998 Order.[41]

Aggrieved, the farmer-beneficiaries appealed the case. However, this appeal was denied by the Department of Agrarian Reform Adjudication Board in its January 25, 2005 Decision.[42]

Meanwhile, on October 17, 1995, while its Petition was still pending, Manila Southcoast entered into a joint venture agreement with Fil-Estate Properties, Inc. (Fil-Estate). The agreement was made for the development of the 10 lots covered by Certificates of Land Ownership Award Nos. 4152, 4153, 4157, 4158, 4159, 4474, 4475, 4476, 4478, and 6662, with an area totaling 1,219.0133 hectares. These were the same lots that would later be the subject of the First Partial Summary Judgment.[43]

In view of this joint venture agreement, Fil-Estate filed a Petition[44] on October 8, 1996, praying that these 10 lots be excluded from the coverage of the Comprehensive Agrarian Reform Program. It claimed that the lots had slopes of more than 18%.[45]

For their part, the affected farmer-beneficiaries questioned the validity of the cancellation proceedings presided by Regional Adjudicator Arche- Manalang, claiming that they were denied due process.[46] They also claimed that some waivers had been

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[40] *Id*. at 321.

[41] *Id*. at 304-333.

[42] *Id*. at 341-390.

[43] *Rollo* (G.R. No. 152797), pp. 37-38.

[44] *Id*. at 1008-1011.

[45] *Id*. at 1009.

[46] *Id*. at 738.

falsified, pointing out that the signatories were already dead at the time of execution of the waivers.[47]

Following this, Agrarian Reform Secretary Garilao instructed Undersecretary for Operations Hector D. Soliman (Undersecretary Soliman) to conduct a fact-finding investigation. Hearings were then conducted.[48]

In his Report,[49] Undersecretary Soliman recommended that a cease and desist order be issued to temporarily stop the development of the area. He also suggested that a massive information campaign be done to apprise the farmer-beneficiaries of their rights and responsibilities under the agrarian reform law. Moreover, he recommended that an investigating panel be formed to look into the allegedly falsified waivers.[50]

These recommendations were favorably acted upon by Agrarian Reform Secretary Garilao.[51]

On December 26, 1996, Department of Agrarian Reform Regional Director Remigio A. Tabones (Regional Director Tabones) issued an Order[52] granting Fil-Estate's Petition and ordering that the 10 lots be excluded from the coverage of the Comprehensive Agrarian Reform Program.

Thus, the affected farmer-beneficiaries appealed before the Agrarian Reform Secretary.[53]

In his March 25, 1998 Order,[54] Agrarian Reform Secretary Garilao, on the basis of Undersecretary Soliman's report and

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[47] *Id*. at 1079.

[48] *Id*. at 738-740.

[49] *Id*. at 1068-1083.

[50] *Id*.

[51] *Id*. at 742 and 1084-1086.

[52] *Id*. at 241-244.

[53] *Id*. at 742-743.

[54] *Id*. at 149-159.

the report of three (3) other task forces, declared 70 hectares of the 1,219.0133-hectare parcel of land as covered land under the Comprehensive Agrarian Reform Program. The dispositive portion of the Order read:

WHEREFORE, given these different recommendations of four different Committees and Task Forces, after a careful study of the proceedings of the different committees and Task Forces, this Order is hereby issued as follows:

1. Coverage of the following agriculturally developed areas, re-documentation of the same under CARP acquisition and award to individual beneficiaries found to be qualified under the CARL:

a. Lot No. 5: 2.3029 hectares as farmlots and 0.0666 as homelots, the homelots to be awarded to actual occupants thereof. Priority for the award of the farmlot will be the claimant, UNLESS there is reason to disqualify him and said award shall not result in the claimant becoming an owner of more than three (3) hectares of agricultural land;

b. Lot No. 6: 12.8467 hectare farmlot. Priority for the award of the farmlot will be the claimant, UNLESS there is reason to disqualify him and said award shall not result in the claimant becoming an owner of more than three (3) hectares of agricultural land;

c. Lot No. 11: 1.1234 hectares farmlot and 0.6388 homelots to be awarded to actual occupants thereof. Priority for the award of the farmlot will be the claimant, UNLESS there is reason to disqualify him and said award shall not result in the claimant becoming an owner of more than three (3) hectares of agricultural land;

d. Lot No. 12: 13.894 hectares as farmlots. Some 2.3674 has. and .4586 has. were deducted from the claim of Mr. Jaime Sobremonte and Mr. Leonardo Caronilla, respectively, as these already exceed the three hectares award ceiling. The area has been scraped by previous bulldozing by the applicant such that it becomes impossible for the team to determine the actual agricultural development of the area. In view of this situation, the Task Force deemed it proper to award the land to the claimants as the presumption must tilt in their favor, there being no contrary evidence presented by the

applicant. The award shall not exceed three hectares per claimant UNLESS there is reason to disqualify him and said award shall not result in the claimant becoming an owner of more than three (3) hectares of agricultural land;

e. Lot No. 13: 0.2251 hectare farmlot. Priority for the award of the farmlot will be the claimant, UNLESS there is reason to disqualify him and said award shall not result in the claimant becoming an owner of more than three (3) hectares of agricultural land;

g. *(sic)* Lot No. 15: 7.6376 hectares as farmlot. However, the coverage of the areas identified as fishponds shall be suspended until the Courts resolve the constitutionality of the law exempting fishponds from the coverage of agrarian reform. Priority for the award of the farmlot will be the claimant, UNLESS there is reason to disqualify him and said award shall not result in the claimant becoming an owner of more than three (3) hectares of agricultural land;

h. *(sic)* Lot No. 16: 14.2026 hectares as farmlots. Priority for the award of the farmlot will be the claimant, UNLESS there is reason to disqualify him and said award shall not result in the claimant becoming an owner of more than three (3) hectares of agricultural land;

i. *(sic)* Lot No. 19: 16.5695 hectares as farmlots. Priority for the award of the farmlot will be the claimant, UNLESS there is reason to disqualify him and said award shall not result in the claimant becoming an owner of more than three (3) hectares of agricultural land;

j. *(sic)* Approval of the distribution of homelots in Lots No. 9 and 20. As manifested, the total area of 65.38 hectares shall be distributed primarily as homelots to actual occupants. The area within Lot 20 which is agriculturally developed shall be subjected to further verification as to its CARPability and the same shall also be awarded as farmlots, covered by Certificates of Land Ownership Awards (CLOAs). Priority for the award of the farmlot will be the claimant, UNLESS there is reason to disqualify him and said award shall not result in the claimant becoming an owner of more than three (3) hectares of agricultural land;

2. Maintaining the coverage of some 1,197 hectares, more or less of lands under Operation Land Transfer and conducting a survey of the actual tillers of the land for purposes of awarding the same/re-allocating the same to its actual tillers in accordance with the land to the tiller principle[;]

3. On the matter of Environmental Protection. In areas that will be exempted by virtue of Section 10, of RA 6657, any development thereon, should be consistent with the intent of the law to preserve these lands for forest cover and soil conservation. It is therefore recommended that the DENR study the development of the area with this end in view in its issuance of ECCs.

Particularly, it is recommended that a buffer zone be established by the DENR to ensure protection of OLT and CARP lands from damage or erosion, as a result of any development to be implemented in excluded areas;

4. Re-conveyance of the exempt parcels to the Asset Privatization Trust, or its successors in-interest, after the CLOAs are properly cancelled by the proper forum;

5. Nullifying the alleged sale or transfer of rights over the CLOAs as contrary to the provisions of agrarian law; and

6. Directing the Regional Director to post a copy of this Order, including the maps attached hereto in the baranggay *(sic)* halls of Bgys. Calayo and Papaya to afford all parties the opportunity to be notified and to cause the amendments of CLOAs issued.

SO ORDERED.[55]

Following this Order, the farmer-beneficiaries moved for reconsideration and sought the issuance of a clarificatory ruling. However, their Motion was denied in Agrarian Reform Secretary Garilao's June 15, 1998 Order.[56]

For its part, Fil-Estate filed before the Court of Appeals a Petition for Partial Review[57] seeking that paragraphs 1, 2, 4, 5,

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

[56] *Id.* at 750-752.

[57] The Petition was filed under Rule 43 of the Rules of Court.

and 6 be deleted from the dispositive portion of the March 25, 1998 Order. It argued that the 10 lots, which are located inside a tourist zone, were excluded from the Comprehensive Agrarian Reform Law's coverage. It further averred that Agrarian Reform Secretary Garilao erred when he awarded portions of the lots to farmer-beneficiaries who did not file an appeal. This Petition was docketed as CA-G.R. SP No. 47497.[58]

As this Petition for Partial Review was pending, the farmer-beneficiaries appealed their case before the Office of the President.[59] They also filed a Petition to Re-Open Case before the Department of Agrarian Reform Secretary,[60] but it was denied on May 17, 2000.[61]

Subsequently, in its July 5, 2000 Decision, the Office of the President dismissed the farmer-beneficiaries' appeal.[62] It upheld the Department of Agrarian Reform's findings that majority of the 1,219.0133-hectare parcel of land had an average slope of 18% and were agriculturally undeveloped.[63]

Aggrieved, the farmer-beneficiaries filed a Petition for Review[64] before the Court of Appeals, which was docketed as CA-G.R. SP No. 60203. Among others, they argued that the Office of the President erred in limiting its scope of review to the 1,219.0133-hectare property when it should have conducted the review over the entire Hacienda Looc based on the community of interest principle. They also argued that the Office of the President erred in characterizing the property as undeveloped and in relying on the findings of the Department of Agrarian

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[58] *Rollo* (G.R. No. 152797), pp. 45-46.

[59] *Id*. at 752.

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

[61] *Id*. at 109.

[62] *Id*. at 50.

[63] *Rollo* (G.R. No. 189315), pp. 137-139.

[64] *Id*. at 538-609.

Reform, especially since the proceedings for exemption were done in secrecy.[65]

In a November 23, 2000 Resolution, however, the Court of Appeals dismissed the case on technical grounds. The farmer-beneficiaries moved for reconsideration, but the Motion was likewise denied.[66]

Thus, the farmer-beneficiaries filed a Petition for *Certiorari* before this Court, docketed as G.R. No. 148967.[67] In a February 9, 2007 Decision on the case entitled *Reyes v. Fil-Estate Properties, Inc.*,[68] this Court remanded the case to the Court of Appeals for it to be resolved on the merits.

As to Fil-Estate's Petition for Partial Review in CA-G.R. SP No. 47497, the Court of Appeals rendered a Decision[69] on March 26, 2002 affirming Agrarian Reform Secretary Garilao's March 25, 1998 Order *in toto*.[70]

In its ruling, the Court of Appeals declared moot the allegation that the farmer-beneficiaries committed forum shopping.[71]

As to the merits of the case, the Court of Appeals held that although Nasugbu, Batangas was declared a tourist zone under Proclamation No. 1520, none of the areas were identified by the Philippine Tourism Authority to have potential tourism value. Its classification as a tourist zone did not automatically exclude it from the coverage of the Comprehensive Agrarian Reform Program. Further, the enumeration of the excluded areas under Section 10 of Republic Act No. 6657 neither mentions nor describes areas that have been reserved as tourist zones.[72]

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[65] *Id*. at 584-589 and 599-605.

[66] *Rollo* (G.R. No. 152797), pp. 50-51.

[67] *Id*. at 51.

[68] 544 Phil. 203 (2007) [Per *J*. Azcuna, First Division].

[69] *Rollo* (G.R. No. 152797), pp. 99-114.

[70] *Id*. at 114.

[71] *Id*. at 110.

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

The Court of Appeals upheld the factual findings of Agrarian Reform Secretary Garilao regarding the lots' slope and level of development.[73] As to the farmer-beneficiaries who did not appeal, it ruled that they may benefit from the favorable ruling of Agrarian Reform Secretary Garilao based on the community of interest principle.[74]

As to the remanded case, on February 27, 2009, the Court of Appeals rendered a Decision[75] in CA G.R. SP No. 60203 affirming the Office of the President's July 5, 2000 Decision. It ruled that its appellate jurisdiction was limited to the subject matter of the case, which only covers the 1,219.0133-hectare parcel of land, not the entire Hacienda Looc. Otherwise, the decision would affect persons not impleaded and would open issues that were not raised in the earlier proceedings.

For the substantive issues, the Court of Appeals affirmed the factual findings of Agrarian Reform Secretary Garilao on the nature of the 1,219.0133-hectare parcel of land, adhering to the rule of according great respect to administrative agencies' factual findings. It also ruled that the farmer-beneficiaries were not denied due process because they were given the opportunity to appeal and seek reconsideration.[76]

Meanwhile, six (6) farmer-beneficiaries—Nolito G. del Mundo, Maria L. Tenorio, Noel G. del Mundo, Racquel del Mundo-Reduca, Teodorico D. Agustin, and Gabriel Maullon (Del Mundo, *et al.*)—filed a separate Petition for Review before the Court of Appeals, which was docketed as CA-G.R. SP No. 111965. They were assailing the Department of Agrarian Reform Adjudication Board's January 25, 2005 Decision, which upheld the cancellation of their Certificate of Land Ownership Award Nos. 5373 and 5513.[77]

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

[74] *Id.* at 113.

[75] *Rollo* (G.R. No. 189315), pp. 79-90.

[76] *Id.*

[77] *Rollo* (G.R. No. 200684), pp. 10 and 43.

Del Mundo, *et al*. questioned the validity of the certificates' cancellation, arguing that it never attained finality as they were never notified of it. They further argued that their lands are agriculturally developed and, thus, covered under the Comprehensive Agrarian Reform Program. They insisted that while they did not appeal the March 10, 1998 Order of Regional Adjudicator Minas, they could benefit from the appeal filed by the other farmer-beneficiaries based on the community of interest principle.[78]

Manila Southcoast, the respondent in Del Mundo, *et al.*'s Petition, argued that the cancellation of the Certificates of Land Ownership Award had become final and executory as to their case, since they failed to appeal Regional Adjudicator Minas' March 10, 1998 Order.[79] It also pointed out that the lands covered under their certificates have slopes of more than 18% and are undeveloped.[80]

In its September 28, 2011 Decision,[81] the Court of Appeals affirmed the Department of Agrarian Reform Adjudication Board's January 25, 2005 Decision. It ruled that the decision[82] canceling the Certificates of Land Ownership Award of Del Mundo, *et al*. had attained finality as to them for their failure to appeal from Regional Adjudicator Minas' Order. It also adopted the Department of Agrarian Reform's finding that the subject lands were "mostly idle and vacant, predominantly

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[78] *Id*. at 57.

[79] *Id*. at 507-510.

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

[81] *Id*. at 43-63-A.

[82] In its Decision, the Court of Appeals cited the Third Partial Summary Judgment of Regional Adjudicator Arche-Manalang. However, it was the Order dated March 10, 1998 of Regional Adjudicator Minas that ordered the cancellation of Certificates of Land Ownership Award Nos. 5373 and 5513.

forested, hilly and mountainous with thick growths of shrubs and grass . . . with above 18 percent slope."[83]

Moreover, the Court of Appeals rejected Del Mundo, *et al.'s* allegation that they were denied due process. Even if they were not notified of the cancellation proceedings, the Court of Appeals pointed out that the defect was cured when they submitted, although belatedly, an Appearance and Opposition to the Notice of Withdrawal of Appeal and Motion for Reconsideration.[84]

Del Mundo, *et al*. moved for reconsideration. They contended, among others, that Associate Justice Marlene Gonzales-Sison (Associate Justice Gonzales-Sison), who had concurred in the Court of Appeals Decision, should have mandatorily inhibited form the case on the ground of bias and partiality. Their Motion, however, was denied by the Court of Appeals in its February 20, 2012 Resolution.[85]

Following all of these proceedings, the parties filed different pleadings before this Court.

On May 20, 2002, Fil-Estate filed a Petition for Review on *Certiorari*[86] assailing the Court of Appeals' March 26, 2002 Decision in CA-G.R. SP No. 47497. To recall, the Court of Appeals affirmed Agrarian Reform Secretary Garilao's March 25, 1998 Order declaring 70 hectares of the 1,219.0133-hectare parcel of land in Hacienda Looc as covered land under the Comprehensive Agrarian Reform Program. Docketed as G.R. No. 152797, the Petition was filed against farmer-beneficiaries headed by Paulino Reyes (Reyes, *et al.*).

After an exchange of pleadings, the Petition was given due course on August 13, 2003.[87] The parties filed their

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[83] *Rollo* (G.R. No. 200684), p. 61.

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

[85] *Id*. at 64-67.

[86] *Rollo* (G.R. No. 152797), pp. 27-97.

[87] *Id*. at 1524.

respective memoranda on December 1, 2003 and December 10, 2003.[88]

On October 19, 2009, Reyes, *et al*. filed their own Petition for Review on *Certiorari*,[89] docketed as G.R. No. 189315, questioning the Court of Appeals' February 27, 2009 Decision and August 25, 2009 Resolution in CA-G.R. SP No. 60203. In these assailed judgments, the Court of Appeals affirmed the Office of the President's July 5, 2000 Decision upholding Agrarian Reform Secretary Garilao's March 25, 1998 Order. Fil-Estate filed its Comment on March 3, 2010.[90]

On March 15, 2010, the Petitions were consolidated.[91]

On September 2, 2011, Reyes, *et al.* filed a Reply[92] to Fil-Estate's Comment in G.R. No. 189315.

Meanwhile, on April 4, 2012, Del Mundo, *et al.* also filed before this Court their Petition for Review on *Certiorari*[93] questioning the September 28, 2011 Decision and February 20, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 111965. Manila Southcoast later filed a Comment.[94] This case was docketed as G.R. No. 200684.

On August 29, 2012, all three (3) cases were consolidated.[95]

On October 2, 2014, Reyes, *et al.* and Fil-Estate, the parties in G.R. Nos. 152797 and 189315, later filed a Joint Motion for Partial Judgment Based on Compromise Agreement (Joint Motion for Partial Judgment).[96] Under the Compromise Agreement, the

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[88] *Id*. at 1538-1687.

[89] *Rollo* (G.R. No.189315), pp. 11-78.

[90] *Id*. at 116-181.

[91] *Id*. at 767-768.

[92] *Id*. at 794-821.

[93] *Rollo* (G.R. No. 200684), pp. 8-42.

[94] *Id*. at 503-526.

[95] *Id*. at 492.

[96] *Rollo* (G.R. No. 152797), pp. 1733-1746.

parties sought to exclude from litigation Lots 780-12 and 780-13, which are covered by Certificates of Land Ownership Award Nos. 4158 and 4159, respectively. These lots have a total land area of 212 hectares.[97]

The Compromise Agreement identified the proper claimants to Lots 780-12 and 780-13, namely:

For Lot 780-12: Antonio Buhay, Mamerto Espineli, Carmelita Granados, Tirso Gulfan, Jr., Heirs of Avelino Pastor (represented by Felipe G. Pastor), Heirs of Benjamin Piliin (represented by Hermie M. Piliin), Felix Sobremonte, and Heirs of Egliceria Sobremonte (represented by Dionisio Sobremonte) (hereafter collectively known as the Lot 780-12 Claimants); and

For Lot 780-13: Adelaida S. Bayani, Elmer Bayani, Heirs of Jacinto Cabalag (represented by Lauriana Cabalag), Heirs of Pascual Destreza (represented by Eulogia D. Sobremonte), Ernesto Sobremonte, and Nicasio Tinamisan (hereafter collectively known as the Lot 780-13 Claimants).[98]

The Heirs of Francisco Mendoza, Liberato De Joya, Jocelyn Mercado Reyes, Juan Bautista, Paulino M. Mercado, Teresita Dinglas, Heirs of Moses Carable, and Enriquito Dinglas are not parties to G.R. Nos. 152797 and 189315 but have voluntarily submitted themselves to this Court's jurisdiction to seek the approval of the Compromise Agreement.[99]

The Compromise Agreement, however, was only signed by the parties' respective counsels without a special power of attorney.[100] The Compromise Agreement also omitted other parties to G.R. Nos. 152797 and 189315.[101]

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[97] *Id*.

[98] *Id*. at 1737-1738.

[99] *Id*. at 1750-1751.

[100] *Id*. at 1744-1745, 1752.

[101] *Id*. at 1750.

Thus, on October 21, 2015, this Court issued a Resolution[102] requiring the parties to submit a compromise agreement signed either by themselves or by their counsel with a special power of attorney. The parties were also required to include all the parties to G.R. Nos. 152797 and 189315 in the Joint Motion for Partial Judgment.[103]

On March 11, 2016, the parties in the Joint Motion for Partial Judgment submitted a Sworn Declaration with Instructions to Counsel dated September 18, 2014, individually signed by the petitioners in G.R. Nos. 152797 and 189315. They also submitted individual Special Powers of Attorney executed by the parties and their heirs.[104]

In the August 30, 2016 Resolution,[105] the parties in G.R. Nos. 152797 and 189315 were ordered to comment on the effects of the omission of Fresco Catapang, Rosita Catapang, Domingo P. Limboc, Virgilio A. Limboc, Sonny Catapang, and Rexie Dingles from the Joint Motion for Partial Judgment. In compliance, the parties submitted their explanation stating that the six (6) individuals are claimants of other lots.[106]

In G.R. Nos. 152797 and G.R. No. 189315, the following arguments were raised:

Fil-Estate argues that the proper remedy from the decisions, resolutions, and orders of the Agrarian Reform Secretary is a petition for review under Rule 43 of the Rules of Court, not an appeal to the Office of the President.[107]

Fil-Estate also argues that Reyes, *et al.* committed willful and deliberate forum shopping. It points out that the three (3)

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[102] *Id*. at 1747-1754.

[103] *Id*.

[104] *Id*. at 1761-1827.

[105] *Id*. at 1831-1832.

[106] *Id*. at 1872.

[107] *Id*. at 1643-1646.

pleadings filed by Reyes, *et al*. raised the same allegations and prayed for the same reliefs: (1) in their appeal before the Office of the President, seeking the denial of Fil-Estate's application for exemption; (2) in their Comment before the Court of Appeals in CA-G.R. SP No. 47497; and (3) in their Petition to Re-Open Case before the Department of Agrarian Reform.[108]

As to the substantive issues, Fil-Estate essentially asserts that the 10 lots subject of Regional Adjudicator Arche-Manalang's First Partial Summary Judgment are excluded from the coverage of the Comprehensive Agrarian Reform Program.

According to Fil-Estate, Nasugbu, Batangas was classified as a tourism zone and under the Philippine Tourism Authority's control pursuant to Proclamation No. 1520, issued by then President Ferdinand Marcos (President Marcos) on November 20, 1975. The entire coastline of Batangas was also classified as a tourism zone under Proclamation No. 1801, which was also issued by then President Marcos on March 10, 1978. The Philippine Tourism Authority even attested that Hacienda Looc has been identified as one (1) of the four (4) major tourism development areas. Therefore, the 10 lots are excluded from the coverage of the Comprehensive Agrarian Reform Program, regardless of whether they have slopes of less than 18% or whether they are agriculturally developed.[109]

In any case, Fil-Estate insists that the 10 lots are undeveloped and have slopes of 18% or over based on the certifications issued by the Community Environmental and Natural Resources Office and the Department of Agriculture.[110]

Finally, Fil-Estate claims that the Court of Appeals erred in sustaining the March 25, 1998 Order of Agrarian Reform Secretary Garilao, who adjudicated on matters that were not at issue. The only issue was the propriety of Regional Director

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[108] *Id*. at 1646-1656.

[109] *Id*. at 1657-1667 and *rollo* (G.R. No. 189315), pp. 165-175.

[110] *Id*. at 1670-1675 and *rollo* (G.R. No. 189315), pp. 157-165.

Tabones' Order excluding the 10 lots from the Comprehensive Agrarian Reform Program, but he supposedly exceeded the scope of his review by looking at the validity of the cancellation of the 25 Certificates of Land Ownership Award.[111]

On the other hand, Reyes, *et al.* argue that under the doctrine of exhaustion of administrative remedies, an appeal before the Office of the President is the proper remedy against Agrarian Reform Secretary Garilao's Orders. They point out that it was Fil-Estate that sought relief from another forum by instituting a case before the Court of Appeals despite the pendency of their appeal before the Office of the President.[112]

Maintaining that the 10 lots are covered by the Comprehensive Agrarian Reform Program, Reyes, *et al*. rely on experts from the Institute of Environmental Science and Management, who characterized the lands in Hacienda Looc as agricultural and the 10 lots as agriculturally developed.[113] They question Agrarian Reform Secretary Garilao's basis in declaring that some areas have slopes of at least 18% and are agriculturally undeveloped. They point out that the evidence that he relied on are inaccurate and flawed since the farmer-beneficiaries were excluded from the exemption proceedings.[114]

Next, Reyes, *et al.* argue that Proclamation No. 1520 had already been repealed by Executive Order Nos. 448 and 506, as amended. These executive orders provide, among others, that lands reserved by virtue of proclamations or laws for specific purposes, which are suitable for agriculture but are no longer used for the purposes for which they have been reserved, shall be transferred to the Department of Agrarian Reform for distribution under the Comprehensive Agrarian Reform Program. At the time that Executive Order Nos. 448 and 506 were issued, the Philippine Tourism Authority had no existing plan to develop

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[111] *Id*. at 1680-1685.

[112] *Id*. at 1581.

[113] *Id*. at 1589-1592.

[114] *Id*. at 1587-1589.

Hacienda Looc pursuant to Proclamation Nos. 1520 and 1801. Its "master plans" were only made sometime after the passage of the two (2) executive orders.[115]

Assuming that Proclamation No. 1520 had not been repealed, Reyes, *et al.* argue that agrarian reform, as an aspect of social justice, outweighs the ends of tourism and should be given more consideration.[116]

Finally, Reyes, *et al.* argue that Agrarian Reform Secretary Garilao did not err in looking into the validity of the cancellation proceedings, as he was authorized under Section 50 of the Comprehensive Agrarian Reform Law to correct all errors that would defeat the substantive rights of farmer-beneficiaries.[117] Further insisting that the certificates' cancellation is void, they claim that the Department of Agrarian Reform Adjudication Board did not acquire jurisdiction over the farmer-beneficiaries as they were not made aware of the proceedings.[118] They further allege that the farmer-beneficiaries were deceived, threatened, and intimidated into signing blank waivers and declarations of abandonment in favor of Manila Southcoast.[119]

Reyes, *et al.* add that although the subject of the Petition only covers 10 lots situated in Hacienda Looc, the community of interest principle warrants a review of the application of the Comprehensive Agrarian Reform Law over the entire Hacienda Looc. They point out that Fil-Estate's plans to convert the 10 lots into a tourist haven would negatively impact the agricultural activities in other areas of Hacienda Looc.[120]

Meanwhile, the parties in G.R. No. 200684 raise the following allegations:

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[115] *Id.* at 1594-1596.

[116] *Id.* at 1596-1597.

[117] *Rollo* (G.R. No. 189315), pp. 55-61.

[118] *Rollo* (G.R. No. 152797), pp. 1601-1602.

[119] *Rollo* (G.R. No. 189315), p. 52.

[120] *Id.* at 68-70 and *rollo* (G.R. No. 152797), pp. 1602-1604.

First, Del Mundo, *et al*. assert that the Court of Appeals' rulings in CA-G.R. SP No. 111965 are void, as Associate Justice Gonzales-Sison's did not inhibit from the case. They point out she had penned two (2) cases involving the same subject matter, which cast doubt on her objectivity as a magistrate.[121]

Del Mundo, *et al*. further claim that Undersecretary Adasa's October 27, 1997 Order, which had their lots excluded from the coverage of the Comprehensive Agrarian Reform Program, is not binding on them since they were denied due process.[122] They also assert that Regional Adjudicator Minas' March 10, 1998 Order, which had their Certificates of Land Ownership Award canceled, did not attain finality as to their case. Citing the community of interest principle, they claim that while they did not file an appeal, they should benefit from the appeal filed by the other farmer-beneficiaries.[123]

As to the substantive issues, Del Mundo, *et al*. again question the validity of the cancellation of their Certificates of Land Ownership Award. First, they assail the issuance of a new certificate of title in favor of Manila Southcoast despite its Petition for cancellation pending before the Department of Agrarian Reform. Second, they believe that Undersecretary Adasa disregarded Undersecretary Soliman's findings, pointing out that most Certificates of Land Ownership Award were canceled by virtue of waivers, which were not voluntarily executed by the farmer-beneficiaries.[124] Thus, they pray that the case be remanded to the Department of Agrarian Reform for the reception of further evidence.[125]

For its part, Manila Southcoast counters that Del Mundo, *et al*. merely imputed bias on Associate Justice Gonzales-Sison without providing extrinsic evidence. In any case, it asserts

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[121] *Rollo* (G.R. No. 200684), pp. 23-25.

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

[123] *Id*. at 26-30.

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

[125] *Id*. at 36.

that her non-inhibition would not render the Court of Appeals' ruling void.[126]

As to the assailed Orders' finality, Manila Southcoast argues that the community of interest principle does not apply to Del Mundo, *et al.* This is because, it claims, they failed to show that they and the other farmer-beneficiaries have rights and interests that are interwoven and dependent on each other. It asserts that Del Mundo, *et al.* have lost their right to appeal and cannot invoke the community of interest principle to recover it.[127]

Manila Southcoast also claims that the issuance of a new certificate of title in its favor did not automatically result in the cancellation of the Certificate of Land Ownership Award. They assert that the new certificate of title issued was based on the Deed of Sale it had executed with the government. They find nothing questionable about the issuance of a new certificate of title in its name while its petition for cancellation was still pending before the Department of Agrarian Reform.[128]

Finally, Manila Southcoast argue that Del Mundo, *et al.* were not denied due process, having been given an opportunity to explain their side.[129]

These consolidated cases raise several issues for this Court's resolution. In G.R. Nos. 152797 and 189315:

First, whether or not Lots 780-12 and 780-13 should be excluded from litigation in G.R. Nos. 152797 and 189315 based on the Compromise Agreement between the parties;

Second, whether or not Reyes, *et al.* erred in filing an appeal before the Office of the President instead of a petition for review before the Court of Appeals to challenge Agrarian Reform Secretary Garilao's March 25, 1998 Order;

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[126] *Id.* at 503-505.

[127] *Id.* at 507-510.

[128] *Id.* at 510-512.

[129] *Id.* at 510-512.

Third, whether or not Reyes, *et al.* committed willful and deliberate forum shopping by filing their Comment to the Petition in CA-G.R. SP No. 47497 and by filing a Petition to Re-Open Case before the Department of Agrarian Reform during the pendency of their appeal before the Office of the President;

Fourth, whether or not Agrarian Reform Secretary Garilao exceeded the scope of his review by looking into the validity of the cancellation proceeding; and

Fifth, whether or not the lots subject of G.R. Nos. 152797 and 189315 are excluded from the coverage of the Comprehensive Agrarian Reform Program.

As to G.R. No. 200684, the following issues are raised:

First, whether or not the non-inhibition of Court of Appeals Associate Justice Gonzales-Sison rendered the judgments in CA-G.R. SP No. 111965 void;

Second, whether or not, under the principle of communality of interest, the Orders rendered by Undersecretary Adasa and Regional Adjudicator Minas did not attain finality as to Del Mundo, *et al.*; and

Finally, whether or not the cancellation of Del Mundo, *et al.*'s Certificates of Land Ownership Award was valid.

I

Article 2028 of the Civil Code defines a compromise as a "contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced." It can either be judicial or extrajudicial depending on its object or purpose. A judicial compromise is one that puts an end to pending lawsuit, while an extrajudicial compromise is one entered into by the parties to avoid litigation.[130]

By its very definition, a compromise is a contract between two (2) or more parties. Just like any other contract, its validity

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[130] *Chiquita Brands, Inc. v. Omelio*, 810 Phil. 497, 529 (2017) [Per *J.* Leonen, *En Banc*].

depends upon compliance with the requisites enumerated in Article 1318 of the Civil Code,[131] namely: (1) consent of the contracting parties; (2) object certain, which is the subject matter of the contract; (3) cause of the obligation.

Certain matters cannot be the subject of a compromise.[132] Courts should carefully look into the terms and conditions stipulated by the parties, as a compromise must not have provisions that are contrary to "law, morals, good customs, public order or public policy";[133] otherwise, it shall be deemed void, and shall vest no right in and hold on obligation for either of the parties.[134] A compromise is strictly limited to objects expressly stated in its provisions and those that are deemed included by necessary implication.[135]

In cases where a party is represented by another, a special power of attorney is necessary. Article 1878 of the Civil Code is explicit about this requirement.[136] However, the absence of a special power of attorney does not render the compromise void but merely unenforceable, capable of being ratified by the proper party.[137] In *Lim Pin v. Liao Tan*,[138] this Court explained the nature of such authorization:

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[131] *Uy v. Chua*, 616 Phil. 768, 779-780 (2009) [Per J. Chico-Nazario, Third Division].

[132] CIVIL CODE, Art. 2035.

[133] CIVIL CODE, Art. 1409(1).

[134] CIVIL CODE, Art. 1409(1).

[135] CIVIL CODE, Art. 2036.

[136] CIVIL CODE, Art. 1878(3) provides:

ARTICLE 1878. Special powers of attorney are necessary in the following cases:

. . . . . .

(3) To compromise, to submit questions to arbitration, to renounce the right to appeal from a judgment, to waive objections to the venue of an action or to abandon a prescription already acquired[.]

[137] *Bumanlag v. Alzate*, 228 Phil. 455, 455-456 (1986) [Per J. Paras, Second Division].

[138] 200 Phil. 685 (1982) [Per J. Gutierrez, Jr., First Division].

The requirements of a special power of attorney in Article 1878 of the Civil Code and of a special authority in Rule 138 of the Rules of Court refer to the nature of the authorization and not its form. The requirements are met if there is a clear mandate from the principal specifically authorizing the performance of the act. As early as 1906, this Court in *Strong v. Gutierrez-Repide* stated that such a mandate may be either oral or written, the one vital thing being that it shall be express. And more recently, We stated that, if the special authority is not written, then it must be duly established by evidence:

> … the Rules require, for attorneys to compromise the litigation of their clients, a special authority. And while the same does not state that the special authority be in writing the Court has every reason to expect that, if not in writing the same be duly established by evidence other than the self-serving assertion of counsel himself that such authority was verbally given him.[139] (Citations omitted)

In this case, the Compromise Agreement submitted by the parties in G.R. Nos. 152797 and 189315 was only signed by the parties' respective counsels. This Court deferred action on the Joint Motion for Partial Judgment pending the submission of a Compromise Agreement duly signed by the parties or a special power of attorney authorizing the parties' counsel to enter into a Compromise Agreement.

On March 11, 2016, Reyes, *et al.* submitted a Sworn Declaration with Instructions to Counsel dated September 18, 2014, individually signed by the parties in G.R. Nos. 152797 and 189315. They also submitted individually executed Special Powers of Attorney.[140]

A perusal of these documents shows that all claimants of Lots 780-12 and 780-13[141] signed the Sworn Declaration with

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[139] *Id.* at 693.

[140] *Rollo* (G.R. No. 152797) pp. 1761-1827.

[141] For Lot 780-12: Antonio Buhay, Mamerto Espineli, Carmelita Granados, Tirso Gulfan, Jr., Heirs of Avelino Pastor (represented by Felipe G. Pastor), Heirs of Benjamin Piliin (represented by Hermie M. Piliin), Felix Sobremonte, and Heirs of Egliceria Sobremonte (represented by Dionisio Sobremonte) (hereafter collectively known as the Lot 780-12 Claimants); and

Instructions to Counsel.[142] Although some parties in G.R. Nos. 152797 and 189315 were not included, their omission cannot be deemed fatal to the validity of the Joint Motion for Partial Judgment. Based on the evidence on record, Fresco Catapang, Rosita Catapang, Domingo P. Limboc, Virgilio A. Limboc, Sonny Catapang, and Rexie Dingles are not claimants of Lots 780-12 and 780-13. Fresco Catapang, Rosita Catapang (who was substituted by her son, Sonny Catapang), Domingo P. Limboc, and Virgilio A. Limboc are among the claimants of Lots 780-15 and 780-16.[143] Meanwhile, Rexie Dingles is the wife of Celerio Dingles,[144] who is a claimant of Lot 780-5.[145] These individuals have no interest over the lots sought to be excluded.

In any case, their omission from the Compromise Agreement will not prejudice them. As a contract, a compromise agreement only has binding and obligatory force between the parties, their heirs, and assigns.[146] Non-parties to the agreement cannot be bound by its terms and conditions.[147] This is because there is no "vinculum or juridical tie which is the efficient cause for the establishment of an obligation."[148]

The Compromise Agreement[149] states, among others, that claimants of Lots 780-12 and 780-13 acknowledge receipt of valuable and sufficient consideration in view of which, they agree to:

For Lot 780-13: Adelaida S. Bayani, Heirs of Jacinto Cabalag (represented by Lauriana Cabalag). Heirs of Pascual Destreza (represented by Eulogia D. Sobremonte), Ernesto Sobremonte, and Nicasio Tinamisan (hereafter collectively known as the Lot 780-13 Claimants).

[142] *Rollo* (G.R. No. 152797), pp. 1770-1776.

[143] *Rollo* (G.R. No. 152797), p. 1881.

[144] *Id*. at 1868.

[145] *Id*. at 1881.

[146] CIVIL CODE, Art. 1311.

[147] *Limpo v. Court of Appeals*, 517 Phil. 529, 534-535 (2006) [Per *J*. Azcuna, Seccond Division].

[148] *Id*. at 534.

[149] *Rollo* (G.R. No. 152797), pp. 1736-1743.

. . . Waive, renounce and cede, in favor of [Fil-Estate] any and all rights to exclusive ownership or co-ownership, past, present or future, contingent or otherwise, whether or not with merit or validity, which they may have over Lot 780-12 and Lot 780-13 . . . based on CLOA No. 4158 (for Lot 780-12) and CLOA No. 4159 (for Lot 780-13)[.][150]

Republic Act No. 6657, as amended by Republic Act No. 9700, places reasonable limitations on the transferability of awarded lands. The pertinent portion of Section 27 states, in part:

SECTION 27. Transferability of Awarded Lands. — Lands acquired by beneficiaries under this Act or other agrarian reform laws shall not be sold, transferred or conveyed except through hereditary succession, or to the government, or to the LBP, or to other qualified beneficiaries through the DAR for a period of ten (10) years: Provided, however, That the children or the spouse of the transferor shall have a right to repurchase the land from the government or LBP within a period of two (2) years.

An agrarian reform beneficiary is prohibited from alienating awarded lands for a period of 10 years, save in certain cases. In *Lebrudo v. Loyola*,[151] a waiver and transfer of rights over a property covered under the Comprehensive Agrarian Reform Program was declared invalid for violating the prohibition under Section 27 of the Comprehensive Agrarian Reform Law, as amended. In upholding the invalidity of the waiver and transfer of rights, this Court explained that:

. . . lands awarded to beneficiaries under the Comprehensive Agrarian Reform Program (CARP) may not be sold, transferred or conveyed for a period of 10 years. The law enumerates four exceptions: (1) through hereditary succession; (2) to the government; (3) to the Land Bank of the Philippines (LBP); or (4) to other qualified beneficiaries. In short, during the prohibitory 10-year period, any sale, transfer or conveyance of land reform rights is void, except as allowed by law, in order to prevent a circumvention of agrarian reform laws.

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[150] *Id.* at 1738.

[151] 660 Phil. 456 (2011) [Per *J.* Carpio, Second Division].

> . . . The law expressly prohibits any sale, transfer or conveyance by farmer-beneficiaries of their land reform rights within 10 years from the grant by the DAR. The law provides for four exceptions and Lebrudo does not fall under any of the exceptions. In *Maylem v. Ellano*, we held that the waiver of rights and interests over landholdings awarded by the government is invalid for being violative of agrarian reform laws. Clearly, the waiver and transfer of rights to the lot as embodied in the Sinumpaang Salaysay executed by Loyola is void for falling under the 10-year prohibitory period specified in RA 6657.[152] (Citation omitted)

In this case, the claimants of Lots 780-12 and 780-13 are no longer covered by the prohibition under Section 27 of Republic Act No. 6657, as amended. The Department of Agrarian Reform issued their Certificates of Land Ownership long ago, from 1991 to 1993. With the lapse of more than 10 years, the claimants may now renounce their rights over the two (2) lots in favor of Fil-Estate.

II

Fil-Estate asserts that the proper remedy to assail Agrarian Reform Secretary Garilao's rulings is a Rule 43 petition before the Court of Appeals, following Section 54 of Republic Act No. 6657. Reyes, *et al.* counter that filing an appeal before the Office of the President is the appropriate remedy, pursuant to the doctrine of exhaustion of administrative remedies.

Section 54 of Republic Act No. 6657 in relation to Section 61 provides the mode of appeal from the decisions, orders, awards, or rulings of the Department of Agrarian Reform:

> SECTION 54. *Certiorari.* — Any decision, order, award or ruling of the DAR on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, or interpretation of this Act and other pertinent laws on agrarian reform may be brought to the Court of Appeals by *certiorari* except as otherwise provided in this Act within fifteen (15) days from the receipt of a copy thereof.

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[152] *Id.* at 463-464.

The findings of fact of the DAR shall be final and conclusive if based on substantial evidence.

. . . . . .

SECTION 61. *Procedure on Review.* — Review by the Court of Appeals or the Supreme Court, as the case may be, shall be governed by the Rules of Court. The Court of Appeals, however, may require the parties to file simultaneous memoranda within a period of fifteen (15) days from notice, after which the case is deemed submitted for decision.

On one (1) occasion, this Court held that the proper remedy to question the decisions of the Secretary of Agrarian Reform is a petition for *certiorari* filed before the Court of Appeals.

In *Samahang Magbubukid ng Kapdula, Inc. v. Court of Appeals,*[153] a petition for *certiorari* was filed before the Court of Appeals assailing the Secretary of Agrarian Reform's determination of qualified beneficiaries. It was argued that the Secretary of Agrarian Reform's decision should have first been appealed to the Department of Agrarian Reform Adjudication Board based on the doctrine of exhaustion of administrative remedies. In rejecting the argument, this Court held that the Secretary of Agrarian Reform's determination of qualified beneficiaries is a final ruling of the Department of Agrarian Reform itself, one that need not be appealed to the Department of Agrarian Reform Adjudication Board. It also ruled that only the decisions of other Agrarian Reform officials other than the Secretary may be reviewed by the Department of Agrarian Reform Adjudication Board.[154]

Later, in *Sebastian v. Morales,*[155] this Court held that Section 54 of Republic Act No. 6657 must be read in relation to Sections 60 and 61 of Republic Act No. 6657 and Republic Act No. 7902. The proper mode of appeal from the decisions,

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[153] 364 Phil. 622 (1999) [Per *J.* Purisima, Third Division].

[154] *Id.* at 630-631.

[155] 445 Phil. 595 (2003) [Per *J.* Quisumbing, Second Division].

resolutions, and final orders of the Secretary of Agrarian Reform is through a petition for review on *certiorari* filed under Rule 43 of the Rules of Court:

We agree with the appellate court that petitioners' reliance on Section 54 of R.A. No. 6657 "is not merely a mistake in the designation of the mode of appeal, but clearly an erroneous appeal from the assailed Orders." For in relying solely on Section 54, petitioners patently ignored or conveniently overlooked Section 60 of R.A. No. 6657, the pertinent portion of which provides that:

> An appeal from the decision of the Court of Appeals, or from any order, ruling or decision of the DAR, as the case may be, shall be by a petition for review with the Supreme Court, within a non-extendible period of fifteen (15) days from receipt of a copy of said decision. . . .

Section 60 of R.A. No. 6657 should be read in relation to R.A. No. 7902 expanding the appellate jurisdiction of the Court of Appeals to include:

> Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions . . . except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

With the enactment of R.A. No. 7902, this Court issued Circular 1-95 dated May 16, 1995 governing appeals from all quasi-judicial bodies to the Court of Appeals by petition for review, regardless of the nature of the question raised. Said circular was incorporated in Rule 43 of the 1997 Rules of Civil Procedure.

Section 61 of R.A. No. 6657 clearly mandates that judicial review of DAR orders or decisions are governed by the Rules of Court. The Rules direct that it is Rule 43 that governs the procedure for judicial review of decisions, orders, or resolutions of the DAR Secretary. By pursuing a special civil action for *certiorari* under Rule 65 rather than the mandatory petition for review under Rule 43, petitioners

opted for the wrong mode of appeal. Pursuant to the fourth paragraph of Supreme Court Circular No. 2-90, "an appeal taken to the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed." Therefore, we hold that the Court of Appeals committed no reversible error in dismissing CA-G.R. SP No. 51288 for failure of petitioners to pursue the proper mode of appeal.[156]

This rule was further qualified in *Valencia v. Court of Appeals*.[157] The petitioner in that case appealed the Agrarian Reform Secretary's Decision to the Office of the President. As basis, he relied on Department of Agrarian Reform Memorandum Circular No. 3, series of 1994. The Court of Appeals later declared that the proper remedy from the decision of the Secretary of Agrarian Reform was a petition for review to the Court of Appeals under Rule 43 of the Rules of Court, not an appeal to the Office of the President.

This Court reversed the Court of Appeals Decision and upheld the propriety of the procedural remedy Valencia had taken:

Interpreting and harmonizing laws with laws is the best method of interpretation. *Interpretare et concordare leges legibus est optimus interpretandi modus.* This manner of construction would provide a complete, consistent and intelligible system to secure the rights of all persons affected by different legislative and quasi-legislative acts. Where two (2) rules on the same subject, or on related subjects, are apparently in conflict with each other, they are to be reconciled by construction, so far as may be, on any fair and reasonable hypothesis. Validity and legal effect should therefore be given to both, if this can be done without destroying the evident intent and meaning of the later act. Every statute should receive such a construction as will harmonize it with the pre-existing body of laws.

Harmonizing DAR Memo. Circ. No. 3, series of 1994, with SC *Adm. Circ. No. 1-95 and Sec. 54 of R.A. No. 6657 would be consistent with promoting the ends of substantial justice for all parties seeking the protective mantle of the law. To reconcile and harmonize them, due consideration must be given to the purpose for which each was*

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[156] *Id.* at 606-607.

[157] 449 Phil. 711 (2003) [Per *J.* Bellosillo, Second Division].

promulgated. The purpose of DAR Memo. Circ. No. 3, series of 1994, is to provide a mode of appeal for matters not falling within the jurisdictional ambit of the Department of Agrarian Reform Adjudication Board (DARAB) under R.A. No. 6657 and correct technical errors of the administrative agency. In such exceptional cases, the Department Secretary has established a mode of appeal from the Department of Agrarian Reform to the Office of the President as a plain, speedy, adequate and inexpensive remedy in the ordinary course of law. This would enable the Office of the President, through the Executive Secretary, to review technical matters within the expertise of the administrative machinery before judicial review can be resorted to by way of an appeal to the Court of Appeals under Rule 43 of the 1997 Rules on Civil Procedure.

On the other hand, the purpose of SC *Adm. Circ. No. 1-95, now embodied in Rule 43 of the 1997 Rules of Civil Procedure, is to invoke the constitutional power of judicial review over quasi-judicial agencies, such as the Department of Agrarian Reform under R.A. No. 6657 and the Office of the President in other cases by providing for an appeal to the Court of Appeals.* Section 54 of R.A. No. 6657 is consistent with SC Adm. Circ. No. 1-95 and Ru1e 43 in that it establishes a mode of appeal from the DARAB to the Court of Appeals.

. . . . . .

As a valid exercise of the Secretary's rule-making power to issue internal rules of procedure, DAR Memo. Circ. No. 3, series of 1994, expressly provides for an appeal to the Office of the President. Thus, petitioner Valencia filed on 24 November 1993 a timely appeal by way of a petition for review under Ru1e 43 to the Court of Appeals from the decision of the Office of the President, which was received on 11 November 1993, well within the fifteen (15)-day reglementary period.

an appeal is first made by the highest administrative body in the hierarchy of the executive branch of government.[158] (Emphasis supplied, citations omitted)

This Court in *Valencia* distinguished two (2) modes of appeal that may be taken from the decisions, resolutions, and final orders of the Department of Agrarian Reform depending on

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[158] *Id.* at 726-729.

the subject matter of the case. For matters falling within the jurisdiction of the Department of Agrarian Reform Adjudication Board, the appeal should be lodged before the Court of Appeals by way of a petition for review on *certiorari* under Rule 43 of the Rules of Court. Otherwise, the case may be elevated to the Office of the President depending on whether the rules provide for such mode of appeal.

The distinction made in *Valencia* is consistent with the two-fold nature of the Department of Agrarian Reform's jurisdiction[159] as set forth in Section 50 of Republic Act No. 6657:

> SECTION 50. *Quasi-Judicial Powers of the DAR.* — The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the DENR.
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> It shall not be bound by technical rules of procedure and evidence but shall proceed to hear and decide all cases, disputes or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with justice and equity and the merits of the case. Toward this end, it shall adopt a uniform rule of procedure to achieve a just, expeditious and inexpensive determination of every action or proceeding before it.
>
> It shall have the power to summon witnesses, administer oaths, take testimony, require submission of reports, compel the production of books and documents and answers to interrogatories and issue *subpoena,* and *subpoena duces tecum* and to enforce its writs through sheriffs or other duly deputized officers. It shall likewise have the power to punish direct and indirect contempts in the same manner and subject to the same penalties as provided in the Rules of Court.
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> Responsible farmer leaders shall be allowed to represent themselves, their fellow farmers, or their organizations in any proceedings before the DAR: Provided, however, That when there are two or more

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[159] *Soriano v. Bravo*, 653 Phil. 72, 85 (2010) [Per *J.* Leonardo De Castro, First Division] citing *Sta. Rosa Realty Development Corporation v. Amante*, 493 Phil. 570 (2005) [Per *J.* Austria-Martinez, Special First Division].

representatives for any individual or group, the representatives should choose only one among themselves to represent such party or group before any DAR proceedings.

Notwithstanding an appeal to the Court of Appeals, the decision of the DAR shall be immediately executory except a decision or a portion thereof involving solely the issue of just compensation.

This two-fold jurisdiction of the Department of Agrarian Reform has been delineated through various issuances.

The Secretary of Agrarian Reform has jurisdiction over all matters involving the administrative implementation of Republic Act No. 6657. At present, these matters are governed by rules outlined in Department of Agrarian Reform Administrative Order No. 03, series of 2017. Applications for exemption from coverage under Section 10 of Republic Act No. 6657 have been classified as Agrarian Law Implementation Cases, which fall under the exclusive jurisdiction of the Secretary of Agrarian Reform.[160]

Jurisdiction over agrarian disputes, on the other hand, is lodged before the Department of Agrarian Reform Adjudication Board. Agrarian Law Implementation Cases are not within its jurisdiction.[161]

The Rules for Agrarian Law Implementation Cases, both past and present, provide a mode of appeal from the decisions of the Secretary of Agrarian Reform to the Office of the President.[162] On the other hand, the Rules of Procedure of the Department of Agrarian Reform Adjudication Board states that appeals from the decisions of the Department of Agrarian Reform Adjudication

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[160] DAR Administrative Order No. 06 (2000); DAR Administrative Order No. 03 (2003); DAR Administrative Order No. 03 (2017).

[161] Department of Agrarian Reform Adjudication Board New Rules of Procedure (1994); Department of Agrarian Reform Adjudication Board Rules of Procedure (2003); Department of Agrarian Reform Adjudication Board Rules of Procedure (2009).

[162] DAR Administrative Order No. 06 (2000); DAR Administrative Order No. 03 (2003); DAR Administrative Order No. 03 (2017).

Board may be brought to the Court of Appeals pursuant to the Rules of Court.[163]

Here, Fil-Estate applied for exemption from coverage under Section 10 of Republic Act No. 6657.[164] Certainly, this is a matter that fell within the exclusive jurisdiction of Agrarian Reform Secretary Garilao.

Moreover, Agrarian Reform Secretary Garilao's March 25, 1998 Order would have depended on the governing rules of procedure at that time. When Reyes, *et al*. received a copy of the Order, the Rules for Agrarian Law Implementation Cases had not yet been promulgated. Nevertheless, Department of Agrarian Reform Memorandum Circular No. 3, which allows parties to appeal the Agrarian Reform Secretary's rulings to the Office of the President, was still in effect.

Therefore, Reyes, *et al*. did not err in elevating the case to the Office of the President first before filing a petition for review before the Court of Appeals.

III

The rule on forum shopping is found in Rule 7, Section 5 of the Rules of Court:

RULE 7
Parts of a Pleading

SECTION 5. Certification Against Forum Shopping. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving

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[163] Department of Agrarian Reform Adjudication Board New Rules of Procedure (1994); Department of Agrarian Reform Adjudication Board Rules of Procedure (2003); Department of Agrarian Reform Adjudication Board Rules of Procedure (2009).

[164] *Rollo* (G.R. No. 152797), p. 149 in relation to Department of Agrarian Reform Administrative Order No. 10 (1994).

the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

The provision is intended to cover only initiatory pleadings or incipient applications "asserting a claim for relief."[165] A claim for relief "that is derived only from, or is necessarily connected with, the main action or complaint"[166] such as an answer with compulsory counterclaim is not covered by the rule requiring a certification against forum shopping.[167] Likewise, a comment to a petition filed before an appellate tribunal, not being an initiatory pleading, does not require a certification against forum shopping.[168]

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[165] *Roxas v. Court of Appeals*, 415 Phil. 430, 442 (2001) [Per *J.* De Leon, Jr., Second Division]. See also *Spouses Carpio v. Rural Bank of Sto. Tomas (Batangas), Inc.*, 523 Phil. 158, 162 (2006) [Per *J.* Sandoval-Gutierrez, Second Division].

[166] *Spouses Carpio v. Rural Bank of Sto. Tomas (Batangas), Inc.*, 523 Phil. 158, 163 (2006) [Per *J.* Sandoval-Gutierrez, Second Division].

[167] *Id*.

[168] *Torres v. De Leon*, 778 Phil. 491, 501-502 (2016) [Per *J.* Peralta, Third Division].

A comment to a petition is not an initiatory pleading or an incipient application asserting a claim for relief as contemplated in Rule 7, Section 5 of the Rules of Court. Thus, Reyes, *et al.* cannot be said to have committed forum shopping when they filed their Comment to Fil-Estate's Petition in CA-G.R. SP No. 47497.

Similarly, Reyes, *et al.* are not guilty of forum shopping when they filed a Petition to Reopen the Case before the Secretary of Agrarian Reform.

Forum shopping exists when litigants resort to two (2) different *forums* "for the purpose of obtaining the same relief, to increase the chances of obtaining a favorable judgment."[169] The rules impose sanctions on parties who commit forum shopping, since its practice "trifles with the courts, abuses their processes, degrades the administration of justice and adds to the already congested court dockets."[170]

The evil sought to be avoided by the rule on forum shopping is the proliferation of contradictory decisions on the same controversy. This is the critical factor that courts must consider in determining whether forum shopping exists.[171] There is forum shopping when "the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in another."[172] In *Dy v. Mandy Commodities Company, Inc.*:[173]

> Thus, there is forum shopping when the following elements are present: (a) identify of parties, or at least such parties as represent 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

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[169] *Dy v. Mandy Commodities*, 611 Phil. 74, 84 (2009) [Per J. Chico-Nazario, Third Division].

[170] *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation*, 457 Phil. 740, 748 (2003) [Per J. Bellosillo, Second Division].

[171] *Dy v. Mandy Commodities*, 611 Phil. 74, 84 (2009) [Per J. Chico-Nazario, Third Division].

[172] *Id.* at 85.

[173] 611 Phil. 74 (2009) [Per J. Chico-Nazario, Third Division].

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*.[174]

It may seem that Reyes, *et al*. committed forum shopping by elevating Agrarian Reform Secretary Garilao's adverse Order to the Office of the President, then filing a Petition to Re-Open Case before the Secretary of Agrarian Reform. Nonetheless, the evil sought to be avoided by the rule did not exist. When Reyes, *et al*. filed the Petition to Re-open Case, Agrarian Reform Secretary had yet to act upon their appeal. Moreover, at that time, the case records had still not been elevated to the Office of the President for review.[175] Thus, there could have been no possibility that two (2) conflicting decisions would be rendered by two (2) different *forums*.

IV

Fil-Estate insists that Agrarian Reform Secretary Garilao, in issuing the March 25, 1998 Order, exceeded his jurisdiction. It argues that since the scope of his review was limited to the exclusion proceedings over the 10 lots, he erred in looking into other matters, such as the proceedings involving the cancellation of the Certificates of Land Ownership Award issued to the Hacienda Looc farmers.[176]

The Comprehensive Agrarian Reform Law recognizes the need of landless farmers and farmworkers to either own the land they till or receive a just share of the fruits.[177] This government initiative is founded upon the history of agrarian reform in the country, which was exhaustively discussed in *Heirs of Nuñez, Sr. v. Heirs of Villanoza*:[178]

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[174] *Id*. at 85-86.

[175] *Rollo* (G.R. No. 152797), p. 389.

[176] *Id*. at 1680-1685.

[177] Republic Act No. 6657 (1988), Sec 2.

[178] 809 Phil. 965 (2017) [Per *J*. Leonen, Second Division].

Prior to any colonization, various ethnolinguistic cultures had their own customary laws governing their property relationships. The arrival of the Spanish introduced the concept of encomienda, or royal land grants, to loyal Spanish subjects, particularly the soldiers. Under King Philip II's decree, the encomienderos or landowners were tasked "to maintain peace and order" within their encomiendas, to protect the large estates from external attacks, and to support the missionaries in converting the natives into Christians. In turn, the encomienderos had the right to collect tributes or taxes such as gold, pearls, cotton cloth, chickens, and rice from the natives called indios. The encomienda system helped Hispanicize the natives and extended Spanish colonial rule by pacifying the early Filipinos within the estates.

There were three (3) kinds of encomiendas: the royal encomiendas, which belonged to the King; the ecclesiastical encomiendas, which belonged to the Church; and the private encomiendas, which belonged to private individuals. The local elites were exempted from tribute-paying and labor, or *polo* services, required of the natives.

The encomienda system was abused by the encomienderos. Filipinos were made to pay tribute more than what the law required. Their animals and crops were taken without just compensation, and they were forced to work for the encomienderos.

Thus, the indios, who once freely cultivated the lands, became mere share tenants or dependent sharecroppers of the colonial landowners.

In the 1899 Malolos Constitution and true to one (1) of the principal concerns of the Philippine Revolution, then President General Emilio Aguinaldo declared "his intention to confiscate large estates, especially the so-called [f]riar lands." Unfortunately, the First Philippine Republic did not last long.

The encomienda system was a vital source of revenue and information on the natives for the Spanish crown. In the first half of the 19th century, the cash crop economy emerged after the Philippines integrated into the world market, increasing along with it the powers of the local elites, called *principalias*, and landlords.

The United States arrived later as the new colonizer. It enacted the Philippine Bill of 1902, which limited land area acquisitions into 16 hectares for private individuals and 1,024 hectares for corporations. The Land Registration Act of 1902 (Act No. 496) established a comprehensive registration of land titles called the Torrens system.

This resulted in several ancestral lands being titled in the names of the settlers.

The Philippines witnessed peasant uprisings including the *Sakdalista* movement in the 1930's. During World War II, peasants and workers organizations took up arms and many identified themselves with the Hukbalahap, or *Hukbo ng Bayan Laban sa Hapon.* After the Philippine Independence in 1946, the problems of land tenure remained and worsened in some parts of the country. The Hukbalahaps continued the peasant uprisings in the 1950s.

To address the farmers' unrest, the government began initiating various land reform programs, roughly divided into three (3) stages.

The first stage was the share tenancy system under then President Ramon Magsaysay (1953-1957). In a share tenancy agreement, the landholder provided the land while the tenant provided the labor for agricultural production. The produce would then be divided between the parties in proportion to their respective contributions. On August 30, 1954, Congress passed Republic Act No. 1199 (Agricultural Tenancy Act), ensuring the "equitable division of the produce and [the] income derived from the land[.]"

Compulsory land registration was also established under the Magsaysay Administration. Republic Act No. 1400 (Land Reform Act) granted the Land Tenure Administration the power to purchase or expropriate large tenanted rice and corn lands for resale to *bona fide* tenants or occupants who owned less than six (6) hectares of land. However, Section 6 (2) of Republic Act No. 1400 set unreasonable retention limits at 300 hectares for individuals and 600 hectares for corporations, rendering President Magsaysay's efforts to redistribute lands futile.

On August 8, 1963, Congress enacted Republic Act No. 3844 (Agricultural Land Reform Code) and abolished the share tenancy system, declaring it to be against public policy. The second stage of land reform, the agricultural leasehold system, thus began under President Diosdado Macapagal (1961-1965).

Under the agricultural leasehold system, the landowner, lessor, usufructuary, or legal possessor furnished his or her landholding, while another person cultivated it until the leasehold relation was extinguished. The landowner had the right to collect lease rental from the agricultural lessee, while the lessee had the right to a homelot and to be indemnified for his or her labor if the property was

surrendered to the landowner or if the lessee was ejected from the landholding.

Republic Act No. 3844 also sought to provide economic family-sized farms to landless citizens of the Philippines especially to qualified farmers. The landowners were allowed to retain as much as 75 hectares of their landholdings. Those lands in excess of 75 hectares could be expropriated by the government.

The system finally transitioned from agricultural leasehold to one of full ownership under President Ferdinand E. Marcos (1965-1986). On September 10, 1971, Congress enacted Republic Act No. 6389 or the Code of Agrarian Reform.

Republic Act No. 6389 automatically converted share tenancy into agricultural leasehold. It also established the Department of Agrarian Reform as the implementing agency for the government's agrarian reform program. Presidential Decree No. 2 proclaimed the whole country as a land reform area.

On October 21, 1972, Presidential Decree No. 27, or the Tenants Emancipation Decree, superseded Republic Act No. 3844. Seeking to "emancipat[e] the tiller of the soil from his bondage," Presidential Decree No. 27 mandated the compulsory acquisition of private lands to be distributed to tenant-farmers. From 75 hectares under Republic Act No. 3844, Presidential Decree No. 27 reduced the landowner's retention area to a maximum of seven (7) hectares of land.

Presidential Decree No. 27 implemented the Operation Land Transfer Program to cover tenanted rice or corn lands. According to *Daez v. Court of Appeals*, "the requisites for coverage under the [Operation Land Transfer] program are the following: (1) the land must be devoted to rice or corn crops; and (2) there must be a system of share-crop or lease-tenancy obtaining therein."

. . . . . .

Following the People Power Revolution, then President Corazon C. Aquino (1986-1992) fulfilled the promise of land ownership for the tenant- farmers. Proclamation No. 131 instituted the Comprehensive Agrarian Reform Program. Executive Order No. 129 (1987) reorganized the Department of Agrarian Reform and expanded it in power and operation. Executive Order No. 228 (1987) declared the full ownership of the land to qualified farmer beneficiaries under Presidential Decree No. 27.

. . . . . .

On June 10, 1988, Congress enacted Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law, to supersede Presidential Decree No. 27.

The compulsory land acquisition scheme under Republic Act No. 6657 empowers the government to acquire private agricultural lands for distribution to tenant-farmers. A qualified farmer beneficiary is given an emancipation patent, called the Certificate of Land Ownership Award, which serves as conclusive proof of his or her ownership of the land.[179] (Citations omitted)

Republic Act No. 6657 is anchored on the social justice provisions on agrarian reform found in Article XIII of the 1987 Constitution:

ARTICLE XIII
Social Justice and Human Rights

. . . . . .

Agrarian and Natural Resources Reform

SECTION 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.

SECTION 5. The State shall recognize the right of farmers, farmworkers, and landowners, as well as cooperatives, and other independent farmers' organizations to participate in the planning, organization, and management of the program, and shall provide support to agriculture through appropriate technology and research, and adequate financial, production, marketing, and other support services.

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[179] *Id.* at 985-998.

SECTION 6. The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands.

The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.

SECTION 7. The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of local marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.

SECTION 8. The State shall provide incentives to landowners to invest the proceeds of the agrarian reform program to promote industrialization, employment creation, and privatization of public sector enterprises. Financial instruments used as payment for their lands shall be honored as equity in enterprises of their choice.

Republic Act No. 6657, as amended, echoes these social justice provisions. Section 2 lists among the objectives of agrarian reform "the just distribution of all agricultural lands" subject to certain conditions. It also recognizes, among others, the participatory role of all stakeholders by allowing farmers, farmworkers, landowners, cooperatives, and other independent farmer's organizations to "participate in the planning, organization, and management" of the Comprehensive Agrarian Reform Program.

Section 50 of Republic Act No. 6657, as amended, vests the Department of Agrarian Reform with primary jurisdiction over agrarian reform matters and over all matters involving the implementation of agrarian reform. This provision is further reiterated in jurisprudence. In the recent case of *Secretary of*

Department of Agrarian Reform v. Heirs of Abucay,[180] for one, this Court held that the "jurisdiction over the administrative implementation of agrarian laws exclusively belongs to the Department of Agrarian Reform Secretary."[181]

Thus, in carrying out its mandate of resolving disputes and controversies in the most expeditious manner, the Department of Agrarian Reform is not constrained by the technical rules of procedure and evidence. It may employ "all reasonable means to ascertain the facts of every case in accordance with justice and equity and the merits of the case."[182] Toward this end, it is empowered to issue the necessary rules and regulations.[183]

This Court finds that Agrarian Reform Secretary Garilao did not exceed the scope of his jurisdiction in issuing the March 25, 1998 Order. The Department of Agrarian Reform, through its Secretary, has primary jurisdiction over all matters involving the implementation of agrarian reform, including the investigation of acts that he or she believes are directed toward the circumvention of the objectives of the Comprehensive Agrarian Reform Program.

A reading of the Comprehensive Agrarian Reform Law, as a social welfare legislation, should be "more than just an inquiry into the literal meaning of the law."[184] In interpreting tenancy and labor legislations, the broad consideration is the ultimate resolution of doubts in favor of the tenant or worker.[185]

Here, while the cancellation proceedings initiated by Manila Southcoast are different from the Petition for exclusion filed by Fil-estate, Agrarian Reform Secretary Garilao may still probe

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[180] G.R. Nos. 186432 and 186964, March 12, 2019, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65171 > [Per *J*. Leonen, *En Banc*].

[181] *Id*.

[182] Republic Act No. 6657 (1988), Sec. 50.

[183] Republic Act No. 6657 (1988), Sec. 49.

[184] *Vda. De Santos v. Garcia,* 118 Phil. 194, 197 (1963) [Per *J*. Regala, *En Banc*].

[185] *Id*.

into the validity of the cancellation proceedings. This is in view of the powers granted to the Department of Agrarian Reform under Section 50 of Republic Act No. 6657, as amended.

In the March 25, 1998 Order, Agrarian Reform Secretary Garilao found merit in the farmer-beneficiaries' claims on the fraudulent means by which their Certificates of Land Ownership Award were canceled.[186] He cannot simply brush aside the irregularities attending the cancellation proceedings when, as the head of the Department of Agrarian Reform, he must carry out the objectives of Republic Act No. 6657.

Thus, Agrarian Reform Secretary Garilao did not err in considering all the controversies surrounding Hacienda Looc, especially since there were serious allegation raised by the farmer-beneficiaries. The cancellation proceedings were allegedly based on "waivers which are of dubious veracity."[187] For instance, in his investigation, Undersecretary Soliman found that some of the waivers executed by the farmer-beneficiaries were uniform in phraseology and in format. Some were even allegedly falsified: they were apparently signed by farmer-beneficiaries who had already died.[188] As a result of the allegation of the farmer-beneficiaries, Agrarian Reform Secretary Garilao saw the need to create other fact-finding teams to investigate further.[189]

V

In the March 25, 1998 Order, Agrarian Reform Secretary Garilao found several areas of Hacienda Looc suitable for agrarian reform. In questioning this finding, Fil-Estate argues that Nasugbu, Batangas was classified as a tourism zone prior to the enactment and effectivity of the Comprehensive Agrarian Reform Law. Thus, Nasugbu, Batangas is excluded from the coverage of the Comprehensive Agrarian Reform Program.

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[186] *Rollo* (G.R. No. 152797), pp. 149-159.

[187] *Id.* at 150.

[188] *Id.* at 1077-1079.

[189] *Id.* at 150-156.

Proclamation No. 1520, on which Fil-Estate heavily relies, was issued on November 28, 1975. The Proclamation indentifies the municipalities of Maragondon and Ternate in Cavite and the municipality of Nasugbu in Batangas as potential tourist zones:

DECLARING THE MUNICIPALITIES OF MARAGONDON AND TERNATE IN CAVITE PROVINCE AND THE MUNICIPALITY OF NASUGBU IN BATANGAS PROVINCE AS A TOURIST ZONE, AND FOR OTHER PURPOSES

WHEREAS, certain areas in the sector comprising the Municipalities of Maragondon and Ternate in Cavite Province and Nasugbu in Batangas have potential tourism value after being developed into resort complexes for the foreign and domestic market; and

WHEREAS, it is necessary to conduct the necessary studies and to segregate specific geographic areas for concentrated efforts of both the government and private sectors in developing their tourism potential;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby declare the area comprising the Municipalities of Maragondon and Ternate in Cavite Province and Nasugbu in Batangas Province as a tourist zone under the administration and control of the Philippine Tourism Authority (PTA) pursuant to Section 5 (D) of P.D. 564.

The PTA shall identify well-defined geographic areas within the zone with potential tourism value, wherein optimum use of natural assets and attractions, as well as existing facilities and concentration of efforts and limited resources of both government and private sector may be affected and realized in order to generate foreign exchange as well as other tourist receipts.

Any duly established military reservation existing within the zone shall be excluded from this proclamation.

All proclamations, decrees or executive orders inconsistent herewith are hereby revoked or modified accordingly.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

DONE in the City of Manila, this 28th day of November, in the year of Our Lord, Nineteen Hundred and Seventy-Five.

The effect of Proclamation No. 1520 *vis-à-vis* the application of the Comprehensive Agrarian Reform Law was tackled in *Roxas & Company, Inc. v. DAMBA-NSFW*.[190]

In that case, the petitioner sought the conversion and exclusion of three (3) haciendas in Nasugbu, Batangas from the coverage of the Comprehensive Agrarian Reform Program on the basis of Proclamation No. 1520. Among the arguments raised was that Proclamation No. 1520 effectively reclassified and converted the use of the lands in Maragondon and Ternate in Cavite and Nasugbu in Batangas from agricultural to non-agricultural. This Court rejected the argument and ruled that Proclamation No. 1520 merely identified areas that had potential tourism value:

> Roxas & Co. contends that PP 1520 declared the three municipalities as each constituting a tourism zone, reclassified all lands therein to tourism and, therefore, converted their use to non-agricultural purposes.
>
> To determine the chief intent of PP 1520, reference to the "whereas clauses" is in order. By and large, a reference to the congressional deliberation records would provide guidance in dissecting the intent of legislation. But since PP 1520 emanated from the legislative powers of then President Marcos during martial rule, reference to the whereas clauses cannot be dispensed with.
>
> *The perambulatory clauses of PP 1520 identified only "certain areas in the sector* comprising *the [three Municipalities that] have potential tourism value" and mandated the conduct of "necessary studies" and the segregation of "specific geographic areas" to achieve its purpose. Which is why the PP directed the Philippine Tourism Authority (PTA) to identify what those potential tourism areas are. If all the lands in those tourism zones were to be wholly converted to non-agricultural use, there would have been no need for the PP to direct the PTA to identify what those "specific geographic areas" are.*

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[190] 622 Phil. 37 (2009) [Per *J.* Carpio Morales, *En Banc*].

The Court had in fact passed upon a similar matter before. Thus in *DAR v. Franco*, it pronounced:

> Thus, the DAR Regional Office VII, *in coordination with the Philippine Tourism Authority, has to determine precisely which areas are for tourism development* and excluded from the Operation Land Transfer and the Comprehensive Agrarian Reform Program. And suffice it to state here that the Court has repeatedly ruled that lands already classified as non-agricultural before the eneactment of RA 6657 on 15 June 1988 do not need any conversion clearance. . . .

While the above pronouncement in *Franco* is an *obiter*, it should not be ignored in the resolution of the present petitions since it reflects a more rational and just interpretation of PP 120. There is no prohibition in embracing the rationale of an *obiter dictum* in settling controversies, or in considering related proclamations establishing tourism zones.[191] (Emphasis supplied, citations omitted)

According to *Roxas*, Proclamation No. 1520 neither reclassified nor converted all lands in the Maragondon, Ternate, and Nasugbu from agricultural to non-agricultural. Thus, these areas were deemed not to have been automatically excluded from the coverage of the Comprehensive Agrarian Reform Program.

This Court further held that the Department of Agrarian Reform has primary jurisdiction over applications for conversion and, as an administrative body with special competence, it has the power to determine whether a parcel of land should be included in the coverage of the Comprehensive Agrarian Reform Program:

In the above-cited case of *Roxas & Co v. CA*, the Court made it clear that the "power to determine whether *Haciendas Palico, Banilad* and *Caylaway* are non-agricultural, hence, exempt from the coverage of the [Comprehensive Agrarian Reform Law] lies with the [Department of Agrarian Reform], not with this Court." The DAR, an administrative body of special competence, denied, by Order of October 22, 2001, the application for CARP exemption of Roxas &

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

Co., it finding that PP 1520 did *not* automatically reclassify all the lands in the affected municipalities from their original uses. It appears that the PTA had not yet, at that time, identified the "specific geographic areas" for tourism development and had no pending tourism development projects in the areas. Further, report from the Center for Land Use Policy Planning and Implementation (CLUPPI) indicated that the areas were planted with sugar cane and other crops.

Relatedly, the DAR, by *Memorandum Circular No. 7, Series of 2004*, came up with clarificatory guidelines and therein decreed that

> A….
>
> B. Proclamations declaring general areas such as whole provinces, municipalities, barangays, islands or peninsulas as tourist zones that merely:
>
> (1) Recognize certain still unidentified areas within the covered provinces, municipalities, barangays as, islands, or peninsulas to be with potential tourism value and charge the Philippine Tourism Authority with the task to identify/ delineate specific geographic areas within the zone with potential tourism value and to coordinate said areas' development; or
>
> (2) Recognize the potential value of identified spots located within the general area declared as tourist zone (*i.e.* . . .) and direct the Philippine Tourism Authority to coordinate said areas' development; ***could not be regarded as effecting an automatic reclassification*** **of the entirety of the land area declared as tourist zone. This is so because "reclassification of lands" denotes their allocation into some specific use and "providing for the manner of their utilization and disposition" (Sec. 20, Local Government Code) or the "act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, or commercial, as embodied in the land use plan."** (Joint HLURB, DAR, DA, DILG Memo. Circular Prescribing Guidelines for MC 54, S. 1995, Sec. 2)

A proclamation that merely recognizes the potential tourism value of certain areas within the general area declared as tourist zone clearly *does not allocate, reserve,*

or intend the entirety of the land area of the zone for non-agricultural purposes. **Neither does said proclamation direct that otherwise CARPable lands within the zone shall already be used for purposes other than agricultural.**

Moreover, to view these kinds of proclamation as a reclassification for non-agricultural purposes of entire provinces, municipalities, barangays, islands, or peninsulas would be unreasonable as it amounts to an automatic and sweeping exemption from CARP in the name of tourism development. The same would also undermine the land use reclassification powers vested in local government units in conjunction with pertinent agencies of government.

C. There being no reclassification, it is clear that said proclamations/issuances, assuming [these] took effect before June 15, 1988, could not supply a basis for exemption of the entirety of the lands embraced therein from CARP coverage . . . .

D. . . . .

The DAR's reading into these general proclamations of tourism zones deserves utmost consideration, more especially in the present petitions which involve vast tracts of agricultural land. To reiterate, PP 1520 merely recognized the "potential tourism value" of certain areas within the general area declared as tourism zones. It did not reclassify the areas to non-agricultural use.

Apart from PP 1520, there are similarly worded proclamations declaring the whole of Ilocos Norte and Bataan Provinces, Camiguin, Puerto Prinsesa, Siquijor, Panglao Island, parts of Cebu City and Municipalities of Argao and Dalaguete in Cebu Province as tourism zones.

Indubitably, these proclamations, particularly those pertaining to the Provinces of Ilocos Norte and Bataan, did not intend to reclassify all agricultural lands into non-agricultural lands in one fell swoop. The Court takes notice of how the agrarian reform program was — and still is — implemented in these provinces since there are lands that do not have any tourism potential and are more appropriate for agricultural utilization.

Relatedly, a reference to the *Special Economic Zone Act of 1995* provides a parallel orientation on the issue. Under said Act, several towns and cities encompassing the whole Philippines were readily identified as economic zones. To uphold Roxas & Co.'s reading of PP 1520 would see a total reclassification of practically all the agricultural lands in the country to non-agricultural use. Propitiously, the legislature had the foresight to include a bailout provision in Section 31 of said Act for land conversion. The same cannot be said of PP 1520, despite the existence of Presidential Decree (PD) No. 27 or the *Tenant Emancipation Decree*, which is the precursor of the CARP.

. . . . . .

Given these martial law-era decrees and considering the socio-political backdrop at the time PP 1520 was issued in 1975, it is inconceivable that PP 1520, as well as other similarly worded proclamations which are completely silent on the aspect of reclassification of the lands in those tourism zones, would nullify the gains already then achieved by PD 27.[192] (Emphasis in the original, citations omitted)

Thus, in this case, there is no merit in Fil-Estate's argument that, in light of Proclamation No. 1520, the 10 lots are excluded from the coverage of the Comprehensive Agrarian Reform Program.

In addition, the Certifications[193] issued by the Philippine Tourism Authority attached to the Petition merely reiterate the provisions of Proclamation No. 1520. There is no competent proof to show that specific geographic areas in Nasugbu have been identified by the Philippine Tourism Authority for development based on studies. There is also no proof of the existence of a tourism development plan that specifically covers the disputed areas. At best, these Certifications only recognize the passage of Proclamation No. 1520.

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[192] *Id.* at 61-66.

[193] *Rollo* (G.R. No. 152797), pp. 248-250.

VI

Section 10 of Republic Act No. 6657 enumerates the types of land excluded from the coverage of the Comprehensive Agrarian Reform Program. Among the lands excluded are those with slopes of 18% and over, except if they are already developed:

> SECTION 10. *Exemptions and Exclusions.* —
>
> . . . . . .
>
> (c) Lands actually, directly and exclusively used and found to be necessary for national defense, school sites and campuses, including experimental farm stations operated by public or private schools for educational purposes, seeds and seedling research and pilot production center, church sites and convents appurtenant thereto, mosque sites and Islamic centers appurtenant thereto, communal burial grounds and cemeteries, penal colonies and penal farms actually worked by the inmates, government and private research and quarantine centers and *all lands with eighteen percent (18%) slope and over, except those already developed,* shall be exempt from the coverage of this Act. (Emphasis supplied)

Both parties believe that the findings of Agrarian Reform Secretary Garilao on the lots' slope and development are erroneous. Fil-Estate claims that the lots in dispute fall squarely under Section 10 of Republic Act No. 6657, as amended. On the other hand, Reyes, *et al.* claim that all the lots are agriculturally developed and are, hence, covered under the Comprehensive Agrarian Reform Program.

This Court sees no reason to disturb the factual findings of Agrarian Reform Secretary Garilao in his March 25, 1998 Order, which were affirmed by the Court of Appeals.

This Court is not a trier of facts;[194] we do not examine and weigh anew the probative value of the parties' evidence. As a rule, the factual findings of lower tribunals are "final, binding[,]

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[194] *Bautista v. Puyat Vinyl Products, Inc.*, 416 Phil. 305, 308 (2001) [Per *J.* Pardo, First Division].

or conclusive on the parties and upon this [c]ourt[.]"[195] The jurisdiction of this Court in Rule 45 petitions is limited in scope such that only questions of law may be raised.[196]

A question of law exists when "doubt or difference arises as to what the law is on a certain state of facts[.]"[197]

On the other hand, a question of fact exists when "doubt or difference arises as to the truth or the falsehood of alleged facts[.]"[198] It inquires into the probative value of the parties' evidence.[199]

The general rule admits of certain exceptions, which must be alleged and proved by the parties. These exceptions are:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is 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.[200] (Citation omitted)

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[195] *Pascual v. Burgos*, 776 Phil. 167, 182 (2016) [Per J. Leonen, Second Division].

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

[197] *Pilar Development Corporation v. Intermediate Appellate Court*, 230 Phil. 301, 307 (1986) [Per J. Paras, Second Division].

[198] *Id*.

[199] *Pascual v. Burgos*, 776 Phil. 167, 182 (2016) [Per J. Leonen, Second Division].

[200] *Id*. at 182-183.

None of these exceptions are present here.

Moreover, as a rule, the findings of administrative agencies, such as the Department of Agrarian Reform, are deemed binding and conclusive upon the appellate courts.[201] Administrative agencies possess special knowledge and expertise on "matters falling under their specialized jurisdiction."[202] Thus, their findings, when supported by substantial evidence, are accorded great respect and even finality, especially when affirmed by the Court of Appeals.[203]

In this case, to determine whether the lots should be excluded from the coverage of the Comprehensive Agrarian Reform Program, the Department of Agrarian Reform, through Agrarian Reform Secretary Garilao, created a regional task force and two (2) other fact-finding teams headed by Undersecretary Soliman. In addition, an inter-agency committee was formed, headed by Undersecretary Victor Gerardo Bulatao, together with representatives from the Department of Environment and Natural Resources, the Department of Agriculture, and the Department of Tourism. These investigating teams conducted site inspections and verifications, field surveys, and entered into dialogues with the affected stakeholders.[204]

The Department of Agrarian Reform's factual findings on the lots' slope and level of development are based on substantial evidence. There is no reason to depart from them.

VII

Judges have the duty to render just decisions, which must be done in a manner "completely free from suspicion as to its

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[201] *Perez v. Cruz*, 452 Phil. 597, 606-607 (2003) [Per *J*. Quisumbing, Second Division].

[202] *Lim v. Commission on Audit*, 447 Phil. 122, 126 (2003) [Per *J*. Sandoval-Gutierrez, *En Banc*].

[203] *Villaflor v. Court of Appeals*, 345 Phil. 524, 532 (1997) [Per *J*. Panganiban, Third Division].

[204] *Rollo* (G.R. No. 152797), pp. 149-159.

fairness and as to [their] integrity."[205] The public's faith and confidence in the justice system must always be preserved.[206] Thus, in certain instances, judges may be compelled to inhibit themselves from sitting in a case. Rule 137, Section 1 of the Rules of Court outlines these instances:

> SECTION 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.
>
> A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

The first paragraph pertains to compulsory disqualification or inhibition where it is conclusively presumed that a judge's partiality and objectivity might be questioned due to his or her relationship or interest. In *Garcia v. Judge De la Peña*:[207]

> The rule on compulsory disqualification of a judge to hear a case where, as in the instant case, the respondent judge is related to either party within the sixth degree of consanguinity or affinity rests on the salutary principle that no judge should preside in a case in which he is not wholly free, disinterested, impartial and independent. A judge has both the duty of rendering a just decision and the duty of doing it in a manner completely free from suspicion as to its fairness and as to his integrity. The law conclusively presumes that a judge cannot objectively or impartially sit in such a case and, for that reason,

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[205] *Garcia v. Judge De la Peña*, 299 Phil. 817, 824 (1994) [*Per Curiam, En Banc*].

[206] *Id*.

[207] 299 Phil. 817 (1994) [*Per Curiam, En Banc*].

prohibits him and strikes at his authority to hear and decide it, in the absence of written consent of all parties concerned. The purpose is to preserve the people's faith and confidence in the courts of justice.[208] (Citations omitted)

The second paragraph of Rule 137, Section 1 refers to voluntary inhibition. Unlike the first paragraph, which enumerates specific cases where a judge should inhibit, the rule on voluntary inhibition gives judges the discretion to determine whether they should sit in a case for "just and valid reasons, with only their conscience as guide."[209] Broad as it may seem, the rule on voluntary inhibition "does not give judges the unfettered discretion to decide whether to desist from hearing a case."[210] There must be a just and valid cause or reason. An imputation of bias or partiality will not suffice absent any showing of "acts or conduct clearly indicative of arbitrariness or prejudice."[211]

Here, this Court finds no reason for Court of Appeals Associate Justice Gonzales-Sison to inhibit from sitting in CA-G.R. SP No. 111965.

Del Mundo, *et al.* simply accused her of bias and partiality for having penned two (2) cases involving the same subject matter as their Petition. This is insufficient; there must be evidence of acts or conduct indicative of the charges. In *Pagoda Philippines, Inc. v. Universal Canning, Inc.*,[212] this Court explained that:

. . . for bias and prejudice to be considered valid reasons for the voluntary inhibition of judges, mere suspicion is not enough. Bare

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[208] *Id.* at 824.

[209] *Pagoda Philippines, Inc. v. Universal Canning, Inc.*, 509 Phil. 339, 345 (2005) [Per *J.* Panganiban, Third Division].

[210] *Id.* at 346.

[211] *Id.*

[212] 509 Phil. 339 (2005) [Per *J.* Panganiban, Third Division].

allegations of their partiality will not suffice "in the absence of clear and convincing evidence to overcome the presumption that a judge will undertake his noble role to dispense justice according to law and evidence and without fear or favor."[213]

Besides, Del Mundo, *et al.* did not even attach copies of the two (2) decisions that Associate Justice Gonzales-Sison penned which allegedly indicate her bias. Thus, she was not shown to have been motivated by bias or prejudice.

VIII

Del Mundo, *et al.* concede that they failed to appeal Undersecretary Adasa and Regional Adjudicator Minas' Orders. They believe, however, that this is not fatal to their cause. Citing *Dadizon v. Bernadas,*[214] they claim that the appeal filed by the other farmer-beneficiaries should be considered as an appeal of all the farmer-beneficiaries under the community of interest principle.[215]

Their argument fails to persuade.

The procedural issue in *Dadizon* was whether the requirement of impleading all indispensable parties under Rule 7, Section 3 of the Rules of Court applies to appeals. This Court ruled that the rule on indispensable parties only applies to original actions, not to appeals. The reversal of the judgment on appeal would only bind the parties in the appealed case but not those who were not made parties.

As an exception, however, this Court cited communality of interest among the parties, where a reversal of the judgment on appeal operates as a reversal to all the parties—even to those who did not appeal—if it is shown that their rights and interests are inseparable or so "interwoven and dependent on each

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[213] *Id.* at 346.

[214] 606 Phil. 687 (2009) [Per *C.J.* Puno, First Division].

[215] *Rollo* (G.R. No. 200684), p. 27.

other[.]"[216] The rule has also been held to apply in instances when an "injustice might result from a reversal as to less than all the parties."[217]

The rule on communality of interest does not apply here. The rule refers to the effect of a reversal of a judgment on parties who did not appeal. Del Mundo, *et al*. cannot rely upon this rule to recover an appeal which they had already lost.

Even if the rule were applicable, there is no showing that Del Mundo, *et al*.'s rights and interests are inseparable or so "interwoven and dependent" on the rights and interests of the parties who filed an appeal.

WHEREFORE, the consolidated Petitions are **DENIED**. The March 26, 2002 Decision of the Court of Appeals in CA-G.R. SP No. 47497, the February 27, 2009 Decision and August 25, 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 60203, and the September 28, 2011 Decision and February 20, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 111965 are **AFFIRMED**.

SO ORDERED.

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

Hernando, J., on leave.

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[216] *Dadizon v. Bernadas*, 606 Phil. 687, 694 (2009) [Per *C.J.* Puno, First Division]. See also *Tropical Homes, Inc. v. Fortun*, 251 Phil. 83 (1989) [Per *J.* Regalado, Second Division].

[217] *Lim-Bungcaras v. Commission on Elections*, 799 Phil. 642, 671 (2016) [Per *J.* Leonardo-De Castro, *En Banc*].

THIRD DIVISION

[G.R. No. 194469. September 18, 2019]

HUBERT JEFFREY P. WEBB, *petitioner, vs.* **NBI DIRECTOR MAGTANGGOL B. GATDULA, FORMER NBI DIRECTOR CARLOS S. CAABAY, FORMER NBI DIRECTOR NESTOR M. MANTARING, DR. RENATO C. BAUTISTA, DR. PROSPERO CABANAYAN, ATTY. FLORESTO P. ARIZALA, JR., ATTY. REYNALDO O. ESMERALDA, ATTY. ARTURO FIGUERAS, ATTY. PEDRO RIVERA and JOHN HERRA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*, DEFINED AND EXPLAINED; THE PRINCIPLE OF *RES JUDICATA* SEEKS TO CONSERVE SCARCE JUDICIAL RESOURCES AND TO PROMOTE EFFICIENCY; IT PRECLUDES THE RISK OF TWO CONFLICTING DECISIONS WHEN THERE IS RE-LITIGATION. –– *Res judicata* literally means "a matter adjudged." It is an oft-repeated doctrine which bars the re-litigation of the same claim between the parties or the same issue on a different claim between the same parties. *Res judicata* is founded on the principle of estoppel, and is based on the public policy against unnecessary multiplicity of suits. x x x In *res judicata*, primacy is given to the first case. The underlying reason for this rule is the doctrine of immutability of final judgments, which is essential for the effective and efficient administration of justice. x x x The doctrine rests upon the principle that "parties ought not to be permitted to litigate the same issue more than once[.]" It "exists as an obvious rule of reason, justice, fairness, expediency, practical necessity, and public [tranquility]." Precluding re-litigation of the same dispute is made in recognition that judicial resources are finite and the number of cases that can be heard by the court is limited. Thus, the principle of *res judicata* seeks to conserve scarce judicial resources and to promote efficiency. Moreover, it precludes

the risk of inconsistent results and prevents the embarrassing problem of two (2) conflicting judicial decisions when there is re-litigation. Hence, *res judicata* "encourages reliance on judicial decision, bars vexatious litigation, and frees the courts to resolve other disputes."

2. ID.; ID.; ID.; ID.; TWO CONCEPTS OF *RES JUDICATA*, ELABORATED; *RES JUDICATA* BY BAR BY PRIOR JUDGMENT AND *RES JUDICATA* BY CONCLUSIVENESS OF JUDGMENT, DISTINGUISHED. –– *Res judicata* embraces two (2) concepts: (1) bar by prior judgment; and (2) conclusiveness of judgment. *Res judicata* by bar by prior judgment, enunciated in Rule 39, Section 47(b) of the Rules of Court, is in effect when, "between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action." Thus, the judgment in the first case constitutes an absolute bar to the second action. The second concept, pertaining to conclusiveness of judgment, is found in Rule 39, Section 47(c) of the Rules of Court. There is conclusiveness of judgment when "there is identity of parties in the first and second cases, but no identity of causes of action[.]" Moreover, "the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein." Thus, when a court of competent jurisdiction judicially tried and settled a right or fact, or an opportunity for a trial has been given, the court's judgment should be conclusive upon the parties. x x x In essence, *res judicata* by bar by prior judgment prohibits the filing of a second case when it has the same parties, subject, and cause of action, or when the litigant prays for the same relief as in the first case. Meanwhile, *res judicata* by conclusiveness of judgment precludes the re-litigation of a fact or issue that has already been judicially settled in the first case between the same parties. If, between the first and second case, the causes of action are different and only the parties and issues are the same, *res judicata* is still present by conclusiveness of judgment.

3. ID.; ID.; ID.; ID.; PRINCIPLE OF *RES JUDICATA* DOES NOT APPLY IN THIS CASE; IT IS NOT APPLICABLE IN CRIMINAL CASES; EVEN IF THE PRINCIPLE OF *RES JUDICATA* WERE APPLIED, THE PRESENT ACTION FOR INDIRECT CONTEMPT IS STILL NOT

PRECLUDED BY THE FINALITY OF THE DECISION IN THE CRIMINAL CASE OF *LEJANO V. PEOPLE* IN VIEW OF THE ABSENCE OF THE ELEMENTS OF *RES JUDICATA*. — [T]his Court's ruling in *Lejano* cannot preclude petitioner's filing of the contempt action. The principle of *res judicata*, a civil law principle, is not applicable in criminal cases, as explained in *Trinidad v. Office of the Ombudsman*. As further held in *People v. Escobar*, while certain provisions of the Rules of Civil Procedure may be applied in criminal cases, Rule 39 of the Rules of Civil Procedure is excluded from the enumeration under Rule 124 of the Rules of Criminal Procedure. Besides, even if the principle of *res judicata* were applied, this action is still not precluded by the finality of the decision in the criminal case. Between *Lejano* and this contempt case, only the first three (3) elements of *res judicata* are present: (1) the judgment in *Lejano* is final; (2) it was rendered by a court of competent jurisdiction; and (3) it was a judgment on the merits. The last element is absent: there is no identity of parties, issues, and cause of action in the two (2) cases. Clearly, respondents in this contempt action are not parties in the criminal case. Moreover, the issue and the cause of action here are different from the criminal case.

4. ID.; SPECIAL CIVIL ACTIONS; CONTEMPT OF COURT, DEFINED AND EXPLAINED; TWO TYPES OF CONTEMPT. — Contempt of court is willful disobedience to the court and disregard or defiance of its authority, justice, and dignity. In *Lim-Lua v. Lua*, this Court explained that contempt of court "signifies not only a willful disregard or disobedience of the court's order, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or, in some manner, to impede the due administration of justice." The power to cite persons in contempt is an essential element of judicial authority. All courts have the inherent power to punish for contempt to the end that they may "enforce their authority, preserve their integrity, maintain their dignity, and insure the effectiveness of the administration of justice." x x x There are two (2) types of contempt under the Rules of Court, namely: (1) direct contempt; and (2) indirect contempt. There is direct contempt when there is a "misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before [it.]" It includes disrespect toward the court, offensive

personalities toward others, refusal to be sworn in or to answer as a witness, or to subscribe an affidavit or deposition. It may be meted out "summarily without a hearing." Under Rule 71, Section 3 of the Rules of Court, there is indirect contempt when any of the following acts are committed: (a) Misbehavior of an officer of a court in the performance of his [or her] official duties or in his [or her] official transactions; (b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto; (c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule; (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice; (e) Assuming to be an attorney or an officer of a court, and acting as such without authority; (f) Failure to obey a subpoena duly served; (g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him [or her].

5. ID.; ID.; ID.; CONTEMPT PROCEEDINGS ARE *SUI GENERIS*; TWO-FOLD ASPECTS OF THE POWER OF CONTEMPT; CRIMINAL CONTEMPT AND CIVIL CONTEMPT, DISTINGUISHED. — Contempt proceedings are *sui generis*. They "may be resorted to in civil as well as criminal actions, and independently of any action." The power of contempt has a two-fold aspect, namely: "(1) the proper punishment of the guilty party for his disrespect to the court or its order; and (2) to compel his performance of some act or duty required of him by the court which he refuses to perform." Due to this two-fold aspect, contempt may be classified as civil or criminal. Criminal contempt is a "conduct that is directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect." On the other hand, civil contempt is one's failure to fulfill a court order in a civil action that would benefit the opposing

party. It is, therefore, an offense against the party in whose behalf the violated order was made. In *People v. Godoy*, this Court held that the primary consideration in determining whether a contempt is civil or criminal is the purpose for which the power of contempt is exercised. A proceeding is criminal when the purpose is primarily punishment. Criminal contempt is directed against the power and dignity of the court with no element of personal injury involved. The private parties' interest in the criminal contempt proceedings is tangential, if any. In contrast, a proceeding is civil when the purpose is compensatory or remedial. In such case, contempt "consists in the refusal of a person to do an act that the court has ordered him to do for the benefit or advantage of a party to an action pending before the court[.]" Thus, in civil contempt, the party in whose favor that judgment was rendered is the real party-in-interest in the proceedings. A difference between criminal and civil contempt also lies in the determination of the burden of proof. In criminal contempt proceedings, the contemnor is "presumed innocent and the burden is on the prosecution to prove the charges beyond reasonable doubt." In civil contempt proceedings, no presumption exists, "although the burden of proof is on the complainant, and while the proof need not be beyond reasonable doubt, it must amount to more than a mere preponderance of evidence." The disobedience that the law punishes as constructive contempt implies willfulness. To be held liable for contempt, a person's act must be done willfully or for an illegitimate or improper purpose. Thus, the good faith, or lack thereof, of the person being cited in contempt should be considered. x x x However, this Court has clarified that intent is a necessary element only in criminal contempt cases. Because the purpose of civil contempt proceeding is remedial and not punitive, intent is immaterial. Hence, good faith or lack of intent to violate the court's order is not a defense in civil contempt.

6. ID.; ID.; ID.; WHERE FAILURE TO PRODUCE THE SPECIMEN IN COURT CONSTITUTES WILLFUL DISOBEDIENCE OF A LAWFUL ORDER OF THIS COURT; PENALTY OF FINE, IMPOSED. — Petitioner has shown that respondents acted with gross negligence in safekeeping the specimen in their custody. The records show that respondents, when repeatedly asked to produce the specimen, convinced the trial court that they have the specimen in their custody. x x x Moreover, respondents failed to convince this

Court that they have acted in the regular performance of their duty. They did not controvert petitioner's allegations and evidence; particularly, they offered no explanation as to the contradicting claims of respondent Dr. Cabanayan and the facts behind the certification issued by the National Bureau of Investigation. Aside from their bare assertion that the medical technologist gave them the wrong information, no other evidence showed that they transferred the specimen to the trial court or to other agency's custody. Finally, respondents' argument that they were not in service yet when the incident happened is untenable since the National Bureau of Investigation submitted its Compliance on April 27, 2010 and July 16, 2010, when all of them were already in service. While this Court has ruled that the power to cite persons in contempt should be used sparingly, it should be wielded to ensure the infallibility of justice, where the defiance or disobedience is patent and contumacious that there is an evident refusal to obey. The facts here sufficiently prove that, indeed, there was willful disobedience. Respondents Gatdula, Caabay, Mantaring, Dr. Bautista, Dr. Cabanayan, Atty. Arizala, and Atty. Esmeralda should, therefore, be cited in contempt for disobedience of a lawful order of this Court. x x x [T]his Court finds it proper to mete out the penalty of ₱20,000.00 on respondents Gatdula, Caabay, Mantaring, Dr. Bautista, Dr. Cabanayan, Atty. Arizala, and Atty. Esmeralda.

7. ID.; ID.; ID.; AS TO OTHER RESPONDENTS WHO WERE NOT SHOWN TO HAVE PLANNED A DELIBERATE SCHEME TO INCULPATE PETITIONER, THE PRAYER THAT THEY BE HELD IN CRIMINAL CONTEMPT FOR COUCHING A WITNESS IN EXECUTING AN AFFIDAVIT AND IN COACHED IDENTIFICATION OF THE PETITIONER MUST FAIL; INTENT IS A NECESSARY ELEMENT IN CRIMINAL CONTEMPT. — [P]etitioner prays that respondents Atty. Rivera and Herra be held in contempt for coaching Alfaro in executing her dubious affidavit and in the coached identification of petitioner. Petitioner alleges that these acts amount to improper conduct tending to impede, obstruct, or degrade the administration of justice. A contempt case on this ground is in the nature of a criminal contempt. Being a criminal contempt, it must be shown that respondents acted willfully or for an illegitimate purpose. This implies willfulness, bad faith, or deliberate intent to cause

injustice. In criminal contempt, the contemnor is presumed innocent and the burden of proving beyond reasonable doubt that the contemnor is guilty of contempt lies with the petitioner. Here, respondents were not shown to have planned a deliberate scheme to inculpate petitioner. Petitioner's sole evidence against respondent Atty. Rivera is Atty. Artemio Sacaguing's testimony stating that Alfaro supposedly told him that Atty. Rivera asked her to execute a second affidavit. There was no other evidence presented supporting this. This does not satisfy the quantum of evidence required of petitioner. x x x Intent is a necessary element in criminal contempt. This Court cannot cite a person for criminal contempt unless the evidence makes it clear that he or she intended to commit it. The evidence here does not clearly show that respondent Herra coached Alfaro to identify petitioner. This is not proof beyond reasonable doubt. As such, the contempt complaint against respondents Atty. Rivera and Herra must fail.

APPEARANCES OF COUNSEL

Office of the Solicitor General for respondents.

Malit Law Office for respondent John Herra.

Mantaring Bagasbas & Associates for respondent Nestor Mantaring.

Narzal B. Mallares for respondent Carlos Caabay.

R E S O L U T I O N

LEONEN, *J.*:

While this Court's power to cite persons in contempt should be used sparingly, it should be wielded to ensure the infallibility of justice where the defiance or disobedience is patent and contumacious that there is an evident refusal to obey.[1]

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[1] *Oca v. Custodio*, 814 Phil. 641, 665 (2017) [Per *J.* Leonen, Second Division].

In criminal contempt proceedings, the presumption of innocence exists. Proof beyond reasonable doubt is but necessary; absent this, the accused cannot be cited in contempt.

This Court resolves a Petition for Indirect Contempt[2] under Rule 71 of the Rules of Court. The case was filed against officers of the National Bureau of Investigation, namely: (1) Director Magtanggol B. Gatdula (Gatdula); (2) former Director Carlos S. Caabay (Caabay); (3) former Director Nestor M. Mantaring (Mantaring); (4) Dr. Renato C. Bautista (Dr. Bautista); (5) Dr. Prospero Cabanayan (Dr. Cabanayan); (6) Atty. Floresto P. Arizala, Jr. (Atty. Arizala); (7) Atty. Reynaldo O. Esmeralda (Atty. Esmeralda); (8) Atty. Arturo Figueras (Atty. Figueras);[3] (9) Atty. Pedro Rivera (Atty. Rivera); and (10) Agent John Herra (Herra).

This Petition is an offshoot of the rape-homicide case of *Lejano v. People*.[4] In that case, Hubert Jeffrey P. Webb (Webb), among others, was charged with the crime of rape with homicide for allegedly raping Carmela Vizconde (Carmela), then killing her, her mother, and her sister in 1991— the events of which had been infamously called the Vizconde Massacre.[5]

While the criminal case was pending before the trial court, Webb filed a Motion to Direct the National Bureau of Investigation (NBI) to Submit Semen Specimen to DNA Analysis. As he claims in his Petition, the DNA testing would establish his innocence since the results would show that the semen found in Carmela did not belong to him.[6] When the Motion was denied, Webb filed a Petition for *Certiorari* assailing the denial.[7]

In an April 20, 2010 Resolution, this Court granted Webb's request to order a testing on the semen specimen found in

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[2] *Rollo*, pp. 3-64, Petition to Cite Officers of the NBI in Contempt.

[3] Died during the pendency of this case.

[4] 652 Phil. 512 (2010) [Per *J.* Abad, *En Banc*].

[5] *Id.* at 554.

[6] *Rollo*, pp. 9 and 52-54.

[7] *Id.* at 44.

Carmela's cadaver, in view of the Rules on DNA Evidence.[8] It ordered the National Bureau of Investigation to assist the parties in submitting the semen specimen to the University of the Philippines Natural Science Research Institute.[9]

This Court ruled:

"WHEREFORE, in the higher interest of justice, the request of appellant Webb to submit for DNA analysis the semen specimen taken from the cadaver of Carmela Vizconde under the custody of the National Bureau of Investigation is hereby GRANTED. The NBI is ORDERED to ASSIST the parties in facilitating the submission of said specimen to the UP-Natural Science and Research Institute, Diliman, Quezon City and they (NBI and UP-NSRI) are further ORDERED to REPORT to this Court within fifteen (15) days from notice hereof regarding compliance with and implementation of this Resolution."[10]

In its Compliance and Manifestation dated April 27, 2010, the National Bureau of Investigation claimed that the semen specimen was no longer in its custody. It alleged that the specimen had been submitted as evidence to the trial court when its Medico-Legal Chief, Dr. Cabanayan, testified on January 30, 31, and February 1, 5, 6, and 7, 1996.[11]

The trial court denied this claim.[12] The Branch Clerk of Court explained that what were marked in evidence were photographs of the slides containing the vaginal smear, not the slides themselves.[13]

However, in a Certification dated April 23, 1997, Dr. Bautista of the National Bureau of Investigation's Medico-Legal Division

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[8] *Id.* at 11.

[9] *Id.* at 12.

[10] *Id.*

[11] *Id.*

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

[13] *Id.* at 46.

confirmed that the slides containing the specimen were still in the Bureau's custody.[14]

When required by this Court to explain the discrepancies, the National Bureau of Investigation filed its Compliance dated July 16, 2010. In its Compliance, Dr. Cabanayan explained that he submitted the semen specimen to the trial court during his direct and cross-examinations. Dr. Bautista, denying responsibility, clarified that he issued the certification based on the information given to him by the medical technologist of the Bureau's Pathology Section.[15]

Due to the missing semen specimen, Webb filed this Petition for Indirect Contempt. He prays that the impleaded former and current National Bureau of Investigation officers be cited for indirect contempt for "impeding, degrading, and obstructing the administration of justice and for disobeying the April 20, 2010 Resolution of this Honorable Court[.]"[16]

Petitioner argues that the National Bureau of Investigation's claims are belied by the records of the case. He points out that based on the prosecution's Formal Offer of Evidence, the exhibits submitted to the trial court were only photographs of the slides containing the specimen.[17]

In addition, petitioner alleges that it was not mentioned during respondent Dr. Cabanayan's testimony that he turned over the actual slides to the court. On February 5, 1996, when the defense requested the production of the actual slides, the prosecution merely promised to bring them on the next hearing.[18] When he was asked the following day, Dr. Cabanayan stated

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[14] *Id*. at 12.

[15] *Id*. at 13.

[16] *Id*. at 14.

[17] *Id*. at 47.

[18] *Id*.

that he "forgot all about"[19] the slides. On his last appearance on February 7, 1996, he still failed to submit the sperm specimen.[20]

Dr. Cabanayan's claim, petitioner submits, is also belied by the court records, among which was respondent Dr. Bautista's certification that the specimen was still in the Bureau's custody.[21] He further argues that respondent Dr. Bautista's attempt to abandon his initial certification should be doubted as it is not supported by competent evidence. For one, he did not identify the medical technologist who supposedly fed him the information. Assuming that his story were true, he forwarded no evidence that the medical technologist lied to him, petitioner points out.[22]

In essence, petitioner claims that the National Bureau of Investigation made a false report to this Court when it stated that it had submitted the specimen to the trial court.[23] The testimony and certification from respondents Dr. Cabanayan and Dr. Bautista, respectively, show that the Bureau, not the trial court, had the last custody of the specimen.[24]

Petitioner further faults the National Bureau of Investigation for its apparent lack of care and concern in preserving the vital piece of evidence. He claims that since a Motion to direct the Bureau to submit the semen specimen for DNA analysis was pending, the Bureau should have been more diligent in handling the specimen.[25] Yet, it has been nonchalant, as evinced by respondent Dr. Bautista's negligence when he admitted that he did not personally check if the slides were still in their custody.[26]

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[19] *Id*. at 49.

[20] *Id*.

[21] *Id*. at 50.

[22] *Id*. at 51.

[23] *Id*.

[24] *Id*.

[25] *Id*. at 55.

[26] *Id*.

In addition, petitioner asserts that the National Bureau of Investigation devised a deliberate scheme to falsely inculpate him and his co-accused.

First, he questions its reliance on its star witness, Jessica Alfaro (Alfaro), whom he claims to be a bogus.[27] Petitioner contends that Alfaro was a regular informant of the National Bureau of Investigation who declared that she knew someone who witnessed the killings. When she failed to produce the supposed eyewitness, Alfaro allegedly volunteered herself to be the witness despite lack of personal knowledge of the crime.[28]

Petitioner also submits that the National Bureau of Investigation knew that Alfaro's testimonies were inconsistent on several material points.[29] In her first affidavit, Alfaro admitted that she did not witness the crime's actual commission as she was a mere lookout; yet, in her second affidavit, she suddenly claimed being in the Vizconde residence and witnessing Carmela's rape.[30] To cover up the inconsistencies, Alfaro admitted to the Bureau that she shredded her first affidavit, which was only recovered from Alfaro's assisting lawyer, Atty. Arturo Mercader (Atty. Mercader).[31] Moreover, the Bureau admitted that Alfaro identified the wrong person for accused Miguel Rodriguez.[32] Alfaro also lied when she stated that she was not assisted by counsel when she executed the first affidavit, when she was, in fact, actually assisted by Atty. Mercader.[33] Petitioner argues that Alfaro is not a reliable witness, as supported by her being a self-confessed drug addict.[34]

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[27] *Id*. at 16.

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

[29] *Id*. at 19.

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

[31] *Id*. at 19-20.

[32] *Id*. at 42.

[33] *Id*. at 43.

[34] *Id*. at 44.

Petitioner also implicates respondents Attys. Figueras and Rivera, claiming that they coached Alfaro in the dubious execution of the second affidavit.[35] He highlights that Alfaro did not actually know him until respondent Agent Herra and Agent Mark Anthony So (So) coached her into identifying him in court.[36] He insists that while Alfaro presented herself as his close friend or *barkada*, she did not actually know him or how he looked like prior to the case.[37]

Petitioner also alleges that National Bureau of Investigation Director Antonio Aragon (Antonio) tried to convince his nephew, Honesto Aragon (Honesto), not to testify that he was with petitioner in the United States at the time the crime was committed.[38] In his testimony, Honesto admitted that his uncle, Antonio, dissuaded him from testifying because they are relatives and his testimony will not look "good for the public."[39]

Petitioner stresses that the National Bureau of Investigation disregarded the documentary evidence they obtained from the United States and Philippine governments, which would have proven that he was in the United States around the time the crime was committed. The Bureau supposedly obtained US Immigration Naturalization Service and Philippine Bureau of Immigration Certifications showing his departure for the United States on March 9, 1991 and his arrival back to the Philippines on October 27, 1992.[40] It also received documentary evidence confirming that petitioner was employed in California in June 1991, and that he purchased a bicycle on June 30, 1991 from Orange Cycle in California.[41]

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

[36] *Id*. at 25-26.

[37] *Id*. at 25-31.

[38] *Id*. at 31-34.

[39] *Id*. at 33.

[40] *Id*. at 35-37.

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

Moreover, petitioner points out that the National Bureau of Investigation's Officer-in-Charge Director Federico Opinion (Opinion) admitted that petitioner's involvement in the murder was a "creation of media"[42] and that the Bureau has already confirmed through immigration records that petitioner was in the United States during the material dates.[43]

Petitioner also argues that the National Bureau of Investigation ignored the evidence showing that the fingerprints found on the fluorescent lamp in the Vizcondes' garage did not match his fingerprints, but those of Engineer Danilo Aguas, another lead suspect in the case.[44]

Despite strong contrary evidence, petitioner asserts that the National Bureau of Investigation still pursued the case and falsely implicated him in the crime. The Bureau's actions, he states, "constitute improper conduct which tends to directly or indirectly impede, obstruct, or degrade the administration of justice"[45] and willful disobedience of the order of this Court, for which the officers should be held in contempt of court.[46]

Petitioner prays that the following National Bureau of Investigation officers be cited in indirect contempt for the following acts:

1. Current NBI Director Magtanggol B. Gatdula, Former NBI Director Carlos S. Caabay and Former NBI Director Nestor M. Mantaring

    - For failing to exercise direct supervision and due diligence in safekeeping the semen specimen which was entrusted to the custody of the NBI since 1997 until the present time and which was the subject matter

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[42] *Id*. at 41.

[43] *Id*.

[44] *Id*. at 43.

[45] *Id*. at 56.

[46] *Id*.

of a pending Motion to Direct the NBI to Submit Semen Specimen for DNA Analysis.

2. Dr. Renato C. Bautista – Medico-Legal Officer III

   - For issuing his Certification that the slides were still in the custody of the NBI and later denying that they are.

3. Dr. Prospero Cabanayan – former Chief, Medico-Legal Division

   - For failing to bring the slides containing the semen specimen during the hearing held on 6 February 1996 as required by the Court, and for falsely claiming that he had already surrendered the slides to the trial court despite all evidence to the contrary.

4. Atty. Floresto P. Arizala, Jr., M.D. – Chief, Medico-Legal Division

   - For filing and signing, on behalf of the NBI, its Compliance and Manifestation dated 27 April 2010, wherein it was falsely claimed that the desired semen specimen/vaginal smear taken from the cadaver of Carmela Vizconde was no longer in its custody because the same was already submitted as evidence to the trial court when then NBI Medico-Legal Chief Prospero A. Cabanayan testified on January 30, 31 and February 1, 5, 6, and 7, 1996—which the trial court flatly denied.

5. Atty. Reynaldo O. Esmeralda, Deputy Director for Technical Services

   - For filing and signing, on behalf of the NBI, its Compliance and Manifestation dated 27 April 2010, wherein it was falsely claimed that the desired semen specimen/vaginal smear taken from the cadaver of Carmela Vizconde was no longer in its custody because the same was already submitted as evidence to the trial court when then NBI Medico-Legal Chief Prospero A. Cabanayan testified on January 30, 31, February 1, 5, 6, and 7, 1996—which the trial court flatly denied.

6. NBI's Atty. Arturo Figueras and Atty. Pedro Rivera

    - For coaching Jessica Alfaro in the execution of the Second Affidavit which converted her into an instant eyewitness to the crime and cured the "defects" of her First Affidavit.

7. NBI Agent John Herra

    - For coaching Jessica Alfaro by showing her pictures of Petitioner and asking NBI Agent Mark Anthony So to identify Petitioner and his facial marks so that she would be able to identify him in court even if they knew that Alfaro did not know him.[47]

On December 14, 2010, about two (2) weeks after the filing of this Petition for Indirect Contempt, this Court ruled on *Lejano*, the criminal case. In finding that the prosecution failed to prove their guilt beyond reasonable doubt, petitioner and his co-accused were acquitted of the crime charged.[48]

Later, the Office of the Solicitor General, representing respondents Gatdula, Atty. Esmeralda, Dr. Bautista, and Atty. Arizala, filed its Comment to this Petition.[49]

The Office of the Solicitor General argues that the Petition is rendered moot upon the promulgation of *Lejano*. Since the non-production of the specimen is merely incidental to the determination of petitioner's innocence, his acquittal has rendered the issue moot as no useful purpose can be served by its resolution.[50] It emphasizes that in *Lejano*, this Court settled

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[47] *Id*. at 59-60.

[48] *Lejano v. People, People v. Hubert Jeffrey P. Webb, et al.*, 652 Phil. 512 (2010) [Per *J*. Abad, *En Banc*].

[49] *Rollo*, pp. 248-262. Comment of the Office of the Solicitor General. Respondents Atty. Carlos C. Caabay, Atty. Nestor M. Mantaring, Dr. Prospero A. Cabanayan, Atty. Arturo A. Figueras, Atty. Pedro L. Rivera and Mr. John Herra were not represented by the Office of the Solicitor General because they were no longer officially connected with the NBI.

[50] *Id*. at 249-250.

that the mere loss of the specimen did not warrant petitioner's acquittal.[51] It argues that there is no violation of due process because the State is not required to preserve the semen specimen unless there was bad faith on the part of the prosecution or the police.[52]

The Office of the Solicitor General likewise avers that this Court's Resolution ordering the DNA analysis of the specimen was only to afford petitioner his constitutional right to due process and was not indispensable in determining his guilt.[53]

Moreover, the Office of the Solicitor General claims that respondents did not impede, obstruct, or degrade the administration of justice or defy this Court's order.[54] It points out that respondents Gatdula and Atty. Esmeralda are not responsible for the loss of the specimen because they assumed office only several years after the Vizconde Massacre.[55]

Meanwhile, respondent Atty. Arizala stated in his Compliance that the specimen was no longer in the National Bureau of Investigation's custody, as respondent Dr. Cabanayan had already submitted the evidence to the trial court.[56] He also claims that no bad faith can be attributed to respondent Dr. Bautista when he certified the specimen's availability, as he just relied on the medical technologist's information which he had no reason to doubt.[57]

Assuming that the specimen was still with the National Bureau of Investigation, the Office of the Solicitor General claims that the legal presumption of good faith and regularity in the

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[51] *Id*. at 250.

[52] *Id*.

[53] *Id*. at 251.

[54] *Id*. at 252.

[55] *Id*. at 253.

[56] *Id*.

[57] *Id*. at 253-254.

performance of their official duties must prevail absent any showing of malice or gross negligence amounting to bad faith.[58] It maintains that there was no bad faith on the part of respondents for the non-production of the specimen.[59]

The Office of the Solicitor General further contends that in *Lejano*, this Court settled that at the time the petitioner requested the DNA analysis, rules governing DNA evidence did not yet exist. There is neither any technology available in the country nor any precedent recognizing its admissibility as evidence.[60] It also questions petitioner's failure to challenge the trial court's denial of his request to have the DNA analysis.[61]

In a separate Comment,[62] respondents Gatdula and Atty. Esmeralda clarify that they had no participation in the alleged misconduct because they were not yet in service. Respondent Gatdula was appointed as Director only on July 7, 2010 and assumed office on July 12, 2010, while respondent Atty. Esmeralda was appointed Director III on October 19, 2006 and assumed office as Deputy Director for Technical Services in July 2009.[63] They also point out that when this Court ordered the DNA analysis, they no longer had the power to obey because the specimen was no longer in the Bureau's custody.[64]

Respondents Gatdula and Atty. Esmeralda also stress that since this Court had already settled the issue of the loss of DNA evidence, the non-production of the specimen is a non-issue.[65]

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[58] *Id*. at 254.

[59] *Id*. at 255.

[60] *Id*. at 255-256.

[61] *Id*. at 256.

[62] *Id*. at 213-239. The Comment dated February 23, 2011 was jointly submitted by Atty. Magtanggol B. Gatdula and Atty. Reynaldo O. Esmeralda.

[63] *Id*. at 214-215.

[64] *Id*.

[65] *Id*. at 220-221.

They argue that they never intended to disrespect or defy the order of this Court.[66]

In his Comment,[67] respondent Atty. Arizala claims innocence, alleging that he was not privy to the specimen's actual loss since he was assigned in a different station from 2004 to late 2008. He narrates that after personally supervising and failing to find the specimen, he was informed by respondent Dr. Cabanayan that the specimen had been transferred to the trial court. Thus, in the exercise of his ministerial duty, he issued a certification in 2009 stating the absence of the specimen—but, even so, he was not privy to its actual loss.[68]

Respondent Atty. Rivera also argued in his Comment[69] that he had no hand in the incident because he was not a custodian of the evidence. He explains that he was only an agent-investigator who was asked to testify before the trial court.[70]

In his Comment,[71] respondent Mantaring argues that since he was not directly part of the task force assigned to the case, he could not have failed exercising direct supervision and due diligence in safekeeping the semen specimen.[72] Although he was the Bureau Director from 2005 to 2010, he claims that he cannot be held liable for contempt for the specimen's loss. He adds that he only relied on respondent Dr. Cabanayan's statement[73] since he did not personally know what transpired in the trial court when the specimen was presented in evidence.[74]

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[66] *Id.* at 221.

[67] *Id.* at 285-286.

[68] *Id.*

[69] *Id.* at 287.

[70] *Id.*

[71] *Id.* at 305-312.

[72] *Id.* at 306.

[73] *Id.* at 306-307.

[74] *Id.* at 307.

Respondent Mantaring also argues that whether the specimen was submitted to the trial court is a factual question which must first be judicially resolved before the allegation against him is passed upon.[75]

In his Compliance/Explanation,[76] respondent Dr. Cabanayan denies that the semen specimen was lost. He narrates that, as the medico-legal officer, he was assigned to examine and report the findings for submission to the trial court. He said that the glass slides containing the semen specimen, among other pieces of evidence and findings, were collated and kept in a file folder tagged NBI Medical Jacket No. N-91-1665. In the footnote registered in the medical jacket, he noted the date, time, and court where he testified and submitted the file folder.[77]

In his Comment,[78] respondent Herra denies responsibility for the supposed loss of the specimen. He states that he was assigned with the defunct Task Force JECARES as Alfaro's lone close-in-security. As such, he did not have a hand in the investigation, much less access to any evidence.[79] He also denies that he coached Alfaro to identify petitioner.[80] He argues that he does not have any photo of petitioner, and he did not show it to Alfaro.[81]

As to respondent Caabay, despite several service of the Court's order, he failed to submit a comment.[82]

Antonio and Opinion, former National Bureau of Investigation directors, have already died and have been excluded from the

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[75] *Id*.

[76] *Id*. at 334-337.

[77] *Id*. at 335.

[78] *Id*. at 405-417.

[79] *Id*. at 405-406.

[80] *Id*. at 407-408.

[81] *Id*. at 408-409.

[82] *Id*. at 463.

contempt charges.[83] Similarly, respondent Atty. Figueras died during the pendency of this case.[84]

Petitioner manifested that he would be waiving his right to file a reply.[85]

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

First, whether or not this action is barred by the decision of this Court in *Lejano*; and

Second, whether or not respondents Magtanggol B. Gatdula, Carlos S. Caabay, Nestor M. Mantaring, Dr. Renato C. Bautista, Dr. Prospero Cabanayan, Atty. Floresto P. Arizala, Jr., Atty. Reynaldo O. Esmeralda, Atty. Pedro Rivera, and John Herra are guilty of indirect contempt; particularly: (1) disobedience or resistance to a lawful order of the court; and (2) improper conduct tending to impede, obstruct, or degrade the administration of justice.

I

Res judicata literally means "a matter adjudged."[86] It is an oft-repeated doctrine which bars the re-litigation of the same claim between the parties or the same issue on a different claim between the same parties.[87]

Res judicata is founded on the principle of estoppel, and is based on the public policy against unnecessary multiplicity of suits.[88] In *Ligtas v. People*:[89]

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[83] *Id*. at 60.

[84] *Id*. at 424-425.

[85] *Id*. at 448-452.

[86] *People v. Escobar*, 814 Phil. 840, 856 (2017) [Per J. Leonen, Second Division].

[87] *Id*.

[88] *Ligtas v. People*, 766 Phil. 750, 775 (2015) [Per J. Leonen, Second Division].

[89] 766 Phil. 750 (2015) [Per J. Leonen, Second Division].

Like the splitting of causes of action, res judicata is in pursuance of such policy. Matters settled by a Court's final judgment should not be litigated upon or invoked again. Relitigation of issues already settled merely burdens the Courts and the taxpayers, creates uneasiness and confusion, and wastes valuable time and energy that could be devoted to worthier cases.[90]

In *res judicata*, primacy is given to the first case. The underlying reason for this rule is the doctrine of immutability of final judgments, which is essential for the effective and efficient administration of justice.[91] In *Siy v. National Labor Relations Commission*:[92]

> [W]ell-settled is the principle that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.
>
> The reason for this is that litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be not deprived of the fruits of the verdict. Courts must guard against any scheme calculated to bring about that result and must frown upon any attempt to prolong the controversies.[93]

The doctrine rests upon the principle that "parties ought not to be permitted to litigate the same issue more than once[.]"[94]

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[90] *Id.* at 775 citing *Co v. People*, 610 Phil. 60, 70-71 (2009) [Per J. Corona, First Division].

[91] *Pryce Corporation v. China Banking Corporation*, 727 Phil. 1 (2014) [Per J. Leonen, *En Banc*].

[92] 505 Phil. 265 (2005) [Per J. Corona, Third Division].

[93] *Id.* at 274.

[94] *Nabus v. Court of Appeals*, 271 Phil. 768, 778 (1991) [Per J. Regalado, Second Division].

It "exists as an obvious rule of reason, justice, fairness, expediency, practical necessity, and public [tranquility]."[95]

Precluding re-litigation of the same dispute is made in recognition that judicial resources are finite and the number of cases that can be heard by the court is limited. Thus, the principle of *res judicata* seeks to conserve scarce judicial resources and to promote efficiency. Moreover, it precludes the risk of inconsistent results and prevents the embarrassing problem of two (2) conflicting judicial decisions when there is re-litigation.[96] Hence, *res judicata* "encourages reliance on judicial decision, bars vexatious litigation, and frees the courts to resolve other disputes."[97]

Res judicata embraces two (2) concepts: (1) bar by prior judgment; and (2) conclusiveness of judgment.

Res judicata by bar by prior judgment, enunciated in Rule 39, Section 47(b)[98] of the Rules of Court, is in effect when, "between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action."[99] Thus, the judgment in the first case constitutes an absolute bar to the second action.

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[95] *People v. Escobar*, 814 Phil. 840, 856 (2017) [Per *J.* Leonen, Second Division] citing *Degayo v. Magbanua-Dinglasan*, 757 Phil. 376, 382 (2015) [Per *J.* Brion, Second Division].

[96] *Salud v. Court of Appeals*, 303 Phil. 397 (1994) [Per *J.* Puno, Second Division].

[97] *Id.* at 406.

[98] RULES OF COURT, Rule 39, Sec. 47(b) provides:

SECTION 47. *Effect of judgments or final orders.* — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

. . . . . .

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity[.]

[99] *Social Security Commission v. Rizal Poultry and Livestock Association, Inc.*, 665 Phil. 198, 205 (2011) [Per *J.* Perez, First Division].

The second concept, pertaining to conclusiveness of judgment, is found in Rule 39, Section 47(c)[100] of the Rules of Court. There is conclusiveness of judgment when "there is identity of parties in the first and second cases, but no identity of causes of action[.]" Moreover, "the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein."[101] Thus, when a court of competent jurisdiction judicially tried and settled a right or fact, or an opportunity for a trial has been given, the court's judgment should be conclusive upon the parties.[102] In *Nabus v. Court of Appeals*:[103]

> The doctrine [of conclusiveness of judgment] states that a fact or question which was in issue in a former suit, and was there judicially passed on and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein, as far as concerns the parties to that action and persons in privity with them, and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or a different cause of action, while the judgment remains unreversed or unvacated by proper authority. The only identities thus required for the operation of the judgment as an estoppel, in contrast to the judgment as a bar, are identity of parties and identity of issues.
>
> It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the

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[100] RULES OF COURT, Rule 39, Section 47 (c) provides:

SECTION 47. *Effect of judgments or final orders*. —

. . . . . .

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

[101] *Social Security Commission v. Rizal Poultry and Livestock Association, Inc.*, 665 Phil. 198, 205 (2011) [Per *J.* Perez, First Division].

[102] *Nabus v. Court of Appeals*, 271 Phil. 768 (1991) [Per *J.* Regalado, Second Division].

[103] *Id*.

same parties or their privies, it is essential that the issues be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit; but the adjudication of an issue in the first case is not conclusive of an entirely different and distinct issue arising in the second. In order that this rule may be applied, it must clearly and positively appear, either from the record itself or by the aid of competent extrinsic evidence that the precise point or question in issue in the second suit was involved and decided in the first. And in determining whether a given question was an issue in the prior action, it is proper to look behind the judgment to ascertain whether the evidence necessary to sustain a judgment in the second action would have authorized a judgment for the same party in the first action.[104] (Citations omitted)

In essence, *res judicata* by bar by prior judgment prohibits the filing of a second case when it has the same parties, subject, and cause of action, or when the litigant prays for the same relief as in the first case. Meanwhile, *res judicata* by conclusiveness of judgment precludes the re-litigation of a fact or issue that has already been judicially settled in the first case between the same parties.[105] If, between the first and second case, the causes of action are different and only the parties and issues are the same, *res judicata* is still present by conclusiveness of judgment.[106]

To properly invoke *res judicata*, the following elements must concur:

(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

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[104] *Id.* at 784-785.

[105] *Presidential Decree No. 1271 Committee v. De Guzman*, 801 Phil. 731 (2016) [Per J. Leonen, Second Division].

[106] *Id.* at 766.

the first and second action, identity of parties, subject matter, and causes of action.[107]

In this case, this Court's ruling in *Lejano* cannot preclude petitioner's filing of the contempt action.

The principle of *res judicata*, a civil law principle, is not applicable in criminal cases, as explained in *Trinidad v. Office of the Ombudsman*.[108] As further held in *People v. Escobar*,[109] while certain provisions of the Rules of Civil Procedure may be applied in criminal cases, Rule 39 of the Rules of Civil Procedure is excluded from the enumeration under Rule 124 of the Rules of Criminal Procedure.

Besides, even if the principle of *res judicata* were applied, this action is still not precluded by the finality of the decision in the criminal case.

Between *Lejano* and this contempt case, only the first three (3) elements of *res judicata* are present: (1) the judgment in *Lejano* is final; (2) it was rendered by a court of competent jurisdiction; and (3) it was a judgment on the merits. The last element is absent: there is no identity of parties, issues, and cause of action in the two (2) cases.

Clearly, respondents in this contempt action are not parties in the criminal case. Moreover, the issue and the cause of action here are different from the criminal case.

Here, the action seeks to cite respondents in contempt, while in the criminal case, the accused sought to reverse his conviction. Respondents argue that this complaint is rendered "moot" because the non-production of the semen specimen is merely incidental to the issue of petitioner's innocence. Further, respondents stress that the ruling in *Lejano* as to the loss of specimen was already

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[107] *Social Security Commission v. Rizal Poultry and Livestock Association, Inc.*, 665 Phil. 198, 206 (2011) [Per *J.* Perez, First Division].

[108] 564 Phil. 382 (2007) [Per *J.* Carpio Morales, *En Banc*].

[109] 814 Phil. 840 (2017) [Per *J.* Leonen, Second Division].

settled. They, thus, conclude that the judgment regarding the loss of the specimen bars the contempt case because the DNA testing is no longer of practical value to petitioner.

Respondents attempt to water down the non-production of the evidence by attacking the underlying purpose of this Court's order. Their arguments falter.

To be clear, contempt of court simply asks whether respondents willfully defied this Court's order. Their reasoning only tends to weaken the authority of this Court. They present a dangerous argument; that is, people can choose to defy this Court's orders as long as it fits their perception.

Moreover, in *Lejano*, this Court answered the question of whether the loss of the specimen entitles the accused to acquittal. In this contempt case, it only resolves if there was willful disregard or disobedience of this Court's order, regardless of its underlying purpose or value to this Court or to the parties.

In sum, there is a lack of identity of parties, issues, and cause of action between the criminal case and the contempt action. As such, the judgment in the criminal case will not preclude this case's resolution.

II

Contempt of court is willful disobedience to the court and disregard or defiance of its authority, justice, and dignity.[110] In *Lim-Lua v. Lua*,[111] this Court explained that contempt of court "signifies not only a willful disregard or disobedience of the court's order, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or, in some manner, to impede the due administration of justice."[112]

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[110] *Oca v. Custodio*, 814 Phil. 641, 665 (2017) [Per *J.* Leonen, Second Division] citing *Halili v. Court of Industrial Relations*, 220 Phil. 507 (1985) [Per *J.* Makasiar, *En Banc*].

[111] 710 Phil. 211 (2013) [Per *J.* Villarama, Jr., First Division].

[112] *Id*. at 232 citing *Bank of the Philippine Islands v. Calanza*, 607 Phil. 547 (2010) [Per *J.* Nachura, Second Division].

The power to cite persons in contempt is an essential element of judicial authority.[113] All courts have the inherent power to punish for contempt to the end that they may "enforce their authority, preserve their integrity, maintain their dignity, and insure the effectiveness of the administration of justice."[114]

In *Roque, Jr. v. Armed Forces of the Philippines Chief of Staff*:[115]

The power of contempt is exercised to ensure the proper administration of justice and maintain order in court processes. *In Re: Kelly* provides:

> The summary power to commit and punish for contempt, tending to obstruct or degrade the administration of justice, as inherent in courts as essential to the execution of their powers and to the maintenance of their authority, is a part of the law of the land.
>
> Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum in their presence and submission to their lawful mandates, and as a corollary to this provision, to preserve themselves and their officers from the approach of insults and pollution.
>
> The existence of the inherent power of courts to punish for contempt is essential to the observance of order in judicial proceedings and to the enforcement of judgments, orders, and writs of the courts, and consequently to the due administration of justice.[116] (Citations omitted)

There are two (2) types of contempt under the Rules of Court, namely: (1) direct contempt; and (2) indirect contempt.

There is direct contempt when there is a "misbehavior in the presence of or so near a court as to obstruct or interrupt

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[113] *In re: Vicente Sotto*, 82 Phil. 595 (1949) [Per *J.* Feria, *En Banc*].

[114] *Commissioner of Immigration v. Cloribel*, 127 Phil. 716, 723 (1967) [*Per Curiam, En Banc*].

[115] 805 Phil. 921 (2017) [Per *J.* Leonen, Second Division].

[116] *Id.* at 942-943.

the proceedings before [it.]"[117] It includes disrespect toward the court, offensive personalities toward others, refusal to be sworn in or to answer as a witness, or to subscribe an affidavit or deposition.[118] It may be meted out "summarily without a hearing."[119]

Under Rule 71, Section 3 of the Rules of Court, there is indirect contempt when any of the following acts are committed:

(a) Misbehavior of an officer of a court in the performance of his [or her] official duties or in his [or her] official transactions;

(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

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[117] RULES OF COURT, Rule 71, Sec. 1 provides:

SECTION 1. *Direct Contempt Punished Summarily*. — A person guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so, may be summarily adjudged in contempt by such court and punished by a fine not exceeding two thousand pesos or imprisonment not exceeding ten (10) days, or both, if it be a Regional Trial Court or a court of equivalent or higher rank, or by a fine not exceeding two hundred pesos or imprisonment not exceeding one (1) day, or both, if it be a lower court.

[118] *Id*.

[119] *Oca v. Custodio*, 814 Phil. 641, 666 (2017) [Per *J*. Leonen, Second Division].

(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

(f) Failure to obey a subpoena duly served;

(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him [or her].

Contempt proceedings are *sui generis*. They "may be resorted to in civil as well as criminal actions, and independently of any action."[120]

The power of contempt has a two-fold aspect, namely: "(1) the proper punishment of the guilty party for his disrespect to the court or its order; and (2) to compel his performance of some act or duty required of him by the court which he refuses to perform."[121] Due to this two-fold aspect, contempt may be classified as civil or criminal.[122]

Criminal contempt is a "conduct that is directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect."[123] On the other hand, civil contempt is one's failure to fulfill a court order in a civil action that would benefit the opposing party. It is, therefore, an offense against the party in whose behalf the violated order was made.[124]

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[120] *Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines*, 672 Phil. 1, 14 (2011) [Per *J*. Bersamin, First Division].

[121] *Halili v. Court of Industrial Relations*, 220 Phil. 507, 527 (1985) [Per *J*. Makasiar, *En Banc*].

[122] *Id*.

[123] *People v. Godoy*, 312 Phil. 977, 999 (1995) [Per *J*. Regalado, *En Banc*] citing 17 C.J.S., Contempt, Sec. 5(1), p. 10.

[124] *Id*.

In *People v. Godoy*,[125] this Court held that the primary consideration in determining whether a contempt is civil or criminal is the purpose for which the power of contempt is exercised.[126]

A proceeding is criminal when the purpose is primarily punishment. Criminal contempt is directed against the power and dignity of the court with no element of personal injury involved. The private parties' interest in the criminal contempt proceedings is tangential, if any.[127]

In contrast, a proceeding is civil when the purpose is compensatory or remedial.[128] In such case, contempt "consists in the refusal of a person to do an act that the court has ordered him to do for the benefit or advantage of a party to an action pending before the court[.]"[129] Thus, in civil contempt, the party in whose favor that judgment was rendered is the real party-in-interest in the proceedings.[130]

Furthermore, in *Godoy*:

> Criminal contempt proceedings are generally held to be in the nature of criminal or quasi-criminal actions. They are punitive in nature, and the Government, the courts, and the people are interested in their prosecution. Their purpose is to preserve the power and vindicate the authority and dignity of the court, and to punish for disobedience of its orders. Strictly speaking, however, they are not criminal proceedings or prosecutions, even though the contemptuous act involved is also a crime. The proceeding has been characterized as sui generis, partaking of some of the elements of both a civil and criminal proceeding, but really constituting neither. In general, criminal contempt proceedings should be conducted in accordance with the

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[125] 312 Phil. 977 (1995) [Per J. Regalado, *En Banc*].

[126] *Id*.

[127] *Id*.

[128] *Id*.

[129] *Id*. at 1000.

[130] *Id*.

principles and rules applicable to criminal cases, in so far as such procedure is consistent with the summary nature of contempt proceedings. So it has been held that the strict rules that govern criminal prosecutions apply to a prosecution for criminal contempt, that the accused is to be afforded many of the protections provided in regular criminal cases, and that proceedings under statutes governing them are to be strictly construed. However, criminal proceedings are not required to take any particular form so long as the substantial rights of the accused are preserved.

Civil contempt proceedings are generally held to be remedial and civil in their nature; that is, they are proceedings for the enforcement of some duty, and essentially a remedy for coercing a person to do the thing required. As otherwise expressed, a proceeding for civil contempt is one instituted to preserve and enforce the rights of a private party to an action and to compel obedience to a judgment or decree intended to benefit such a party litigant. So a proceeding is one for civil contempt, regardless of its form, if the act charged is wholly the disobedience, by one party to a suit, of a special order made in behalf of the other party and the disobeyed order may still be obeyed, and the purpose of the punishment is to aid in an enforcement of obedience.[131] (Citation omitted)

A difference between criminal and civil contempt also lies in the determination of the burden of proof. In criminal contempt proceedings, the contemnor is "presumed innocent and the burden is on the prosecution to prove the charges beyond reasonable doubt."[132] In civil contempt proceedings, no presumption exists, "although the burden of proof is on the complainant, and while the proof need not be beyond reasonable doubt, it must amount to more than a mere preponderance of evidence."[133]

The disobedience that the law punishes as constructive contempt implies willfulness.[134] To be held liable for contempt,

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[131] *Id*. at 1000-1001.

[132] *Id*. at 1002.

[133] *Id*.

[134] *Commissioner of Immigration v. Cloribel*, 127 Phil. 716 (1967) [*Per Curiam, En Banc*].

a person's act must be done willfully or for an illegitimate or improper purpose. Thus, the good faith, or lack thereof, of the person being cited in contempt should be considered.[135] In *Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines*:[136]

> There is no question that in contempt the intent goes to the gravamen of the offense. Thus, the good faith, or lack of it, of the alleged contemnor should be considered. Where the act complained of is ambiguous or does not clearly show on its face that it is contempt, and is one which, if the party is acting in good faith, is within his rights, the presence or absence of a contumacious intent is, in some instances, held to be determinative of its character. A person should not be condemned for contempt where he contends for what he believes to be right and in good faith institutes proceedings for the purpose, however erroneous may be his conclusion as to his rights. To constitute contempt, the act must be done willfully and for an illegitimate or improper purpose.[137] (Citations omitted)

However, this Court has clarified that intent is a necessary element only in criminal contempt cases. Because the purpose of civil contempt proceeding is remedial and not punitive, intent is immaterial. Hence, good faith or lack of intent to violate the court's order is not a defense in civil contempt.[138]

Here, respondents were charged with indirect contempt on two (2) grounds under the Rules of Court: (1) "disobedience of or resistance to a lawful writ, process, order, or judgment of a court"; and (2) "improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice[.]"

III

On the first ground, petitioner contends that respondents Gatdula, Caabay, Mantaring, Dr. Bautista, Dr. Cabanayan,

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[135] *Lim-Lua v. Lua*, 710 Phil. 211 (2013) [Per J. Villarama, Jr., First Division].

[136] 672 Phil. 1 (2011) [Per *J.* Bersamin, First Division].

[137] *Id.* at 16.

[138] *People v. Godoy*, 312 Phil. 977 (1995) [Per J. Regalado, *En Banc*].

Atty. Arizala, and Atty. Esmeralda all disobeyed this Court's order in failing to produce the specimen for DNA analysis.

Since the order to have the DNA test was made for petitioner's benefit, disobedience of or resistance to the order is in the nature of civil contempt.

In allowing the test, this Court declared that the DNA technology would afford petitioner the fullest extent of his constitutional right to due process. In its Resolution, this Court stated:

> "It is well to remind the parties that a flawed procedure in the conduct of DNA analysis of the semen specimen on the slides used during the trial for microscopic examination of human spermatozoa may yield an inconclusive result and thus will not entitle the accused to an acquittal. More important, allowing Webb to utilize the latest available DNA technology does not automatically guarantee an exculpatory DNA evidence, but simply to afford appellant Webb the fullest extent of his constitutional right to due process."[139] (Citation omitted)

Furthermore, when this contempt petition was filed, petitioner's purpose was to seek the enforcement of this Court's order for his benefit and advantage.

Petitioner has shown that respondents acted with gross negligence in safekeeping the specimen in their custody. The records show that respondents, when repeatedly asked to produce the specimen, convinced the trial court that they have the specimen in their custody.

During the February 5, 1996 hearing, the defense lawyers requested the production of the slides containing the semen specimen. The prosecution stated that the slides were not available that day, but promised to bring them the following day:

> COURT:
>
> Is this slide available now?

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[139] *Rollo,* p. 11.

FISCAL ZUNO:

It is not available, Your Honor with these questions propounded by the counsel, we can produce the slide itself, Your Honor, and can be produced by the laboratory technician who examined the slide, Your Honor. So that the doctor will not make any estimate of the slide. Because further questions on the slide, on the size of the slide, Your Honor, we will object to it on the ground that it is not the best evidence. We will be presenting the slide, Your Honor.

. . . . . .

COURT:

Is the slide not available today?

FISCAL ZUNO:

It is not available, Your Honor because we did not expect that questions will be asked on the slide. We will bring the slide on the next hearing, Your Honor.[140]

The following day, when respondent Dr. Cabanayan was asked to produce the slides, he testified that he forgot all about it:

ATTY. AGUIRRE:

Q: Yesterday Doctor you were drawing the size of the slides you used in taking the sample of the seminal fluid, but the prosecution objected to and instead they said it would be better they will produce in court the slides which you used for the examination of the seminal fluid or the fluid taken from the genitalia of Carmela Vizconde. Did you bring with you now those three (3) slides?

WITNESS DR. CABANAYAN:

A: I am sorry to inform the Honorable Court that I forgot all about it before I came here.[141]

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[140] *Id*. at 48 citing TSN dated February 5, 1996, pp. 29-34.

[141] *Id*. at 49 citing TSN dated February 6, 1996, p. 4.

On February 7, 1996, respondent Dr. Cabanayan still failed to produce the slides. This time, he even testified that he last saw the slides in 1995.[142]

These exchanges before the trial court belie respondents' claim that they submitted the sperm specimen to the court. Moreover, the prosecution's Formal Offer of Evidence shows that the exhibits submitted were merely the photographs of the slides containing the vaginal smear. The actual slides were never submitted in court.

Subsequently, the National Bureau of Investigation also issued a certification on April 23, 1997 that the sperm specimen was still in its custody. In their attempt to evade responsibility, respondents later claimed that it was the medical technologist who confirmed that the specimen was still in the Bureau's care, and they relied on this information in good faith. As discussed, good faith is not a defense in civil contempt proceedings.

Moreover, respondents failed to convince this Court that they have acted in the regular performance of their duty. They did not controvert petitioner's allegations and evidence; particularly, they offered no explanation as to the contradicting claims of respondent Dr. Cabanayan and the facts behind the certification issued by the National Bureau of Investigation. Aside from their bare assertion that the medical technologist gave them the wrong information, no other evidence showed that they transferred the specimen to the trial court or to other agency's custody.

Finally, respondents' argument that they were not in service yet when the incident happened is untenable since the National Bureau of Investigation submitted its Compliance on April 27, 2010 and July 16, 2010, when all of them were already in service.

While this Court has ruled that the power to cite persons in contempt should be used sparingly, it should be wielded to ensure the infallibility of justice, where the defiance or

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[142] *Id*. at 49-50.

disobedience is patent and contumacious that there is an evident refusal to obey.[143]

The facts here sufficiently prove that, indeed, there was willful disobedience. Respondents Gatdula, Caabay, Mantaring, Dr. Bautista, Dr. Cabanayan, Atty. Arizala, and Atty. Esmeralda should, therefore, be cited in contempt for disobedience of a lawful order of this Court.

Corollary to its power of contempt, courts have the inherent power to impose a penalty that is reasonably commensurate with the gravity of the offense.[144] This penalty must be exercised on the preservative and corrective principle, not for vindicatory or retaliatory purpose.[145]

Under Rule 71, Section 3 of the Rules of Court, if a respondent is adjudged guilty of indirect contempt committed against a regional trial court or a court of equivalent or higher rank, he or she may be punished by a fine not exceeding ₱30,000.00, or imprisonment not exceeding six (6) months.

Thus, this Court finds it proper to mete out the penalty of ₱20,000.00 on respondents Gatdula, Caabay, Mantaring, Dr. Bautista, Dr. Cabanayan, Atty. Arizala, and Atty. Esmeralda.

IV

On the second ground, petitioner prays that respondents Atty. Rivera and Herra be held in contempt for coaching Alfaro in executing her dubious affidavit and in the coached identification of petitioner. Petitioner alleges that these acts amount to improper conduct tending to impede, obstruct, or degrade the administration of justice.

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[143] *Oca v. Custodio*, 814 Phil. 641, 665 (2017) [Per *J.* Leonen, Second Division].

[144] *Fortune Life Insurance Company, Inc. v. Commission on Audit,* G.R. No. 213525, November 21, 2017, 845 SCRA 599 [Per *J.* Bersamin, *En Banc*].

[145] *Id*.

A contempt case on this ground is in the nature of a criminal contempt. Being a criminal contempt, it must be shown that respondents acted willfully or for an illegitimate purpose. This implies willfulness, bad faith, or deliberate intent to cause injustice.[146] In criminal contempt, the contemnor is presumed innocent and the burden of proving beyond reasonable doubt that the contemnor is guilty of contempt lies with the petitioner.[147]

Here, respondents were not shown to have planned a deliberate scheme to inculpate petitioner. Petitioner's sole evidence against respondent Atty. Rivera is Atty. Artemio Sacaguing's testimony stating that Alfaro supposedly told him that Atty. Rivera asked her to execute a second affidavit. There was no other evidence presented supporting this. This does not satisfy the quantum of evidence required of petitioner.

It was also not shown that respondent Herra coached Alfaro to identify petitioner. Allegedly, So, another Bureau agent, witnessed how respondent Herra coached Alfaro. However, in his testimony, So merely mentioned that respondent Herra asked him if petitioner was the person in the photo while Alfaro was around:

ATTY. BAUTISTA:

> Q: Now, when you went to the room of Jessica Alfaro on the second floor where John Herra was likewise there together with the pictures of Hubert Webb, upon your arrival in the place, what happened?

WITNESS SO:

> A: Agent John Herra showed me the pictures of Mr. Hubert Webb.

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[146] *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*, 529 Phil. 619 (2006) [Per *J.* Ynares-Santiago, First Division].

[147] *People v. Godoy*, 312 Phil. 977 (1995) [Per *J.* Regalado, *En Banc*].

ATTY. BAUTISTA:

Q: Yes. And why were the pictures shown to you, were you told why those pictures were being shown to you?

WITNESS SO:

A: Agent John Herra asked me, "Is this Hubert?", "Ito ba si Hubert?"

. . . . . .

ATTY BAUTISTA:

Q: Now, when that question "Ito ba si Hubert?" was asked of you by John Herra, was Jessica Alfaro present?

WITNESS SO:

A: Yes, Your Honor.

. . . . . .

ATTY. BAUTISTA:

Q: Who asked "Saan 'yung nunal ni Huber Webb", who asked that?

WITNESS SO:

A: Agent John Herra, Your Honor.

. . . . . .

ATTY. BAUTISTA:

Q: When Agent John Herra asked you kung nasaan 'yung nunal [ni] Hubert, was Jessica Alfaro present?

WITNESS SO:

A: Yes, Your Honor.[148]

Intent is a necessary element in criminal contempt. This Court cannot cite a person for criminal contempt unless the evidence makes it clear that he or she intended to commit it.[149] The evidence here does not clearly show that respondent Herra coached Alfaro to identify petitioner. This is not proof

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

[149] *Marantan v. Diokno,* 726 Phil. 642 (2014) [Per. *J.* Mendoza, Third Division].

beyond reasonable doubt. As such, the contempt complaint against respondents Atty. Rivera and Herra must fail.

WHEREFORE, the Petition is **PARTLY GRANTED**. Respondents Magtanggol B. Gatdula, Carlos S. Caabay, Nestor M. Mantaring, Dr. Renato C. Bautista, Dr. Prospero Cabanayan, Atty. Floresto P. Arizala, Jr., and Atty. Reynaldo O. Esmeralda are found **GUILTY OF INDIRECT CONTEMPT**. They are sentenced to pay a fine of Twenty Thousand Pesos (₱20,000.00) each. However, the Petition against respondents Atty. Pedro Rivera and John Herra is **DISMISSED**.

SO ORDERED.

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

Hernando, J., on leave.

SECOND DIVISION

[G.R. No. 200102. September 18, 2019]

THE REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **ARTHUR TAN MANDA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY; PARTIES; A PETITION FOR SUBSTANTIAL CORRECTION OF AN ENTRY IN THE CIVIL REGISTRY SHOULD IMPLEAD AS RESPONDENTS THE CIVIL REGISTRAR, AS WELL AS ALL OTHER PERSONS WHO HAVE OR CLAIM TO HAVE ANY INTEREST THAT WOULD BE AFFECTED THEREBY.—In a long line of cases,

starting with *Republic v. Valencia* the Court has already settled that even substantial errors in a civil registry may be corrected and the true facts established provided the parties aggrieved by the error avail themselves of the appropriate adversary proceeding. x x x The fact that the notice of hearing was published in a newspaper of general circulation and notice thereof was served upon the State will not change the nature of the proceedings taken. A reading of Sections 4 and 5 [of Rule 108 of the Rules of Court] shows that the Rules mandate two (2) sets of notices to potential oppositors: one given to persons named in the petition, and another given to other persons who are not named in the petition but nonetheless may be considered interested or affected parties. Consequently, the petition for a substantial correction of an entry in the civil registry should implead as respondents the civil registrar, as well as all other persons who have or claim to have any interest that would be affected thereby. Summons is thus served not for the purpose of vesting the courts with jurisdiction but to comply with the requirements of fair play and due process to afford the person concerned the opportunity to protect his interest if he so chooses. In this case, respondent merely impleaded the Office of the Civil Registry of Cebu City. In filing the petition, however, he seeks the correction of his parents' citizenship as appearing in his birth certificate from "Chinese" to "Filipino." Thus, respondent should have impleaded and notified not only the Local Civil Registrar but also [his] parents and siblings as the persons who have interest and are affected by the changes or corrections [he] wanted to make.

2. ID.; ID.; ID.; REQUIREMENTS; STRICT COMPLIANCE WITH THE REQUIREMENTS OF THE RULES IS MANDATED WHEN A PETITION FOR CANCELLATION OR CORRECTION OF AN ENTRY IN THE CIVIL REGISTER INVOLVES SUBSTANTIAL AND CONTROVERSIAL ALTERATIONS, INCLUDING THOSE ON CITIZENSHIP, LEGITIMACY OF PATERNITY OR FILIATION, OR LEGITIMACY OF MARRIAGE. —[I]t is true that in some cases, failure to implead and notify the affected or interested parties was cured by the publication of the notice of hearing. In those cases, however, earnest efforts were made by petitioners in bringing to court all possible interested parties; the interested parties themselves

initiated the corrections proceedings; when there is no actual or presumptive awareness of the existence of the interested parties; or when a party is inadvertently left out. Consequently, when a petition for cancellation or correction of an entry in the civil register involves substantial and controversial alterations, including those on citizenship, legitimacy of paternity or filiation, or legitimacy of marriage, a strict compliance with the requirements of Rule 108 of the Rules is mandated. "If the entries in the civil register could be corrected or changed through mere summary proceedings and not through appropriate action wherein all parties who may be affected by the entries are notified or represented, the door to fraud or other mischief would be set open, the consequence of which might be detrimental and far reaching."

3. POLITICAL LAW; CITIZENSHIP; PROOF OF CITIZENSHIP; THE EXERCISE OF THE RIGHTS AND PRIVILEGES GRANTED ONLY TO FILIPINOS IS NOT CONCLUSIVE PROOF OF CITIZENSHIP, BECAUSE A PERSON MAY MISREPRESENT HIMSELF TO BE A FILIPINO AND THUS ENJOY THE RIGHTS AND PRIVILEGES OF CITIZENS OF THE COUNTRY.— [R]espondent merely presented the Identification Certificates issued by the then CID to his parents to prove that they are Filipino citizens. Surely, their Chinese citizenship could not be converted to Filipino just because certain government agencies recognized them as such. "The exercise of the rights and privileges granted only to Filipinos is not conclusive proof of citizenship, because a person may misrepresent himself to be a Filipino and thus enjoy the rights and privileges of citizens of this country."

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Mendoza and Lee Law Offices for respondent.

D E C I S I O N

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

Assailed in this Petition for Review on *Certiorari* is the January 4, 2012 Decision[1] of the Court of Appeals-Cebu City (CA) in CA-G.R. CV No. 00026. The assailed decision dismissed the appeal filed by Republic of the Philippines (Petitioner) and consequently affirmed the January 15, 2004 Decision[2] of the Regional Trial Court, Cebu City, Branch 6 (RTC), in SP. PROC. No. 12146-CEB granting the Petition for Correction of Entry in the Birth Certificate of Arthur Tan Manda (Respondent).

The Antecedents

Respondent alleged that he was born to spouses Siok Ting Tan Manda and Chin Go Chua Tan. His birth certificate reflects his father's and mother's citizenship as Chinese implying that he is also a Chinese citizen. Respondent averred that the foregoing entries were erroneous because his father Siok Ting Tan Manda is a Filipino citizen by birth and his mother Chin Go Chua Tan is also a Filipino citizen by marriage. He consequently prayed that both erroneous entries of his parents' citizenship be corrected from Chinese to Filipino. In support of his allegations, respondent presented Identification Certificates[3] issued by the then Commission on Immigration and Deportation (CID) to his parents stating that they are Filipino citizens.

The RTC Ruling

In its January 15, 2004 Decision, the RTC granted respondent's petition on the basis of the Identification Certificates and the birth certificate of respondent's father. It ordered the Office of the Local Civil Registrar of Cebu City to correct the entries pertaining to his parents' citizenship from Chinese to Filipino.

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[1] Penned by Associate Justice Eduardo B. Peralta, Jr., with Executive Justice Pampio A. Abarintos and Associate Justice Gabriel T. Ingles, concurring; *rollo*, pp. 30-35.

[2] Penned by Judge Anacleto L. Caminade; *id*. at 36-37.

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

Aggrieved, petitioner elevated an appeal before the CA.

The CA Ruling

In its January 4, 2012 Decision, the CA affirmed the RTC ruling. It held that respondent complied with the requirements of an adversarial proceeding. The appellate court opined that the publication of the notice of hearing in a newspaper of general circulation and the notices sent to petitioner and the Local Civil Registrar of Cebu City were sufficient *indicia* of an adverse proceeding. It added that the Identification Certificates issued by the then CID adequately proved that respondent's father was a Filipino citizen by birth while his mother was a Filipino citizen by marriage.

Hence, this Petition for Review on *Certiorari.*

The Issues

I. Whether the petition should be denied for failure to implead indispensable parties; and

II. Whether respondent sufficiently proved that his parents are Filipino citizens.

Petitioner argues that the changes sought to be effected with respect to the citizenship of respondent's parents as appearing in his record of birth are substantial because these may have an effect on the citizenship of his parents and siblings, thus, an adversarial proceeding should be had where all interested parties are impleaded, or at least notified, and allowed to be heard before the intended changes are effected; that only the Local Civil Registrar of Cebu City was made a party defendant in the petition; that there is no showing that respondent's parents and his siblings were notified of the case or that they participated in the proceedings before the trial court; and that it is not enough that respondent adduced in evidence the Identification Certificates issued by the then CID to warrant the correction or change of entry in his record of birth pertaining to the nationality of his parents.[4]

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[4] *Id.* at 10-26.

On June 1, 2011, however, respondent passed away.[5] Thus, he was substituted by his wife, Arlinda D. Manda (Arlinda). In her Comment,[6] Arlinda counters that the publication of the notice of hearing cures the failure to implead indispensable parties; that the Identification Certificates of respondent's parents which showed and proved that they are Filipino citizens enjoy the presumption of regularity; and that petitioner has not adduced any evidence to the contrary to dispute such presumption.

The Court's Ruling

The petition is meritorious.

In a long line of cases, starting with *Republic v. Valencia*[7] the Court has already settled that even substantial errors in a civil registry may be corrected and the true facts established provided the parties aggrieved by the error avail themselves of the appropriate adversary proceeding. In that case, the Court declared:

> It is undoubtedly true that if the subject matter of a petition is not for the correction of clerical errors of a harmless and innocuous nature, but one involving nationality or citizenship, which is indisputably substantial as well as controverted, affirmative relief cannot be granted in a proceeding *summary* in nature. However, it is also true that a right in law may be enforced and a wrong may be remedied as long as the *appropriate remedy is used*. This Court adheres to the principle that even substantial errors in a civil registry may be corrected and the true facts established provided the parties aggrieved by the error avail themselves of the appropriate adversary proceeding. x x x

What is meant by "appropriate adversary proceeding?" Black's Law Dictionary defines "adversary proceeding" as follows:

> One having opposing parties; contested, as distinguished from an [*ex parte*] application, one of which the party seeking relief

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[5] *Id*. at 80.

[6] *Id*. at 142-151.

[7] 225 Phil. 408 (1986).

> has given legal warning to the other party, and afforded the latter an opportunity to contest it. Excludes an adoption proceeding.[8] x x x (Citation omitted)

Sections 3, 4, and 5, Rule 108 of the Rules of Court (Rules) state:

> SEC. 3. *Parties*. — When cancellation or correction of an entry in the civil register is sought, the **civil registrar and all persons who have or claim any interest** which would be affected thereby shall be **made parties** to the proceeding.
>
> SEC. 4. *Notice and publication*. — Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the **persons named in the petition**. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.
>
> SEC. 5. *Opposition*. — The **civil registrar and any person having or claiming any interest under the entry** whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto. (Emphases supplied)

The fact that the notice of hearing was published in a newspaper of general circulation and notice thereof was served upon the State will not change the nature of the proceedings taken.[9] A reading of Sections 4 and 5 shows that the Rules mandate two (2) sets of notices to potential oppositors: one given to persons named in the petition, and another given to other persons who are not named in the petition but nonetheless may be considered interested or affected parties.[10] Consequently, the petition for a substantial correction of an entry in the civil registry should implead as respondents the civil registrar, as well as all other persons who have or claim to have any interest

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[8] *Id*. at 413.

[9] *Labayo-Rowe v. Republic*, 250 Phil. 300, 308 (1988).

[10] *Republic v. Coseteng-Magpayo*, 656 Phil. 550, 560 (2011).

that would be affected thereby.[11] Summons is thus served not for the purpose of vesting the courts with jurisdiction but to comply with the requirements of fair play and due process to afford the person concerned the opportunity to protect his interest if he so chooses.[12]

In this case, respondent merely impleaded the Office of the Civil Registry of Cebu City. In filing the petition, however, he seeks the correction of his parents' citizenship as appearing in his birth certificate from "Chinese" to "Filipino." Thus, respondent should have impleaded and notified not only the Local Civil Registrar but also [his] parents and siblings as the persons who have interest and are affected by the changes or corrections [he] wanted to make.[13]

Indeed, it is true that in some cases, failure to implead and notify the affected or interested parties was cured by the publication of the notice of hearing. In those cases, however, earnest efforts were made by petitioners in bringing to court all possible interested parties; the interested parties themselves initiated the corrections proceedings; when there is no actual or presumptive awareness of the existence of the interested parties; or when a party is inadvertently left out.[14]

Consequently, when a petition for cancellation or correction of an entry in the civil register involves substantial and controversial alterations, including those on citizenship, legitimacy of paternity or filiation, or legitimacy of marriage, a strict compliance with the requirements of Rule 108 of the Rules is mandated.[15] "If the entries in the civil register could be corrected or changed through mere summary proceedings

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[11] *Id.* at 558.

[12] *Ceruila v. Delantar*, 513 Phil. 237, 252 (2005).

[13] *Republic v. Lugsanay Uy*, 716 Phil. 254, 265 (2013).

[14] *Id.* at 265-266; citations omitted.

[15] *Onde v. The Office of the Local Civil Registrar of Las Piñas City*, 742 Phil. 691, 696 (2014).

and not through appropriate action wherein all parties who may be affected by the entries are notified or represented, the door to fraud or other mischief would be set open, the consequence of which might be detrimental and far reaching."[16]

Finally, respondent merely presented the Identification Certificates issued by the then CID to his parents to prove that they are Filipino citizens. Surely, their Chinese citizenship could not be converted to Filipino just because certain government agencies recognized them as such.[17] "The exercise of the rights and privileges granted only to Filipinos is not conclusive proof of citizenship, because a person may misrepresent himself to be a Filipino and thus enjoy the rights and privileges of citizens of this country."[18]

WHEREFORE, the petition is hereby **GRANTED**. The January 4, 2012 Decision of the Court of Appeals in CA-G.R. CV No. 00026 is **SET ASIDE**. Consequently, the January 15, 2004 Decision of the Regional Trial Court, Branch 6, Cebu City, in Sp. Proc. No. 12146-CEB granting the Petition for Correction of Entry in Birth Certificate filed by respondent Arthur Tan Manda, is **NULLIFIED**.

SO ORDERED.

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

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[16] *Supra* note 9, at 306-307.

[17] *In re: Florencio Mallare*, 131 Phil. 817, 825 (1968).

[18] *Go, Sr. v. Ramos*, 614 Phil. 451, 478-479 (2009).

[*] Acting Chief Justice per Special Order No. 2703 dated September 10, 2019.

THIRD DIVISION

[G.R. No. 203382. September 18, 2019]

PEDRO S. CUERPO, SALVADOR SIMBULAN and FERNANDO H. ROÑO, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW SHOULD BE RAISED; EXCEPTIONS. — The Rules of Court requires that only questions of law should be raised in petitions filed under Rule 45. Hence, questions "on whether the prosecution['s] evidence proved the guilt of the accused beyond reasonable doubt; whether the presumption of innocence was properly accorded the accused; whether there was sufficient evidence to support a charge of conspiracy; or whether the defense of good faith was correctly appreciated are all, in varying degrees, questions of fact," should not be raised in appeals from the Sandiganbayan (SB). This is because, as a rule, "the factual findings of the SB are conclusive on this Court" save for several exceptions. In *Maderazo, et al. v. People, et al.*, these exceptions are as follows: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the interference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conclusions without citation of specific evidence on which they are based; and (6) the findings of fact are premised on an absence of evidence on record.

2. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019); SECTION 3(E) ON CORRUPT PRACTICES OF PUBLIC OFFICERS; ELEMENTS. — [T]he elements of violation of Section 3(e) [on Corrupt practices of public officers] of R.A. No. 3019 are the following: (a) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (b) that he acted with manifest partiality, evident bad faith, or

inexcusable negligence; and (c) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

3. ID.; ID.; ID.; ID.; MODES OF COMMISSION OF THE CRIME. — The law provides three (3) modes of commission of the crime, namely, through "manifest partiality," "evident bad faith," and/or "gross negligence." There is "***manifest partiality***" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. On the other hand, "***evident bad faith***" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.

4. ID.; ID.; ID.; ID.; ID.; EVIDENT BAD FAITH; THE URBAN DEVELOPMENT AND HOUSING ACT (RA 7279) ON EVICTION AND DEMOLITION WAS VIOLATED IN CASE AT BAR. — Section 10, Article XIII of the 1987 Constitution provides the Philippine policy on eviction and demolition, *viz*: Section 10. **Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and a just and humane manner.** x x x In accordance with this policy, Section 28, Article VII of The Urban Development and Housing Act (R.A. No. 7279) states that eviction or demolition as a practice is discouraged. It, however, provides situations where eviction or demolition is allowed but prescribes requirements that must be satisfied before an eviction or demolitions involving underprivileged and homeless citizens are considered valid. x x x Summary eviction and demolition are also allowed. However, they are permitted only in cases pertaining to identified professional squatters, squatting syndicates and new squatter families. x x x Records are bereft of information that any of the 93 families as members of the *Samahan*, including private complaints, were identified by the Local Government Unit as squatter families, thus, they cannot be considered professional squatters or members of a squatting syndicate. Neither can they be considered new squatter families because the construction of makeshift homes was made on their own property. x x x Granting that private

complainants' shanties were constructed without the necessary building or development permits, this fact does not automatically necessitate the summary demolition. "[P]roperty rights are involved, thereby needing notices and opportunity to be heard as provided for in the constitutionally guaranteed right of due process." Without compliance with the laws allowing for eviction and demolition, petitioners were not justified in employing procedural sidesteps in displacing private complainants from their property by a mere Memorandum ordering for summary demolition issued by Mayor Cuerpo. Petitioners should have undergone the appropriate proceeding as set out in the law.

5. ID.; ID.; ID.; ID.; THE ACTION CAUSED AN UNDUE INJURY TO A PARTY; DISCUSSED. — Undue means illegal, immoral, unlawful, void of equity and moderations while injury is defined as any wrong or damage done to another, either in his person, or in his rights, reputation or property; the invasion of any legally protected interests of another. "It is required that the undue injury caused by the positive or passive acts of the accused be quantifiable and demonstrable and proven to the point of moral certainty." In this case, the undue injury caused to the private complainant is evident from the testimonies of the witnesses that the demolition team confiscated some of the private complainants' construction materials, appliances, and personal belongings. x x x Moreover, "proof of the extent of damage is not essential, it being sufficient that the injury suffered or the benefit received is perceived to be substantial enough and not merely negligible.

6. ID.; ID.; PENALTIES FOR VIOLATIONS. — As regards the proper penalty to be imposed, Section 9(a) of R.A. No. 3019, as amended, provides: SECTION 9. Penalties for violations. – (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with **imprisonment for not less than six years and one month nor more than fifteen years,** perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income. Applying the Indeterminate Sentence Law, the SB correctly sentenced petitioners to suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month, as

minimum, to nine (9) years, one (1) month, and one (1) day, as maximum, with perpetual disqualification from public office.

APPEARANCES OF COUNSEL

Joel E. Macababbad for petitioners.

D E C I S I O N

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

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the January 31, 2012 Decision[1] and September 7, 2012 Resolution[2] of the Sandiganbayan (SB) in Criminal Case No. SB-08-CRM-0019 which found Mayor Pedro S. Cuerpo (Mayor Cuerpo), Engr. Fernando Roño (Engr. Roño) and Barangay Captain Salvador Simbulan (Brgy. Capt. Simbulan) (petitioners) guilty of violating Section 3(e) of Republic Act (R.A.) No. 3019 or the Anti-Graft and Corrupt Practices Act.

The Facts

The instant case emanated from an Information charging petitioners and accused Captain Renato Evasco (Capt. Evasco) of violation of Section 3 (e) of R.A. No. 3019, the accusatory portion of which states:

That during the period August 2002 to October 2003, or sometime prior or subsequent thereto, in Rodriguez, Rizal and within the jurisdiction of this Honorable Court, the above-named accused Pedro Cuerpo, Fernando H. Roño, Salvador Simbulan, Capt. Renato Evasco, all public officers, being Municipal Mayor, Municipal Engineer, Barangay Chairman of Barangay Burgos and Head of Demolition Team, respectively, all of Rodriguez, Rizal, taking advantage of their

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[1] Penned by Associate Justice Teresita V. Diaz-Baldos and concurred in by Associate Justices Napoleon E. Inoturan and Oscar C. Herrera, Jr., *rollo*, pp. 46-78.

[2] *Id*. at 79-90.

official positions and committing the offense in relation to their office, conspiring and confederating with each other and with John Does and acting with evident bad faith and manifest partiality did then and there willfully, unlawfully and criminally cause the demolition of the tents and other temporary shelters of private complainants Leticia B. Nanay, Nancy B. Barsubia, Gemma I. Bernal, Maria Victoria G. Ramirez, Crisanta S. Oxina and Adelaida H. Ebio which said private complainants temporarily erected on their land covered by TCT No. 436865, and deprive the said private complainants of the lawful use of their aforesaid land without due process of law and without any legal basis and court order, thereby causing undue injury to the said private complainants and the members of their families.

CONTRARY TO LAW.[3]

The factual and procedural antecedents, as culled from the records of the case, are as follows:

Leticia B. Nanay (Nanay), Nancy B. Barsubia (Barsubia), Gemma I. Bernal (Bernal), Maria Victoria G. Ramirez, Crisanta S. Oxina (Oxina) and Adelaida H. Ebio (Ebio) (private complainants) are among the ninety-three (93) families and members of "*Samahang Magkakapitbisig*" (*Samahan*), who used to occupy a parcel of land in Barangay (Brgy.) Valencia, Quezon City as informal settlers. In order to force them to vacate the property, a case was filed before the Metropolitan Trial Court (MeTC) of Quezon City, Branch 355 docketed as Civil (CV) Case No. 35-15452. But to reach a peaceful resolution of the case, the parties entered into a "*Kasunduan*" to the effect that all the 93 families would voluntarily vacate the property in exchange for ₱2,250,000.00 as financial assistance.[4]

The *Samahan* searched and was able to find an 8,250-square meter piece of land for their relocation in Brgy. Burgos, Rodriguez, Rizal. On August 30, 2002, several members of the *Samahan* went to Mayor Cuerpo to inform him about the impending relocation of the families. Mayor Cuerpo reacted

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

[4] *Id*. at 63-64.

negatively and told them they could not be accepted in the Municipality. He further informed them that before they could transfer, they should first apply for a development permit and develop the property thereafter which means that the *Samahan* first have to subdivide the lots, build roads, install water, and electrical facilities before they could move in.[5] When the *Samahan* members inquired for the list of requirements for the application for a development permit from the Municipal Zoning Office, they were provided with a list applicable for a low-cost housing subdivision to be developed by a real estate developer.[6]

On September 2, 2002, in view of the refusal of Mayor Cuerpo to allow the 93 families to relocate in Brgy. Burgos, Rodriguez, Rizal, because he does not want squatters in Montalban, private complainants instituted a petition docketed as Special Civil Action Case No. 091-02 for Prohibition, *Mandamus*, and Damages with Prayer for the Issuance of Temporary Restraining Order (TRO), and/or Writ of Preliminary Injunction before the Regional Trial Court (RTC) of San Mateo, Rizal, Branch 75.[7] On September 10, 2002 and October 28, 2002, the RTC of San Mateo, Rizal, Branch 77 denied the prayer for TRO and the families were ordered to apply for building permits in compliance with the National Building Code.[8]

On December 23, 2002, with the financial assistance given to them, the *Samahan* was able to purchase the piece of land located in Brgy. Burgos, Rodriguez, Rizal. The sale was registered with the Registry of Deeds of Marikina City and Transfer Certificate of Title (TCT) No. 436865 was issued[9] to the families. The lot was then subdivided among the 93 families.[10]

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[5] *Id*. at 64.

[6] *Id*. at 56.

[7] *Id*. at 64-65.

[8] *Id*. at 128.

[9] *Id*. at 65, May 23, 2003.

[10] *Id*.

On August 11, 2003, the *Samahan*, including the private complainants, filed 93 separate applications for Building Permit with the Municipal Engineer. These applications were stamped "Received" by the Office of the Municipal Engineer but were returned by Engr. Roño, the municipal engineer, for lack of a development permit.[11]

On August 15, 2003, because of the refusal of Engr. Roño to process the application for building permit, the applicants amended CV Case No. 091-02 impleading Engr. Roño and asked the trial court to compel him to accept and process the applications for building permits.[12]

On September 17, 2003, the petition was granted by the trial court and directed Mayor Cuerpo and Engr. Roño to accept and process the subject applications for building permits. However, these applications were again returned unprocessed.[13]

On September 22, 2003, because of the Fifth *Alias* Writ of Demolition issued by the MeTC of Quezon City, Branch 355, in CV Case No. 35-15452, the 93 families including private complainants were forced to leave Barangay Valencia, Quezon City; moved to their purchased lot and built temporary shelters made of lumber and tarpaulin despite the lack of building or development permit. On even date, Brgy. Capt. Simbulan, upon the order of Mayor Cuerpo, arrived and asked for their permit. When they told him they have none, Brgy. Capt. Simbulan informed them that there will be a demolition that afternoon. At around 1:30 p.m., a demolition team consisting of Special Weapons and Tactics and Police Officers led by Capt. Evasco arrived. The demolition team dismantled the makeshift homes and took away lumber, tarpaulin, plywood, and appliances. The demolition team returned the following day and confiscated the remaining lumber, leaving only their personal belongings. During the demolition conducted on October 28, 2003, accused

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[11] *Id*.

[12] *Id*. at 128.

[13] *Id*. at 65.

Capt. Evasco handed them a Memorandum dated October 23, 2003 from petitioner Mayor Cuerpo showing that a demolition should have been conducted on October 24, 2003.[14]

Private complainants filed a complaint, claiming that these demolitions were committed with evident bad faith and manifest partiality, which deprived them of the lawful use of their land without due process of law or any legal basis or court order. Consequently, an Information was filed before the Office of the Ombudsman, where petitioners and Capt. Evasco were charged of violating Section 3(e) of R.A. No. 3019.

Upon arraignment, petitioners pleaded "not guilty."[15] During the pre-trial, the parties stipulated on the following facts:

1. At all times material to this case, the following [Petitioners] were then holding the positions opposite their names, to wit:

   a. Pedro Cuerpo Mayor

   b. Fernando Roño Municipal Engineer

   c. Salvador Simbulan - Barangay Chairman of Barangay Burgos

   all of Rodriguez, Rizal.

2. On 11 August 2003 the six applicants mentioned in the Information went to the Office of the Municipal Engineer of Rodriguez, Rizal, to submit individual applications for Building Permits in line with their intention to build homes within their property.

3. On 19 September 2003, the Office of the Municipal Engineer accepted the letter dated September 18, 2003, the Order of the RTC-Branch 75 of San Mateo Rizal, and a copy of Transfer Certificate of Title No. 436865.

4. On 22 September 2003, the families comprising "Samahan" were forced to transfer to their property in Barangay Burgos, Rodriguez, Rizal, due to the Order issued by Branch 35 of

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[14] *Id*. at 65-66.

[15] *Id*. at 47.

the [MeTC], Quezon City, directing the Sheriff to implement the fifth Alias Writ of Demolition against the homes of "Samahan's" members.

5. Upon arrival at their parcel of land in Barangay Burgos, Rodriguez, Rizal, on 22 September 2003, the families put up tents and tarps to serve as their temporary shelter.

6. On 22 and 23 September 2003, the temporary shelters put up by the families of "Samahan" members Leticia Nanay, Nancy Barsubia, Gemma Bernal, Maria Victoria Ramirez, Crisanta Oxina and Adelaida Ebio were demolished.

7. The private complainants in this case constructed their shanties or temporary shelters on the land they owned in Rodriguez, Rizal.

8. The shanties or temporary shelters in question owned by private complainants in this case were constructed on a strip of land described in Transfer Certificate Title No. 436865 issued by the Register of Deeds of Marikina City.[16]

By way of defense, petitioners did not dispute the demolitions that transpired on specified dates but justified that they were done because the families did not have the necessary permit to construct their houses in the subject property.[17]

The SB Ruling

On January 31, 2012, the SB issued the assailed Decision.[18] It found that there was sufficient evidence to conclude the presence of conspiracy among the petitioners. It ruled that the requirement of a development permit by petitioner Engr. Roño and the subsequent order to develop private complainants' property before the issuance of a building permit was in concerted harmony with the instructions of petitioner Mayor Cuerpo not to allow private complainants, who were former informal settlers,

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

[17] *Id*. at 66.

[18] *Id*. at 46-78.

to relocate to Burgos, Rodriguez.[19] In the case of, Brgy. Chairman Simbulan, the SB determined that he exceeded his authority in executing Mayor Cuerpo's demolition order. More than the demolition, he confiscated private complainants' appliances depriving them of their simple properties without due process.[20] To the SB, the petitioners' coordinated acts, starting from the instructions of Mayor Cuerpo to disallow private complainants to relocate in their property and the refusal of Engr. Roño to issue the requested building permits until the carrying out of the directive of Mayor Cuerpo addressed to Engr. Roño, Brgy. Chairman Simbulan and Capt. Evasco which harmoniously and jointly achieved the common purpose of summarily demolishing private complainants' structure constituted conspiracy.[20]

The SB likewise ruled that the prosecution was able to prove beyond reasonable doubt the concurrence of all the essential elements of the offense of Violation of Section 3(e) of R.A. No. 3019 and accordingly convicted the petitioners as charged, *viz.*:

> **WHEREFORE**, in the light of all the foregoing, the Court finds [petitioners] Mayor **PEDRO S. CUERPO**, Municipal Engineer **FERNANDO ROÑO** and Barangay Chairman **SALVADOR SIMBULAN *GUILTY*** beyond reasonable doubt of Violation of Section 3 (e) of R.A. No. 3019, and after applying the Indeterminate Sentence Law, hereby imposes upon each of them the penalty of imprisonment ranging from six (6) years and one (1) month as minimum, to nine (9) years, one (1) month and one (1) day as maximum.
>
> They are further perpetually disqualified from holding public office.
>
> Considering that accused [Capt. Evasco] is still at large, let this case be archived with respect to him, and let an Alias Warrant of Arrest be issued against him.
>
> **SO ORDERED**.[21] (Emphasis in the original)

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[19] *Id*. at 72.

[20] *Id*. at 73.

[20] *Id*. at 74.

[21] *Id*. at 77.

Petitioners moved for reconsideration alleging that they merely acted in good faith and in compliance with the law. Presenting new arguments, petitioners claimed that there was no demolition that took place; they only prevented the private complainants from constructing their temporary shelters on the subject property. Petitioners also added that they were just exercising their duty to secure the safety of all residents by prohibiting construction on danger zones without the proper permits. They further averred that the structures built may be legally considered nuisance which must be prevented.[22] The SB found no merit in the motion for reconsideration, thus denied the same in a Resolution[23] dated September 7, 2012.

Hence, this recourse.

In the instant petition, petitioners assert that the SB erred in convicting them for the crime of violation of Section 3(e) of R.A. No. 3019. They claim that the prosecution failed to prove the elements of manifest partiality, evident bad faith, or gross inexcusable negligence and undue injury. Petitioners posit that they acted in good faith and in compliance with the law in preventing the 93 families from constructing their houses for lack of development permit, building permit, and location clearance.[25]

Moreover, petitioners impute serious and reversible legal error on the part of the SB in ruling that there was conspiracy among them.[26]

The Issue Before the Court

For the Court's resolution is whether or not the SB correctly convicted petitioners for violation of Section 3(e) of R.A. No. 3019.

The Court's Ruling

We deny the petition.

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[22] *Id*. at 91-112.

[23] *Id*. at 79-90.

[25] *Id*. at 9-44.

[26] *Id*.

The Rules of Court requires that only questions of law should be raised in petitions filed under Rule 45.[27] Hence, questions "on whether the prosecution['s] evidence proved the guilt of the accused beyond reasonable doubt; whether the presumption of innocence was properly accorded the accused; whether there was sufficient evidence to support a charge of conspiracy; or whether the defense of good faith was correctly appreciated are all, in varying degrees, questions of fact,"[28] should not be raised in appeals from the SB. This is because, as a rule, "the factual findings of the SB are conclusive on this Court"[29] save for several exceptions. In *Maderazo, et al. v. People, et al.*,[30] these exceptions are as follows:

> (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conclusions without citation of specific evidence on which they are based; and (6) the findings of fact are premised on an absence of evidence on record.[31] (Citation omitted)

None of these exceptions are present in this case.

This Court, thus, affirms the conviction of the petitioners by the SB for violation of Section 3(e) of R.A. No. 3019.

Section 3(e) of R.A. No. 3019 provides:

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

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[27] *Pascual v. Burgos, et al.* 776 Phil. 167, 182 (2016).

[28] *Raymundo E. Zapanta v. People*, 759 Phil. 156, 170 (2015).

[29] *Jaca v. People, et al*. 702 Phil. 210, 238 (2013).

[30] 762 Phil. 685, 692 (2015).

[31] *Id.* at 692.

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefit, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

Based on the above-stated provision, the elements of violation of Section 3(e) of R.A. No. 3019 are the following:

(a) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers);

(b) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and

(c) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.[32]

There was concurrence of these elements in this case.

First element. It is undisputed that petitioners were public officers at the time the offense was committed. This was stipulated on by the parties during the pre-trial.[33]

Second element. The prosecution claims that the demolition of their shanties were committed with evident bad faith and manifest partiality, depriving them of the lawful use of their land without due process of law or any legal basis or court order.

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[32] See *Senator Jinggoy Ejercito Estrada v. Office of the Ombudsman, Hon. Sandiganbayan, Office of the Ombudsman, Field Investigation Office, National Bureau of Investigation, and Atty. Levito D. Baligod*, G.R. Nos. 212761-62; *John Raymundo De Asis v. Conchita Carpio Morales, in her official capacity as Ombudsman, People of the Philippines, and Sandiganbayan, Fifth Division*, G.R. Nos. 213473-74; and *Janet Lim Napoles v. Conchita Carpio Morales, in her official capacity as Ombudsman, People of the Philippines and Sandiganbayan, Fifth Division*, G.R. Nos. 213538-39, July 31, 2018.

[33] *Rollo*, p. 48.

The law provides three (3) modes of commission of the crime, namely, through "manifest partiality," "evident bad faith," and/or "gross negligence."[34] There is "***manifest partiality***" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. On the other hand, "***evident bad faith***" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.[35]

The summary demolition caused the private complainants to file a complaint which was the basis of the information filed before the Office of the Ombudsman. The manner by which the private complainants were summarily displaced was the main justification of the SB in ruling that the element of evident bad faith was present in this case.

We agree.

Section 10, Article XIII of the 1987 Constitution provides the Philippine policy on eviction and demolition, *viz*:

> Section 10. **Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and a just and humane manner**.
>
> No resettlement of urban and rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated. (Emphasis supplied)

In accordance with this policy, Section 28, Article VII of R.A. No. 7279[36] states that eviction or demolition as a practice is discouraged. It, however, provides situations where eviction or demolition is allowed but prescribes requirements that must

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[34] *Fuentes v. People*, 808 Phil. 586, 593 (2017).

[35] *Id.* at 594.

[36] The Urban Development and Housing Act (UDHA) of 1992.

be satisfied before an eviction or demolitions involving underprivileged and homeless citizens[37] are considered valid.

Section 28, Article VII of R.A. No. 7279 states:

> Sec. 28. Eviction and Demolition. — Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:
>
> (a) When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds;
>
> (b) When government infrastructure projects with available funding are about to be implemented; or
>
> (c) When there is a court order for eviction and demolition.
>
> **In the execution of eviction or demolition orders involving underprivileged and homeless citizens, the following shall be mandatory:**
>
> **(1) Notice upon the effected persons or entities at least thirty (30) days prior to the date of eviction or demolition;**
>
> (2) Adequate consultations on the matter of settlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;
>
> (3) Presence of local government officials or their representatives during eviction or demolition;
>
> (4) Proper identification of all persons taking part in the demolition;
>
> (5) Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;
>
> (6) No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;

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[37] Section 3(t), Article I of RA 7279.

> (7) Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures; and
>
> (8) Adequate relocation, whether temporary or permanent: Provided, however, That in cases of eviction and demolition pursuant to a court order involving underprivileged and homeless citizens, relocation shall be undertaken by the local government unit concerned and the National Housing Authority with the assistance of other government agencies within forty-five (45) days from service of notice of final judgment by the court, after which period the said order shall be executed: Provided, further, That should relocation not be possible within the said period, financial assistance in the amount equivalent to the prevailing minimum daily wage multiplied by sixty (60) days shall be extended to the affected families by the local government unit concerned.
>
> This Department of the Interior and Local Government and the Housing and Urban Development Coordinating Council shall jointly promulgate the necessary rules and regulations to carry out the above provision. (Emphasis supplied)

Summary eviction and demolition are also allowed.[38] However, they are permitted only in cases pertaining to identified[39] professional squatters, squatting syndicates and new squatter families, which are not the case here.

"*Professional squatters*" refer to individuals or groups who occupy lands without the express consent of the landowner and who have sufficient income for legitimate housing. They are persons who have previously been awarded homelots or housing units by the Government but who sold, leased or transferred

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[38] Section 27, Article VII of RA 7279; Section 2, IRR governing summary eviction.

[39] Section 2, par. 2.0, IRR governing summary eviction.

> 2.0. Squatter families identified by the Local Government Unit (LGU) in cooperation with the Presidential Commission of the Urban Poor (PCUP), Philippine National Police (PNP) and accredited Urban Poor organization (UPO) as professional squatters or members of squatting syndicates as defined in the Act.

the same to settle illegally in the same place or in another urban area, and non-bona fide occupants and intruders of lands reserved for socialized housing. The term shall not apply to individuals or groups who simply rent land and housing from professional squatters or squatting syndicates.[40] "*Squatting syndicates*," on the other hand, refers to groups of persons engaged in the business of squatter housing for profit or gain.[41] While "*new squatter*" refers to individual groups who occupy land without the express consent of the landowner after March 28, 1992. Their structures shall be dismantled and appropriate charges shall be filed against them by the proper authorities if they refuse to vacate the premises.[42]

Records are bereft of information that any of the 93 families as members of the *Samahan*, including private complainants, were identified by the Local Government Unit as squatter families, thus, they cannot be considered professional squatters or members of a squatting syndicate. Neither can they be considered new squatter families because the construction of makeshift homes was made on their own property.

Also, private complainants who were just evicted from their previous dwelling place for squatting may be considered "underprivileged and homeless citizens" or individuals or families residing in urban and urbanizable areas whose income or combined household income falls within the poverty threshold as defined by the National Economic and Development Authority and who do not own housing facilities. This shall include those who live in makeshift dwelling units and do not enjoy security of tenure.[43] With no other place to go, private complainants were forced to transfer to the lot they were able to purchase

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[40] Section 3 (m), Article I of RA 7279; Section 1, par. 2.0, IRR governing summary eviction.

[41] Section 3 (s), Article I of RA 7279; Section 1, par. 3.0, IRR governing summary eviction.

[42] Section 1, par. 4.0, IRR governing summary eviction.

[43] Section 3 (t), Article I of RA 7279;

using the settlement money for voluntarily vacating the property where they used to live. Unfortunately, on the day of their transfer, the temporary shelters they constructed which were made of lumber and tarpaulin were summarily demolished for their failure to present a building and development permit.

Based on the foregoing, petitioners' acts were clearly committed with evident bad faith. The demolition of private complainants' houses was precipitated by the refusal of Engr. Roño to issue a building permit for failure of the 93 families to secure a development permit. The summary removal of private complainants' makeshift homes constructed in their private property by the demolition team headed by Brgy. Chairman Simbulan and Capt. Evasco upon the instruction of Mayor Cuerpo was made in blatant disregard of private complainants' right to due process and was done without observance of the applicable laws on demolition. The summary demolition took place on September 22, 2003, a few hours after private complainants moved into their property. It went on the following day, September 23, 2003, when the demolition team confiscated the remaining construction materials leaving only private complainants' personal belongings. On October 23, 2003, Mayor Cuerpo issued a Memorandum addressed to Engr. Roño, Brgy. Chairman Simbulan and Capt. Evasco ordering them to undertake a second demolition on October 24, 2003, but actually took place on October 28, 2003. Said demolition was also without prior notice or court order and was aggravated by the confiscation by the demolition team of private complainant's lumber, tarpaulin and some appliances. Clearly, their action contemplates ill will, which constitutes evident bad faith and in blatant disregard of the state policy to uphold the constitutionally guaranteed rights of private complainants as part of the disadvantaged sector of the society.

Granting that private complainants' shanties were constructed without the necessary building or development permits, this fact does not automatically necessitate the summary demolition. "[P]roperty rights are involved, thereby needing notices and opportunity to be heard as provided for in the constitutionally

guaranteed right of due process."[44] Without compliance with the laws allowing for eviction and demolition, petitioners were not justified in employing procedural sidesteps in displacing private complainants from their property by a mere Memorandum ordering for summary demolition issued by Mayor Cuerpo. Petitioners should have undergone the appropriate proceeding as set out in the law.

Third and last element. Undue means illegal, immoral, unlawful, void of equity and moderations while injury is defined as any wrong or damage done to another, either in his person, or in his rights, reputation or property; the invasion of any legally protected interests of another. "It is required that the undue injury caused by the positive or passive acts of the accused be quantifiable and demonstrable and proven to the point of moral certainty."[45]

In this case, the undue injury caused to the private complainant is evident from the testimonies of the witnesses that the demolition team confiscated some of the private complainants' construction materials, appliances, and personal belongings. As testified to, the private complainants' sustained undue injury as a result of the summary demolition and confiscation in the following quantifiable amounts: Nanay — ₱101,600.00;[46] Barsubia — ₱100,000.00;[47] Ramirez — ₱30,000.00;[48] Oxina —₱120,000.00;[49] and Ebio — ₱45,000.00.[50] These were not controverted by the petitioners.

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[44] *Aquino v. Municipality of Malay, Aklan, et al.*, 744 Phil. 497, 512 (2014).

[45] See *Dr. Posadas, et al. v. Sandiganbayan, et al.*, 714 Phil. 248, 274-275 (2013). Citations omitted.

[46] *Rollo*, p. 55.

[47] *Id*.

[48] *Id*. at 53.

[49] *Id*. at 55.

[50] *Id*. at 53.

Moreover, "proof of the extent of damage is not essential, it being sufficient that the injury suffered or the benefit received is perceived to be substantial enough and not merely negligible."[51]

Undoubtedly, all the elements of the crimes as charged are present in this case. Thus, "the Court finds no reason to overturn the SB's findings, as there is no showing that it overlooked, misunderstood, or misapplied the surrounding facts and circumstances of this case, and considering further the fact that it was in the best position to assess and determine the credibility of the parties' witnesses."[52] As such, petitioners' conviction for violation of Section 3(e) of R.A. No. 3019 must stand.

As regards the proper penalty to be imposed, Section 9(a) of R.A. No. 3019, as amended, provides:

> SECTION 9. Penalties for violations. — (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with **imprisonment for not less than six years and one month nor more than fifteen years**, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.[53] (Emphasis supplied)

Applying the Indeterminate Sentence Law,[54] the SB correctly sentenced petitioners to suffer the penalty of imprisonment for

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[51] *Fuentes v. People*, *supra* note 33 at 597.

[52] *Raquil-Ali M. Lucman v. People of the Philippines and Sandiganbayan 2nd Division,* G.R. No. 238815, March 18,2019.

[53] Emphasis supplied.

[54] SEC. 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and to a minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; **and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the**

an indeterminate period of six (6) years and one (1) month, as minimum, to nine (9) years, one (1) month, and one (1) day, as maximum, with perpetual disqualification from public office.

WHEREFORE, premises considered, we hereby **DENY** the petition for lack of merit and thereby **AFFIRM** the January 31, 2012 Decision and the September 7, 2012 Resolution of the Sandiganbayan in Criminal Case No. SB-08-CRM-0019.

SO ORDERED.

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

Hernando, J., on leave.

SECOND DIVISION

[G.R. No. 204782. September 18, 2019]

GENUINO AGRO-INDUSTRIAL DEVELOPMENT CORPORATION, *petitioner, vs.* **ARMANDO G. ROMANO, JAY A. CABRERA and MOISES V. SARMIENTO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; IN LABOR CASES, A RULE 45 PETITION IS LIMITED ONLY TO REVIEWING WHETHER THE CA CORRECTLY DETERMINED THE PRESENCE OR

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minimum shall not be less than the minimum term prescribed by the same. (Emphasis supplied)

[*] Designated additional Member per Raffle dated September 11, 2019.

ABSENCE OF GRAVE ABUSE OF DISCRETION AND DECIDING OTHER JURISDICTIONAL ERRORS OF THE NLRC. — A perusal of the present petition inevitably shows that the petitioner reiterated substantially the same arguments and assailed congruent factual findings of the Labor Arbiter, the NLRC and the CA. A petition for review on *certiorari* under Rule 45 is a mode of appeal where the issue is limited only to questions of law. In labor cases, a Rule 45 petition is limited to reviewing whether the CA correctly determined the presence or absence of grave abuse of discretion and deciding other jurisdictional errors of the NLRC, and not on the basis of whether the latter's decision on the merits of the case was strictly correct. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility. The abuse must also be so patent and gross as would amount to an evasion of a positive duty or to a virtual refusal to perform the duty required, or to act at all in contemplation of law, as to be equivalent to having acted without jurisdiction.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RETRENCHMENT; REQUISITES. –– Article 298 [on Closure of Establishment and Reduction of Personnel] of the Labor Code laid down the authorized causes where the employer may validly terminate the employment of its employees. x x x Petitioner is correct in saying that retrenchment is a management prerogative to downsize its work force to avert business losses, which could either be already incurred or impending. Where appropriate and where conditions are in accord with law and jurisprudence, the Court has authorized valid reductions in the work force to forestall business losses, the hemorrhaging of capital, or even to recognize an obvious reduction in the volume of business which has rendered certain employees redundant. However, for retrenchment to be valid, certain requisites must first be satisfied. In *Perez v. Comparts Industries, Inc.* this Court held: The complete designation of this authorized cause is **retrenchment to prevent losses precisely to save a financially ailing business establishment from eventually collapsing.** Without the purpose to prevent losses, the termination becomes

illegal. However, the employer or the company need not be incurring losses already; the requirement is that there may be impending losses hence the resort to retrenchment: [T]he three (3) basic requirements are: (a) proof that the retrenchment is necessary to prevent losses or impending losses; (b) service of written notices to the employees and to the Department of Labor and Employment at least one (1) month prior to the intended date of retrenchment; and (c) payment of separation pay equivalent to one (1) month pay, or at least one-half (½) month pay for every year of service, whichever is higher. In addition, jurisprudence has set the standards for losses which may justify retrenchment, thus: (1) the losses incurred are substantial and not *de minimis;* (2) the losses are actual or reasonably imminent; (3) the retrenchment is reasonably necessary and is likely to be effective in preventing the expected losses; and (4) the alleged losses, if already incurred, or the expected imminent losses sought to be forestalled, are proven by sufficient and convincing evidence.

3. ID.; ID.; ID.; ILLEGAL DISMISSAL; RELIEFS PROVIDED UNDER ARTICLE 294; IN LIEU OF REINSTATEMENT AND BACKWAGES, AN AWARD OF SEPARATION PAY IS ORDERED SINCE IT HAS BEEN 14 YEARS SINCE THE TIME RESPONDENTS WERE REMOVED FROM WORK. — Article 294 of the Labor Code provides for the reliefs of an illegally dismissed employee. The provision states: **ART. 294. Security of Tenure.—** In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. x x x Since respondents' termination was illegal, they are entitled to reinstatement without loss of seniority rights and to their full backwages pursuant to the said article. However, reinstatement presupposes that the previous position from which the employee has been removed is still in existence or there is an unfilled position of a nature, more or less, similar to the one previously occupied by said employee. x x x Since it has been 14 years since the time respondents were removed from work, it is unlikely

that the former positions held by them or their equivalent are still existing or are presently unoccupied; thus, making their reinstatement no longer viable. x x x In lieu of reinstatement and full backwages, an award of separation pay, equivalent to one (1) month salary for every year of service, and full backwages is ordered instead.

4. ID.; ID.; ID.; ID.; ID.; BASES FOR COMPUTATION OF BACKWAGES AND SEPARATION PAY. –– The basis for computing separation pay is usually the length of the employee's past service, while that for backwages is the actual period when the employee was unlawfully prevented from working. Backwages represent compensation that should have been earned but were not collected because of the unjust dismissal. Separation pay, on the other hand, is that amount which an employee receives at the time of his severance from employment, designed to provide the employee with the wherewithal during the period that he is looking for another employment, and is a proper substitute for reinstatement. Under Article 279 (now Article 294) of the Labor Code, backwages is computed from the time of dismissal until the employee's reinstatement. However, when separation pay is ordered in lieu of reinstatement, backwages is computed from the time of dismissal until the finality of the decision ordering separation pay. Anent the computation of separation pay, the same shall be equivalent to one month salary for every year of service and should not go beyond the date an employee was deemed to have been actually separated from employment, or beyond the date when reinstatement was rendered impossible. In the present case, in allowing separation pay, the final decision effectively declares that the employment relationship ended so that separation pay and backwages are to be computed up to that point.

5. COMMERCIAL LAW; CORPORATION LAWS; DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION; ONCE THE VEIL OF CORPORATE FICTION IS PIERCED, THE SEPARATE BUT RELATED CORPORATION BECOMES SOLIDARILY LIABLE IN LABOR CASES. –– It is an elementary and fundamental principle of corporation law that a corporation is an artificial being invested by law with a personality separate and distinct from its stockholders and from other corporations to which it may be connected. However, the corporate mask may be lifted

and the corporate veil may be pierced when a corporation is just but the alter ego of a person or of another corporation. Moreover, piercing the corporate veil may also be resorted to by the courts or quasi-judicial bodies when "[the separate personality of a corporation] is used as a means to perpetrate fraud or an illegal act, or as a *vehicle for the evasion of an existing obligation,* the circumvention of statutes, or to confuse legitimate issues." Furthermore, the veil of corporate fiction may also be pierced as when the same is *made as a shield to confuse legitimate issues.* x x x Furthermore, once the veil of corporate fiction is pierced, the separate but related corporation becomes solidarity liable in labor cases.

APPEARANCES OF COUNSEL

Rodolfo P. Orticio for petitioner.
Carambas Timog Law Offices for respondents.

D E C I S I O N

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

The Facts and The Case

Before this Court is a Petition for Review on *Certiorari*[1] filed by petitioner Genuino Agro-Industrial Development Corporation, seeking to annul and set aside the May 31, 2012 Decision[2] and December 12, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 103337 which found no grave abuse of discretion on the part of the National Labor Relations Commission (NLRC) in affirming the ruling of the Labor Arbiter finding the respondents to be the regular employees of the petitioner whom it had illegally dismissed; and ordering the

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[1] *Rollo,* pp. 9-30.

[2] Penned by Associate Justice Michael P. Elbinias, with Associate Justices Japar B. Dimaampao and Socorro B. Inting, concurring; *id*. at 180-190.

[3] *Id*. at 194-195.

petitioner to reinstate them and Respondents Armando G. Romano (Romano), Jay A. Cabrera (Cabrera) and Moises V. Sarmiento (Sarmiento) claimed that they work as brine men at Genuino Ice Company Inc.'s (Genuino Ice) ice plant in Turbina, Calamba, Laguna branch. Romano was hired through the man power agency, Vicar General Contractor and Management Services (Vicar), while Sarmiento and Cabrera were hired through L.C. Moreno General Contractor and Management Services (L.C. Moreno). Vicar was the last agency that supplied all the employees to Genuino Ice.[4]

Respondents averred that sometime in September 2004, the workers were given a work schedule where one worker was not made to report for work for 15 consecutive days while the six other workers report for work on their regular schedules. In other words, each worker does not work for 15 days for a period of 90 days. When Romano reported back to work on June 25, 2005 after his 15 days forced leave, he was told then and there that his employment was already terminated. Sarmiento and Cabrera also suffered the same fate. They were dismissed from work on July 10, 2005.[5] Thus, on August 3, 2005, respondents filed a complaint for illegal dismissal with prayer for separation pay against Genuino Ice and Vicar before the Department of Labor and Employment (DOLE).[6]

Genuino Ice, for its part, claimed that respondents charged the wrong party as they were never its employees but of petitioner, its affiliate company. They were contractual employees of Vicar and L.C. Moreno which deployed them to work at petitioner's ice plant at Turbina, Calamba City. Due to the continuous and tremendous decline in the demand for ice products being produced by the petitioner, it shut down its block ice production plant facilities. Its six workers were reduced to two. Among

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[4] *Id*. at 54, 65-76, 181.

[5] *Id*. at 55, 181.

[6] *Id*. at 241, 299.

those affected were the respondents who were relieved from their posts by Vicar and L.C Moreno.[7]

By reason of Genuino Ice's contention that respondents charged the wrong party, they amended their complaint by impleading the petitioner, including the relief of reinstatement, and asking for attorney's fees.[8]

In his Decision[9] dated December 29, 2006, the Labor Arbiter held that respondents were regular employees of the petitioner since they were performing functions that were necessary and desirable to the operations of the ice plant. The continuous work of the respondents as brine men in the plant for several years (since 1988 in the case of Romano and Sarmiento, and since 1992 in Cabrera's case) rendered dubious the proposition that their respective employments were fixed for a specific period or that they were seasonal employees. The contention that petitioner did not exercise any form of control over the work performance of the respondents was found by the Labor Arbiter hard to believe considering that they were suffered to work at the ice plant. The Labor Arbiter also found Vicar to be without substantial capital and equipment to qualify as an independent contractor, and thus treated it as a labor-only contractor, and held accountable as such.

While the Labor Arbiter recognized that the company has the prerogative to close its department, the Labor Arbiter still found respondents' dismissal from employment as illegal inasmuch as the petitioner failed to adduce any evidence showing that the closure of its block ice production facility had some basis and that their dismissal was for an authorized cause. The Labor Arbiter disposed the case in this wise:

WHEREFORE, judgment is hereby rendered:

1. Declaring that [respondents] were regular employees of [petitioner];

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[7] *Id.* at 60-62.

[8] *Id.* at 241-246.

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

2. Declaring that [respondents] were illegally dismissed by [petitioner]; and as such should be immediately reinstated to their former positions without loss of seniority rights. [Petitioner] should report compliance with this directive within ten (10) days from receipt hereof;

3. Adjudging [petitioner] and [Vicar] jointly and severally liable to pay [respondents] the amount of [₱] 133,395.51 each as backwages, as of the date of this decision for a total amount of [₱]400,186.53. This is only partial payment, full satisfaction of which shall be reckoned to the date of the actual reinstatement of [respondents].

SO ORDERED.[10]

On appeal before the NLRC, petitioner stressed that respondents never questioned its prerogative to retrench them due to partial closure of its plant and reduction of its personnel, but only questioned the propriety of their termination for non-compliance with the notice requirement laid down in Article 283 (now Article 298) of the Labor Code. Considering that respondents were laid-off for an authorized cause (the partial shut-down of its ice plant), only that they were not properly notified thereof, petitioner contended that respondents are not entitled to reinstatement, backwages and separation pay, but only to nominal damages.[11]

Meanwhile, in compliance with the reinstatement aspect of the Labor Arbiter's Decision, the petitioner served upon the respondents a Notice of Compliance informing them that they could no longer be reinstated to their former posts at its ice plant in Turbina, Calamba City, due to the closure of its block ice production facilities. Thus, they were directed to report at petitioner's main office within five days from receipt of the said notice of compliance for their reinstatement/placement at petitioner's other branches or affiliate companies, particularly at its ice plant in Navotas.[12] By virtue of the said directive,

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[10] *Id*. at 97.

[11] *Id*. at 17, 105-111; 276.

[12] *Id*. at 131.

respondents reported at petitioner's main office on March 6, 2007. However, they were simply made to wait the whole day and were not given any job assignments. When respondents inquired on their work assignments on March 8 and 12, 2007, they were told that there were still no available work assignments for them, prompting them to file a motion for the issuance of a writ of partial execution ordering their reinstatement in the payroll effective March 6, 2007.[13]

Petitioner opposed the motion for partial execution. It argued that it could not be forced to reinstate the respondents whether in their previous positions or in the payroll because the department where they used to work had already closed and there were no other equivalent positions available in petitioner's only branch in Navotas.[14]

In an Order dated July 5, 2007, the Labor Arbiter granted the motion and issued a writ of partial execution. Since the writ of partial execution was returned unsatisfied,[15] petitioner moved for the issuance of an *alias* writ of partial execution reiterating their prayer to be reinstated in the payroll.[16] After the petitioner filed its opposition to the motion, the Labor Arbiter issued an Order on September 28, 2007 granting the issuance of an *alias* writ of partial execution. Petitioner appealed the said September 28, 2007 Order and prayed that the same be lifted and set aside pending resolution of the main case on appeal.[17]

On November 29, 2007, the NLRC rendered its Decision[18] finding that the Labor Arbiter did not err in holding the petitioner and Vicar guilty of illegal dismissal, and ordering respondents'

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[13] *Id*. at 132-134.

[14] *Id*. at 135-138.

[15] *Id*. at 143.

[16] *Id*. at 142-145.

[17] *Id*. at 183.

[18] *Id*. at 116-121.

reinstatement with full backwages. The NLRC held that they could not justify respondents' dismissal on the ground of retrenchment considering that petitioner and Vicar totally disregarded the requirements laid down in Article 298 of the Labor Code and failed to adduce documentary proof, like an audited financial statement, to substantiate their claim.

Not accepting defeat, petitioner moved for the reconsideration of the NLRC Decision. Petitioner stressed that as it had explained in its Notice of Compliance, respondents could no longer be reinstated to their former positions due to the closure of its block ice production facilities. There were also no equivalent positions available at its other branch where the respondents may be placed. As such, petitioner reiterated that in view of the situation, it could not be forced to reinstate the respondents to their former positions or even in the payroll. The closure of its ice plants one after the other must be treated as a supervening event that warrants the modification of the order of reinstatement with payment of full backwages, to the payment of separation pay.[19]

Finding the motion for reconsideration filed by the petitioner to have raised no new matters of substance, the NLRC denied the same in a Resolution[20] dated February 26, 2008.

Undaunted, the petitioner sought recourse before the CA *via* a Petition for *Certiorari* alleging grave abuse of discretion on the part of the NLRC in: (1) not finding that respondents were retrenched from employment and that they are not entitled to reinstatement and backwages, but only to nominal damages; (2) not modifying the Labor Arbiter's Decision which ordered respondents' reinstatement and payment of full backwages to the payment of separation pay.[21]

In the interim, or on September 26, 2011, the Labor Arbiter issued a Writ of Execution commanding the sheriff to proceed

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[19] *Id*. at 122-130.

[20] *Id*. at 140.

[21] *Id*. at 20, 278-279.

to the premises of the petitioner and Vicar, and collect from them the amount of ₱1,392,579.93 representing respondents' backwages, inclusive of 13th month pay and service incentive leave pay, for the period of July 10, 2005 to April 30, 2010, among others.[22]

In a Decision[23] dated May 31, 2012, the CA found no grave abuse of discretion on the part of the NLRC in deciding the case as it did and denied the petition. It held that while retrenchment is one of the recognized authorized causes for the dismissal of an employee, petitioner failed to discharge its burden of proving that respondents' retrenchment was valid for the reason that petitioner not only failed to notify them and the DOLE of the retrenchment, it also failed to prove that it was losing financially. Thus, respondents' dismissal was clearly illegal. Petitioner cannot also claim that it is liable only for nominal damages considering that retrenchment was shown not to be justified. The CA also found no reason to modify the award of reinstatement and full backwages for failure of the petitioner to sufficiently prove that the department where respondents' used to work had indeed closed, or that there were no other similar unfilled posts available at its other branch.

Its motion for reconsideration having been denied,[24] petitioner is now before this Court *via* the present petition. Respondents filed their Comment with Motion[25] thereto, praying that Genuino Ice be declared solidarily liable with the petitioner to pay respondents the monetary awards granted to them by the Labor Arbiter, to which the petitioner has filed its Opposition.[26] In a Resolution[27] dated January 14, 2015, the Court required the parties to submit their respective memoranda.[28]

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[22] *Id*. at 279, 330-334.

[23] *Supra* note 2.

[24] *Supra* note 3.

[25] *Id*. at 216-234.

[26] *Id*. at 208-210.

[27] *Id*. at 266-267.

[28] *Id*. at 268-289; 297-325.

The Issues Presented

Petitioner raised the following issues for this Court's consideration:

1. THE HONORABLE COURT OF APPEALS ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING THE NLRC'S DECISION IN NOT RULING FOR THE RETRENCHMENT OF THE RESPONDENTS WITHOUT PROPER NOTICE AND DUE PROCESS, THAT THEY ARE NOT ENTITLED TO REINSTATEMENT AND PAYMENT OF BACKAWAGES, BUT TO NOMINAL DAMAGES PURSUANT TO RULING HELD IN ***"JAKA FOOD PROCESSING CORP. VERSUS PACOT," GR. No. 151378, March 28, 2005."***
2. THE HONORABLE COURT OF APPEALS ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN NOT MODIFYING THE NLRC'S DECISION AFFIRMING THE LABOR ARBITER'S DECISION ORDERING REINSTATEMENT AND PAYMENT OF FULL BACKWAGES TO THE RESPONDENTS, TO PAYMENT OF SEPARATION PAY RECKONED FROM DATE OF THEIR INITIAL EMPLOYMENT, UP TO DECEMBER 29, 2006, THE DATE OF THE LABOR ARBITER'S DECISION.
3. [RESPONDENTS'] MOTION PRAYING THAT GENUINO ICE COMPANY, INC. BE HELD SOLIDARILY LIABLE WITH PETITIONER GENUINO AGRO DEVELOPMENT CORPORATION FOR THE PAYMENT OF MONETARY AWARDS OF THE LABOR ARBITER IS OUT OF CONTEXT, AND HAS NO FACTUAL AND LEGAL BASIS.[29]

The Arguments of the Parties

Echoing substantially the same arguments put forward before the Labor Arbiter, the NLRC and the CA, petitioner avers that the respondents do not question its right to lay off its workers on account of serious business losses, but only questions the propriety of their termination for non-compliance with the notice

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[29] *Id*. at 279-280.

requirement and non-payment of separation pay under Article 298 of the Labor Code. Respondents also bewail that their termination was discriminatory since they were not informed why their services were terminated instead of the other workers. Since respondents admitted that the closure of petitioner's business was brought about by serious business losses, respondents are considered to have been terminated for cause, but without according them due process, entitling them to the payment of nominal damages.[30]

Petitioner reiterates that the closure of its ice plants was a supervening event which rendered it impossible for it to reinstate the respondents to their former positions or even in the payroll, since their former positions are no longer existing and no equivalent positions are also available in its other branch. Thus, instead of directing it to reinstate the respondents and pay them their full backwages, petitioner must instead be ordered to pay respondents their separation pay.[31]

Anent the motion of the respondents to declare Genuino Ice solidarily liable with it, petitioner avers that the same has no factual and legal basis because Genuino Ice is not a party in this case. Moreover, the Decision of the Labor Arbiter which held only the petitioner liable to the respondents, had already become final and immutable as to the respondents, they having not appealed the same. Thus, they cannot at this stage of the proceedings seek to alter the Decision to make Genuino Ice solidarily liable.[32]

Respondents counter that the petitioner is raising the very same grounds it raised before the CA, and this Court in *Genuino Ice Company, Inc. v. Lava*[33] has resolved exactly the same issues and exactly the same facts involving co-employees of the respondents against Genuino Ice, where the latter was found

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[30] *Id*. at 21-22; 280-281.

[31] *Id*. at 22-26; 281-286.

[32] *Id*. at 208-209; 286-287.

[33] 661 Phil. 729 (2011).

guilty of illegal dismissal. Consistent with the Court's ruling in the said case, the Court must likewise affirm the ruling of the CA finding the petitioner guilty of illegal dismissal and liable for the monetary awards prayed for by the respondents.[34]

Respondents contend further that they could not be precluded from asking the Court to pierce the veil of corporate fiction of Genuino Ice to make it solidarily liable with the petitioner given that their actuations would lead one to believe that they are one and the same company inasmuch as the verification portion of the Memorandum of Appeal filed by the petitioner was signed by Edgar A. Carriaga (Carriaga), Genuino Ice's authorized representative, and it was Genuino Ice that posted the appeal bond on its behalf. When respondents tried to collect from the surety bond the amount of ₱401,000.00 by virtue of the writ of partial execution and notice of garnishment that were issued, they failed to get a single centavo as the same was opposed by Carriaga, claiming that the amount was intended as a collateral security for Genuino Ice and not for the petitioner (despite the latter's representation that it had duly perfected its appeal before the NLRC).[35]

The Ruling of the Court

Limits of review under Rule 45 from the CA's Decision in a labor case

A perusal of the present petition inevitably shows that the petitioner reiterated substantially the same arguments and assailed congruent factual findings of the Labor Arbiter, the NLRC and the CA. A petition for review on *certiorari* under Rule 45 is a mode of appeal where the issue is limited only to questions of law.[36] In labor cases, a Rule 45 petition is limited to reviewing whether the CA correctly determined the presence or absence

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[34] *Rollo,* pp. 216-226; 304-314.

[35] *Id*. at 226-233; 316-318.

[36] *Manggagawa ng Komunikasyon sa Pilipinas v. Philippine Long Distance Telephone Co., Inc.,* 809 Phil. 106, 120 (2017).

of grave abuse of discretion and deciding other jurisdictional errors of the NLRC,[37] and not on the basis of whether the latter's decision on the merits of the case was strictly correct.[38]

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.[39] The abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility. The abuse must also be so patent and gross as would amount to an evasion of a positive duty or to a virtual refusal to perform the duty required, or to act at all in contemplation of law, as to be equivalent to having acted without jurisdiction.[40]

In *Career Philippines Shipmanagement, Inc. v. Serna,*[41] this Court laid down the parameters of an appeal taken under Rule 45 from the CA's Rule 65 Decision in a labor case, *viz:*

> In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.** In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. x x x

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[37] *Fuji Television Network, Inc. v. Espiritu,* 749 Phil. 388, 415 (2014).

[38] *Protective Maximum Security Agency, Inc. v. Fuentes,* 753 Phil. 482, 503 (2015), citing *Bani Rural Bank, Inc. v. De Guzman,* 721 Phil. 84, 99 (2013).

[39] *Pascual v. Burgos,* 776 Phil. 167, 185 (2016).

[40] *Biñan Rural Bank v. Carlos,* 759 Phil. 416, 421 (2015).

[41] 700 Phil. 1, 9-10 (2012).

Accordingly, we do not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field. Nor do we substitute our "own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible." The factual findings of the NLRC, when affirmed by the CA, are generally conclusive on this Court.

There are, however, recognized exceptions to this general rule where the Court, in the exercise of its discretionary appellate jurisdiction, may look into factual issues raised in Rule 45 petition. These exceptions are enumerated in *Sia Tio v. Abayata.*[42] To wit:

(1) when the findings are grounded entirely on speculation, surmises or conjectures;

(2) when the inference made is manifestly mistaken, absurd or impossible;

(3) when there is grave abuse of discretion;

(4) when the judgment is based on a misapprehension of facts;

(5) when the findings of fact are conflicting;

(6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;

(7) when the findings are contrary to the trial court;

(8) when the findings are conclusions without citation of specific evidence on which they are based;

(9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent;

(10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and

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[42] 578 Phil. 731,741-742 (2008).

(11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

None of the exceptions enumerated above are obtaining in this case.

Respondents were illegally dismissed from employment, retrenchment not being duly proved

Article 298 of the Labor Code laid down the authorized causes where the employer may validly terminate the employment of its employees. It provides:

ART. 298. Closure of Establishment and Reduction of Personnel. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Petitioner is correct in saying that retrenchment is a management prerogative to downsize its work force to avert business losses, which could either be already incurred or impending. Where appropriate and where conditions are in accord with law and jurisprudence, the Court has authorized valid reductions in the work force to forestall business losses, the

hemorrhaging of capital, or even to recognize an obvious reduction in the volume of business which has rendered certain employees redundant.[43] However, for retrenchment to be valid, certain requisites must first be satisfied. In *Perez v. Comparts Industries, Inc.*[44] this Court held:

> The complete designation of this authorized cause is **retrenchment to prevent losses precisely to save a financially ailing business establishment from eventually collapsing.** Without the purpose to prevent losses, the termination becomes illegal. However, the employer or the company need not be incurring losses already; the requirement is that there may be impending losses hence the resort to retrenchment:
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> > [T]he three (3) basic requirements are: (a) proof that the retrenchment is necessary to prevent losses or impending losses; (b) service of written notices to the employees and to the Department of Labor and Employment at least one (1) month prior to the intended date of retrenchment; and (c) payment of separation pay equivalent to one (1) month pay, or at least one-half (½) month pay for every year of service, whichever is higher. In addition, jurisprudence has set the standards for losses which may justify retrenchment, thus: (1) the losses incurred are substantial and not *de minimis;* (2) the losses are actual or reasonably imminent; (3) the retrenchment is reasonably necessary and is likely to be effective in preventing the expected losses; and (4) the alleged losses, if already incurred, or the expected imminent losses sought to be forestalled, are proven by sufficient and convincing evidence.

To justify retrenchment, petitioner claims serious business losses leading to the shutdown of its block ice plant facilities to which respondents belong. There is, however, dearth of evidence showing that the petitioner was indeed suffering from business losses or financial reverses as it staunchly claimed. Petitioner could have easily proved its dire financial state by submitting its financial statements duly audited by independent

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[43] *Manatad v. Philippine Telegraph and Telephone Corp.*, 571 Phil. 494, 512 (2008).

[44] 796 Phil. 643, 660-661 (2016).

external auditors, but it did not.[45] Its failure to prove these reverses or losses necessarily means that respondents' dismissal was not justified.[46] In addition, records would bear out, as in fact petitioner never denied, that it failed to satisfy the notice requirement under Article 298 of the Labor Code. Neither was the required separation pay to effect a valid retrenchment given to the respondents. For these reasons, the Court must uphold the ruling of the CA that there was absence of grave abuse of discretion on the part of the NLRC when it upheld the ruling of Labor Arbiter finding the respondents to have been illegally dismissed by the petitioner inasmuch as retrenchment was not duly proven by the latter.

Respondents are entitled to backwages and separation pay

Article 294 of the Labor Code provides for the reliefs of an illegally dismissed employee. The provision states:

ART. 294. Security of Tenure.— In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

In *Advan Motor, Inc. v. Veneracion,*[47] the Court explained the reliefs of reinstatement and backwages. Thus:

The two reliefs of reinstatement and backwages have been discussed in *Reyes v. RP Guardians Security Agency, Inc.* in the following manner:

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[45] *Sanoh Fulton Phils., Inc. v. Bernardo,* 716 Phil. 378, 389 (2013).

[46] *Emcor, Inc. v. Sienes,* 615 Phil. 33, 50 (2009), citing *Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc.,* 581 Phil. 228, 251 (2008).

[47] 848 SCRA 421, 434 (2017).

> Backwages and reinstatement are separate and distinct reliefs given to an illegally dismissed employee in order to alleviate the economic damage brought about by the employee's dismissal. "Reinstatement is a restoration to a state from which one has been removed or separated" while "the payment of backwages is a form of relief that restores the income that was lost by reason of the unlawful dismissal." Therefore, the award of one does not bar the other.
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> In the case of *Aliling v. Feliciano,* citing *Golden Ace Builders v. Talde,* the Court explained:
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> > Thus, an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.
> >
> > The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages.

Since respondents' termination was illegal, they are entitled to reinstatement without loss of seniority rights and to their full backwages pursuant to the said article.

However, reinstatement presupposes that the previous position from which the employee has been removed is still in existence or there is an unfilled position of a nature, more or less, similar to the one previously occupied by said employee.[48] While the

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[48] *Olympia Housing, Inc. v. Lapastora,* 778 Phil. 189, 205 (2016), citing *Galindez v. Rural Bank of Llanera, Inc.,* 256 Phil. 585, 591 (1989).

CA was correct in its assessment that the NLRC did not abuse its discretion when it ordered respondents' reinstatement, the Court, in the exercise of its equity jurisdiction may still modify the affirmed judgment in order to conform to law and justice.

Equity jurisdiction aims to do complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of the inflexibility of its statutory or legal jurisdiction.[49] Since it has been 14 years since the time respondents were removed from work, it is unlikely that the former positions held by them or their equivalent are still existing or are presently unoccupied; thus, making their reinstatement no longer viable. On this score, the CA decision must accordingly be modified in this respect. In lieu of reinstatement and full backwages, an award of separation pay, equivalent to one (1) month salary for every year of service, and full backwages is ordered instead.[50]

Bases for computation of backwages and separation pay

The basis for computing separation pay is usually the length of the employee's past service, while that for backwages is the actual period when the employee was unlawfully prevented from working.[51] Backwages represent compensation that should have been earned but were not collected because of the unjust dismissal.[52] Separation pay, on the other hand, is that amount which an employee receives at the time of his severance from employment, designed to provide the employee with the wherewithal during the period that he is looking for another employment,[53] and is a proper substitute for reinstatement.[54]

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[49] *Reyes v. Lim,* 456 Phil. 1, 10 (2003).

[50] See *San Miguel Properties Philippines, Inc. v. Gucaban,* 669 Phil. 288, 302-303 (2011).

[51] *Divine Word College of Laoag v. Mina,* 784 Phil. 546, 558 (2016).

[52] *Golden Ace Builders v. Talde,* 634 Phil. 364, 369 (2010).

[53] *Goodyear Phils., Inc. v. Angus,* 746 Phil. 668, 681 (2014).

[54] *SME Bank, Inc. v. De Guzman,* 719 Phil. 103, 136 (2013).

Under Article 279 (now Article 294) of the Labor Code, backwages is computed from the time of dismissal until the employee's reinstatement. However, when separation pay is ordered in lieu of reinstatement, backwages is computed from the time of dismissal until the finality of the decision ordering separation pay.[55] Anent the computation of separation pay, the same shall be equivalent to one month salary for every year of service[56] and should not go beyond the date an employee was deemed to have been actually separated from employment, or beyond the date when reinstatement was rendered impossible.[57] In the present case, in allowing separation pay, the final decision effectively declares that the employment relationship ended so that separation pay and backwages are to be computed up to that point.[58]

Applied here, Romano's backwages shall be computed from June 25, 2005, while the backwages of Sarmiento and Cabrera shall be reckoned from July 10, 2005, the time they were illegally dismissed until finality of this Decision. As regards their separation pay, the same shall be computed from their first day of employment until the finality of this decision, at the rate of one month pay per year of service.

Genuino Ice should be held solidarily liable with petitioner Genuino Agro

It is an elementary and fundamental principle of corporation law that a corporation is an artificial being invested by law with a personality separate and distinct from its stockholders and from other corporations to which it may be connected.[59]

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[55] *Bani Rural Bank, Inc. v. De Guzman,* 721 Phil. 84, 101-102 (2013).

[56] *Supra* note 47.

[57] *Capin-Cadiz v. Brent Hospital and Colleges, Inc.,* 781 Phil. 610, 629 (2016).

[58] *Nacar v. Gallery Frames,* 716 Phil. 267, 278 (2013).

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

However, the corporate mask may be lifted and the corporate veil may be pierced when a corporation is just but the alter ego of a person or of another corporation.[60] Moreover, piercing the corporate veil may also be resorted to by the courts or quasi-judicial bodies when "[the separate personality of a corporation] is used as a means to perpetrate fraud or an illegal act, or as a *vehicle for the evasion of an existing obligation*, the circumvention of statutes, or to confuse legitimate issues."[61] Furthermore, the veil of corporate fiction may also be pierced as when the same is *made as a shield to confuse legitimate issues*.[62] As such, in *Zambrano v. Philippine Carpet Manufacturing Corporation*,[63] the Court held:

> The doctrine of piercing the corporate veil applies in three (3) basic areas, namely: (1) defeat of public convenience as when the corporate fiction is *used as a vehicle for the evasion of an existing obligation;* (2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or (3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.

Furthermore, once the veil of corporate fiction is pierced, the separate but related corporation becomes solidarily liable in labor cases. Thus, the Court in *Symex Security Services, Inc. v. Rivera, Jr.*,[64] pronounced:

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[60] *Concept Builders, Inc. v. National Labor Relations Commission*, 326 Phil. 955, 958 (1996).

[61] *International Academy of Management and Economics v. Litton and Company, Inc.*, G.R. No. 191525, December 13, 2017, 848 SCRA 437, 445 (citations omitted).

[62] *Reynolds Philippine Corporation v. Court of Appeals*, 251 Phil. 196, 201 (1989), citations omitted.

[63] 811 Phil. 569, 585 (2017), citations omitted.

[64] G.R. No. 202613, November 8, 2017, 844 SCRA 416, 440-441, citing *Guillermo v. Uson*, 782 Phil 215, 225 (2016).

The common thread running among the aforementioned cases, however, is that the veil of corporate fiction can be pierced, and responsible corporate directors and officers or even a separate but related corporation, may be impleaded and held answerable solidarily in a labor case, even after final judgment and on execution, so long as it is established that such persons have deliberately used the corporate vehicle to unjustly evade the judgment obligation, or have resorted to fraud, bad faith or malice in doing so. When the shield of a separate corporate identity is used to commit wrongdoing and opprobriously elude responsibility, the courts and the legal authorities in a labor case have not hesitated to step in and shatter the said shield and deny the usual protections to the offending party, even after final judgment. The key element is the presence of fraud, malice or bad faith. Bad faith, in this instance, does not connote bad judgment or negligence but imparts a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud.

Thus, for purposes of determining whether to pierce Genuino Ice's separate corporate personality and hold it solidarily liable with the petitioner to pay the monetary claims due to the respondents, the following factual circumstances have to be considered:

(1) Petitioner and its supposed affiliate Genuino Ice have the same address, sets of officers, and representative to this suit.[65]

(2) The Calamba City ice plant where respondents used to work appears to be owned and operated by both the petitioner and Genuino Ice.[66]

(3) Genuino Ice, after being sued for illegal dismissal before the Labor Arbiter, claimed that the respondents were actually employees of its affiliate company, which is the petitioner.[67]

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[65] *Rollo*, pp. 60-61; 111, 115; 251; 319.

[66] *Id*. at 158.

[67] *Id*. at 61-62.

(4) Genuino Ice, despite claiming that it is not respondent's employer, manifested during the September 6, 2005 proceedings that it is willing to re-hire the respondents.[68]

(5) Respondents impleaded petitioner in the proceedings before the Labor Arbiter.[69]

(6) Genuino Ice filed all the pleadings in the proceedings before the Labor Arbiter while the petitioner stood idly by despite having been already impleaded by the respondents.[70]

(7) The Labor Arbiter found the petitioner jointly liable with Vicar for illegally dismissing the respondents.

(8) Petitioner, after the Labor Arbiter handed its verdict, filed the appeal before the NLRC with Genuino Ice posting its appeal bond.[71]

(9) Genuino Ice, by virtue of the surety bond it posted, acknowledged its obligation to pay the monetary claims awarded to the respondents on account of the December 29, 2006 Decision of the Labor Arbiter, should the same not be reversed on appeal, despite the fact that the one adjudged liable therein was not Genuino Ice but the petitioner.[72]

(10) Respondents tried to collect from the appeal bond that was posted by Genuino Ice (and which the petitioner had previously assured was sufficient) but failed to do so due to the opposition of Genuino Ice where it invoked its separate corporate personality.[73]

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[68] *Id*. at 114.

[69] *Id*. at 87; 227, 315.

[70] *Id*.

[71] *Id*. at 98-111; 247.

[72] *Id*. at 91-97; 247.

[73] *Id*. at 172, 251, 316.

(11) Petitioner insists before this Court that, since the Labor Arbiter's Decision adjudged it liable to pay the respondents' monetary claims, its affiliate, Genuino Ice, cannot be declared as solidarily liable to pay the same claims for lack of factual and legal basis.[74]

A deep scrutiny of the aforementioned circumstances necessitates the application of the doctrine of piercing the veil of corporate fiction. The circumstances indubitably establish that both Genuino Ice and the petitioner are using their respective distinct corporate personalities in bad faith and to confuse legitimate issues in the hope of evading its obligation to the respondents.

The aforementioned circumstances show that both Genuino Ice and the petitioner have taken turns in representing each other's common cause and in pursuing remedies to protect its common interest in repelling the respondents' monetary claims. Whenever a claim is directed against one of them, the other admits the monetary liability so that the former may be shielded and *vice versa*. This was demonstrated, for example, when Genuino Ice posted a bond for the appeal filed by the petitioner with the NLRC. In the said surety bond, Genuino Ice acknowledged its obligation to satisfy the monetary awards granted to the respondents notwithstanding the fact that it was not the one found liable for illegal dismissal, but the petitioner. Petitioner, for its part, assured the respondents that the bond it posted was sufficient to answer for their monetary claims in the event that the decision rendered in their favor becomes final and executory. However, despite their assurances, when the respondents went for the appeal bond to satisfy their claims, Genuino Ice opposed the move and through Carriaga, its manager and who also happened to be the personnel manager of the petitioner, argued that the funds cannot be pursued for it belongs to Genuino Ice. Such evasive maneuver clearly demonstrates bad faith on the part of the petitioner and Genuino Ice, and is

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[74] *Id*. at 208, 286.

clearly indicative of using the veil of corporate fiction to unjustly elude the monetary obligation due to respondents as adjudged.

As observed, when an "affiliate company" takes the cudgels for another, it means that both have a common interest. If indeed there was no commonality or intertwining of an interest in frustrating the respondents' monetary claims, the petitioner and not Genuino Ice would have posted a bond for its ***own*** appeal. The Court cannot allow its intelligence to be insulted by Genuino Ice's representation that it has a corporate personality which is separate and distinct from the petitioner because both companies have pursued legal remedies and measures for the benefit of each other, and made representations that clearly defrauded the respondents. Hence, for purposes of this litigation and for the satisfaction of the respondents' monetary claims, both Genuino Ice and the petitioner shall be treated as one and the same entity, and held liable solidarily for the same.

WHEREFORE, premises considered, the petition is partially **GRANTED**. The assailed May 31, 2012 Decision and December 12, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 103337 are **AFFIRMED** with **MODIFICATION** in that, Genuino Ice Company, Inc. is adjudged solidarily liable with petitioner Genuino Agro-Industrial Development Corporation and Vicar General Contractor and Management Services to pay the monetary claims due to the respondents as follows:

(1) Backwages computed from June 25, 2005 with respect to respondent Armando G. Romano, and July 10, 2005 with respect to respondents Moises V. Sarmiento and Jay A. Cabrera, the time they were illegally dismissed, until the finality of this Decision; and

(2) In lieu of reinstatement, separation pay computed from respondents' first day of employment until the finality of this Decision, at the rate of one month pay per year of service.

The monetary awards granted shall earn legal interest at the rate of six percent per annum from the date of the finality of this Decision until fully paid.

The case is **REMANDED** to the Labor Arbiter for the proper computation of the monetary benefits awarded.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 208892. September 18, 2019]

SPOUSES ANTHONY ROGELIO BERNARDO and MA. MARTHA BERNARDO, *petitioners, vs.* **UNION BANK OF THE PHILIPPINES and the HON. COURT OF APPEALS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MAY ONLY BE RESORTED TO IN CASES WHERE THERE IS NO APPEAL OR ANY OTHER PLAIN, SPEEDY, AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW. — [A] special civil action for *certiorari* may only be resorted to in cases where there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. Here, the proper recourse for petitioners was to file a Petition for Review on *Certiorari* under Rule 45 and not to resort to *certiorari* under Rule 65 of

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[*] Acting Chief Justice per Special Order No. 2703 dated September 10, 2019.

the Rules of Court as a substitute for the lost remedy of appeal. As such, the Petition for *Certiorari* should be dismissed outright for being the wrong mode of appeal.

2. ID.; ID.; JUDGMENTS; *RES JUDICATA*; A COMPROMISE AGREEMENT THAT IS APPROVED BY FINAL ORDER OF THE COURT HAS THE EFFECT OF *RES JUDICATA* BETWEEN THE PARTIES, AND IS DEEMED A JUDGMENT THAT IS SUBJECT TO EXECUTION IN ACCORDANCE WITH THE RULES OF COURT. — The Civil Code defines a compromise as "a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced." A compromise agreement that is approved by final order of the court has the effect of *res judicata* between the parties, and is deemed a judgment that is subject to execution in accordance with the Rules of Court. "Judges[,] therefore[,] have the *ministerial* and *mandatory* duty to implement and enforce it." In implementing a compromise agreement, the "courts cannot modify, impose terms different from the terms of [the] compromise agreement, or set aside the compromises and reciprocal concessions made in good faith by the parties without gravely abusing their discretion."

APPEARANCES OF COUNSEL

Solis Medina Limpingco and Fajardo Law Offices for petitioners.

Union Bank Office of the General Counsel for respondent.

D E C I S I O N

INTING, *J.*:

We resolve the Petition for *Certiorari* under Rule 65 of the Rules of Court assailing the Decision[1] dated February 21, 2013

[1] Penned by Associate Justice Noel G. Tijam (formerly a Member of this Court), and concurred in by Associate Justices Romeo F. Barza and Ramon A. Cruz. *Rollo*, pp. 20-32.

and the Resolution[2] dated July 18, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 111832.

The Antecedents

On August 20, 1999, petitioners, Spouses Anthony Rogelio Bernardo and Ma. Martha Bernardo, obtained a loan amounting to ₱3,032,635.57 from respondent Union Bank of the Philippines (Union Bank).[3] The loan was secured by a real estate mortgage executed by petitioners in Union Bank's favor Over a 700-square meter lot on which their family home stood, located in Ayala Alabang Village, Muntinlupa City.[4]

Petitioners, however, eventually defaulted in the payment of their loan.[5] Consequently, Union Bank commenced the extrajudicial foreclosure proceedings on the mortgaged property.[6] The foreclosure sale was held on September 28, 2000 wherein Union Bank emerged as the highest bidder.[7] The Certificate of Sale was thereafter issued in Union Bank's favor and duly registered with the Register of Deeds of Muntinlupa City on February 26, 2001.[8]

On February 20, 2002, petitioners filed a Complaint for annulment of the foreclosure sale against Union Bank before the Regional Trial Court (RTC), Branch 256, Muntinlupa City, on the ground of noncompliance with the publication notice requirement prior to the foreclosure sale of the mortgaged property.[9]

During the pre-trial, the parties executed a Compromise Agreement which was then *approved* by the RTC on June 2,

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[2] *Id.* at 34-36.

[3] *Id.* at 21.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

2004.[10] In the Compromise Agreement, petitioners agreed to buy back the foreclosed property for ₱5,459,871.19, with the condition that failure to comply with the terms of the agreement shall entitle Union Bank, among others, to enforce its rights and remedies under the real estate mortgage contract.[11]

Unfortunately, petitioners again defaulted in their payments to Union Bank pursuant to the payment schedule under Section 6(b) of the Compromise Agreement.[12] This prompted Union Bank to file a Motion for Issuance of Writ of Execution before the RTC in order to consolidate its title over the foreclosed property. The RTC granted the motion in its Order dated December 13, 2005 and directed the issuance of a Writ of Execution in the bank's favor.[13] Consequently, title to the foreclosed property was transferred in Union Bank's name under Transfer Certificate of Title No. 18260.[14]

On January 8, 2007, petitioners filed a Motion to Quash the Writ of Execution and Notice to Vacate before the RTC.[15] The RTC granted the motion in its Order[16] dated February 13, 2007 but instead of quashing the Writ of Execution, it ordered that the writ be stayed "only for the purpose of collecting all the amounts due and outstanding pursuant to the schedule of payments" under the Compromise Agreement.[17]

While Union Bank's Motion for Reconsideration was pending, petitioners filed a Motion for Judicial Consignation on May 21, 2007.[18] Union Bank opposed the motion and countered that it

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[10] *Id*. at 37-40; approved by Presiding Judge Alberto L. Lerma.

[11] *Id*. at 38-39.

[12] *Id*. at 7 and 38.

[13] *Id*. at 22.

[14] *Id.* at 41-42.

[15] *Id*. at 22.

[16] *Id*. at 44 to 45.

[17] *Id*. at 45.

[18] *Id*. at 22.

was not necessary to resort to judicial consignation as the bank was already in the process of evaluating the proposal offered by petitioners.[19]

Ruling of the RTC

In its Order dated March 31, 2009, the RTC granted Union Bank's Motion for Reconsideration and denied petitioners' Motion for Judicial Consignation.[20]

However, upon petitioners' motion, the RTC *reconsidered* its ruling in its Order dated June 26, 2009 and held that the remedy for Union Bank, should petitioners fail to abide by the terms of payment set forth in the Compromise Agreement, was to move for the execution of the judgment with respect to the amounts due and outstanding and *not* to take actual control and possession of the subject property.[21]

Accordingly, the RTC ruled as follows:

> WHEREFORE, in view of the foregoing, the Order dated March 31, 2009 is hereby reconsidered and set aside. On the other hand, the Motion for Judicial Consignation is hereby granted. Accordingly, [petitioners are] hereby ordered to consign and deposit with the Office of the Clerk of Court, Muntinlupa City[,] within ten days from receipt hereof[,] the remaining balance of the total purchase price of the subject property[,] with interest thereon at the rate of 16% per annum up to May 15, 2007. Further, upon full payment by [petitioners] of the agreed purchase price of the subject property, [Union Bank] is hereby ordered to execute a deed of sale in favor of [petitioners].[22]

Union Bank filed a Motion for Reconsideration but the RTC denied the motion in its Order dated September 30, 2009.[23] Aggrieved, Union Bank filed a Petition for *Certiorari* before the CA assailing the RTC Orders.

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[19] *Id*.

[20] *Id*. at 23.

[21] *Id*. at 170.

[22] *Id*. at 23.

[23] *Id*.

Ruling of the CA

In its Decision dated February 21, 2013, the CA granted the Petition for *Certiorari*, and reversed and set aside the Order of the RTC.[24] It upheld the validity of the Compromise Agreement entered into by the parties.[25]

The CA found that the RTC had gravely abused its discretion "when it interpreted the Compromise Agreement in such a way as to digress from the clear wordings thereof,"[26] *viz.:*

> To the mind of this Court, the RTC went beyond the clear wordings of the Compromise Agreement, particularly the remedies available to [Union Bank] in case [petitioners fail] to comply with the terms and conditions of the [agreement]. Instead of applying the parties' intention, the RTC interpreted the contract for them. This is not in harmony with the *"plain meaning rule"* under statutory construction.
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> x x x x x x x x x
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> Evidently, one of the remedies available to [Union Bank was] to resort to its rights mentioned under the [real estate mortgage] contract which necessarily include[d] the power and authority *"to take actual possession and control"* of the mortgaged property in the event of [petitioners'] non-compliance with the terms of the Compromise Agreement.[27] (Emphasis supplied.)

Moreover, the CA ruled that the Compromise Agreement did *not* have the effect of extinguishing petitioners' loan obligation to Union Bank.[28] It pointed out that the Compromise Agreement simply granted a new payment scheme and interest rate to petitioners without any alteration as regards their original loan obligation to the bank.[29]

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[24] *Id*. at 32.

[25] *Id*.

[26] *Id*. at 31-32.

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

[28] *Id*. at 27.

[29] *Id*.

Petitioners moved for reconsideration but the CA denied the motion in its Resolution dated July 18, 2013. As a result, petitioners filed the present Petition for *Certiorari* assailing the CA Decision and Resolution.

Issues

The issues for the Court's resolution are: *first,* whether petitioners' original loan obligation to Union Bank was novated by the Compromise Agreement;[30] and *second,* whether Union Bank can resort to the exercise of its rights and remedies under the real estate mortgage contract in case of petitioners' failure to comply with the new payment scheme set forth in the Compromise Agreement.[31]

The Court's Ruling

At the outset, it should be stressed that a special civil action for *certiorari* may only be resorted to in cases where there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[32] Here, the proper recourse for petitioners was to file a Petition for Review on *Certiorari* under Rule 45 and not to resort to *certiorari* under Rule 65 of the Rules of Court as a substitute for the lost remedy of appeal. As such, the Petition for *Certiorari* should be dismissed outright for being the wrong mode of appeal.

In any case, even *if* the Petition is treated as one duly filed under Rule 45, it would still be denied for lack of merit.

The Civil Code defines a compromise as "a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced."[33] A compromise agreement that is approved by final order of the court has the

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[30] *Id.* at 12.

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

[32] RULES OF COURT, Rule 65, Section 1.

[33] CIVIL CODE, Article 2028.

effect of *res judicata* between the parties,[34] and is deemed a judgment that is subject to execution in accordance with the Rules of Court.[35] "Judges[,] therefore[,] have the *ministerial* and *mandatory* duty to implement and enforce it."[36]

In implementing a compromise agreement, the "courts cannot modify, impose terms different from the terms of [the] compromise agreement, or set aside the compromises and reciprocal concessions made in good faith by the parties without gravely abusing their discretion."[37]

A careful perusal of the Compromise Agreement shows that it was executed by the parties for the settlement of petitioners' outstanding loan obligation with Union Bank.[38] They agreed that petitioners would buy back the foreclosed property from the bank for ₱5,459,871.19, which amount they termed as the "purchase price" in the agreement.[39] The purchase price was to be paid under an amortization schedule, made an integral part of the agreement, that divided payment thereof in equal installments of ₱72,170.25 per month for a period of fifteen (15) years.[40]

Note, in this regard, that the Compromise Agreement specifically referred to the payment of petitioners' original loan obligation as the very purpose for its execution. Since there was no real change in the original obligation, substitution of the person of the debtor, or subrogation of a third person to the rights of the creditor, petitioners' loan obligation to Union Bank *cannot* be said to have been extinguished by novation,[41] as petitioners insist.

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[34] CIVIL CODE, Article 2037.

[35] See *PNOC-EDC v. Abella*, 489 Phil. 515, 535 (2005).

[36] *Id*. Emphasis supplied.

[37] *Gadrinab v. Salamanca, et al.*, 736 Phil. 279, 295 (2014).

[38] *Rollo*, p. 38.

[39] *Id*.

[40] *Id*.

[41] See CIVIL CODE, Article 1291.

The Compromise Agreement, too, enumerated Union Bank's remedies in case petitioners default in the payment of their monthly amortizations with the bank, *viz.*:

> 8. Failure on the part of [petitioners] to comply with or should [petitioners] violate any of the foregoing terms/provisions of this Compromise Agreement shall entitle [Union Bank] to **forfeit all payments made by [petitioners] which shall be applied as rental for [their] use and possession of the Property** without the need for any judicial action or notice to or demand upon [petitioners] and without prejudice to such other rights as may be available to and at the option of [Union Bank] such as, but not limited to, **bringing an action in court to enforce payment of the Purchase Price or the balance thereof and/or damages, or for any causes of action allowed by law.**
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> 9. Any failure on the part of [petitioners] to comply with the terms of this Compromise Agreement shall entitle the aggrieved party to a Writ of Execution for all the amounts due and outstanding under the terms of this Compromise Agreement against the party responsible for the breach or violation, **including the exercise by [Union Bank] of its rights and remedies under the Real Estate Mortgage**.[42] (Emphasis supplied)

In other words, the remedies available to Union Bank should petitioners fail to abide by the terms of the Compromise Agreement are: *first,* to forfeit all payments made by petitioners which would then be applied as rental for their use and possession of the mortgaged property; *second,* to move for the issuance of a writ of execution to enforce payment of the purchase price or the balance thereof with the trial court; and *third,* to exercise its rights and remedies under the real estate mortgage.

These remedies became readily available to Union Bank when petitioners admittedly[43] failed to pay their monthly amortizations to the bank as required under the Compromise Agreement. Consequently, the RTC was *correct* when it issued its Order dated December 13, 2005 granting the Motion for Issuance of

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[42] *Rollo,* p. 39.

[43] *Id.* at 7.

Writ of Execution filed by Union Bank in order to consolidate its title over the foreclosed property.[44]

The *first* error the RTC made was when it *reconsidered* its earlier ruling and ordered that the Writ of Execution it had previously issued in Union Bank's favor be stayed but "*only* for the purpose of collecting all the amounts due and outstanding pursuant to the schedule of payments."[45]

The *second* error came in spades in the RTC's Order dated June 26, 2009 wherein the trial court declared that: *(a)* Union Bank had abandoned the real estate mortgage when it entered into the Compromise Agreement with petitioners;[46] and *(b)* the remedy for Union Bank in case of default in payment on the part of petitioners was to ask the court for execution of the judgment as regards the amounts due and outstanding, and not to take actual control and possession of the foreclosed property.[47]

There is absolutely no basis to the RTC's ruling that Union Bank had abandoned its rights and remedies under the real estate mortgage when it executed the Compromise Agreement with petitioners. The Compromise Agreement itself acknowledged the existence of the real estate mortgage[48] and even included it as part of Union Bank's remedies in case petitioners default in payment of their monthly amortizations,[49] which is precisely what happened in this case.

The RTC, too, gravely abused its discretion when it *limited* the remedies available to Union Bank to just the collection of the balance of the purchase price notwithstanding the clear terms of the Compromise Agreement (Section 9 thereof, in particular),

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[44] *Id*. at 22.

[45] See the Order dated February 13, 2007; *id*. at 44 to 45.

[46] *Id*. at 170.

[47] *Id*.

[48] *Id*. at 37.

[49] *Id*. at 38.

which allowed the bank to exercise its rights and remedies under the real estate mortgage.

Based on these considerations, we see no cogent reason to overturn the CA's factual findings and conclusions. There is no question that the RTC had failed to implement the Compromise Agreement strictly on the terms agreed upon by the parties.

WHEREFORE, the Petition is **DISMISSED**. The Decision dated February 21, 2013 and the Resolution dated July 18, 2013 of the Court of Appeals in CA-G.R. SP No. 111832 are **AFFIRMED.**

SO ORDERED.

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

Hernando, J., on leave.

SECOND DIVISION

[G.R. No. 216024. September 18, 2019]

SPS. ERNESTO V. YU and ELSIE YU, *petitioners, vs.* **EULOGIO A. TOPACIO, JR.,** *respondent.*

SYLLABUS

1. CIVIL LAW; PROPERTY; OWNERSHIP; QUIETING OF TITLE; TO DETERMINE THE RESPECTIVE RIGHTS OF THE COMPLAINANT AND OTHER CLAIMANTS; REQUISITES. — In an action for quieting of title, the competent court is tasked to determine the respective rights of the complainant and other claimants, not only to place things in their proper place, to make the one who has no rights to said

immovable respect and not disturb the other, but also for the benefit of both, so that he who has the right would see every cloud of doubt over the property dissipated, and he could afterwards without fear introduce the improvements he may desire, to use, and even to abuse the property as he deems best. It has for its bases Articles 476 and 477 of the Civil Code. x x x [Here, respondent] Topacio failed to meet one of the requirements for quieting of title as set forth by law and jurisprudence, to wit: In order that an action for quieting of title may prosper, two requisites must concur: (1) the plaintiff or complainant has a legal or equitable title or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.

2. **ID.; ID.; ID.; RECOVERY OF POSSESSION; OWNERSHIP MUST BE PROVED AND THE PROPERTY MUST BE PROPERLY IDENTIFIED. ––** As to the action for recovery of possession, the rule is settled that in order for it to prosper, it is indispensable that he who brings the action fully proves not only his ownership but also the identity of the property claimed, by describing the location, area and boundaries thereof. Indeed, he who claims to have a better right to the property must clearly show that the land possessed by the other party is the very land that belongs to him. Said action is governed by Article 434 of the Civil Code, which states that the property must be identified and the plaintiff must rely on the strength of his title and not on the weakness of defendant's claim.

3. **ID.; ID.; ID.; ACTION FOR RECONVEYANCE; REMEDY OF LANDOWNER WHOSE LAND WAS WRONGFULLY REGISTERED IN THE NAME OF ANOTHER. —** An action for reconveyance is a legal and equitable remedy granted to the rightful landowner, whose land was wrongfully or erroneously registered in the name of another, to compel the registered owner to transfer or reconvey the land to him. The plaintiff must allege and prove his ownership of the land in dispute and the defendant's erroneous, fraudulent or wrongful registration of the property. As can be seen, reconveyance is the remedy of the rightful owner only.

4. **ID.; ID.; ID.; IMPUTATION OF FRAUD IN THE ISSUANCE OF A TORRENS TITLE MUST BE SUFFICIENTLY**

ESTABLISHED. — A Torrens title is generally conclusive evidence of ownership of the land referred to therein and a strong presumption exists that a Torrens title was regularly issued and valid. Such that, imputations of fraud must be proved by clear and convincing evidence. x x x A person who possesses a title issued under the Torrens system is entitled to all the attributes of ownership including possession.

5. ID.; ID.; ID.; POSSESSOR IN GOOD FAITH; RULE. — The records do not show that the spouses Yu was in bad faith when they possessed the disputed portion of Topacio's land. x x x [T]he essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim and absence of intention to overreach another. Applied to possession, one is considered in good faith if he is not aware that there exists in his title or mode of acquisition any flaw which invalidates it. Since spouses Yu had introduced improvements on the said portion of land in good faith, Topacio as owner thereof, may exercise his option of choosing between appropriating as his own the structures constructed thereon by spouses Yu by paying the proper indemnity or value; or obliging spouses Yu to pay the price of the said lot if its value is considerably not more than that of the improvements. Otherwise, reasonable rent must be paid by spouses Yu if Topacio did not choose to appropriate the improvements, pursuant to Article 448 of the Civil Code, x x x The choice belongs to the owner of the land, a rule that accords with the principle of accession that the accessory follows the principal and not the other way around. Topacio must choose only one.

6. ID.; DAMAGES; ATTORNEY'S FEES; PROPRIETY THEREOF. — As to the award of attorney's fees, x x x While Topacio was compelled to file this suit to vindicate his rights, this by itself will not justify the award of attorney's fees. As held by this Court: It is settled that the award of attorney's fees is the exception rather than the rule and counsel's fees are not to be awarded every time a party wins suit. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification; its basis cannot be left to speculation or conjecture. Where granted, the court must explicitly state in the body of the decision, and not only in the dispositive portion thereof, the legal reason for the award of attorney's fees. Moreover, a recent case ruled

that in the absence of stipulation, a winning party may be awarded attorney's fees only in case plaintiff's action or defendant's stand is so untenable as to amount to gross and evident bad faith.

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioners.
Topacio Law Office for respondent.

D E C I S I O N

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

This resolves the Petition for Review on *Certiorari* under Rule 45 which assails the March 17, 2014 Decision[1] and the December 22, 2014 Resolution[2] of the Court of Appeals (CA), in CA-G.R. CV No. 100590.

The case arose from an Amended Complaint[3] for Quieting of Title, Recovery of Possession, Reconveyance and Damages, filed by respondent Eulogio A. Topacio, Jr., (Topacio) which seeks to nullify Transfer Certificates of Title (TCT) Nos. T-490552 and T-289604, and to recover possession of the properties covered respectively by the said TCTs, from petitioners spouses Ernesto V. Yu and Elsie Yu (spouses Yu) and defendants *a quo* Benny Saulog and Spouses Jesus and Lorinda Mupas,[4] plus reasonable compensation for the use and occupation of the said parcels of land.

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[1] Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Celia C. Librea-Leagogo and Franchito N. Diamante, concurring; *rollo*, pp. 30-45.

[2] *Id.* at 47-48.

[3] *Id.* at 96-101.

[4] Later on, respondent filed a Motion to Discharge Saulog and Spouses Mupas upon learning that the properties they occupy were outside of his property.

Topacio alleged that he is the registered owner of Lot 7402-E situated in Barangay Paliparan, Dasmariñas, Cavite covered by TCT No. T-348422 consisting of 9,878 square meters. That Spouses Yu were issued TCT No. T-490552 consisting of 606 square meters, more or less, which is a portion of the area covered by his title.

Topacio believed that said title issued to Spouses Yu is spurious, illegal and null and void as the same was issued much later than his title. Allegedly, said title of Spouses Yu casts a cloud on Topacio's title. Despite demand made by Topacio, Spouses Yu failed to cease and desist from fencing and constructing a house on Topacio's property, prompting the latter to file the instant action.

In their Answer with Counterclaim,[5] Spouses Yu claimed that they are the owners of the property covered by TCT No. T-490552 consisting of 606 square meters. They have acquired the said property from spouses Asislo Martinez and Norma Linatoc (Spouses Martinez) by virtue of an Absolute Deed of Sale dated June 10, 1994.[6] The said property was then covered by TCT No. T-267842 in the name of Asislo Martinez. Spouses Yu, thereafter, registered the sale of the said property causing the issuance of TCT No. T-490552.

Spouses Yu explained that their predecessors (Spouses Martinez) acquired the said property from the Bureau of Lands on June 9, 1989 by virtue of Sales Certificate No. 1793, Deed No. V-70973.[7] Based on the said Sales Certificate, the said property was surveyed by the Public Land Surveyor on July 18, 1938.

Spouses Yu averred that prior to their purchase of the said property, they caused the conduct of a relocation survey over the same to ascertain its boundaries.[8] The survey was conducted

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[5] *Rollo,* pp. 86-94.

[6] *Id.* at pp. 72-73.

[7] *Id.* at 6.

[8] *Id.*

by Geodetic Engineer Antonio Pascual, Jr., who thereafter prepared a location survey plan.

After the execution of the Deed of Absolute Sale, spouses Yu took possession of the subject property, exercised dominion over the same and religiously paid real estate taxes due thereon. In November 1994, spouses Yu constructed a fence around the said property after obtaining a barangay permit and a fencing permit from the Municipal Engineer's Office. At the time the fence was being constructed, no one stopped nor disturbed spouses Yu from completing the work. Neither did anybody claim ownership over the subject property.

Meanwhile, Topacio filed a Motion for Joint Survey[9] which was granted by the Regional Trial Court (RTC) in an Order[10] dated May 7, 2008, in aid of the early disposition of the case without going into trial.

On March 5, 2009, a survey team from the Community Environment and Natural Resources Office (CENRO) of Trece Martirez City led by Geodetic Engineer Ramoncito Tañola (Engr. Tañola) was constituted and on April 22, 2009, they conducted a verification survey on the parcels of land claimed by Topacio and spouses Yu in the presence of all the parties, who were duly assisted by their counsels and private geodetic engineers.

On February 25, 2010, Engr. Tañola submitted his Report of Verification Survey,[11] which in gist states, that Lot 7402-E registered in the name of Eulogio A. Topacio, Jr. and Lot 8142-New registered in the name of spouses Ernesto V. Yu and Elsie Yu, have the same points (which is Mon. 79) and when plotted using their respective Tie Lines it appeared that they fall apart with each other with the approximate distance of 1,526 meters. That based on the actual verification survey, the property claimed by spouses Yu with existing structure and with the total area of 450 square meters is inside the property of Topacio.

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[9] *Id*. at 169-171.

[10] *Id*. at 173-176.

[11] *Id*. at 409-410.

On December 28, 2011, the RTC, Branch 90 of Dasmariñas, Cavite rendered a Decision[12] dismissing Topacio's Complaint because there was no sufficient proof that spouses Yu and the other defendants obtained their respective titles by means of fraud. The RTC ruled that since spouses Yu's title was not shown to be fraudulent, there was no instrument, record, claim, encumbrance or proceeding that constituted a cloud of doubt upon Topacio's title. Thus:

WHEREFORE, premises considered, this case against all the defendants must perforce be **DISMISSED** for lack of merit. The counterclaims of the defendants-spouses must likewise be dismissed for lack of factual and legal bases.

SO ORDERED.[13]

Topacio moved to reconsider the RTC Decision but the motion was denied by the RTC in an Order[14] dated July 24, 2012.

Dissatisfied, Topacio filed an appeal[15] with the CA. The CA issued the now assailed Decision modifying the ruling of the RTC, as follows:

WHEREFORE, premises considered, the Appeal is partly **GRANTED.** The Decision dated December 28, 2011 and the Order dated July 24, 2012 of the Regional Trial Court, Branch 90 of Dasmarinas, Cavite, sitting in Imus, Cavite rendered in Civil Case No. 2215-00, are hereby **MODIFIED** inasmuch as defendants-appellees spouses Ernesto Yu and Elsie Ong are ordered to:

(1) vacate and transfer possession of the area of Lot 7402-E covered by TCT No. T-348422, that they are unlawfully occupying to plaintiff-appellant Eulogio B. Topacio Jr. and to remove at their own expense any improvements they introduced thereon;

(2) pay plaintiff-appellant reasonable compensation in the amount of ₱5,000.00 per month for the use and occupation of the portion of

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[12] *Id*. at 49-60.

[13] *Id*. at 60.

[14] *Id*. at 61.

[15] *Id*. at 333-353.

his property from November 29, 2000, the date of judicial demand, until they vacate the said portion of the subject property; and

(3) to pay plaintiff-appellant the amount of ₱25,000.00 for and as attorney's fees and the costs of this suit.

SO ORDERED.[16]

Spouses Yu filed a Motion for Reconsideration ascribing error on the part of the CA in ordering the transfer of possession of the subject property to [Topacio], and in directing spouses Yu to vacate the same. However, in the assailed Resolution dated December 22, 2014, the CA denied spouses Yu's Motion for lack of merit. Hence, the instant appeal anchored on the following grounds, to wit:

I. THE COURT OF APPEALS ERRED IN RESOLVING THE LOCATION OR BOUNDARY OF TOPACIO'S PURPORTED PROPERTY IN THE CASE BELOW, WHICH IS AN ACTION FOR QUIETING OF TITLE; AND

II. THE COURT OF APPEALS COMMITTED A SERIOUS ERROR IN RELYING ON AND GIVING MUCH WEIGHT TO THE VERIFICATION SURVEY CONDUCTED BY ENGR. TAÑOLA OF THE CENRO-DENR.[17]

Spouses Yu fault the CA for its conflicting stance that despite its ruling that Topacio's action for quieting of title does not have merit, it still awarded in favor of Topacio the possession of the subject property on the basis of the verification survey report showing that spouses Yu were occupying the parcel of land which is a portion of the property belonging to Topacio. Spouses Yu argue that in so ruling, the RTC was actually settling a boundary dispute which is not proper in actions to quiet title.

We find that no error was committed by the CA. The CA was not contradicting itself when it denied Topacio's action to quiet title and granted his action to recover possession.

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

[17] *Id*. at 13.

The object of the instant dispute is a parcel of land being physically occupied by spouses Yu. Topacio claims that said portion of the land is part of Lot 7402-E with an area of 9,878 square meters and covered by TCT No. T-348422, which was issued in his (Topacio's) name on June 25, 1992. Spouses Yu, on the other hand, claim that their possession of the said disputed parcel of land was based on TCT No. T-490552 issued to them on September 1, 1994, after they purchased the same from spouses Martinez.

Topacio was convinced that TCT No. T-490552 was spurious, illegal and null and void as it was issued much later than his title. Believing that said instrument casts a cloud on his title, Topacio filed an action consisting of three reliefs: (1) to quiet title; (2) to recover possession; and (3) to reconvey the property, with damages against spouses Yu.

In an action for quieting of title, the competent court is tasked to determine the respective rights of the complainant and other claimants, not only to place things in their proper place, to make the one who has no rights to said immovable respect and not disturb the other, but also for the benefit of both, so that he who has the right would see every cloud of doubt over the property dissipated, and he could afterwards without fear introduce the improvements he may desire, to use, and even to abuse the property as he deems best.[18] It has for its bases Articles 476 and 477 of the Civil Code, which provide:

ART. 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

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[18] *Spouses Basa v. Loy Vda. De Senly Loy,* G.R. No. 204131, June 4, 2018.

ART. 477. The plaintiff must have legal or equitable title to, or interest in the real property which is the subject-matter of the action. He need not be in possession of said property.

As to the action for recovery of possession, the rule is settled that in order for it to prosper, it is indispensable that he who brings the action fully proves not only his ownership but also the identity of the property claimed, by describing the location, area and boundaries thereof.[19] Indeed, he who claims to have a better right to the property must clearly show that the land possessed by the other party is the very land that belongs to him.[20] Said action is governed by Article 434 of the Civil Code, which states that the property must be identified and the plaintiff must rely on the strength of his title and not on the weakness of defendant's claim.

An action for reconveyance is a legal and equitable remedy granted to the rightful landowner, whose land was wrongfully or erroneously registered in the name of another, to compel the registered owner to transfer or reconvey the land to him.[21] The plaintiff must allege and prove his ownership of the land in dispute and the defendant's erroneous, fraudulent or wrongful registration of the property.[22] As can be seen, reconveyance is the remedy of the rightful owner only.[23]

We find no error on the rulings of the courts below that the action for quieting of title is unavailing. Topacio's action for quieting of title was not given merit for the reason that Topacio failed to meet one of the requirements for quieting of title as set forth by law and jurisprudence, to wit:

In order that an action for quieting of title may prosper, two requisites must concur: (1) the plaintiff or complainant has a legal or equitable

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[19] *Seriña v. Caballero,* 480 Phil. 277, 288 (2004).

[20] *Id*.

[21] *Leoveras v. Valdez,* 667 Phil. 190, 199-200 (2011).

[22] *Id.* at 200.

[23] See *Leoveras v. Valdez,* 667 Phil. 190, 207 (2011).

title or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.[24]

While Topacio was able to prove his legal title over the disputed portion of the property as he was issued TCT No. T-348422, registered on June 25, 1992, he however failed to show that the title relied upon by spouses Yu as basis for their claim of possession, specifically TCT No. T-490552, was in fact invalid or ineffective. As a matter of fact, spouses Yu traced the origin of the said TCT issued to them and the mode of acquiring the same. Spouses Yu explained that they purchased the said lot from spouses Martinez by virtue of a Deed of Absolute Sale dated June 10, 1994. Their predecessors (spouses Martinez) in turn, acquired the said property from the Bureau of Lands on June 9, 1989, by virtue of Sales Certificate No. 1793, Deed No. V-70973.[25] Based on the said Sales Certificate, the said property was surveyed by the Public Land Surveyor on July 18, 1938.

Neither was there a showing that the TCT issued in favor of spouses Yu was procured through fraud. A Torrens title is generally conclusive evidence of ownership of the land referred to therein and a strong presumption exists that a Torrens title was regularly issued and valid.[26] Such that, imputations of fraud must be proved by clear and convincing evidence.[27] No such evidence of fraud was adduced in this case.

Under these circumstances, there is no reason to doubt the validity of the said TCT No. T-490552 issued in favor of spouses Yu. Indeed, as found by the CA, the two Certificates of Title cover two different parcels of land. Using as basis the technical

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[24] *Phil-Ville Development and Housing Corp. v. Bonifacio,* 666 Phil. 325, 340 (2011).

[25] *Rollo,* p. 6.

[26] *Orquiola v. Court of Appeals,* 435 Phil. 323, 330 (2002).

[27] *Alonso v. Cebu Country Club, Inc.,* 632 Phil. 637, 656-657 (2010).

description contained in the respective TCTs of the parties, we agree with the CA's conclusion that TCT No. T-348422 issued in the name of Topacio is entirely distinct from TCT No. T-490552 issued in the name of spouses Yu.

Apart from the Certificates of Title of the lots in question, it is also important to rely on the sketch plans and survey report prepared by an expert witness, which as worded by the CA, provides the necessary expert assistance in the determination of the actual location and metes and bounds of Lot 7402-E claimed by Topacio in relation to Lot 8142 of spouses Yu.

Spouses Yu complain of irregularities of the survey conducted by Engr. Tañola, to wit: (a) that Engr. Tañola did not make an independent survey of the properties; (b) that there were informal settlers that prevented Engr. Tañola from making actual measurements; (c) that Engr. Tañola was not familiar with the property and was merely pointed out to him by Engr. Galang; (d) that he was able to locate Mon. 79 at around 5:00 pm; (e) that no other representatives of the parties were present during the survey, and (f) Engr. Tañola's findings were based on mere photocopies of the subject titles.

Despite this protestation, we cannot fault the CA for giving weight on the result of the survey conducted by Engr. Tañola of the Department of Environment and Natural Resources (DENR)/CENRO. It bears to stress that Engr. Tañola's appointment was ordered by the court upon the initiative of both parties through their Motion for Joint Survey.[28] The survey was also attended by all the parties with the assistance of their counsels and private surveyors.[29] As the survey was open to all parties, it was not Engr. Tañola's fault if the parties failed to send their other representatives to witness the conduct of the survey. And lastly, Engr. Tañola is a government official from DENR/CENRO. His acts as a government official are presumed to be regular, and in the absence of enough evidence

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[28] *Supra* note 2, at 43.

[29] *Id*.

to the contrary, the said legal presumption stands.[30] The irregularities cited by spouses Yu are not sufficient to overcome this presumption.

Thus, the Report of Verification Survey[31] (Survey Report) and the Sketch Plan Sheet 1[32] submitted during the trial below categorically show that the two certificates of title do not cover the same land, thus:

> After computing the actual side-shots of the properties, reference lot, it was verified and ascertained.
>
> That Lot 7402-E, Psd-042106-054870 covered by TCT No. 348422 and registered in the name of Eulogio Topacio married to Alicia Cruz Tolentino with the total area of 9,878 square meters
>
> That Lot 8142-New, Fls-2286, Imus Estate covered by TCT No. 490552 and registered in the name of Sps. Ernesto V. Yu and Elsie Yu with a total area of 606 square meters.
>
> That the Tie Point of both Lot 7402-E, Psd-042106-054870 and Lot 8142-New, Fls-22 Imus Estate is Mon. No. 79, of Imus Estate and found out to be visible, undisturbed and still in con[not legible] position.
>
> That the Tie Point of both Lot 7402-E, Psd-042106-054870 and Lot 8142-New, Fls-2286. Imus Estate and when plotted using their respective Tie Line appeared that they fall apart with each other with the approximate distance of 1,526 meters.[33] (Underlining supplied)

Thus, from the technical description of both TCT No. 348422 and TCT No. 490552, as well as the survey conducted, there is a clear showing of disparity in the location of the properties covered by the two certificates of titles of both parties. In other words, the TCT of Topacio covers an entirely different parcel of land than that of the TCT of spouses Yu. This is not a case

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[30] *Chan v. Court of Appeals,* 359 Phil. 242, 256 (1998).

[31] *Rollo,* p. 410.

[32] *Id.* at 411.

[33] *Id.*

of double registration where two certificates of titles are issued to different persons covering the same land in whole or in part.

Strictly speaking therefore, the existence of TCT No. 490552 in the name of spouses Yu, is not a cloud that prejudiced Topacio's title insofar as it pertains to a different land. Verily, there is no reason to quiet the title of Topacio and invalidate the title of spouses Yu. Thus, we affirm the ruling of the CA that the requisites for an action to quiet title are wanting in this case.

Since the property covered by TCT No. 490552, issued under spouses Yu rightfully belongs to the latter, there is, likewise, no factual or legal basis to order the reconveyance of the property in favor of Topacio as the latter has no better right to, and is not even a prior owner of the property covered by TCT No. 490552. Hence, the action for reconveyance must, likewise, be dismissed.

It appears, however, that in seeking to recover possession of the disputed property, Topacio relied mainly on the last part of the Survey Report which states:

> That based on the actual verification survey the property claimed by Sps. Ernesto V. Yu and Elsie Yu with existing structure and with the total area of 450 square is inside the property of Eulogio A. Topacio, Jr. covered by Lot 7402-E, Psd-042106-054870.[34]

We agree with the findings of the CA that the only plausible explanation for this is that spouses Yu took possession of a lot different from the lot described in their Torrens title.[35] In other words, spouses Yu physically possessed the portion of the lot belonging to Topacio which is not described in their TCT. We have here a case of physical encroachment of a parcel of land belonging to another.

Such being the case, Topacio, as a rightful titled owner of the said disputed parcel of land covered by TCT No. 348422

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[34] *Id*.

[35] See *supra* note 1, at 43.

which was physically encroached by spouses Yu, has the right to seek recovery of its full possession. A person who possesses a title issued under the Torrens system is entitled to all the attributes of ownership including possession.[36]

The records, however, do not show that the spouses Yu was in bad faith when they possessed the disputed portion of Topacio's land. Spouses Yu were honestly convinced of the validity of their right to possess the disputed property on the basis of their valid title to it. Clearly, spouses Yu were in good faith when they built a house and fence on Lot No. 7402-E, since they honestly believed that it was covered by their TCT No. T-490552. Indeed, the essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim and absence of intention to overreach another.[37] Applied to possession, one is considered in good faith if he is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.[38]

Since spouses Yu had introduced improvements on the said portion of land in good faith, Topacio as owner thereof, may exercise his option of choosing between appropriating as his own the structures constructed thereon by spouses Yu by paying the proper indemnity or value; or obliging spouses Yu to pay the price of the said lot if its value is considerably not more than that of the improvements. Otherwise, reasonable rent must be paid by spouses Yu if Topacio did not choose to appropriate the improvements, pursuant to Article 448 of the Civil Code, which provides:

ART. 448. The owner of the land on which anything has been built, sown or planted in **good faith,** shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one

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[36] *Tuazon v. Spouses Isagon,* 768 Phil. 292, 296 (2015).

[37] *Ochoa v. Apeta,* 559 Phil. 650, 656 (2007).

[38] *Id*.

who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof. (Emphasis supplied)

The choice belongs to the owner of the land, a rule that accords with the principle of accession that the accessory follows the principal and not the other way around.[39] Topacio must choose only one. Consequently, the Court deems it proper to delete the award of damages in favor of Topacio.[40] The damages that must be deleted in this case is the claim for compensation of ₱5,000.00 per month reckoned from November 29, 2000, the date of judicial demand.

As to the award of attorney's fees, the same must, likewise, be deleted. While Topacio was compelled to file this suit to vindicate his rights, this by itself will not justify the award of attorney's fees. As held by this Court:

It is settled that the award of attorney's fees is the exception rather than the rule and counsel's fees are not to be awarded every time a party wins suit. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification; its basis cannot be left to speculation or conjecture. Where granted, the court must explicitly state in the body of the decision, and not only in the dispositive portion thereof, the legal reason for the award of attorney's fees.

Moreover, a recent case ruled that "in the absence of stipulation, a winning party may be awarded attorney's fees only in case plaintiff's action or defendant's stand is so untenable as to amount to gross and evident bad faith.[41]

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[39] *Id.* at 657.

[40] *Bernas v. Estate of Felipe Yu Han Yat*, G.R. Nos. 195908 & 195910, August 15, 2018.

[41] *Benedicto v. Villaflores*, 646 Phil. 733, 742 (2010) (Resolution), cited case omitted.

As discussed, no bad faith on the part of spouses Yu obtains in the instant case.

WHEREFORE, the petition for review on *certiorari* is **DENIED** for lack of merit. The March 17, 2014 Decision and the December 22, 2014 Resolution of the Court of Appeals, in CA-G.R. CV No. 100590 are hereby **AFFIRMED** with **MODIFICATION** such that the award of damages, in the form of reasonable compensation for the use, and attorney's fees are **DELETED**. Eulogio A. Topacio, Jr., however, has the right to exercise his option under Article 448 of the Civil Code. No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 217755. September 18, 2019]

ELMER MONTERO, *petitioner, vs.* **SANTIAGO MONTERO, JR. and CHARLIE MONTERO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; DEFINED AS THE POWER AND AUTHORITY OF A COURT TO HEAR, TRY, AND DECIDE A CASE. — Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have

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[*] Acting Chief Justice per Special Order No. 2703 dated September 10, 2019.

authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; *it is conferred by law* and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists.

2. ID.; BATAS PAMBANSA BLG. 129, AS AMENDED; METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, MUNICIPAL TRIAL COURTS AND MUNICIPAL CIRCUIT TRIAL COURTS; HAVE EXCLUSIVE ORIGINAL JURISDICTION IN ALL CIVIL ACTIONS WHICH INVOLVE TITLE TO, OR POSSESSION OF, REAL PROPERTY, OR ANY INTEREST THEREIN WHERE THE ASSESSED VALUE OF THE PROPERTY OR INTEREST THEREIN DOES NOT EXCEED PHP20,000.00 OR, IN CIVIL ACTIONS IN METRO MANILA, WHERE SUCH ASSESSED VALUE DOES NOT EXCEED PHP50,000.00. — According to BP 129, as amended by Republic Act No. (RA) 7691, the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts have *exclusive original jurisdiction* in all civil actions which *involve title to, or possession of, real property, or any interest therein* where the assessed value of the property or interest therein does not exceed ₱20,000.00 or, in civil actions in Metro Manila, where such assessed value does not exceed ₱50,000.00.

3. ID.; ID.; REGIONAL TRIAL COURT; HAS EXCLUSIVE ORIGINAL JURISDICTION IN ALL CIVIL ACTIONS IN WHICH THE SUBJECT OF LITIGATION IS INCAPABLE OF PECUNIARY ESTIMATION. — [I]n all civil actions in which the subject of the litigation is incapable of pecuniary estimation, the Regional Trial Courts shall have exclusive original jurisdiction.

4. ID.; ACTIONS; ACTION INVOLVING TITLE TO REAL PROPERTY; MEANS THE PLAINTIFF'S CAUSE OF ACTION IS BASED ON A CLAIM THAT HE OWNS SUCH PROPERTY OR THAT HE HAS THE LEGAL RIGHTS TO HAVE EXCLUSIVE CONTROL, POSSESSION, ENJOYMENT, OR DISPOSITION OF THE SAME. —

Jurisprudence has held that an action "involving title to real property" means that the plaintiff's cause of action is **based on a claim that he owns such property or that he has the legal rights to have exclusive control, possession, enjoyment, or disposition of the same**.

5. ID.; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER OF A PARTICULAR ACTION IS DETERMINED BY THE PLAINTIFF'S ALLEGATIONS IN THE COMPLAINT AND THE PRINCIPAL RELIEF HE SEEKS IN THE LIGHT OF THE LAW THAT APPORTIONS THE JURISDICTION OF COURTS; CASE AT BAR. — [I]t is a hornbook doctrine that a court's jurisdiction over the subject matter of a particular action is **determined by the plaintiff's allegations in the complaint and the principal relief he seeks** in the light of the law that apportions the jurisdiction of courts. Hence, the Court has held that even if the action is supposedly one for annulment of a deed, the nature of an action is not determined by what is stated in the caption of the complaint but by the allegations of the complaint and the reliefs prayed for. Where the **ultimate objective** of the plaintiffs is **to obtain title to real property**, it should be filed in the proper court having jurisdiction over the assessed value of the property subject thereof. Applying the foregoing in the instant case, the Complaint itself unequivocally states that petitioner Elmer, by filing the said Complaint, seeks to compel respondents Santiago and Charlie "**to respect the right of ownership and possession over the land in question by the heirs of** [**Dominga**.]" In fact, in the instant Petition, petitioner Elmer himself declares that "the narration on the complaint would show that **the petitioner was only establishing his *rightful ownership* over the subject property.**" x x x Further, the Complaint asks that the RTC order respondent Santiago "to reconvey the above-described property of the deceased [Dominga] to her surviving heirs and to demolish his house and any other structures erected therein x x x [and that respondent Charlie] demolish his house which has been constructed in bad faith within a portion of the residential area of the land in question and any other structures erected therein." Hence, more than asking for the nullification of documents, it is crystal clear that petitioner Elmer asserts his alleged right of possession over the subject property by seeking the reconveyance of the subject property. According to jurisprudence, "[i]n a

> number of cases, [the Court has] held that **actions for reconveyance of or for cancellation of title to or to quiet title over real property are actions that fall under the classification of cases that involve** [‘]**title to, or possession of, real property, or any interest therein**.[’]” Hence, the instant case is clearly one involving title to, possession of, and interest in real property. x x x Hence, as the subject matter of petitioner Elmer’s Complaint involves title to, possession of, and interest in real property which indisputably has an assessed value of below ₱20,000.00, the CA was correct in finding that the RTC had no jurisdiction to hear, try and decide the case.

APPEARANCES OF COUNSEL

Public Attorney’s Office for petitioner.
Calpito Law Office for respondents.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an appeal *via* a Petition for Review on *Certiorari*[1] (Petition) filed under Rule 45 of the Rules of Court by petitioner Elmer Montero (petitioner Elmer), assailing the Decision[2] dated November 28, 2014 (assailed Decision) and Resolution[3] dated March 23, 2015 (assailed Resolution) of the Court of Appeals (CA) in CA-G.R. SP No. 133658.

The Facts and Antecedent Proceedings

As culled from the CA’s recital of the facts, the essential facts and antecedent proceedings of the instant case are as follows:

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[1] *Rollo*, pp. 10-29.

[2] *Id*. at 120-130. Penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court) with Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles, concurring.

[3] *Id*. at 147.

[Petitioner Elmer] filed a [C]omplaint[4] for Declaration of Nullity of Affidavit of Adjudication,[5] Cancellation of Tax Declaration No. 5289[6] and OCT No. P-14452,[7] Reconveyance, and Damages with Prayer for Preliminary Injunction [(Complaint)] [before the Regional Trial Court of Bangued, Branch 2 (RTC)] against [respondents] Santiago Montero[,] Jr. [(respondent Santiago)] and Charlie Montero [(respondent Charlie)], and Elpidio Escobar, Teresita Parel, and Atty. Danilo V. Molina, the latter three in their official capacities as Municipal Assessor of Pilar, Abra, Provincial Assessor of Abra, and Registrar of Deeds of Abra, respectively. [The case was docketed as Civil Case No. 3107.] [Petitioner Elmer] averred:

1. Dominga Taeza [(Dominga)] was the second legal wife of Jose Montero. Their children were Alfredo, Pacita, Marcela, and Ernesto. Dominga had one illegitimate son, Federico Taeza. Petitioner [Elmer] was a surviving heir of Alfredo Montero.

2. [Dominga] died intestate and left a parcel of land situated in Pilar, Abra [(subject property)]. Free Patent No. 27941 under [Dominga's] name was issued over the land on January 11, 1939. Different tax declarations in Dominga's name also showed that she was in actual possession of the land. Upon Dominga's death in 1975, her actual, exclusive, open, continuous, and notorious possession of the land was transferred to her successors-in-interest by operation of law.

3. Sometime in 1993, when [petitioner Elmer] was about to pay the real estate tax on the property, he was informed by the Assessors' Office of Pilar, Abra that the same was already transferred in the name of [respondent Santiago] by virtue of an Affidavit of Adjudication dated June 13, 1989 upon the latter's misrepresentation that [respondent Santiago] was an only heir of his father Santiago Montero, Sr. The latter, however, was not related by blood to [Dominga], but was the son of Jose Montero (Dominga's husband) by his first marriage.

4. By virtue of the Affidavit of Adjudication, Tax Declaration No. 417 in [Dominga's] name was cancelled by Tax Declaration No. 5289 in

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[4] *Id*. at 64-69.

[5] *Id*. at 79.

[6] *Id*. at 80-80a.

[7] *Id*. at 60-63.

[respondent Santiago's] name. Original Certificate of Title (OCT) No. P-14452 covering the land was also issued in the latter's name.

5. Sometime in 2002, [respondent Santiago] and his children threatened Ernesto Montero with physical harm to purposely acquire possession of a residential portion of the land, and thereafter, [respondent Charlie] started dumping materials for the house construction over the pleas of Ernesto Montero. [Respondent Santiago], on the other hand, was also renovating his house located within the residential area of the land.

6. [The respondents] wantonly refused to reconvey the property to the surviving heirs of [Dominga].

[Respondents Santiago and Charlie] filed a Motion to Dismiss,[8] alleging that the Regional Trial Court had no jurisdiction over the subject matter of the complaint based on the following grounds:

1. Under Section 19 of Batas Pambansa Blg. 129, regional trial courts shall exercise exclusive original jurisdiction over civil action involving title to, or possession of, real property where the assessed value of the property involved exceeds ₱20,000.00, or in Metro x x x Manila, where the value exceeds ₱50,000.00, except actions for forcible entry and unlawful detainer.

Where the assessed value of the real property does not exceed ₱20,000.00, or ₱50,000.00 in Metro Manila, exclusive original jurisdiction shall be vested in Metropolitan Trial Courts, Municipal Trial Courts and Municipal Trial Courts, pursuant to Section 33 of BP 129.

As alleged in the complaint, the assessed value of the property is ₱3,010.00[,] an amount not exceeding ₱20,000.00., thus, exclusive original jurisdiction over the case is vested with the Municipal Trial Court.

[2.] Section 48 of [Presidential Decree No.] 1529 prohibits collateral attacks on a Torrens title by reason of its indefeasibility. [Petitioner Elmer's] action to annul the title is incidental to his attempt to defend his ownership and possession of the property and constitutes collateral attack on OCT No. P-14452.

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[8] *Id*. at 86-93.

[Petitioner Elmer] filed his Comment/Opposition to the Motion to Dismiss[9] arguing that the principal action is incapable of pecuniary estimation, thus, falling within the jurisdiction of the [RTC]. Also, his attack against the validity of OCT No. P-14452 was allegedly direct and not collateral therein.

By Order[10] dated September 3, 2013, the trial court denied [respondents'] motion to dismiss, *viz*:

x x x x x x x x x

> After a careful analysis of the allegations of the complaint, the court arrives at the conclusion that the cause of action is a direct attack upon the title of the defendants, maintaining that the issuance of OCT No. P-14452 is void ab initio, and considering that the same was issued way back in 1994, that the equitable remedy of reconveyance be ordered.
>
> The "Motion to Dismiss" is therefore denied, because, evidently, the cause of action is incapable of pecuniary estimation.

x x x x x x x x x

[The respondents'] motion for reconsideration[11] was also denied under [the RTC's] Order[12] dated November 8, 2013.

[Hence, respondents Santiago and Charlie filed their Petition[13] dated December 28, 2013 under Rule 65 of the Rules of Court (Rule 65 Petition), alleging that the RTC committed grave abuse of discretion in denying their Motion to Dismiss.][14]

The Ruling of the CA

In the assailed Decision, the CA granted the respondents' Rule 65 Petition. The dispositive portion of the said Decision reads:

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[9] *Id*. at 94-96.

[10] *Id*. at 102. Penned by Judge Corpus B. Alzate.

[11] *Id*. at 53-58.

[12] *Id*. at 59.

[13] *Id*. at 37-51.

[14] *Id*. at 121-124.

ACCORDINGLY, the petition is **GRANTED**. The Orders dated September 3, 2013 and November 8, 2013 are **SET ASIDE**, and the Motion to Dismiss on ground of lack of jurisdiction, **GRANTED**.

SO ORDERED.[15]

In sum, the CA held that "[t]he present action, therefore, is not mainly about the declaration of nullity of [the respondents'] affidavit of adjudication or the title they obtained based on said affidavit. The primary issue for resolution is who between the contending parties is the lawful owner of the land, and thus, entitled to its possession. The action is, therefore, one that *involves title to, or possession of, real property*, jurisdiction over which is determined by the assessed value of the property in question."[16]

The CA further found that "it is undisputed that the assessed value of the property in question is ₱3,010.00, an amount not exceeding ₱20,000.00. Based on [Section 19 of Batas Pambansa No. (BP) 129 or the Judiciary Reorganization Act of 1980, the] jurisdiction over the instant case is with the Metropolitan Trial Courts, Municipal Trial Courts, or Municipal Circuit Trial Courts, as the case may be. Undeniably, the [RTC] does not have jurisdiction over the case and thus, erred in denying [the respondents'] motion to dismiss based on this ground."[17]

Petitioner Elmer filed his Motion for Reconsideration[18] dated January 5, 2015, which was denied by the CA in the assailed Resolution.

Hence, the instant appeal.

Issue

Stripped to its core, the instant Petition presents a singular issue — whether the subject matter of petitioner Elmer's

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[15] *Id*. at 129.

[16] *Id*. at 127.

[17] *Id*. at 128-129.

[18] *Id*. at 131-135.

Complaint involve the title to, possession of, or interest in real property, or is incapable of pecuniary estimation.

The Court's Ruling

The instant Petition is unmeritorious. Petitioner Elmer's Complaint involves the title to, possession of, and interest in real property, *i.e.*, the subject property, which indisputably has an assessed value of below ₱20,000.00. Hence, the RTC had *no jurisdiction* to hear case.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; *it is conferred by law* and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists.[19]

According to BP 129, as amended by Republic Act No. (RA) 7691, the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts have *exclusive original jurisdiction* in all civil actions which *involve title to, or possession of, real property, or any interest therein* where the assessed value of the property or interest therein does not exceed ₱20,000.00 or, in civil actions in Metro Manila, where such assessed value does not exceed ₱50,000.00.[20] On the other hand, in all civil actions in which the subject of the litigation is incapable of pecuniary estimation, the Regional Trial Courts shall have exclusive original jurisdiction.[21]

It is the bone of contention of petitioner Elmer that the Complaint that he filed before the RTC is incapable of pecuniary

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[19] *Foronda-Crystal v. Son*, G.R. No. 221815, November 29, 2017, 847 SCRA 280, 288-289.

[20] Sec. 3.

[21] BP 129, Sec. 1.

estimation as the principal relief that he is seeking is the cancellation of certain documents, *i.e.*, the Affidavit of Adjudication, Tax Declaration No. 5289, and OCT No. P-14452.

The Court is not convinced.

Jurisprudence has held that an action "involving title to real property" means that the plaintiff's cause of action is **based on a claim that he owns such property or that he has the legal rights to have exclusive control, possession, enjoyment, or disposition of the same**.[22]

In connection with the foregoing, it is a hornbook doctrine that a court's jurisdiction over the subject matter of a particular action is **determined by the plaintiff's allegations in the complaint and the principal relief he seeks** in the light of the law that apportions the jurisdiction of courts.[23]

Hence, the Court has held that even if the action is supposedly one for annulment of a deed, the nature of an action is not determined by what is stated in the caption of the complaint but by the allegations of the complaint and the reliefs prayed for. Where the **ultimate objective** of the plaintiffs is **to obtain title to real property**, it should be filed in the proper court having jurisdiction over the assessed value of the property subject thereof.[24]

Applying the foregoing in the instant case, the Complaint itself unequivocally states that petitioner Elmer, by filing the said Complaint, seeks to compel respondents Santiago and Charlie "**to respect the right of ownership and possession over the land in question by the heirs of** [**Dominga**.]"[25]

In fact, in the instant Petition, petitioner Elmer himself declares that "the narration on the complaint would show that **the**

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[22] *Heirs of Generoso Sebe v. Heirs of Veronica Sevilla*, 618 Phil. 395, 407 (2009).

[23] *Id.* at 403.

[24] *Spouses Huguete v. Spouses Embudo*, 453 Phil. 170, 176-177 (2003).

[25] *Rollo*, p. 68; emphasis supplied.

petitioner was only establishing his *rightful ownership* over the subject property."[26]

Simply stated, at the heart of petitioner Elmer's Complaint is his assertion of the right of ownership and possession over the subject property as against respondents Santiago and Charlie. Primarily, petitioner Elmer seeks to establish and confirm his supposed "rightful ownership" over the subject property.

Further, the Complaint asks that the RTC order respondent Santiago "to reconvey the above-described property of the deceased [Dominga] to her surviving heirs and to demolish his house and any other structures erected therein x x x [and that respondent Charlie] demolish his house which has been constructed in bad faith within a portion of the residential area of the land in question and any other structures erected therein."[27]

Hence, more than asking for the nullification of documents, it is crystal clear that petitioner Elmer asserts his alleged right of possession over the subject property by seeking the reconveyance of the subject property. According to jurisprudence, "[i]n a number of cases, [the Court has] held that **actions for reconveyance of or for cancellation of title to or to quiet title over real property are actions that fall under the classification of cases that involve** [']**title to, or possession of, real property, or any interest therein**.[']"[28] Hence, the instant case is clearly one involving title to, possession of, and interest in real property.

Nonetheless, petitioner Elmer makes the argument that "the main objective of the suit is the cancellation of the respondents' title (OCT No. P-14452)"[29] because the other reliefs stated in the Complaint, which include compelling respondents Santiago

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[26] *Id*. at 21; emphasis and italics supplied.

[27] *Id*. at 67-68.

[28] *Heirs of Valeriano Concha, Sr. v. Sps. Lumocso*, 564 Phil. 580, 596 (2007); emphasis and underscoring supplied.

[29] *Rollo*, p. 21.

and Charlie to recognize and respect the alleged right of ownership of petitioner Elmer, are merely incidental and largely depend on the result of the main action for cancellation of the subject OCT.[30]

Petitioner Elmer's argument is erroneous. He had it the other way around. Proverbially, this argument puts the cart before the horse.

In *Heirs of Generoso Sebe v. Heirs of Veronico Sevilla*,[31] which substantially share a similar set of facts with the instant case, the petitioners therein filed an action for annulment of documents, reconveyance and recovery of possession with damages involving real property with an assessed value of less than ₱20,000.00 before the RTC. The said action was dismissed due to lack of jurisdiction.

Completely analogous to the main argument of petitioner Elmer, the petitioners in the aforesaid case similarly argued that "their action is, first, for the declaration of nullity of the documents of conveyance that defendant Sevilla tricked them into signing and, second, for the reconveyance of the certificate of title for the two lots that Sevilla succeeded in getting. The subject of their action is, they conclude, incapable of pecuniary estimation."[32]

In upholding the RTC's dismissal of the action due to lack of jurisdiction, the Court therein explained that "title" is different from a "certificate of title" which is the document of ownership under the Torrens system of registration issued by the government through the Register of Deeds. While "title" gives the owner the right to demand or be issued a "certificate of title," the holder of a certificate of title does not necessarily possess valid title to the real property. The issuance of a certificate of title does not give the owner any better title than what he actually has in law. **Therefore, a plaintiff's action for cancellation**

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[30] *Id*.

[31] *Supra* note 22.

[32] *Id*. at 406-407.

or nullification of a certificate of title may only be a *necessary consequence* of establishing that the defendant lacks title to real property.[33] Hence, the Court therein held that:

> The present action is, therefore, not about the declaration of the nullity of the documents or the reconveyance to the Sebes of the certificates of title covering the two lots. These *would merely follow* after the trial court shall have first resolved the issue of which between the contending parties is the lawful owner of such lots, the one also entitled to their possession, x x x[34] (Underscoring supplied)

Applying the foregoing in the instant case, the primary relief being sought by petitioner Elmer is really the establishment and confirmation of his right of ownership and possession over the subject property as against respondents Santiago and Charlie, considering that the cancellation of the subject OCT would merely follow and would merely be a consequence of the determination of petitioner Elmer's title over the subject property.

Hence, as the subject matter of petitioner Elmer's Complaint involves title to, possession of, and interest in real property which indisputably has an assessed value of below ₱20,000.00, the CA was correct in finding that the RTC had no jurisdiction to hear, try and decide the case.

WHEREFORE, the instant petition is **DENIED**. The assailed Decision dated November 28, 2014 and Resolution dated March 23, 2015 rendered by the Court of Appeals in CA-G.R. SP No. 133658 are **AFFIRMED**.

SO ORDERED.

Carpio,[*] *Acting C.J.* (*Chairperson*), *Reyes, J. Jr., Hernando,*[**] and *Zalameda, JJ.,* concur.

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[33] *Id.* at 407.

[34] *Id.* at 408.

[*] Designated as Acting Chief Justice per Special Order No. 2703 dated September 10, 2019.

[**] Designated additional member per Raffle dated July 29, 2019.

THIRD DIVISION

[G.R. No. 217787. September 18, 2019]

SOCORRO F. ONGKINGCO and MARIE PAZ B. ONGKINGCO, *petitioners, vs.* **KAZUHIRO SUGIYAMA and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; PETITIONERS ARE BARRED BY LACHES FROM RAISING THE ISSUE OF LACK OF WRITTEN AUTHORITY OR APPROVAL OF THE OFFICER TO FILE THE INFORMATION. — In stark contrast to *Garfin, Cudia* and *Maximo*, petitioners failed to raise the lack of written authority or approval of the city prosecutor before the MeTC, the RTC, and the CA without any justifiable reason. No motion to dismiss or motion to quash was filed by petitioners. From the filing of the Informations in 2002, petitioners were silent on why they raised the said issue for the first time before the Court in 2015 via a petition for review on *certiorari*. Defined as the failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier, *laches* is negligence or omission to assert a right within a reasonable length of time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. *Laches* can be imputed against petitioners, because a considerable length of time had elapsed before they raised the said procedural issue, and reasonable diligence should have prompted them to file a motion to dismiss or to quash the Information before the trial court. For the first time after almost 13 years after the filing of the Informations against them, petitioners are now before the Court decrying that the prosecutor who filed the Informations against them had no authority to do so.

2. ID.; ID.; ID.; THE DEFECT IN THE INFORMATIONS DUE TO LACK OF WRITTEN AUTHORITY OR APPROVAL OF THE OFFICER WHO FILED THE INFORMATION CAN BE CURED BEFORE THE ARRAIGNMENT OF THE

ACCUSED BY A SIMPLE MOTION OF THE PROSECUTION TO AMEND THE INFORMATION, THE AMENDMENT AT THIS STAGE OF THE PROCEEDINGS BEING A MATTER OF RIGHT ON THE PART OF THE PROSECUTION, OR FOR THE COURT TO DIRECT THE AMENDMENT THEREOF TO SHOW THE SIGNATURE OR APPROVAL OF THE CITY PROSECUTOR IN FILING THE INFORMATION. — It is also not amiss to state that had petitioners questioned the authority of Prosecutor II Hirang before the trial court, the defect in the Informations could have been cured before the arraignment of the accused by a simple motion of the prosecution to amend the Information; the amendment at this stage of the proceedings being a matter of right on the part of the prosecution, or for the court to direct the amendment thereof to show the signature or approval of the city prosecutor in filing the Information. Moreover, Section 4, Rule 117 of the Revised Rules of Criminal Procedure mandates that if the motion to quash is based on the alleged defect of the complaint or Information which can be cured by an amendment, the court shall order that an amendment be made. Either of these two could have been done to address the issue of lack of written authority or approval of the officer who filed the Information.

3. ID.; ID.; ID.; A PRIOR WRITTEN AUTHORITY OR APPROVAL OF THE PROVINCIAL OR CITY PROSECUTOR OR CHIEF STATE PROSECUTOR OR THE OMBUDSMAN, OR HIS OR HER DEPUTY, IS REQUIRED BEFORE A PUBLIC PROSECUTOR CAN FILE AN INFORMATION; AN INFORMATION FILED BY AN OFFICER WHO HAS NO AUTHORITY TO DO SO WILL PREVENT THE COURT FROM ACQUIRING JURISDICTION OVER THE CASE. — It is significant to note that under the substantive law, a public prosecutor has the authority to file an Information, but before he or she can do so, a prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman, or his or her deputy, is required by a procedural rule, *i.e.*, Section 4, Rule 112 of the Revised Rules of Criminal Procedure. It also bears emphasis that under Section 9, Rule 117 of the same Rule, the ground that the officer who filed the information had no authority to do so, which prevents the court from acquiring

jurisdiction over the case — referred to in *Garfin* and *Cudia* — pertains to lack of jurisdiction over the offense, which is a non-waivable ground. The three other non-waivable grounds for a motion to quash the information are: (1) the facts charged do not constitute an offense; (2) the criminal action or liability has been extinguished; and (3) the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

4. ID.; ID.; ID.; WHERE THE INFORMATION IS FILED BY A PUBLIC PROSECUTOR WITHOUT THE APPROVAL OF THE CITY PROSECUTOR, BUT THE RESOLUTION FOR FILING OF THE INFORMATION BEARS THE APPROVAL OF THE CITY PROSECUTOR, OR HIS OR HER DULY AUTHORIZED DEPUTY, AND SUCH LACK OF APPROVAL IS TIMELY OBJECTED TO BEFORE ARRAIGNMENT, THE COURT MAY REQUIRE THE PUBLIC PROSECUTOR TO HAVE THE SIGNATURE OF THE CITY PROSECUTOR AFFIXED IN THE INFORMATION TO AVOID UNDUE DELAY; HOWEVER, IF THE OBJECTION IS RAISED AFTER ARRAIGNMENT, AT ANY STAGE OF THE PROCEEDING OR EVEN ON APPEAL, THE SAME SHOULD NO LONGER BE A GROUND TO DECLARE THE INFORMATION AS INVALID, BECAUSE IT IS NO LONGER A QUESTION OF JURISDICTION OVER THE CASE. — [I]n instances where the information is filed by an authorized officer, like a public prosecutor, without the approval of the city prosecutor appearing in the information, but the resolution for filing of the information bears the approval of the city prosecutor, or his or her duly authorized deputy, and such lack of approval is timely objected to before arraignment, the court may require the public prosecutor to have the signature of the city prosecutor affixed in the information to avoid undue delay. However, if the objection is raised after arraignment, at any stage of the proceeding or even on appeal, the same should no longer be a ground to declare the information as invalid, because it is no longer a question of jurisdiction over the case. After all, the resolution of the investigating prosecutor attached to the information carries with it the recommendation to file the information and the approval to file the information by the prosecutor, or his or her duly authorized deputy.

5. ID.; ID.; ID.; IF THE INFORMATION IS FILED BY THE PUBLIC PROSECUTOR WITHOUT THE CITY PROSECUTOR'S OR HIS OR HER DEPUTY'S APPROVAL BOTH IN THE INFORMATION AND THE RESOLUTION FOR THE FILING THEREOF, THEN THE COURT SHOULD REQUIRE THE PUBLIC PROSECUTOR TO SEEK THE APPROVAL OF THE CITY PROSECUTOR BEFORE ARRAIGNMENT; OTHERWISE, THE CASE MAY BE DISMISSED ON THE GROUND OF LACK OF AUTHORITY TO FILE THE INFORMATION; HOWEVER, IF THE INFORMATION IS FILED BY AN UNAUTHORIZED OFFICIAL, THE INFORMATION IS INVALID FROM THE VERY BEGINNING, AND THE COURT SHOULD *MOTU PROPRIO* DISMISS THE CASE EVEN WITHOUT ANY MOTION TO DISMISS, AS SUCH INFORMATION CANNOT CONFER UPON THE COURT JURISDICTION OVER THE CASE. — If the information is filed by the public prosecutor without the city prosecutor's or his or her deputy's approval both in the information and, the resolution for the filing thereof, then the court should require the public prosecutor to seek the approval of the city prosecutor before arraignment; otherwise, the case may be dismissed on the ground of lack of authority to file the information under Section 3(d), Rule 117. This ground may be raised at any stage of the proceedings, which may cause the dismissal of the case. If, however, the information is filed by an unauthorized official—not a public prosecutor, like a private complainant, or even public officers who are not authorized by law or rule to file the information—then the information is invalid from the very beginning, and the court should *motu proprio* dismiss the case even without any motion to dismiss, because such kind of information cannot confer upon the court jurisdiction over the case. In this particular case, there is proof in the records that Prosecutor II Hirang filed the Informations with prior authority from the 1st Assistant City Prosecutor.

6. ID.; ID.; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS; PRESENT. — [T]he CA committed reversible error in affirming the conviction of petitioner Marie Paz of violation of four (4) counts of B.P. 22, because the prosecution failed to prove that she received a notice of dishonor. 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. As an exception, questions of fact may be raised if any of the following is present: (1) When there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admission of the parties; (7) **when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion;** (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) **when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record**. Here, the seventh and tenth exceptions are present.

7. CRIMINAL LAW; BOUNCING CHECKS LAW (BATAS PAMBANSA BILANG 22); VIOLATION OF B.P. 22, ESSENTIAL ELEMENTS THEREOF. — To sustain a conviction of violation of B.P. 22, the prosecution must prove beyond reasonable doubt three (3) essential elements, namely: 1. The accused makes, draws or issues any check to apply to account or for value; 2. The accused knows at the time of the issuance that he or she does not have sufficient funds in, or credit with, drawee bank for payment of the check in full upon its presentment; and 3. The check is subsequently dishonored by the drawee bank for insufficiency of funds or credit; or it would have been dishonored for the same reason had not the drawer, without any valid reasons, ordered the bank to stop payment. The presence of the first and third elements is undisputed. However, while the prosecution established the second element, *i.e.*, receipt of the notice of dishonor, with respect to petitioner Socorro, it failed to do so in the case of petitioner Marie Paz.

8. ID.; ID.; THE MERE ACT OF ISSUING A WORTHLESS CHECK IS PUNISHABLE, REGARDLESS OF THE PURPOSE FOR SUCH ISSUANCE, FOR WHAT IS SIGNIFICANT IS THAT THE ACCUSED HAD DELIBERATELY ISSUED THE CHECKS TO COVER ACCOUNTS AND THOSE SAME CHECKS WERE

DISHONORED UPON PRESENTMENT. — It is of no moment that the subject checks were issued as a guarantee and upon the insistence of private complainant Sugiyama. What is significant is that the accused had deliberately issued the checks in question to cover accounts and those same checks were dishonored upon presentment, regardless of the purpose for such issuance. The legislative intent behind the enactment of B.P. 22, as may be gathered from the statement of the bill's sponsor when then Cabinet Bill No. 9 was introduced before the *Batasan Pambansa*, is to discourage the issuance of bouncing checks, to prevent checks from becoming "useless scraps of paper" and to restore respectability to checks, all without distinction as to the purpose of the issuance of the checks. Said legislative intent is made all the more certain when it is considered that while the original text of the bill had contained a proviso excluding from the law's coverage a check issued as a mere guarantee, the final version of the bill as approved and enacted deleted the aforementioned qualifying proviso deliberately to make the enforcement of the act more effective. It is, therefore, clear that the real intention of the framers of B.P. 22 is to make the mere act of issuing a worthless check *malum prohibitum* and, thus, punishable under such law.

9. ID.; ID.; ID.; FOR THE PRESUMPTION OF KNOWLEDGE OF INSUFFICIENT FUNDS TO ARISE, THE PROSECUTION MUST PROVE THAT THE ISSUER HAD RECEIVED A NOTICE OF DISHONOR AND THAT WITHIN FIVE (5) DAYS FROM RECEIPT THEREOF, HE FAILED TO PAY THE AMOUNT OF THE CHECK OR TO MAKE ARRANGEMENTS FOR ITS PAYMENT. — Inasmuch as the second element involves a state of mind of the person making, drawing or issuing the check which is difficult to prove, Section 2 of B.P. 22 creates a *prima facie* presumption of such knowledge x x x. For this presumption to arise, the prosecution must prove the following: (a) the check is presented within ninety (90) days from the date of the check; (b) the drawer or maker of the check receives notice that such check has not been paid by the drawee; and (c) the drawer or maker of the check fails to pay the holder of the check the amount due thereon, or make arrangements for payment in full within five (5) banking days after receiving notice that such check has not been paid by the drawee. In other words, the presumption is brought into existence only after it is proved that the issuer had received a

notice of dishonor and that within five (5) days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment. The presumption or *prima facie* evidence, as provided in this Section, cannot arise if such notice of nonpayment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period.

10. ID.; ID.; REQUISITE NOTICE OF DISHONOR, SATISFIED; THE DEFENSE OF DENIAL SHOULD BE SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, AND THE ACCUSED CANNOT SOLELY RELY ON HER NEGATIVE AND SELF-SERVING NEGATIONS, FOR SUCH DEFENSE CARRIES NO WEIGHT IN LAW AND HAS NO GREATER EVIDENTIARY VALUE THAN THE TESTIMONY OF CREDIBLE WITNESSES WHO TESTIFY ON AFFIRMATIVE MATTERS. — The prosecution was able to establish beyond reasonable doubt the presence of the second element with respect to petitioner Socorro, who received the notice of dishonor through her secretary. x x x. The testimony of La Serna shows that it was the secretary of petitioner Socorro who acknowledged receipt of the demand letter dated March 5, 2002, with the permission of Socorro, who was just in another room of her office. Suffice it to state that when the secretary of Socorro left for a while, came back shortly, and acknowledged receipt of the same demand letter, the requisite receipt of the notice of dishonor was satisfied. Against the affirmative testimony of La Serna, Socorro merely denied knowledge and receipt of the demand letter dated March 5, 2002. It is well settled that the defense of denial is inherently weak and unreliable by virtue of its being an excuse too easy and too convenient for the guilty to make. Denial should be substantiated by clear and convincing evidence, and the accused cannot solely rely on her negative and self-serving negations, for such defense carries no weight in law and has no greater evidentiary value than the testimony of credible witnesses who testify on affirmative matters.

11. ID.; ID.; FAILURE OF THE PROSECUTION TO PROVE THAT THE PERSON WHO ISSUED THE CHECK WAS GIVEN THE REQUISITE NOTICE OF DISHONOR IS A GROUND FOR ACQUITTAL, AS THE GIVING OF THE

WRITTEN NOTICE OF DISHONOR DOES NOT ONLY SUPPLY PROOF FOR THE ELEMENT ARISING FROM THE PRESUMPTION OF KNOWLEDGE THE LAW PUTS UP, BUT ALSO AFFORDS THE OFFENDER DUE PROCESS. — [M]arie Paz cannot be faulted for failing to refute with evidence the allegation against her, because Sugiyama and La Serna hardly testified as to the service of a notice of dishonor upon her. La Serna never mentioned that Marie Paz was, likewise, served with a notice of dishonor. There is also no proof that Socorro's secretary was duly authorized to receive the demand letter on behalf of Marie Paz. When service of notice is an issue, the person alleging that notice was served must prove the fact of service, and the burden of proving notice rests upon the party asserting its existence. Failure of the prosecution to prove that the person who issued the check was given the requisite notice of dishonor is a clear ground for acquittal. It bears emphasis that the giving of the written notice of dishonor does not only supply proof for the element arising from the presumption of knowledge the law puts up, but also affords the offender due process. The law thereby allows the offender to avoid prosecution if she pays the holder of the check the amount due thereon, or makes arrangements for the payment in full of the check by the drawee within five banking days from receipt of the written notice that the check had not been paid. Thus, the absence of a notice of dishonor is a deprivation of petitioner's statutory right.

12. ID.; ID.; A CORPORATE OFFICER WHO ISSUES A BOUNCING CORPORATE CHECK CAN ONLY BE HELD CIVILLY LIABLE WHEN HE OR SHE IS CONVICTED; ONCE ACQUITTED OF THE OFFENSE OF VIOLATING B.P. 22, A CORPORATE OFFICER IS DISCHARGED OF ANY CIVIL LIABILITY ARISING FROM THE ISSUANCE OF THE WORTHLESS CHECK IN THE NAME OF THE CORPORATION HE OR SHE REPRESENTS, WITHOUT REGARD AS TO WHETHER HIS ACQUITTAL WAS BASED ON REASONABLE DOUBT OR THAT THERE WAS A PRONOUNCEMENT BY THE TRIAL COURT THAT THE ACT OR OMISSION FROM WHICH THE CIVIL LIABILITY MIGHT ARISE DID NOT EXIST. — As a general rule, when a corporate officer issues a worthless check in the corporate's name, he or she may be held personally liable for violating a penal statute, *i.e.*, Section 1 of B.P. 22.

However, a corporate officer who issues a bouncing corporate check can only be held civilly liable when he or she is convicted. Conversely, once acquitted of the offense of violating B.P. 22, a corporate officer is discharged of any civil liability arising from the issuance of the worthless check in the name of the corporation he or she represents. This is without regard as to whether his acquittal was based on reasonable doubt or that there was a pronouncement by the trial court that the act or omission from which the civil liability might arise did not exist. Here, petitioner Socorro should be held civilly liable for the amounts covered by the dishonored checks, in light of her conviction of the four (4) charges for violation of B.P. 22 and because she made herself personally liable for the fixed monthly director's dividends in the amount of ₱90,675.00 and the ₱525,000.00 loan with interest, based on the Contract Agreement dated April 6, 2011, the Addendum to Contract Agreement dated February 4, 2003, and the Memorandum of Agreement dated October 2001, which were all formally offered by the prosecution, and admitted in evidence by the trial court. To be sure, petitioner Marie Paz was never shown to have been part of or privy to any of the said agreements; thus, she cannot be held civilly liable for the dishonored checks.

13. COMMERCIAL LAW; CORPORATIONS; THE STOCKHOLDERS AND OFFICERS ARE NOT PERSONALLY LIABLE FOR THE OBLIGATIONS OF THE CORPORATION EXCEPT WHEN THE VEIL OF CORPORATE FICTION IS BEING USED AS A CLOAK OR COVER FOR FRAUD OR ILLEGALITY, OR TO WORK INJUSTICE. — Generally, the stockholders and officers are not personally liable for the obligations of the corporation except only when the veil of corporate fiction is being used as a cloak or cover for fraud or illegality, or to work injustice. Here, petitioner Socorro bound herself personally liable for the monthly director's dividends in the fixed amount of ₱90,675.00 for a period of five (5) years and for the ₱500,000.00 loan, for which she issued the subject four (4) dishonored checks. She then admitted having incurred serious delay in the payment of the said fixed monthly dividends and loan, and further agreed to adopt a new payment schedule of payment therefor, but to no avail.

14. ID.; ID.; ID.; A CORPORATE OFFICER CANNOT HIDE BEHIND THE SEPARATE AND DISTINCT CORPORATE PERSONALITY OF THE CORPORATION JUST TO EVADE AN UNAUTHORIZED CORPORATE OBLIGATION WHICH SHE HERSELF BOUND TO PERSONALLY UNDERTAKE. — Granted that Socorro is authorized to sign checks as corporate officer and authorized signatory of New Rhia Car Services, Inc., there is still no evidence on record that she was duly authorized, through a Board Resolution or Secretary's Certificate, to guarantee a corporate director thereof [Sugiyama] fixed monthly dividends for 5 years, to enter into a loan, and to adopt a new schedule of payment with the same director, all in behalf of the corporation. It would be the height of injustice for the Court to allow Socorro to hide behind the separate and distinct corporate personality of New Rhia Car Services, Inc., just to evade the corporate obligation which she herself bound to personally undertake. It is not amiss to stress that the power to declare dividends under Section 43 of the Corporation Code of the Philippines lies in the hands of the board of directors of a stock corporation, and can be declared only out of its unrestricted retained earnings. Assuming *arguendo* that Socorro was authorized by the Board to fix the monthly dividends of Sugiyama as a corporate director, it appears that she committed an *ultra vires* act because dividends can be declared only out of unrestricted retained earnings of a corporation, which earnings cannot obviously be fixed and pre-determined 5 years in advance.

15. CRIMINAL LAW; BOUNCING CHECKS LAW (BATAS PAMBANSA BILANG 22); VIOLATION OF B.P. 22, PROPER IMPOSABLE PENALTY. — [S]ince Socorro was convicted of four (4) charges of violation of B.P. 22, she must be held liable for the face value of the subject four (4) dishonored checks which is ₱797,025.00, more so because she personally bound herself liable for what appears to be unauthorized corporate obligations. Moreover, the legal interest rate awarded by the MeTC, which was affirmed by both the RTC and the CA, must be modified pursuant to *Nacar v. Gallery Frames*, as follows: 12% *per annum* from the filing of the complaint on April 11, 2002 until June 30, 2013, and 6% *per annum* from July 1, 2013 until finality of this Decision, the legal interest rate is 6% *per annum*; and (3) from finality of this Decision

until fully paid, the legal interest rate is 6% *per annum*. As to the penalty, the Court finds no reason to disturb the fines (with subsidiary imprisonment in case of insolvency) imposed by the MeTC and affirmed by both the RTC and the CA, for being in accord with Section 1 of B.P. 22, which provides for the penalty of "imprisonment of not less than thirty (30) days but not more than one (1) year, or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court."

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

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; A COMPLAINT OR INFORMATION WHICH IS FILED BEFORE A COURT WITHOUT THE PRIOR WRITTEN AUTHORITY OR APPROVAL OF PROVINCIAL OR CITY PROSECUTOR OR CHIEF STATE PROSECUTOR OR THE OMBUDSMAN OR HIS DEPUTY MAY BE QUASHED. —** [S]ection 4, Rule 112 of the 2000 Revised Rules on Criminal Procedure states that a prior written authority or approval is required to file a complaint or information before the courts, to wit: Section 4. *Resolution of investigating prosecutor and its review*. – x x x. **No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.** x x x Consequently, a complaint or information which is filed before a court without the prior written authority or approval of any of the aforementioned officers may be quashed in accordance with Section 3(d), Rule 117 of the same Rules, *viz*.: Section 3. *Grounds*. The accused may move to quash the complaint or information on any of the following grounds: x x x **(d) That the officer who filed the information had no authority to do so**; x x x

2. **ID.; ID.; ID.; FAILURE OF THE ACCUSED TO CLAIM ANY GROUND OF A MOTION TO QUASH BEFORE HE PLEADS TO THE COMPLAINT OR INFORMATION SHALL BE TAKEN AS WAIVER OF ALL OBJECTIONS**

TO IT; EXCEPTIONS; IF THE FILING OFFICER LACKS AUTHORITY, THE INFIRMITY IN THE INFORMATION CONSTITUTES A JURISDICTIONAL DEFECT THAT CANNOT BE CURED. — In the case at bar, the Informations filed against the petitioners were signed and certified by Prosecutor II Hirang, with the statement that these were filed with the approval of the 1st Assistant City Prosecutor (ACP). However, the petitioners did not move to quash the Informations before the trial court. Section 9, Rule 117 of the Rules of Court provides that the failure of the accused to claim any ground of a motion to quash before he pleads to the complaint or information shall be taken as waiver of all objections which are grounds for a motion to quash, except when: (a) that the facts charged do not constitute an offense; (b) that the court trying the case has no jurisdiction over the offense charged; (c) that the criminal action or liability has been extinguished; and (d) that the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent. Noticeably, the lack of authority of the officer who filed the information is not one of the exceptions expressly provided under this section. In *People v. Judge Garfin*, the Court addressed the very same issue of "whether the lack of prior written approval of the city, provincial or chief state prosecutor in the filing of an information is a defect in the information that is waived if not raised as an objection before arraignment." x x x. The Court declared that if the filing officer lacks authority to file the information, the "infirmity in the information constitutes a jurisdictional defect that cannot be cured." Thus, the Court upheld the dismissal of the case for lack of jurisdiction without prejudice to the filing of a new information by an authorized officer.

3. **CRIMINAL LAW; THE BOUNCING CHECKS LAW (BATAS PAMBANSA BLG. 22); VIOLATION OF B.P. BLG. 22, ESSENTIAL ELEMENTS THEREOF. —** To be liable for violation of *Batas Pambansa* (B.P.) Blg. 22, the following essential elements must be present: (1) The making, drawing, and issuance of any check to apply for account or for value; (2) The knowledge of the maker, drawer, or issuer that at the time of issue there were no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its

presentment; and (3) The dishonor of the check by the drawee bank for insufficiency of funds or credit or the dishonor for the same reason had not the drawer, without any valid cause, ordered the drawee bank to stop payment.

4. ID.; ID.; ID.; FOR THE *PRIMA FACIE* PRESUMPTION OF KNOWLEDGE OF INSUFFICIENCY OF FUNDS OR CREDIT TO ARISE, IT MUST BE PROVEN THAT THE ISSUER HAD RECEIVED A WRITTEN NOTICE OF DISHONOR AND FAILED TO PAY THE AMOUNT OF THE CHECK OR ARRANGE FOR ITS PAYMENT WITHIN FIVE DAYS FROM RECEIPT THEREOF. — In the present case, the controversy lies on the second element, which among all elements, is the hardest to prove, given that it entails a state of mind. Section 2 of B.P. Blg. 22 created a *prima facie* presumption of such knowledge x x x. For this presumption to arise, it must be proven that the issuer had received a written notice of dishonor and failed to pay the amount of the check or arrange for its payment within five days from receipt thereof. Without the requisite notice of dishonor, the issuer cannot be presumed to have knowledge of the insufficiency of funds so as to take measures to preempt criminal action.

5. ID.; ID.; ID.; ID.; IT IS NOT ENOUGH FOR THE PROSECUTION TO PROVE THAT A NOTICE OF DISHONOR WAS SENT TO THE ACCUSED, BUT IT MUST ALSO PROVE THAT THE ACCUSED ACTUALLY RECEIVED THE NOTICE OF DISHONOR. — Evidence for the prosecution shows that the demand letter was served to petitioner Socorro Ongkingco's (Socorro) secretary after the latter allegedly secured permission from Socorro. However, said secretary was not presented to testify on whether she was able to personally give the demand letter to Socorro, who denied receipt thereof. This is insufficient compliance with the required notice of dishonor because it is incumbent upon the prosecution to prove that the issuer of the check actually received the notice of dishonor. The factual milieu of this case is not dissimilar from *Chua v. People*, which is instructive on this matter: The Court finds that the second element was not sufficiently established. **Yao testified that the personal secretary of petitioner received the demand letter, yet, said personal secretary was never presented to testify whether she in fact handed the demand letter to petitioner who, from the onset,**

denies having received such letter. It must be borne in mind that it is not enough for the prosecution to prove that a notice of dishonor was sent to the accused. The prosecution must also prove *actual receipt* of said notice, because the fact of service provided for in the law is reckoned from receipt of such notice of dishonor by the accused.

6. ID.; ID.; A CORPORATE OFFICER CANNOT BE HELD CIVILLY LIABLE FOR THE VALUE OF THE DISHONORED CHECKS ONCE ACQUITTED OF THE OFFENSE OF VIOLATING B.P. BLG. 22, WITHOUT REGARD AS TO WHETHER THE ACQUITTAL WAS BASED ON REASONABLE DOUBT OR THAT THERE WAS A PRONOUNCEMENT BY THE TRIAL COURT THAT THE ACT OR OMISSION FROM WHICH THE CIVIL LIABILITY MIGHT ARISE DID NOT EXIST. — As for the petitioner Marie Paz Ongkingco, there is neither allegation nor proof that a notice of dishonor was served to her. Thus, x x x the prosecution failed to prove all the elements of violation of B.P. Blg. 22 beyond reasonable doubt with regard to both petitioners, warranting their acquittal of the offense charged. In connection with this, the petitioners also cannot be held civilly liable for the value of the dishonored checks. As a general rule, "[w]hen a corporate officer issues a worthless check in the corporate name, he may be held personally liable for violating a penal statute." This is in accordance with Section 1 of B.P. Blg. 22 x x x. However, in *Gosiaco v. Ching, et al.*, the Court discharged a corporate officer of any civil liability arising from the B.P. Blg. 22 case against her, on account of her acquittal in the criminal charge. In *Pilipinas Shell Petroleum Corp. v. Duque, et al.*, the Court held that "a corporate officer who issues a bouncing corporate check can only be held civilly liable when he is convicted." It follows that once acquitted of the offense of violating B.P. Blg. 22, a corporate officer is discharged from any civil liability arising from the issuance of the worthless check in the name of the corporation he represents. The Court further declared that, "this is without regard as to whether his acquittal was based on reasonable doubt or that there was a pronouncement by the trial court that the act or omission from which the civil liability might arise did not exist." In this case, it is clear that the petitioners signed the checks as

the corporate officers and authorized signatories of New Rhia Car Services, Inc. (New Rhia). There is neither allegation nor proof that they bound themselves solidarily liable with the obligations of New Rhia. Following the rulings of the Court on the extinguishment of civil liability of corporate officers who are acquitted from the charge of violating B.P. Blg. 22, the petitioners cannot be held liable for the value of the checks issued in payment for New Rhia's obligation.

APPEARANCES OF COUNSEL

Marcelino B. Lomoya for petititoners.
Abrenica Ardiente Abrenica & Partners for private respondent.
Office of the Solicitor General for public respondent.

D E C I S I O N

PERALTA, *J.*:

Petitioners Socorro F. Ongkingco and Marie Paz B. Ongkingco filed a petition for review on *certiorari*, assailing the Decision[1] of the Court of Appeals (*CA*), dated October 24, 2014 in CA-G.R. CR No. 35356, which affirmed *in toto* the Order[2] of the Regional Trial Court (*RTC*). The RTC affirmed *in toto* the Decision[3] of the Metropolitan Trial Court (*MeTC*) which found petitioners guilty of four (4) counts of violation of *Batas Pambansa Bilang* 22 in Criminal Cases Nos. 318339 to 318342. The MeTC ordered petitioners to pay a fine of ₱100,000.00 each for Criminal Case Nos. 318339 to 318341, and ₱200,000.00

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[1] Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Elihu A. Ybañez and Carmelita S. Manahan, concurring; *rollo*, pp. 27-35.

[2] Penned by RTC of Makati City, Branch 59, Presiding Judge Winlove M. Dumayas; *id.* at 66-69.

[3] Penned by MeTC of Makati City, Branch 66, Presiding Judge Josefino A. Subia; *id.* at 39-50.

for Criminal Case No. 318342, and to jointly and severally pay complainant Kazuhiro Sugiyama the face amount of the 4 dishonored checks in the total amount of ₱797,025.00, with interest at 12% *per annum* from the filing of the complaint on April 11, 2002 until the amount is fully paid, and cost of suits.

The facts are as follows:

On April 6, 2001, respondent Kasuhiro[4] Sugiyama entered into a "Contract Agreement"[5] with New Rhia Car Services, Inc. where petitioner Socorro is the President and Chairperson of the Board of Directors, and petitioner Marie Paz B. Ongkingco is a Board Director. Under the Agreement, Sugiyama would receive a monthly dividend of ₱90,675.00 for five years in exchange for his investment of ₱2,200,000.00 in New Rhia Car Services, Inc. To cover Sugiyama's monthly dividends, petitioners issued six (6) checks. The first three (3) checks, dated September 10, 2011, October 10, 2001 and November 10, 2001, were good checks, but the remaining 3 checks bounced for having been draw against insufficient funds.

In a Memorandum of Agreement[6] dated October 2001, Socorro, President and General Manager of New Rhia Car Service, Inc., obtained a loan from Sugiyama, a Director of the same company, amounting to ₱500,000.00 with a five percent (5%) interest for a period of one (1) month. As a guarantee and payment for the said obligation, Socorro issued an Allied Bank Check with No. 0000127109 dated November 30, 2001, amounting to ₱525,000.00. When the check was presented for payment, it was dishonored for having been drawn against insufficient funds, just like the 3 other checks initially issued by petitioners. A formal demand letter dated March 5, 2002 was delivered to Socorro's office, but no payment was made. Thus, Sugiyama filed a complaint against petitioners for four (4) counts of violation of *Batas Pambansa Bilang (B.P.) 22.*

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[4] Also spelled in the records as "Kazuhiro."

[5] Records, pp. 16-17.

[6] *Id.* at 340.

Save for the check numbers, check dates and amounts, the accusatory portions of the four (4) separate Informations docketed as Criminal Case No. 318339,[7] 318340,[8] 318341[9] and 318342,[10] similarly read as follows:

That on or about the 10th day of December 2001 or prior thereto, in the City of Makati Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the officers and authorized signatories of New Rhia Car Services, [Inc.] did then and there willfully, unlawfully and feloniously make out, draw and issue to Kasuhiro Sugiyama, to apply on account or for value the check described below:

Check No. : 0000122834

Drawn Against: Allied Bank

In the Amount of: [₱]90,675.00

Dated/Postdated: December 10, 2001

Payable to: Kasuhiro Sugiyama

[S]aid accused well knowing that at the time of the issue thereof, said account did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of such check upon its presentment, which check when presented for payment within ninety (90) days from the date thereof was subsequently dishonored by the drawee bank for the reason "Draw Against Insufficient Funds" and despite receipt of notice of such dishonor, the accused failed to pay the payee the amount of the said check or to make arrangement for full payment thereof within five (5) banking days after receiving notice.

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[7] *Id.* at 5: Check No. 0000122834 dated December 10, 2001 in the amount of ₱90,675.00.

[8] *Id.* at 2: Check No. 0000122835 dated January 10, 2002 in the amount of ₱90,675.00.

[9] *Id.* at 3: Check No. 0000122836 dated February 10, 2002 in the amount of ₱90,675.00.

[10] *Id.* at 4: Check No 0000127109 dated November 30, 2001 in the amount of ₱525,000.00.

CONTRARY TO LAW.
Makati, 7 August 2002.

[Signed]
EDGARDO G. HIRANG
Prosecutor II

I hereby certify that a preliminary investigation has been conducted in this case; that there is reasonable ground to believe that a crime has been committed and that the accused are probably guilty thereof; that the accused were given a chance to be informed of the complaint and of the evidence submitted against them; that they were given an opportunity to submit controverting evidence; and that this Information is filed with the approval of the 1st Assistant City Prosecutor having been first obtained.

[Signed]
EDGARDO G. HIRANG
Prosecutor II

Both petitioners pleaded not guilty to the four (4) charges. On February 4, 2003, Socorro and Sugiyama executed an "Addendum to Contract Agreement,"[11] agreeing on a new schedule of payment with interests, but the obligation remain unpaid.

On May 20, 2011, the MeTC rendered a Decision[12] finding petitioners guilty of four (4) counts of violation of B.P. 22, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused beyond reasonable doubt, the Court renders judgment finding accused Socorro F. Ongkingco and Marie Paz B. Ongkingco GUILTY of the offense of Violation of B.P. 22 on four (4) counts and hereby sentences them to pay the respective FINE of:

1. ₱100.000.00 for Criminal Case No. 318339;
2. ₱100.000.00 for Criminal Case No. 318340;

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[11] *Rollo*, pp. 241-245.

[12] *Supra* note 3.

3. ₱100.000.00 for Criminal Case No. 318341; and

4. ₱200.000.00 for Criminal Case No. 318342

with subsidiary imprisonment in case of insolvency.

Further, both accused are jointly and severally ORDERED to PAY complainant Kazuhiro Sugiyama the respective face amount of the four (4) dishonored checks under Criminal Case Nos. 318339 to 318341 or a total amount of ₱797,025.00 with interest of 12.0% per annum from the filing of the complaint on April 11, 2002 until the amount is fully paid and cost of suits.

SO ORDERED.[13]

The MeTC ruled that the first and third elements of violation of B.P. 22 are present, namely: the making, drawing and issuance of any check to apply on account or for value, and the subsequent dishonor by the drawee bank for insufficiency of funds or credit. The MeTC found that the subject 4 checks were issued by the accused Socorro and Marie Paz as guarantee payment for the principal loan of ₱525,000.00 and its interest obtained from Sugiyama. The MeTC noted that the accused admitted the issuance of the said checks to Sugiyama in consideration of the loan to New Rhia Car Services, Inc.; thus, the subject checks were issued on account or for value. The MeTC added that when the 4 checks were presented for payment on their respective due dates, they were dishonored by the drawee bank for the reason "Drawn Against Insufficient Funds (DAIF)" as shown on the dorsal portion of the said checks.

As regards the second element which requires that the prosecution must prove the knowledge of the maker, drawer or issuer that at the time of the issue, he or she does not have sufficient funds in, or credit with, the drawee bank for the payment of such check in full upon presentment, the MeTC held:

Prosecution, in the case at bar, had presented witness [Marilou) La Serna [a staff of Sugiyama's private counsel/private prosecutor] who testified that the demand letter dated March 5, 2002 demanding for the payment of the dishonored checks was received by the secretary of accused Socorro as shown by the handwritten signature on the

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[13] *Id.* at 49.

face of the said letter. Said letter was personally delivered to the office of accused Socorro at Amorsolo Mansion, Adelantado Street, Legaspi Village, Makati City. While witness La Serna did not met (sic) personally Socorro at the office, the secretary acknowledged the receipt of the latter upon asking permission from accused Socorro who was inside the room (**TSN dated March 09, 2010, page 7**). Accused Marie Paz, on the other hand, failed to refute the same absent any controverting evidence on her part. Prosecution, thus, was able to prove the receipt of the demand letter/notice of dishonor. Despite receipt of the same, both accused failed to pay the face amount of the dishonored checks or to make arrangement for the full settlement of the same.[14]

The MeTC further ruled that the prosecution was able to prove by preponderance of evidence the civil liability of both Socorro and Marie Paz, thus:

x x x Accused Socorro did not deny the issuance of the subject checks in which she is one of the signatories in favor of the complainant Sugiyama. **(TSN dated September 06, 2010, page 16)**. Accused Marie, for her part, failed to controvert the same. This was supported by the subject checks together with the Contract of Agreement marked as (**Exhibit "B to B-1"**) and Addendum to Contract Agreement marked as (**Exhibit "C to C-4"**). However, upon presentment with the drawee bank for payment on their respective due dates, it was dishonored for the reason "DAIF." Despite verbal demands by complainant Sugiyama and receipt of the written demand letter made by its counsel, accused still failed to pay or make arrangement for the full settlement of the face value of the dishonored checks. Both accused should be held civilly answerable for the face amount of the subject four (4) dishonored checks under Criminal Case Nos. 318339 to 318342 covering a total amount of ₱797,025.00.[15]

Aggrieved, petitioners appealed to the RTC, which affirmed *in toto* the judgment of the MeTC in an Order[16] dated June 28, 2012.

Dissatisfied, petitioners filed a petition for review before the Court of Appeals.

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[14] *Id.* at 47-48. (Emphasis supplied)

[15] *Id.* at 48-49. (Emphasis in the original)

[16] *Id.* at 69.

On October 24, 2014, the CA rendered a Decision denying the petition for review, the *fallo* of which states:

> WHEREFORE, the Petition is hereby DENIED. The Order dated 28 June 2012 of the Regional Trial Court of Makati City, Branch 59, in Criminal Case Nos. 11-2287 & 11-2290 is AFFIRMED.
>
> SO ORDERED.[17]

The CA ruled that petitioners' stance that they cannot be made liable for the value of the dishonored checks as the same were issued without any consideration begs the question. As aptly held by the MeTC and affirmed by the RTC, the subject checks were issued to guarantee the payment or return of the money which Sugiyama gave to petitioners as loan and the corresponding interest. The CA added that jurisprudence abounds that upon issuance of a check, in the absence of evidence to the contrary, it is presumed that the same was issued for a valuable consideration which may consist either in some right, interest, profit or benefit accruing to the party who makes the contract, or some forbearance, detriment, loss or some responsibility, to act, or labor, or service given, suffered or undertaken by the other side.

In rejecting petitioners' theory that they could not be held criminally liable as they merely drew and signed the corporate check as officers of the corporation, the CA pointed out that under paragraph 2, Section 1 of B.P. 22, where the check is drawn by a corporation, company or entity, the person/s who actually signed the check in behalf of such drawer shall be liable. This is because, generally, only natural persons may commit a crime, and a criminal case can only be filed against the officers of a corporation and not against the corporation itself, which can only act through its officers.

The CA also ruled that the prosecution was able to adduce evidence that petitioners issued the subject dishonored checks. The CA pointed out that all petitioner Marie had to offer by

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[17] *Id.* at 35.

way of defense was her mere denial that she was not a signatory thereto, and that she neither testified nor participated in the trial. The CA added that she could not invoke her lack of involvement in the negotiation for the transaction as a defense, as B.P. 22 punishes the mere issuance of a bouncing check, and not the purpose for which the check was issued or in consideration of the terms and conditions relating to its issuance.

With the CA's denial of their motion for reconsideration, petitioners filed a petition for review on *certiorari*, raising the following grounds: (1) the prosecution failed to prove beyond reasonable doubt that Socorro received the notice of dishonor; (2) the prosecution failed to prove that Marie Paz is a signatory to the checks involved in the case; and (3) the "Addendum to Contract Agreement" executed by the parties obliterated the obligation arising from the dishonored checks. Petitioners also raise for the first time that the four (4) Informations filed before the MeTC, Makati City, do not bear the approval of the city prosecutor.

The petition is partly meritorious.

The dissent seeks to grant the petition, reverse and set aside the Decision of the CA, and acquit petitioners on the grounds (1) that the Informations are defective for having been filed without prior approval of the city prosecutor; and (2) that receipt of the notice of dishonor was not proven. The dissent adds that this is without prejudice to the right of private complainant Sugiyama to pursue an independent civil action against New Rhia Car Services, Inc. for the amount of the dishonored checks.

The dissent found that there is no proof in the records that Prosecutor II Edgardo G. Hirang filed the Informations with prior authority from the 1st Assistant City Prosecutor. Assuming that Prosecutor II Hirang was indeed authorized to do so, the Informations would still be defective because an Assistant City Prosecutor is not one of the authorized officers enumerated in Section 4, Rule 112 of the Revised Rules of Criminal Procedure, which reads:

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of **the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy**.[18]

In support of his view, the dissent cites the following cases:

1. *People v. Judge Garfin*,[19] where the Court held that where the Information was filed by an unauthorized officer, the infirmity therein constitutes a jurisdictional defect that cannot be cured;

2. *Cudia v. CA*,[20] where the Court ruled that: (a) when the law requires an Information to be filed by a specified public officer, the same cannot be filed by another; if not, the court does not acquire jurisdiction over the accused and over the subject matter; and (b) the defense of lack of jurisdiction may be raised at any stage of the proceeding; and

3. *Maximo, et al. v. Villapando, Jr.*,[21] where the Court ruled that mere certification in the Information that it was filed with approval of the city prosecutor is not enough; there must be a demonstration that prior written delegation or authority was indeed given by the city prosecutor to the assistant prosecutor to approve the filing of the Information.

The Court holds that the foregoing cases are not applicable. For one, as aptly pointed out by the Office of the Solicitor General, petitioners are barred by estoppel by *laches* for their unjustified delay in raising the issue of lack of prior written authority or approval to file the Informations. For another, the supposed lack of written authority or approval to file the Informations is a waivable ground for a motion to quash information.

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[18] Emphasis added.

[19] 470 Phil. 211, 236 (2004).

[20] 348 Phil. 190, 200 (1998).

[21] 809 Phil. 843, 867 (2017).

In *Garfin*, the Information for violation of the provisions of Republic Act No. 8282, or the "Social Security Law," was filed by a State Prosecutor with prior authority and approval of the Regional State Prosecutor. The Court ruled, however, that nowhere in Presidential Decree (*P.D.*) No. 1275[22] is the regional state prosecutor granted the power to appoint a special prosecutor armed with the authority to file an Information without prior written authority or approval of the city or provincial prosecutor or chief state prosecutor. No directive was issued by the Secretary of Justice to the Regional State Prosecutor to investigate and/or prosecute Social Security System (SSS) cases filed within his territorial jurisdiction, pursuant to Section 15 of P.D. No. 1275 which governs the appointment of special prosecutors. The Court held that, in the absence of a directive from the Secretary of Justice designating the State Prosecutor as Special Prosecutor for SSS cases or a prior written approval of the Information by the provincial or city prosecutor, the Information filed before the trial court was filed by an officer without authority to file the same. As the infirmity in the Information constitutes a jurisdictional defect that cannot be cured, the judge did not err in dismissing the case for lack of jurisdiction.

In *Cudia*, the City Prosecutor of Angeles City filed a motion to dismiss/withdraw the Information, stating that through inadvertence and oversight, the Investigating Panel was misled into hastily filing the Information, despite the fact that the accused was apprehended for illegal possession of unlicensed firearm and ammunition within the jurisdiction of the Provincial Prosecutor of Pampanga. Despite the opposition of the accused, the trial court granted the motion to dismiss. The Court invalidated the Information filed by the city prosecutor because he had no territorial jurisdiction over the place where the said offense was committed, which is within the jurisdiction of the Provincial Prosecutor. The Court held that an Information, when

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[22] "*Reorganizing the Prosecution Staff of the Department of Justice and the Offices of the Provincial and City Fiscals, Regionalizing the Prosecution Service, and Creating the National Prosecution Service*" dated April 11, 1978.

required by law to be filed by a public prosecuting officer, cannot be filed by another, otherwise, the court does not acquire jurisdiction. The Court also stressed that questions relating to lack of jurisdiction may be raised at any stage of the proceeding, and that an infirmity in the Information, such as lack of authority of the officer signing it, cannot be cured by silence, acquiescence or even by express consent.

In *Maximo*, an Information for perjury was filed against the accused before the MeTC of Makati City. A motion to quash Information was filed, alleging that the person who filed the Information had no authority to do so, because the Resolution finding probable cause did not bear the approval of the city prosecutor. It was contended that the Information bears a certification that the filing of the same had the prior authority or approval of the city prosecutor, and that there is a presumption of regularity that prior written authority or approval was obtained in the filing of the Information, despite the non-presentation of the Office Order, which was the alleged basis of the authority. Stressing that there must be a demonstration that prior written delegation or authority was given by the city prosecutor to the assistant city prosecutor to approve the filing of the Information, the Court affirmed the findings of the CA that: (1) the copy of the Office Order, allegedly authorizing the assistant city prosecutor to sign in behalf of the city prosecutor, was not found in the record; (2) said Office Order is not a matter of judicial notice, and a copy thereof must be presented in order for the court to have knowledge of its contents; and (3) in the absence thereof, there was no valid delegation of authority by the city prosecutor to its assistant city prosecutor.

In *Garfin* and *Maximo*, a motion to dismiss and motion to quash, respectively, were filed by the accused on the ground that the Information was filed without prior written authority or approval of the city prosecutor. Meanwhile, in *Cudia*, a motion to dismiss or withdraw Information was also filed by the city prosecutor himself for lack of territorial jurisdiction over the offense.

In stark contrast to *Garfin, Cudia* and *Maximo,* petitioners failed to raise the lack of written authority or approval of the city prosecutor before the MeTC, the RTC, and the CA without any justifiable reason. No motion to dismiss or motion to quash was filed by petitioners. From the filing of the Informations in 2002, petitioners were silent on why they raised the said issue for the first time before the Court in 2015 *via* a petition for review on *certiorari.*

Defined as the failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier, *laches* is negligence or omission to assert a right within a reasonable length of time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[23] *Laches* can be imputed against petitioners, because a considerable length of time had elapsed before they raised the said procedural issue, and reasonable diligence should have prompted them to file a motion to dismiss or to quash the Information before the trial court. For the first time after almost 13 years after the filing of the Informations against them, petitioners are now before the Court decrying that the prosecutor who filed the Informations against them had no authority to do so.

It is also not amiss to state that had petitioners questioned the authority of Prosecutor II Hirang before the trial court, the defect in the Informations could have been cured before the arraignment of the accused by a simple motion of the prosecution to amend the Information; the amendment at this stage of the proceedings being a matter of right on the part of the prosecution, or for the court to direct the amendment thereof to show the signature or approval of the city prosecutor in filing the Information.[24] Moreover, Section 4, Rule 117 of the Revised Rules of Criminal Procedure mandates that if the motion to quash is based on the alleged defect of the complaint or Information which can be cured by an amendment, the court

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[23] *Jandoc-Gatdula v. Dimalanta,* 528 Phil. 839, 854 (2006).

[24] *Maximo, et al. v. Villapando, Jr., supra* note 21, at 880-881.

shall order that an amendment be made. Either of these two could have been done to address the issue of lack of written authority or approval of the officer who filed the Information.

It is significant to note that under the substantive law,[25] a public prosecutor has the authority to file an Information, but before he or she can do so, a prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman, or his or her deputy, is required by a procedural rule, *i.e.*, Section 4, Rule 112 of the Revised Rules of Criminal Procedure. It also bears emphasis that under Section 9, Rule 117 of the same Rule, the ground that the officer who filed the information had no authority to do so, which prevents the court from acquiring jurisdiction over the case — referred to in *Garfin* and *Cudia* — pertains to lack of jurisdiction over the offense, which is a non-waivable ground. The three other non-waivable

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[25] P.D. No. 1275, Section 11. *Provincial Fiscals and City Fiscals; Duties and Functions*. The provincial fiscal or the city fiscal shall:

x x x x x x x x x

(b) Investigate and/or cause to be investigated all charges of crimes, misdemeanors and violations of all penal laws and ordinances within their respective jurisdictions and **have the necessary information or complaint prepared or made against the persons accused.** In the conduct of such investigations he or his assistants shall receive the sworn statements or take oral evidence of witnesses summoned by subpoena for the purpose. (Emphasis and underscoring supplied.)

Republic Act No. 10071 (Prosecution Service Act of 2010), Section 9. *Powers and Functions of the Provincial Prosecutor or City Prosecutor*.— The provincial prosecutor shall:

x x x x x x x x x

(b) Investigate and/or cause to be investigated all charges of crimes, misdemeanors and violations of penal laws and ordinances within their respective jurisdictions, and **have the necessary information or complaint prepared or made and filed against the persons accused.** In the conduct of such investigations[,] he or she or any of his/her assistants shall receive the statements under oath or take oral evidence of witnesses, and for this purpose may by subpoena summon witnesses to appear and testify under oath before him/her, and the attendance or evidence of an absent or recalcitrant witness may be enforced by application to any trial court[.] (Emphasis and underscoring supplied)

grounds for a motion to quash the information are: (1) the facts charged do not constitute an offense; (2) the criminal action or liability has been extinguished; and (3) the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

To recall, the Information in *Garfin* was sought to be dismissed, as it was filed by a special prosecutor with the prior authority and approval of the regional state prosecutor, who was not authorized by the Secretary of Justice to act as special counsel in SSS cases. On the other hand, the Information in *Cudia* was sought to be dismissed or withdrawn, as it was inadvertently filed by the city prosecutor who had no territorial jurisdiction over the place where the offense of illegal possession of firearm was committed. In contrast to *Garfin* and *Cudia* where the officers had no authority under the law to file the Information, the Information for perjury in *Maximo* was filed by the assistant city prosecutor with a certification that it was done so with prior authority or approval of the city prosecutor, but the written authority or delegation given by the city prosecutor to the former, to approve the filing of the information, was not found on record, as pointed out in a motion to quash.

As held in *Villa v. Ibañez*,[26] jurisdiction over the subject matter is conferred by law, while jurisdiction over the case is invested by the act of the plaintiff and attaches upon the filing of the complaint or information. Hence, while a court may have jurisdiction over the subject matter, like a violation of the Social Security Law, it does not acquire jurisdiction over the case itself until its jurisdiction is invoked with the filing of the Information.

Accordingly, in instances where the information is filed by an authorized officer, like a public prosecutor, without the approval of the city prosecutor appearing in the information, but the resolution for filing of the information bears the approval

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[26] 88 Phil. 402 (1951).

of the city prosecutor, or his or her duly authorized deputy, and such lack of approval is timely objected to before arraignment, the court may require the public prosecutor to have the signature of the city prosecutor affixed in the information to avoid undue delay. However, if the objection is raised after arraignment, at any stage of the proceeding or even on appeal, the same should no longer be a ground to declare the information as invalid, because it is no longer a question of jurisdiction over the case. After all, the resolution of the investigating prosecutor attached to the information carries with it the recommendation to file the information and the approval to file the information by the prosecutor, or his or her duly authorized deputy.

If the information is filed by the public prosecutor without the city prosecutor's or his or her deputy's approval both in the information and, the resolution for the filing thereof, then the court should require the public prosecutor to seek the approval of the city prosecutor before arraignment; otherwise, the case may be dismissed on the ground of lack of authority to file the information under Section 3(d), Rule 117. This ground may be raised at any stage of the proceedings, which may cause the dismissal of the case.

If, however, the information is filed by an unauthorized official—not a public prosecutor, like a private complainant, or even public officers who are not authorized by law or rule to file the information—then the information is invalid from the very beginning, and the court should *motu proprio* dismiss the case even without any motion to dismiss, because such kind of information cannot confer upon the court jurisdiction over the case.

In this particular case, there is proof in the records that Prosecutor II Hirang filed the Informations with prior authority from the 1st Assistant City Prosecutor. The records—which include those of the preliminary investigation accompanying the informations filed before the court, as required under Rule 112—dearly show that 1st Assistant City Prosecutor (*ACP*) Jaime A. Adoc, signing in behalf of the City Prosecutor, approved the

filing of four (4) counts of violation of B.P. 22, after it was recommended for approval by the Investigating Prosecutor.

The dispositive portion of the Resolution dated August 7, 2002 of the City Prosecution Office of Makati City says it all:

> WHEREFORE, premises considered, **it is respectfully recommended that respondents be indicted with four (4) counts of violation of Batas Pambansa Bilang 22** and **that the attached Information for that purpose be approved for filing in court.**
>
> Bail Recommended: ₱7,000.00 for each check for each accused.
>
> Makati City, August 7, 2002.
>
> [Signed]
> EDGARDO G. HIRANG
> Prosecutor II
>
> RECOMMENDING APPROVAL:
> [Signed]
> Review Prosecutor
>
> **APPROVED:**
>
> **FOR THE CITY PROSECUTOR**
>
> [Signed]
> JAIME A. ADOC
> 1st Assistant City Prosecutor[27]

Contrary to the dissent that the prior approval came from the 1st Assistant Prosecutor, who had no authority to file an Information on his own, the afore-quoted dispositive clearly indicates that ACP Adoc approved the filing of the case "FOR THE CITY PROSECUTOR" and not on his own. It would be too late at this stage to task the prosecution, and it would amount to denial of due process, to presume that ACP Adoc had no authority to approve the filing of the subject Informations. Had petitioners questioned ACP Adoc's authority or lack of approval by the city prosecutor before the MeTC, and not just for the first time before the Court, the prosecution could have easily presented such authority to approve the filing of the Information.

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[27] Records, p. 10. (Emphasis added)

At any rate, the CA committed reversible error in affirming the conviction of petitioner Marie Paz of violation of four (4) counts of B.P. 22, because the prosecution failed to prove that she received a notice of dishonor. 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. As an exception, questions of fact may be raised if any of the following is present: (1) When there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admission of the parties; (7) **when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion;** (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) **when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record**.[28] Here, the seventh and tenth exceptions are present.

To sustain a conviction of violation of B.P. 22, the prosecution must prove beyond reasonable doubt three (3) essential elements, namely:

1. The accused makes, draws or issues any check to apply to account or for value;
2. The accused knows at the time of the issuance that he or she does not have sufficient funds in, or credit with, drawee bank for payment of the check in full upon its presentment; and
3. The check is subsequently dishonored by the drawee bank for insufficiency of funds or credit; or it would have been dishonored for the same reason had not the

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[28] *Alburo v. People*, 792 Phil. 876, 889 (2016).

drawer, without any valid reasons, ordered the bank to stop payment.

The presence of the first and third elements is undisputed. However, while the prosecution established the second element, *i.e.*, receipt of the notice of dishonor, with respect to petitioner Socorro, it failed to do so in the case of petitioner Marie Paz.

The prosecution identified and formally offered in evidence, and petitioners admitted[29] to have issued the four (4) subject Allied Bank checks as guaranty checks, to wit: Check No. 0000122834 dated December 10, 2011 in the amount of ₱90,675.00 as Exhibits "D" to "D-2"; Check No. 0000122835 dated January 10, 2002 in the amount of ₱90,675.00 as Exhibits "E" to "E-2"; Check No. 0000122836 dated February 10, 2002 in the amount of ₱90,675.00 as Exhibits "F" to "F-2"; and Check No 0000127109 dated November 30, 2001 in the amount of ₱525,000.00 as Exhibits "H" to "H-2". When presented for payment, all said checks were dishonored for having been drawn against insufficient funds. The MeTC admitted in evidence the prosecution's said Exhibits with their sub-markings.[30]

It is of no moment that the subject checks were issued as a guarantee and upon the insistence of private complainant Sugiyama. What is significant is that the accused had deliberately issued the checks in question to cover accounts and those same checks were dishonored upon presentment, regardless of the purpose for such issuance.[31] The legislative intent behind the enactment of B.P. 22, as may be gathered from the statement of the bill's sponsor when then Cabinet Bill No. 9 was introduced before the *Batasan Pambansa*, is to discourage the issuance of bouncing checks, to prevent checks from becoming "useless scraps of paper" and to restore respectability to checks, all without distinction as to the purpose of the issuance of the checks. Said

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[29] Records, pp. 345-346.

[30] *Id.* at 351.

[31] *Ricaforte v. Jurado*, 559 Phil. 97, 114 (2007).

legislative intent is made all the more certain when it is considered that while the original text of the bill had contained a proviso excluding from the law's coverage a check issued as a mere guarantee, the final version of the bill as approved and enacted deleted the aforementioned qualifying proviso deliberately to make the enforcement of the act more effective. It is, therefore, clear that the real intention of the framers of B.P. 22 is to make the mere act of issuing a worthless check *malum prohibitum* and, thus, punishable under such law.[32]

Inasmuch as the second element involves a state of mind of the person making, drawing or issuing the check which is difficult to prove, Section 2 of B.P. 22 creates a *prima facie* presumption of such knowledge, thus:

> SEC. 2. Evidence of knowledge of insufficient funds. — The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.

For this presumption to arise, the prosecution must prove the following: (a) the check is presented within ninety (90) days from the date of the check; (b) the drawer or maker of the check receives notice that such check has not been paid by the drawee; and (c) the drawer or maker of the check fails to pay the holder of the check the amount due thereon, or make arrangements for payment in full within five (5) banking days after receiving notice that such check has not been paid by the drawee.[33] In other words, the presumption is brought into existence only after it is proved that the issuer had received a notice of dishonor and that within five (5) days from receipt

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[32] *Que v. People*, 238 Phil. 155, 160 (1987).

[33] *Alburo v. People, supra* note 28, at 891.

thereof, he failed to pay the amount of the check or to make arrangements for its payment.[34] The presumption or *prima facie* evidence, as provided in this Section, cannot arise if such notice of nonpayment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period.[35]

The prosecution was able to establish beyond reasonable doubt the presence of the second element with respect to petitioner Socorro, who received the notice of dishonor through her secretary. Prosecution witness Marilou La Serna, a legal staff of Sugiyama's private counsel, testified that the letter dated March 5, 2002 demanding payment of the dishonored checks was received by the secretary of petitioner Socorro, as shown by the handwritten signature on the face of the said letter.[36] La Serna clarified on direct examination that (1) it was petitioner Socorro's secretary who acknowledged receipt of the said demand letter with the permission of Socorro, who was in another room of her office; and (2) that there were several calls in the office of Socorro, as well as a time when she went to the law office of Sugiyama's counsel, to inform that she acknowledged receipt of that demand letter:

[Private prosecutor Atty. Abrenica]
Q. How did you come to know the accused Socorro F. Ongkingco, Ms. Witness?
A. When I served a copy of the demand letter sometime in March 2002, a certain secretary who received my letter and informed me that I have to wait for a while because she will go to the room of Ms. Socorro Ongkingco.

Q. You mentioned earlier that you served a demand letter to Ms. Socorro Ongkingco, I'm showing to you a demand letter previously marked as Exhibit "J", what is the relationship of this letter to the demand letter that you mentioned?

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[34] *Id.*

[35] *Id.*

[36] Records, pp. 343-344; Marked as Exhibits "J", "J-1", "J-2", and "J-3".

A: This is the demand letter I served to Ms. Socorro Ongkingco.

Q: Now Ms. Witness, do you remember where is the office of this Ms. Socorro Ongkingco?
A: The office of Ms. Socorro Ongkingco was just a few meters away from our formerly (sic) office and it was located in Amorsolo Mansion along Adelentado Street.

Q: Where is this Adelentado Street?
A: It's just a few meters away from our formerly (sic) office in Palanca Street.

Q: Now Ms. Witness, you mentioned that you personally served a copy of the demand letter to the accused, can you go over this demand letter and show to the Honorable Court the proof of the receipt of this demand letter?

A: It was signed by her secretary.

ATTY. ABRENICA:

Your Honor, can I request for sub-markings, this signature, date and the name of the office staff of Ms. Socorro Ongkingco who received the demand letter as Exhibit "J-1", your Honor.

Q: Now, Ms. Witness, do you know if Ms. Socorro Ongkingco was able to read this demand letter?
A: Yes, Ma'am because when I first served the demand letter, the secretary who received that demand letter informed me that she will go to the room of Ms. Ongkingco and after a few minutes, she came back and Ms. Socorro Ongkingco replied that the secretary has to signed (sic) the receipt of the demand letter.

Q: Now Ms. Witness, other than the statement of the secretary of Ms. Ongkingco, how else did you know that Ms. Socorro Ongkingco actually received the demand letter?
A: There were a (sic) several calls in the office of Ms. Socorro Ongkingco and there was also a time when she went to the office to informed (sic) that she acknowledged receipt of that demand letter.

Q: Where was that office where Ms. Socorro Ongkingco went?
A: Colonade Building along C. Palanca Street.

Q: Whose office is this?
A: That is the law office of Atty. Abrenica.

Q: Did Ms. Socorro Ongkingco actually go to that office?
A: Yes, Ma'am.

Q: How did you know that she was there at the law office?
A: She was there because I met her for the first time [in] the law office to see our client Mr. Kasuhiro Sugiyama but unfortunately, during that time Mr. Kasuhiro Sugiyama is out of the country, she was not able to meet Mr. Kasuhiro Sugiyama and she met Atty. Percy Abrenica and I was the one who assist (sic) her.

x x x x x x x x x.[37]

On cross-examination and re-direct examination, La Serna confirmed that the demand letter was acknowledged receipt by the secretary with the permission of Socorro herself:

CROSS EXAMINATION BY THE
DEFENSE COUNSEL ATTY. ACHAS

x x x x x x x x x

Q: Is this the demand letter Exhibit "J" served by you to Ms. Ongkingco?
A: Yes, Sir.

Q: Where is the signature of Ms. Socorro Ongkingco?
A: Actually Sir, this is the signature of the secretary.

Q: It was acknowledged only by the secretary?
A: Yes, Sir.

Q: Not personally by Mrs. Ongkingco?
A: Yes, Sir.

Q: Actually, during that time when you go to the office of Ms. Ongkingco, the service letter, she did not acknowledge the receipt of this letter?
A: She was not the one who acknowledged the letter.

COURT:
Q: Question from the Court, you have not met personally the accused at the time when you personally served the demand letter?
A: I have not met Your Honor, but then I was informed by the

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[37] TSN, March 9, 2010, pp. 6-8; records, pp. 260-262. (Emphasis added)

secretary that she's going to leave me for a while to go to the room of Ms. Ongkingco if she's going to sign the demand letter.[38]

x x x x x x x x x

RE-DIRECT EXAMINATION

Q: Ms. Witness, why was the secretary who was (sic) the one who received and signed the receipt of this demand letter?

A: **It was the secretary who signed the receipt as per instruction of Ms. Socorro Ongkingco although I haven't met her when I served the demand but the secretary told me that she will just leave me for a while to ask the permission of Ms. Socorro Ongkingco**.[39]

The testimony of La Serna shows that it was the secretary of petitioner Socorro who acknowledged receipt of the demand letter dated March 5, 2002, with the permission of Socorro, who was just in another room of her office. Suffice it to state that when the secretary of Socorro left for a while, came back shortly, and acknowledged receipt of the same demand letter, the requisite receipt of the notice of dishonor was satisfied.

Against the affirmative testimony of La Serna, Socorro merely denied knowledge and receipt of the demand letter dated March 5, 2002. It is well settled that the defense of denial is inherently weak and unreliable by virtue of its being an excuse too easy and too convenient for the guilty to make. Denial should be substantiated by clear and convincing evidence, and the accused cannot solely rely on her negative and self-serving negations, for such defense carries no weight in law and has no greater evidentiary value than the testimony of credible witnesses who testify on affirmative matters.

Socorro could have easily presented, but failed to proffer the testimony of her secretary to dispute the testimony of La Serna. Socorro neither denied that she permitted her secretary to receive the demand letter, nor explained why her secretary

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[38] *Id.* at 10-11; *id.* at 263-264.

[39] *Id.* at 11; *id.* at 264. (Emphasis added)

acknowledged receipt of the said letter while she was in the other room of her office. Socorro also failed to dispute La Serna's claim that there were several calls in the office of Socorro, as well as a time when she went to the law office of Sugiyama's counsel, to inform that she acknowledged receipt of that demand letter. Socorro did not, likewise, ascribe ill-motive on the part of La Serna to testify falsely against her.

In *Chua v. People*,[40] the Court found that the element of knowledge of insufficiency of funds was not established, for failure to prove the petitioner's receipt of a notice of dishonor. In that case, the private respondent testified that the personal secretary of the petitioner received the demand letter, but said secretary was never presented to testify whether she in fact handed the demand letter to petitioner who, from the onset, denies having received such letter. The Court noted that it is not enough for the prosecution to prove that a notice of dishonor was sent to the accused, and that the prosecution must prove *actual receipt* of said notice, because the fact of service provided for in the law is reckoned from the receipt of such notice of dishonor by the accused. The factual circumstances in *Chua* differ from this case, because petitioner Socorro was shown to have permitted her secretary to acknowledge receipt of the demand letter while she was in another room of her office. Socorro also failed to dispute La Serna's claim that she went to the law office of Sugiyama's counsel to inform that she acknowledged receipt of that demand letter.

Meanwhile, Marie Paz cannot be faulted for failing to refute with evidence the allegation against her, because Sugiyama and La Serna hardly testified as to the service of a notice of dishonor upon her. La Serna never mentioned that Marie Paz was, likewise, served with a notice of dishonor. There is also no proof that Socorro's secretary was duly authorized to receive the demand letter on behalf of Marie Paz.

When service of notice is an issue, the person alleging that notice was served must prove the fact of service, and the

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[40] G.R. No. 195248, November 22, 2017, 846 SCRA 74.

burden of proving notice rests upon the party asserting its existence.[41] Failure of the prosecution to prove that the person who issued the check was given the requisite notice of dishonor is a clear ground for acquittal. It bears emphasis that the giving of the written notice of dishonor does not only supply proof for the element arising from the presumption of knowledge the law puts up, but also affords the offender due process.[42] The law thereby allows the offender to avoid prosecution if she pays the holder of the check the amount due thereon, or makes arrangements for the payment in full of the check by the drawee within five banking days from receipt of the written notice that the check had not been paid.[43] Thus, the absence of a notice of dishonor is a deprivation of petitioner's statutory right.[44]

After reviewing the records and applying the foregoing principles to this case, the Court rules that the prosecution has proven beyond reasonable doubt that petitioner Socorro received a notice of dishonor of the four (4) subject checks, but failed to do so in the case of petitioner Marie Paz. Perforce, petitioner Socorro should be convicted of the four (4) charges for violation of B.P. 22, but petitioner Marie Paz should be acquitted of the said charges.

As a general rule, when a corporate officer issues a worthless check in the corporate's name, he or she may be held personally liable for violating a penal statute,[45] *i.e.*, Section 1 of B.P. 22.[46]

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[41] *Alburo v. People, supra* note 28, at 892.

[42] *Resterio v. People*, 695 Phil. 693,705 (2012), citing *Dico v. Court of Appeals*, 492 Phil. 534, 547-548 (2005).

[43] *Id.*

[44] *Alburo v. People, supra* note 28, at 893.

[45] *Chua v. People, supra* note 40.

[46] Section 1. *Checks without sufficient funds.*

x x x x x x x x x

Where the check is drawn by a corporation, company or entity, the person or persons, who actually signed the check in behalf of such drawer shall be liable under this Act.

However, a corporate officer who issues a bouncing corporate check can only be held civilly liable when he or she is convicted.[47] Conversely, once acquitted of the offense of violating B.P. 22, a corporate officer is discharged of any civil liability arising from the issuance of the worthless check in the name of the corporation he or she represents.[48] This is without regard as to whether his acquittal was based on reasonable doubt or that there was a pronouncement by the trial court that the act or omission from which the civil liability might arise did not exist.[49]

Here, petitioner Socorro should be held civilly liable for the amounts covered by the dishonored checks, in light of her conviction of the four (4) charges for violation of B.P. 22 and because she made herself personally liable for the fixed monthly director's dividends in the amount of ₱90,675.00 and the ₱525,000.00 loan with interest, based on the Contract Agreement dated April 6, 2011, the Addendum to Contract Agreement dated February 4, 2003, and the Memorandum of Agreement dated October 2001, which were all formally offered by the prosecution,[50] and admitted in evidence by the trial court.[51] To be sure, petitioner Marie Paz was never shown to have been part of or privy to any of the said agreements; thus, she cannot be held civilly liable for the dishonored checks.

In the Contract of Agreement[52] dated April 6, 2001, Socorro, President and Chairman of the Board of New Rhia Car Services, Inc., undertook and bound herself as obligor, among other matters, to pay Sugiyama, as obligee, Ninety Thousand Six Hundred Seventy-Five Pesos (₱90,675.00) as monthly director's dividends

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[47] *Pilipinas Shell Petroleum Corporation v. Duque, et al.*, 805 Phil. 954, 961 (2017).

[48] *Id.* at 962.

[49] *Id.*

[50] Records, pp. 345-346.

[51] *Id.* at 351.

[52] Exhibits "B" and "B-1", *id.* at 330-331.

for a period of five (5) years, in consideration of his purchase of stock at New Rhia Car Services, Inc. amounting to Two Million and Two Hundred Thousand Pesos (₱2,200,000.00). To recall, the first three (3) Allied Bank checks, dated September 10, 2011, October 10, 2001 and November 10, 2001, were good checks, but the remaining checks bounced for having been draw against insufficient funds, *i.e.*, Check No. 0000122834 dated December 10, 2011 in the amount of ₱90,675.00; Check No. 0000122835 dated January 10, 2002 in the amount of ₱90,675.00; and Check No. 0000122836 dated February 10, 2002 in the amount of ₱90,675.00.

In the Memorandum of Agreement[53] dated October 2001, Socorro, President and General Manager of New Rhia Car Services, Inc., obtained from Sugiyama, a Director of New Rhia Car Services, Inc., a loan amounting to Five Hundred Thousand Pesos (₱500,000.00), with five percent (5%) interest rate for one (1) month. As guarantee and payment for the said obligation, Socorro issued Allied Bank Check No. 0000127109 dated November 30, 2001, amounting to ₱525,000.00.

In the Addendum to Contract Agreement[54] dated February 4, 2003, Socorro admitted having incurred serious delay in the payment of the agreed monthly director's dividend stated in the Contract of Agreement dated April 6, 2001, and agreed to adopt a new payment schedule of the monthly director's dividend, including penalty interest, as well as the ₱500,000.00 loan covered by the Memorandum of Agreement dated October 2001.

Generally, the stockholders and officers are not personally liable for the obligations of the corporation except only when the veil of corporate fiction is being used as a cloak or cover for fraud or illegality, or to work injustice.[55] Here, petitioner Socorro bound herself personally liable for the monthly director's dividends in the fixed amount of ₱90,675.00 for a period of

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[53] Exhibit "G", *id.* at 340.

[54] Exhibits "C" and "C-1", *id.* at 332-333.

[55] *Bautista v. Auto Plus Traders, Inc., et al.*, 583 Phil. 218, 225 (2008).

five (5) years and for the ₱500,000.00 loan, for which she issued the subject four (4) dishonored checks. She then admitted having incurred serious delay in the payment of the said fixed monthly dividends and loan, and further agreed to adopt a new payment schedule of payment therefor, but to no avail.

Granted that Socorro is authorized to sign checks as corporate officer and authorized signatory of New Rhia Car Services, Inc., there is still no evidence on record that she was duly authorized, through a Board Resolution or Secretary's Certificate, to guarantee a corporate director thereof [Sugiyama] fixed monthly dividends for 5 years, to enter into a loan, and to adopt a new schedule of payment with the same director, all in behalf of the corporation. It would be the height of injustice for the Court to allow Socorro to hide behind the separate and distinct corporate personality of New Rhia Car Services, Inc., just to evade the corporate obligation which she herself bound to personally undertake.

It is not amiss to stress that the power to declare dividends under Section 43 of the Corporation Code of the Philippines lies in the hands of the board of directors of a stock corporation, and can be declared only out of its unrestricted retained earnings. Assuming *arguendo* that Socorro was authorized by the Board to fix the monthly dividends of Sugiyama as a corporate director, it appears that she committed an *ultra vires* act because dividends can be declared only out of unrestricted retained earnings of a corporation, which earnings cannot obviously be fixed and pre-determined 5 years in advance.

In fine, since Socorro was convicted of four (4) charges of violation of B.P. 22, she must be held liable for the face value of the subject four (4) dishonored checks which is ₱797,025.00, more so because she personally bound herself liable for what appears to be unauthorized corporate obligations. Moreover, the legal interest rate awarded by the MeTC, which was affirmed by both the RTC and the CA, must be modified pursuant to *Nacar v. Gallery Frames*,[56] as follows: 12% *per annum* from

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[56] 716 Phil. 267, 282-283 (2013).

the filing of the complaint on April 11, 2002 until June 30, 2013, and 6% *per annum* from July 1, 2013 until finality of this Decision, the legal interest rate is 6% *per annum*; and (3) from finality of this Decision until fully paid, the legal interest rate is 6% *per annum*.

As to the penalty, the Court finds no reason to disturb the fines (with subsidiary imprisonment in case of insolvency) imposed by the MeTC[57] and affirmed by both the RTC and the CA, for being in accord with Section 1 of B.P. 22, which provides for the penalty of "imprisonment of not less than thirty (30) days but not more than one (1) year, or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court."

WHEREFORE, the petition for review on *certiorari* is **PARTLY GRANTED**. The Decision dated October 24, 2014 and the Resolution dated March 19, 2015 of the Court of Appeals in CA-G.R. CR No. 35356 are A**FFIRMED with MODIFICATION**: the conviction of petitioner Socorro F. Ongkingco for four (4) counts of violation of *Batas Pambansa Bilang 22*, is **AFFIRMED** and she is **ORDERED** to **PAY** private complainant Kazuhiro Sugiyama the face value of the four (4) dishonored checks in the amount of ₱797,025.00 with the following legal interest rates: twelve percent (12%) *per annum* from the filing of the complaint on April 11, 2002 until June 30,

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[57] WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused beyond reasonable doubt, the Court renders judgment finding accused Socorro F. Ongkingco and Marie Paz B. Ongkingco GUILTY of the offense of Violation of B.P. 22 on four (4) counts and hereby sentences them to pay the respective FINE of:

1. ₱100,000.00 for Criminal Case No. 318339;
2. ₱100,000.00 for Criminal Case No. 318340;
3. ₱100,000.00 for Criminal Case No. 318341; and
4. ₱200,000.00 for Criminal Case No. 318342

with subsidiary imprisonment in case of insolvency.

x x x x x x x x x

2013, and six percent (6%) *per annum* from July 1, 2013 until finality of this Decision; and from finality of this Decision until fully paid, the legal interest rate is six percent (6%) *per annum*, plus costs of suit. Petitioner Marie Paz B. Ongkingco is **ACQUITTED** of the said charges for lack of proof that she received a notice of dishonor.

SO ORDERED.

Leonen and *Inting, JJ.*, concur.

Reyes, A. Jr., J., dissents, see dissenting opinion.

Hernando, J., on leave.

DISSENTING OPINION

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

It is a settled rule that "issues raised for the first time on appeal will not be entertained because to do so would be anathema to the rudiments of fairness and due process."[1] In the interest of justice, however, the Court may consider and resolve issues not raised before the trial court if it is necessary for the complete adjudication of the rights and obligations of the parties.[2]

The *ponencia* holds that the petitioners are barred by *laches* from questioning the lack of authority of Prosecutor II Edgardo G. Hirang (Prosecutor II Hirang) to sign the Informations against the petitioners. Also, the *ponencia* espouses that the lack of written authority or approval to file the Informations is a waivable ground for a motion to quash the Information.

I disagree.

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[1] *Punongbayan-Visitacion v. People*, G.R. No. 194214, January 10, 2018, 850 SCRA 222, 233.

[2] *Rep. of the Phils. through its Trustee, the Privatization and Management Office v. Philippine International Corp.*, 807 Phil. 604, 611 (2017).

The Informations are defective for having been filed without prior approval

To begin with, Section 4, Rule 112 of the 2000 Revised Rules on Criminal Procedure states that a prior written authority or approval is required to file a complaint or information before the courts, to wit:

Section 4. *Resolution of investigating prosecutor and its review.*— If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the *Sandiganbayan* in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy. (Emphasis supplied)

x x x x x x x x x

Consequently, a complaint or information which is filed before a court without the prior written authority or approval of any of the aforementioned officers may be quashed in accordance with Section 3(d), Rule 117 of the same Rules, *viz.*:

Section 3. *Grounds*. The accused may move to quash the complaint or information on any of the following grounds:

x x x x x x x x x

(d) That the officer who filed the information had no authority to do so; (Emphasis supplied)

x x x x x x x x x

In the case at bar, the Informations filed against the petitioners were signed and certified by Prosecutor II Hirang, with the statement that these were filed with the approval of the 1st Assistant City Prosecutor (ACP). However, the petitioners did not move to quash the Informations before the trial court.

Section 9, Rule 117 of the Rules of Court provides that the failure of the accused to claim any ground of a motion to quash before he pleads to the complaint or information shall be taken as waiver of all objections which are grounds for a motion to quash, except when: (a) that the facts charged do not constitute an offense; (b) that the court trying the case has no jurisdiction over the offense charged; (c) that the criminal action or liability has been extinguished; and (d) that the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent. Noticeably, the lack of authority of the officer who filed the information is not one of the exceptions expressly provided under this section.

In *People v. Judge Garfin*,[3] the Court addressed the very same issue of "whether the lack of prior written approval of the city, provincial or chief state prosecutor in the filing of an information is a defect in the information that is waived if not raised as an objection before arraignment."[4] In that case, the accused had already pleaded not guilty to the charge of violation of the Social Security Act of 1997. Subsequently, the accused filed a motion to dismiss on the ground that the Information was filed by a State Prosecutor without the prior written authority or approval of the city prosecutor as required under Section 4, Rule 112 of the Rules of Court. The Court declared that if the

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[3] 470 Phil. 211 (2004).

[4] *Id.* at 228.

filing officer lacks authority to file the information, the "infirmity in the information constitutes a jurisdictional defect that cannot be cured."[5] Thus, the Court upheld the dismissal of the case for lack of jurisdiction without prejudice to the filing of a new information by an authorized officer.

The preceding pronouncement is consistent with *Cudia v. CA (Cudia)*[6] where the issue was whether the plea to an information without asserting the lack of authority of the city prosecutor is deemed as a waiver to object thereto. The accused in that case was arrested in Mabalacat, Pampanga, for illegal possession of firearms and ammunition, after which he was brought to Angeles City where he was detained. The City Prosecutor then filed an Information in the RTC of Angeles City. The Court invalidated the Information filed by the City Prosecutor as he had no authority to file an information outside his territorial jurisdiction. The Court ruled that it is the Provincial Prosecutor, not the City Prosecutor, who should prepare Informations for offenses committed within Pampanga but outside of Angeles City. The accused's plea to an information may be a waiver of all formal objections to the said information but "questions relating to want of jurisdiction may be raised at any stage of the proceeding."[7] The defect in the Information is not curable, not by the accused's silence, acquiescence, or even by express consent. The Court explained:

> An information, when required to be filed by a public prosecuting officer, cannot be filed by another. **It must be exhibited or presented by the prosecuting attorney or someone authorized by law. If not, the court does not acquire jurisdiction.**
>
> Petitioner, however, insists that his failure to assert the lack of authority of the City Prosecutor in filing the information in question is deemed a waiver thereof. As correctly pointed out by the Court of Appeals, petitioner's plea to an information before he filed a motion to quash may be a waiver of all objections to it insofar as formal

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[5] *Id.* at 236.

[6] 348 Phil. 190 (1998).

[7] *Id.* at 200.

objections to the pleadings are concerned. But by clear implication, if not by express provision of the Rules of Court, and by a long line of uniform decisions, questions relating to want of jurisdiction may be raised at any stage of the proceeding. **It is a valid information signed by a competent officer which, among other requisites, confers jurisdiction on the court over the person of the accused (herein petitioner) and the subject matter of the accusation**. In consonance with this view, **an infirmity in the information, such as lack of authority of the officer signing it, cannot be cured by silence, acquiescence, or even by express consent**.[8] (Citations omitted and emphases ours)

Also, contrary to the *ponencia*, there is no proof that the City Prosecutor authorized the 1st ACP to sign the Resolution dated August 7, 2002 on his behalf. In fact, in *Maximo, et al. v. Villapando (Maximo)*,[9] the Information that was filed by an Assistant City Prosecutor bore a certification that the filing of the same had the prior approval of the City Prosecutor. Still, the Court held that a mere certification that the Information was filed with approval is not enough; there must be a demonstration that prior written delegation or authority was indeed given by the City Prosecutor to the Assistant City Prosecutor to approve the filing of the information.

Here, not only was the supposed written approval not presented; the prior approval purportedly came from the 1st ACP, who had no authority to file an Information on his own. If in *Maximo*, the Court had already rejected the certification signed by an Assistant City Prosecutor with the unsubstantiated approval of the City Prosecutor, there is then all the more reason to disregard the certification of Prosecutor II Hirang with the alleged approval of the 1st ACP.

Furthermore, while the present case differs from *Garfin*, *Cudia*, and *Maximo* in that the petitioners did not file a motion to quash the Informations before the trial court, it must be noted that the *ponencia* ignores that the Court consistently held in these

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[8] *Id.* at 200-201.

[9] 809 Phil. 843 (2017).

cases that this kind of defect in the information is incurable by silence, acquiescence or express consent.

Receipt of Notice of Dishonor was not proven

To be liable for violation of *Batas Pambansa* (B.P.) Blg. 22, the following essential elements must be present:

> (1) The making, drawing, and issuance of any check to apply for account or for value;
>
> (2) The knowledge of the maker, drawer, or issuer that at the time of issue there were no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and
>
> (3) The dishonor of the check by the drawee bank for insufficiency of funds or credit or the dishonor for the same reason had not the drawer, without any valid cause, ordered the drawee bank to stop payment.[10]

In the present case, the controversy lies on the second element, which among all elements, is the hardest to prove, given that it entails a state of mind. Section 2 of B.P. Blg. 22 created a *prima facie* presumption of such knowledge, as follows:

> SEC. 2. *Evidence of knowledge of insufficient funds.* The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.

For this presumption to arise, it must be proven that the issuer had received a written notice of dishonor and failed to pay the amount of the check or arrange for its payment within five

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[10] *Alburo v. People*, 792 Phil. 876, 890 (2016).

days from receipt thereof.[11] Without the requisite notice of dishonor, the issuer cannot be presumed to have knowledge of the insufficiency of funds so as to take measures to preempt criminal action.[12]

Evidence for the prosecution shows that the demand letter was served to petitioner Socorro Ongkingco's (Socorro) secretary after the latter allegedly secured permission from Socorro. However, said secretary was not presented to testify on whether she was able to personally give the demand letter to Socorro, who denied receipt thereof. This is insufficient compliance with the required notice of dishonor because it is incumbent upon the prosecution to prove that the issuer of the check actually received the notice of dishonor. The factual milieu of this case is not dissimilar from *Chua v. People*,[13] which is instructive on this matter:

> The Court finds that the second element was not sufficiently established. **Yao testified that the personal secretary of petitioner received the demand letter, yet, said personal secretary was never presented to testify whether she in fact handed the demand letter to petitioner who, from the onset, denies having received such letter. It must be borne in mind that it is not enough for the prosecution to prove that a notice of dishonor was sent to the accused.** The prosecution must also prove *actual receipt* of said notice, because the fact of service provided for in the law is reckoned from receipt of such notice of dishonor by the accused.[14] (Emphasis supplied; italics in the original)

According to the *ponencia*, the factual circumstances in this case differ from that in *Chua* because Socorro permitted her secretary to acknowledge receipt of the demand letter. However, a review of the records would show that the prosecution never

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[11] *Tan v. Philippine Commercial International Bank*, 575 Phil. 485, 495 (2008).

[12] *Lim Lao v. Court of Appeals*, 340 Phil. 679, 702 (1997).

[13] G.R. No. 195248, November 22, 2017, 846 SCRA 74.

[14] *Id.* at 87-88.

showed any proof of such permission or authorization. Again, in *Chua*, it was also the personal secretary of the accused who received the notice of dishonor, but that secretary, similarly to this case, was never presented to testify whether such demand letter was indeed handed to the accused. It is baffling how the similar circumstances in *Chua* and the present case would lead to conflicting conclusions.

As for the petitioner Marie Paz Ongkingco, there is neither allegation nor proof that a notice of dishonor was served to her. Thus, I submit that the prosecution failed to prove all the elements of violation of B.P. Blg. 22 beyond reasonable doubt with regard to both petitioners, warranting their acquittal of the offense charged. In connection with this, the petitioners also cannot be held civilly liable for the value of the dishonored checks.

As a general rule,"[w]hen a corporate officer issues a worthless check in the corporate name, he may be held personally liable for violating a penal statute."[15] This is in accordance with Section 1 of B.P. Blg. 22, which states:

Section 1. *Checks without sufficient funds.*

x x x x x x x x x

Where the check is drawn by a corporation, company or entity, the person or persons, who actually signed the check in behalf of such drawer shall be liable under this Act.

However, in *Gosiaco v. Ching, et al.*,[16] the Court discharged a corporate officer of any civil liability arising from the B.P. Blg. 22 case against her, on account of her acquittal in the criminal charge. In *Pilipinas Shell Petroleum Corp. v. Duque, et al.*,[17] the Court held that "a corporate officer who issues a bouncing corporate check can only be held civilly liable when he is

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[15] *Navarra v. People, et al.*, 786 Phil. 439, 449 (2016).

[16] 603 Phil. 457 (2009).

[17] 805 Phil. 954 (2017).

convicted."[18] It follows that once acquitted of the offense of violating B.P. Blg. 22, a corporate officer is discharged from any civil liability arising from the issuance of the worthless check in the name of the corporation he represents. The Court further declared that, "this is without regard as to whether his acquittal was based on reasonable doubt or that there was a pronouncement by the trial court that the act or omission from which the civil liability might arise did not exist."[19]

In this case, it is clear that the petitioners signed the checks as the corporate officers and authorized signatories of New Rhia Car Services, Inc. (New Rhia). There is neither allegation nor proof that they bound themselves solidarily liable with the obligations of New Rhia. Following the rulings of the Court on the extinguishment of civil liability of corporate officers who are acquitted from the charge of violating B.P. Blg. 22, the petitioners cannot be held liable for the value of the checks issued in payment for New Rhia's obligation.

On a last note, I am not impervious to the length of time and effort, not to mention the distress and the costs, borne by the private complainant in filing this suit against the petitioners. However, it is my considered view that both the defect in the Informations and the failure of the prosecution to prove the receipt by the petitioners of the requisite written notice of dishonor are too crucial to be brushed aside as these constitute sufficient grounds for the petitioners' acquittal. This is without prejudice to the right of the private complainant to pursue a civil action against New Rhia for the amount of the dishonored checks.

ACCORDINGLY, I vote to **GRANT** the Petition.

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[18] *Id.* at 961.

[19] *Id.* at 962.

THIRD DIVISION

[G.R. No. 221771. September 18, 2019]

TERP CONSTRUCTION CORPORATION, *petitioner, vs.* **BANCO FILIPINO SAVINGS AND MORTGAGE BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE LOWER COURTS WILL NOT BE DISTURBED BY THE COURT IF THEY ARE SUPPORTED BY SUBSTANTIAL EVIDENCE; EXCEPTIONS. — As a general rule, only questions of law may be brought in a petition for review on *certiorari* under Rule 45 of the Rules of Court. This Court will not disturb the factual findings of the lower courts if they are supported by substantial evidence. There are, of course, recognized exceptions to this rule, which are provided in *Medina v. Mayor Asistio, Jr.*: (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 petitioners' 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.

2. ID.; ID.; ID.; MERE DISAGREEMENT BETWEEN THE COURT OF APPEALS AND THE TRIAL COURT AS TO THE FACTS OF A CASE DOES NOT OF ITSELF WARRANT THE COURT'S REVIEW OF THE SAME, AS THE COURT OF APPEALS FACTUAL FINDINGS, EVEN

IF CONTRADICTORY TO THOSE OF THE TRIAL COURT, MAY BE BINDING ON THE COURT WHEN THEY ARE SUPPORTED BY SUBSTANTIAL EVIDENCE. — [A] party cannot merely claim that its case falls under any of the exceptions to the general rule. In *Pascual v. Burgos*, this Court explained that the party claiming the exception "must demonstrate and prove" that a review of the factual findings is necessary. Here, petitioner claims that its case falls under the exceptions since the factual findings of the trial court are in conflict with the factual findings of the Court of Appeals. The Court of Appeals' reversal of the trial court's factual findings, however, is not sufficient reason to warrant this Court's review. In *Uniland Resources v. Development Bank of the Philippines*: It bears emphasizing that mere disagreement between the Court of Appeals and the trial court as to the facts of a case does not of itself warrant this Court's review of the same. It has been held that the doctrine that the findings of fact made by the Court of Appeals, being conclusive in nature, are binding on this Court, applies even if the Court of Appeals was in disagreement with the lower court as to the weight of evidence with a consequent reversal of its findings of fact, so long as the findings of the Court of Appeals are borne out by the record or based on substantial evidence. While the foregoing doctrine is not absolute, petitioner has not sufficiently proved that his case falls under the known exceptions. The Court of Appeals is a trier of facts. Its factual findings, even if contradictory to those of the trial court, may be binding on this Court when they are supported by substantial evidence. x x x. In any case, there was no error in the factual findings of the Court of Appeals.

3. **COMMERCIAL LAW; CORPORATIONS; CORPORATE POWERS; EXPRESS ACTUAL AUTHORITY AND EXPRESS IMPLIED AUTHORITY, DISTINGUISHED; CORPORATE OFFICER'S ALLEGEDLY UNAUTHORIZED ACT OF CONTRACTING UNAUTHORIZED OBLIGATION DEEMED RATIFIED WHERE THE CORPORATION REPEATEDLY MADE PAYMENT THEREOF. —** A corporation exercises its corporate powers through its board of directors. This power may be validly delegated to its officers, committees, or agencies. "The authority of such individuals to bind the corporation is generally derived from law, corporate by laws or authorization from the board, either expressly or

impliedly by habit, custom or acquiescence in the general course of business[.]" The authority of the board of directors to delegate its corporate powers may either be: (1) actual; or (2) apparent. Actual authority may be express or implied. Express actual authority refers to the corporate powers expressly delegated by the board of directors. Implied actual authority, on the other hand, "can be measured by his or her prior acts which have been ratified by the corporation or whose benefits have been accepted by the corporation." Petitioner's subsequent act of twice paying the additional interest Escalona committed to during the term of the Margarita Bonds is considered a ratification of Escalona's acts. Petitioner's only defense that they were "erroneous payment[s]" since it never obligated itself from the start cannot stand. Corporations are bound by errors of their own making.

4. ID.; ID.; ID.; ALTHOUGH AN OFFICER OR AGENT ACTS WITHOUT, OR IN EXCESS OF HIS ACTUAL AUTHORITY, IF HE ACTS WITHIN THE SCOPE OF AN APPARENT AUTHORITY WITH WHICH THE CORPORATION HAS CLOTHED HIM BY HOLDING HIM OUT OR PERMITTING HIM TO APPEAR AS HAVING SUCH AUTHORITY, THE CORPORATION IS BOUND THEREBY IN FAVOR OF A PERSON WHO DEALS WITH HIM IN GOOD FAITH IN RELIANCE ON SUCH APPARENT AUTHORITY; CORPORATE OFFICER'S APPARENT AUTHORITY TO TRANSACT ON BEHALF OF THE CORPORATION, HOW ASCERTAINED. — Escalona likewise had apparent authority to transact on behalf of petitioner. In *Yao Ka Sin Trading v. Court of Appeals*: The rule is of course settled that "[a]lthough an officer or agent acts without, or in excess of, his actual authority if he acts within the scope of an apparent authority with which the corporation has clothed him by holding him out or permitting him to appear as having such authority, the corporation is bound thereby in favor of a person who deals with him in good faith in reliance on such apparent authority, as where an officer is allowed to exercise a particular authority with respect to the business, or a particular branch of its continuously and publicly, for a considerable time." Apparent authority is ascertained through: (1) the general manner by which the corporation holds out an officer or agent as having power

to act or, in other words, the apparent authority with which it clothes him to act in general, or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or without the scope of his ordinary powers. Here, respondent relied on Escalona's apparent authority to promise interest payments over and above the guaranteed 8.5%, considering that Escalona was petitioner's then senior vice president. His apparent authority was further demonstrated by petitioner paying respondent what Escalona promised during the Margarita Bonds' term. It should likewise be noted that at the time this Petition was filed, Escalona signed the Verification and Certification as the president of the corporation, signifying that petitioner did not consider his alleged unauthorized acts as fatal to his continued involvement in corporate affairs.

APPEARANCES OF COUNSEL

Manalo & Perez Law Offices for petitioner.
Michael Allan Andres for respondent.

D E C I S I O N

LEONEN, *J.*:

A corporation's repeated payment of an allegedly unauthorized obligation contracted by one (1) of its officers effectively ratifies that corporate officer's allegedly unauthorized act.

This Court resolves a Petition for Review on *Certiorari*[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals,

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

[2] *Id*. at 27-41. The Decision dated October 16, 2014 was penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Vicente S.E. Veloso and Jane Aurora C. Lantion of the Tenth Division, Court of Appeals, Manila.

[3] *Id*. at 24-25. The Resolution dated December 9, 2015 was penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Jane Aurora C. Lantion and Amy C. Lazaro-Javier (now a member of this Court) of the Special Tenth Division, Court of Appeals, Manila.

which reversed and set aside the Regional Trial Court Decision and ordered Terp Construction Corporation (Terp Construction) to pay Banco Filipino Savings and Mortgage Bank (Banco Filipino) interest differentials of ₱18,104,431.33.

Sometime in 1995, Terp Construction planned to develop a housing project called the Margarita Eastville and a condominium called Margarita Plaza. To finance the projects, Terp Construction, Home Insurance Guaranty Corporation, and Planters Development Bank (Planters Bank) agreed to raise funds through the issuance of bonds worth ₱400 million called the Margarita Project Participation Certificates (Margarita Bonds).[4]

The three (3) companies entered into a Contract of Guaranty in which they agreed that Terp Construction would sell the Margarita Bonds and convey the funds generated into an asset pool named the Margarita Asset Pool Formation and Trust Agreement. Planters Bank, as trustee, would be the custodian of the assets in the asset pool with the corresponding obligation to pay the interests and redeem the bonds at maturity. Home Insurance Guaranty Corporation, as guarantor, would pay investors the value of the bond at maturity plus 8.5% interest per year.[5]

Banco Filipino purchased Margarita Bonds for ₱100 million. It asked for additional interest other than the guaranteed 8.5% per annum, based on the letters dated February 3, 1997 and April 8, 1997 written by Terp Construction Senior Vice President Alberto Escalona (Escalona).[6]

Terp Construction began constructing Margarita Eastville and Margarita Plaza. After the economic crisis in 1997, however, it suffered unrealized income and could not proceed with the construction.[7]

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[4] *Id*. at 28.

[5] *Id*.

[6] *Id*. at 28 and 34.

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

When the Margarita Bonds matured, the funds in the asset pool were insufficient to pay the bond holders. Pursuant to the Contract of Guaranty, Planters Bank conveyed the asset pool funds to Home Insurance Guaranty Corporation, which then paid Banco Filipino interest earnings of 8.5% per year. Banco Filipino, however, sent Terp Construction a demand letter dated January 31, 2001, alleging that it was entitled to a 15.5% interest on its investment and that as of July 1, 2001, it was entitled to a seven percent (7%) remaining unpaid interest of ₱18,104,431.33.[8] Terp Construction refused to pay the demanded interest.[9]

Terp Construction filed a Complaint for declaration of nullity of interest, damages, and attorney's fees against Banco Filipino. It alleged that it only agreed to pay the seven percent (7%) additional interest on the condition that all the asset pool funds would be released to Terp Construction for it to pay the additional interest. However, it could not have paid the additional interest since the funds of the asset pool were never released to it.[10]

Banco Filipino, on the other hand, alleged that it was induced into buying the Margarita Bonds after Terp Construction, through its senior vice president's letters, committed to pay 15.5% interest on a ₱50 million bond that Banco Filipino held for a client and 16.5% interest on a ₱50 million bond it held for another client. It alleged that Terp Construction paid the additional interest twice during the Margarita Bonds' holding period.[11]

Banco Filipino claimed that in September 1998, after no payment of interest on the bonds had been made, Planters Bank called on the guaranty of Home Insurance Guaranty Corporation, which only paid 8.5% interest instead of the 15.5% and 16.5% interests that Terp Construction had committed to pay. Thus, it demanded the interest differentials, but to no avail.[12]

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[8] *Id*.

[9] *Id*. at 30.

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

[11] *Id*. at 30-34.

[12] *Id*. at 31.

Banco Filipino further alleged that it investigated the cause of default and found that it was because Terp Construction was unable to finish the Margarita projects. It also found that despite raising ₱400 million from the bonds, only ₱39 million was actually used for the projects. It alleged that as of November 30, 2001, the unpaid interest differentials already amounted to ₱29,932,827.71.[13]

On May 29, 2010, the Regional Trial Court issued a Decision in favor of Terp Construction. It found that there was no evidence to show that Terp Construction was obligated to pay the interest differentials, and that the act of Escalona, the senior vice president, were not binding on the corporation since they were not ratified.[14]

Banco Filipino appealed before the Court of Appeals, arguing, among others, that the two (2) letters sent by Escalona were sufficient evidence to prove that Terp Construction committed to pay the interest differentials.[15]

On October 16, 2014, the Court of Appeals rendered a Decision[16] setting aside the Regional Trial Court Decision and ordering Terp Construction to pay Banco Filipino interest differentials of ₱18,104,431.33.[17]

According to the Court of Appeals, both parties agreed that Terp Construction would pay Banco Filipino additional interest other than the guaranteed 8.5%. The only issue was Terp Construction's allegation that the payment of this additional interest was subject to a condition that the asset pool funds would be released to Terp Construction.[18]

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[13] *Id*.

[14] *Id*. at 33.

[15] *Id*. at 34.

[16] *Id*. at 27-41.

[17] *Id*. at 40.

[18] *Id*. at 36.

The Court of Appeals, however, found that from the February 3, 1997 and April 8, 1997 letters of Terp Construction to Banco Filipino, the obligation to pay 16.5% and 15.5% interest was a pure obligation since the condition alleged was never mentioned.[19]

The Court of Appeals also found unmeritorious Terp Construction's defense that the letters were unauthorized acts of Escalona, its then senior vice president, since his acts were ratified when Terp Construction paid interest differentials twice to Banco Filipino during the Margarita Bonds' holding period.[20]

Terp Construction filed a Motion for Reconsideration, but this was denied in a December 9, 2015 Resolution.[21] Hence, this Petition[22] was filed.

Petitioner submits that while a petition under Rule 45 of the Rules of Court is generally limited to questions of law, its case falls under one (1) of the recognized exceptions since the factual findings of the trial court and the Court of Appeals are conflicting.[23]

Petitioner also argues that it was not liable for the payment of interest differentials since there was no written contract between the parties on any additional payment beyond the stipulated 8.5%.[24] It asserts that Escalona's acts as then senior vice president cannot bind the corporation since he was not authorized to make such commitments.[25] It also points out that

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

[20] *Id*. at 37-40.

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

[22] *Id*. at 3-22. The Comment (*rollo*, pp. 76-87) was filed on May 2, 2016, while the Reply (*rollo*, pp. 95-106) was filed on August 16, 2017. The Philippine Deposit Insurance Corporation, as Banco Filipino's liquidator, filed the Comment on Banco Filipino's behalf.

[23] *Id*. at 7-8, Petition.

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

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

its erroneous payment of additional interest over the agreed interest of 8.5% cannot be interpreted as a ratification of its senior vice president's acts because it was never obligated itself to pay in the first place.[26]

Respondent, on the other hand, counters that conflicting findings of fact between the trial court and the Court of Appeals do not automatically grant petitioner an exception to the general rule in Rule 45 of the Rules of Court.[27] It contends that there was overwhelming evidence that petitioner agreed to pay respondent interest differentials in view of the two (2) letters from Escalona.[28] It maintains that Escalona's acts as then senior vice president were subsequently ratified by the Board of Directors when petitioner paid respondent additional interests during the Margarita Bonds' term.[29]

In rebuttal, petitioner insists that no agreement existed from the very beginning to pay these interest differentials since the two (2) letters of its then senior vice president were merely offers made in a contract's negotiation stage that was not perfected.[30] It maintains that respondent, as a bank accorded with a higher standard of diligence, cannot merely rely on the legal precept of apparent authority to prove the existence of a monetary obligation.[31]

This Court is asked to resolve the issue of whether or not the Court of Appeals erred in ruling that petitioner Terp Construction Corporation expressly agreed to be bound to respondent Banco Filipino Savings Mortgage Bank for additional interest in the bonds it purchased.

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

[27] *Id*. at 82-84, Comment.

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

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

[30] *Id*. at 96, Reply.

[31] *Id*. at 100.

Before resolving this issue, however, this Court must first pass upon the procedural issue of whether or not factual questions are proper in this case in view of the conflicting factual findings of the Regional Trial Court and the Court of Appeals.

The Petition is denied.

As a general rule, only questions of law may be brought in a petition for review on *certiorari* under Rule 45 of the Rules of Court.[32] This Court will not disturb the factual findings of the lower courts if they are supported by substantial evidence.[33] There are, of course, recognized exceptions to this rule, which are provided in *Medina v. Mayor Asistio, Jr.*:[34]

> (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 petitioners' 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.[35] (Citations omitted)

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[32] See RULES OF COURT, Rule 45, Sec. 1.

[33] See *Pascual v. Burgos*, 776 Phil. 167 (2016) [Per J. Leonen, Second Division] citing *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541, 546 (1999) [Per J. Pardo, First Division]; *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002) [Per J. Pardo, First Division]; *Tabaco v. Court of Appeals*, 239 Phil. 485, 490 (1994) [Per J . Bellosillo, First Division]; *Padilla v. Court of Appeals*, 241 Phil. 776, 781 (1988) [Per J. Paras, Second Division]; and *Bank of the Philippine Islands v. Leobrera*, 461 Phil. 461, 469 (2003) [Per J. Ynares-Santiago, Special First Division].

[34] 269 Phil. 225 (1990) [Per J. Bidin, Third Division].

[35] *Id.* at 232.

However, a party cannot merely claim that its case falls under any of the exceptions to the general rule. In *Pascual v. Burgos*,[36] this Court explained that the party claiming the exception "must demonstrate and prove"[37] that a review of the factual findings is necessary.

Here, petitioner claims that its case falls under the exceptions since the factual findings of the trial court are in conflict with the factual findings of the Court of Appeals.[38] The Court of Appeals' reversal of the trial court's factual findings, however, is not sufficient reason to warrant this Court's review. In *Uniland Resources v. Development Bank of the Philippines*:[39]

> It bears emphasizing that mere disagreement between the Court of Appeals and the trial court as to the facts of a case does not of itself warrant this Court's review of the same. It has been held that the doctrine that the findings of fact made by the Court of Appeals, being conclusive in nature, are binding on this Court, applies even if the Court of Appeals was in disagreement with the lower court as to the weight of evidence with a consequent reversal of its findings of fact, so long as the findings of the Court of Appeals are borne out by the record or based on substantial evidence. While the foregoing doctrine is not absolute, petitioner has not sufficiently proved that his case falls under the known exceptions.[40]

The Court of Appeals is a trier of facts. Its factual findings, even if contradictory to those of the trial court, may be binding on this Court when they are supported by substantial evidence. *Pascual* explains:

> The Court of Appeals, acting as an appellate court, is still a trier of facts. Parties can raise questions of fact before the Court of Appeals

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[36] 776 Phil. 167 (2016) [Per *J*. Leonen, Second Division].

[37] *Id*. at 184.

[38] *Rollo*, pp. 7-8, Petition.

[39] 277 Phil. 839 (1991) [Per *J*. Gancayco, First Division].

[40] *Id*. at 844 citing *Alsua-Betts v. Court of Appeals*, 180 Phil. 737 (1979) [Per *J*. Guerrero, *En Banc*] and *Sacay v. Sandiganbayan*, 226 Phil. 496 (1991) [Per *J*. Feria, *En Banc*].

and it will have jurisdiction to rule on these matters. Otherwise, if only questions of law are raised, the appeal should be filed directly before this court.[41]

In any case, there was no error in the factual findings of the Court of Appeals. Petitioner categorically committed itself to pay respondent over and above the guaranteed interest of 8.5% per annum.

Relevant portions of the letters sent by its then Senior Vice President Escalona to respondent, as reproduced in the Court of Appeals Decision read:

> [February 3, 1997 letter]:
>
> . . . We hereby commit a guaranteed floor rate of 16.5% as project proponent. This would commit us to pay the differential interest earnings to be paid by Planters Development Bank as Trustee every 182 days from purchase date of period of three (3) years until maturity date....
>
> [April 8, 1997 letter]:
>
> Terp Construction commit (*sic*) that the yield to you for this investment is 15.5%. The difference between the yield approved by the Project Governing Board will be paid for by, Terp Construction Corp.[42]

Petitioner disavows this obligation and contends that it was merely an unauthorized offer made by one (1) of its officers during the negotiation stage of a contract. Petitioner, however, does not deny that it paid respondent the additional interest during the Margarita Bonds' holding period, not just once, but twice.

A corporation exercises its corporate powers through its board of directors.[43] This power may be validly delegated to its officers,

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[41] *Pascual v. Burgos* , 776 Phil. 167, 187 (2016) [Per *J.* Leonen, Second Division].

[42] *Rollo*, p. 37.

[43] See CORP. CODE, Sec. 23 provides:

SECTION 23. *The board of directors or trustees*.— Unless otherwise provided in this Code, the corporate powers of all corporations formed under

committees, or agencies. "The authority of such individuals to bind the corporation is generally derived from law, corporate bylaws or authorization from the board, either expressly or impliedly by habit, custom or acquiescence in the general course of business[.]"[44]

The authority of the board of directors to delegate its corporate powers may either be: (1) actual; or (2) apparent.[45]

Actual authority may be express or implied. Express actual authority refers to the corporate powers expressly delegated by the board of directors. Implied actual authority, on the other hand, "can be measured by his or her prior acts which have been ratified by the corporation or whose benefits have been accepted by the corporation."[46]

Petitioner's subsequent act of twice paying the additional interest Escalona committed to during the term of the Margarita Bonds is considered a ratification of Escalona's acts. Petitioner's only defense that they were "erroneous payment[s]"[47] since it never obligated itself from the start cannot stand. Corporations are bound by errors of their own making.

Escalona likewise had apparent authority to transact on behalf of petitioner. In *Yao Ka Sin Trading v. Court of Appeals*:[48]

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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 until their successors are elected and qualified. [This provision has since been amended by Section 22 of Republic Act No. 11232 (2019), or the Revised Corporation Code of the Philippines.]

[44] *People's Aircargo and Warehousing Company, Inc. v. Court of Appeals*, 357 Phil. 850, 863 (1998) [Per J. Panganiban, First Division].

[45] *Calubad v. Ricarcen Development Corporation*, G.R. No. 202364, August 30, 2017, 838 SCRA 303, 321 [Per J. Leonen, Third Division].

[46] *Id*.

[47] *Rollo*, p. 15.

[48] 285 Phil. 345 (1992) [Per J. Davide, Jr., Third Division].

The rule is of course settled that "[a]lthough an officer or agent acts without, or in excess of, his actual authority if he acts within the scope of an apparent authority with which the corporation has clothed him by holding him out or permitting him to appear as having such authority, the corporation is bound thereby in favor of a person who deals with him in good faith in reliance on such apparent authority, as where an officer is allowed to exercise a particular authority with respect to the business, or a particular branch of its continuously and publicly, for a considerable time."[49]

Apparent authority is ascertained through:

(1) the general manner by which the corporation holds out an officer or agent as having power to act or, in other words, the apparent authority with which it clothes him to act in general, or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or without the scope of his ordinary powers.[50] (Citation omitted)

Here, respondent relied on Escalona's apparent authority to promise interest payments over and above the guaranteed 8.5%, considering that Escalona was petitioner's then senior vice president. His apparent authority was further demonstrated by petitioner paying respondent what Escalona promised during the Margarita Bonds' term.

It should likewise be noted that at the time this Petition was filed, Escalona signed the Verification and Certification[51] as the president of the corporation, signifying that petitioner did not consider his alleged unauthorized acts as fatal to his continued involvement in corporate affairs.

WHEREFORE, the Petition is **DENIED**. Petitioner Terp Construction Corporation is ordered to pay respondent Banco Filipino Savings and Mortgage Bank the amount of Eighteen Million One Hundred Four Thousand and Four Hundred Thirty-

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[49] *Id*. at 367 citing 19 C.J.S. 458.

[50] *Id*. citing FLETCHER, *CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS*, Vol. 2 (Perm. Ed.), 1969 Revised Volume, 354.

[51] *Rollo*, p. 18.

One Pesos and Thirty-Three Centavos (₱18,104,431.33) with legal interest of twelve percent (12%) to be computed from January 31, 2001 until June 30, 2013 and six percent (6%) from July 1, 2013 until its full satisfaction. The total amount payable shall likewise earn interest at the rate of six percent (6%) per annum from the finality of this Decision until its full satisfaction.[52]

SO ORDERED.

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

Hernando, J., on leave.

SECOND DIVISION

[G.R. No. 222455. September 18, 2019]

GERRY S. MOJICA, *petitioner, vs.* **GENERALI PILIPINAS LIFE ASSURANCE COMPANY, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; EMPLOYMENT; PETITIONER IS AN INDEPENDENT CONTRACTOR, NOT EMPLOYEE OF THE RESPONDENT, AS HE EARNED THROUGH COMMISSIONS AND WAS NOT PAID A FIXED SALARY OR WAGE. — We affirm the ruling of the trial and appellate courts that petitioner is an independent contractor and not an employee of respondent, as clearly stipulated in the contractual agreements entered into between petitioner and respondent. x x x. As an independent contractor, petitioner earned through commissions and was not paid a fixed salary or wage. Petitioner's

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[52] The legal interest originally imposed is modified in view of *Nacar v. Gallery Frames*, 716 Phil. 26 (2013) [Per J. Peralta, *En Banc*].

remuneration on a commission basis is expressly provided under the Unit Manager's Compensation Schedule which was incorporated in the Unit Manager's Agreement, and the Associate Branch Manager's Compensation Schedule which formed part of the Associate Branch Manager's Agreement.

2. ID.; ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP; FOUR-FOLD TEST; POWER OF CONTROL NOT PRESENT; AN INDEPENDENT CONTRACTOR CARRIES ON THE BUSINESS INDEPENDENTLY AND EXERCISES WIDE LATITUDE IN THE CONDUCT OF HIS BUSINESS. — Another factor which militates against the claim of petitioner that he is an employee of respondent is the latter's lack of control over the means and methods employed by petitioner in the performance of his duties. Under the four-fold test in determining the existence of an employer-employee relationship which considers the following elements: (1) the power to hire; (2) the payment of wages; (3) the power to dismiss; and (4) the power to control, the last is the most important factor. As found by the trial court and the Court of Appeals, petitioner carried on the business of his unit independently and exercised wide latitude in the conduct of his business. In fact, as expressly stated in the Unit Manager's Agreement and the Associate Branch Manager's Agreement, petitioner was "free to exercise his own judgment as to time, place and means of soliciting insurance."

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTEREST; THE STIPULATED INTEREST SHALL BE APPLIED ON THE UNPAID OBLIGATION AND NOT THE LEGAL INTEREST, AS IT IS THE LAW BETWEEN THE PARTIES, PROVIDED THE STIPULATED INTEREST IS NOT EXCESSIVE AND *UNCONSCIONABLE*; STIPULATED INTEREST OF 12% *PER ANNUM* APPLIED IN CASE AT BAR. — Under paragraph 2.7 of the Memorandum of Agreement, petitioner is liable to pay 12% interest *per annum* on the net debit balance of the unpaid monthly drawing allowances. Thus, when petitioner resigned, respondent sent him a letter dated 6 March 2003, accepting petitioner's resignation and demanding payment of petitioner's accountability, with 12% interest in case of delay in payment, pursuant to the Memorandum of Agreement. Article 2209 of the Civil Code mandates that when a debtor incurs a delay in obligations to pay a sum of money, the indemnity for damages

shall be the payment of the interest agreed upon. x x x Thus, if the rate of interest is stipulated, such stipulated interest shall apply and not the legal interest, provided the stipulated interest is not excessive and unconscionable. **The stipulated interest shall be applied until full payment of the obligation because that is the law between the parties**. The legal interest only applies in the absence of stipulated interest. In this case, petitioner is liable for the ₱508,631.05 unpaid monthly drawing allowances, which shall earn the stipulated interest of 12% *per annum* from the time of extrajudicial demand on 6 March 2003 until full payment.

4. ID.; ID.; ID.; ABSENT STIPULATED INTEREST, THE PAYABLES SHALL EARN THE PREVAILING LEGAL INTEREST OF 12% *PER ANNUM*. — [A]s found by the trial court and the Court of Appeals, petitioner is also liable for the unpaid Health Maintenance Insurance dues, group premium for hospitalization, and other payables amounting to ₱6,008.12. However, since there is no stipulated interest on these other payables, such amount due shall earn the prevailing legal interest at the rate of 12% *per annum* from the date of extrajudicial demand on 6 March 2003 until 30 June 2013, and thereafter at the rate of 6% *per annum* from 1 July 2013 until full payment. The interest due on the unpaid monthly drawing allowances and unpaid Health Maintenance Insurance dues, group premium for hospitalization, and other payables, accruing as of judicial demand, shall also earn legal interest at the rate of 12% *per annum* from the date of judicial demand until 30 June 2013, and thereafter at the rate of 6% *per annum* from 1 July 2013 until full payment. This is in accord with the provision of the Civil Code under Article 2212, Chapter 2 (Actual or Compensatory Damages) of Title XVIII (Damages), which provides that: "Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point."

CAGUIOA, *J., concurring and dissenting opinion*:

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTEREST; PARTIES ARE FREE TO STIPULATE ON THE PAYMENT OF INTEREST UNDER THE PRINCIPLE OF AUTONOMY OF CONTRACTS; STIPULATED RATE OF 12% *PER ANNUM* APPLIED TO UNPAID MONTHLY

DRAWING ALLOWANCES UNTIL FULL PAYMENT; STIPULATED INTEREST THAT HAS ALREADY ACCRUED ON THE UNPAID MONTHLY DRAWING ALLOWANCES AT THE TIME OF JUDICIAL DEMAND SHALL EARN INTEREST AT LEGAL RATE OF 6% *PER ANNUM*.— Although *unpaid monthly drawing allowances* are **not** loans or forbearances of money, goods, or credit, parties are free to stipulate on the payment of interest under the principle of autonomy of contracts. Hence, x x x the stipulated rate of 12% should be applied until full payment because it is the law between the parties. However, while x x x Article 2212 of the Civil Code applies to the stipulated interest that has already accrued on the *unpaid monthly drawing allowances* at the time of judicial demand (the last paragraph of the dispositive portion), x x x the 6% *per annum* legal rate provided under Article 2209 in relation to Article 2212 of the Civil Code should instead be applied.

2. ID.; ID.; ID.; UNPAID HEALTH MAINTENANCE INSURANCE DUES, GROUP PREMIUM FOR HOSPITALIZATION, AND OTHER PAYABLES ARE NOT SUBJECT TO THE BSP-PRESCRIBED INTEREST RATE OF 12% PER ANNUM AS THEY ARE NOT LOANS OR FORBEARANCES OF MONEY, GOODS, OR CREDIT. — x x x [*U*]*npaid health maintenance insurance dues, group premium for hospitalization, and other payable*s are likewise not loans or forbearances of money, goods, or credit. Hence, it is not subject to the BSP-prescribed interest rate of 12% *per annum.*

3. ID.; ID.; ID.; COMPENSATORY INTEREST; WHERE NO MONETARY INTEREST HAD BEEN STIPULATED BY THE PARTIES, NO ACCRUED MONETARY INTEREST COULD FURTHER EARN COMPENSATORY INTEREST UPON JUDICIAL DEMAND. — x x x [N]o compensatory interest under Article 2212 of the Civil Code (the last paragraph of the dispositive portion) is due on the *unpaid Health Maintenance Insurance dues, group premium for hospitalization, and other payables* as no interest has been stipulated. The Court has held that "Article 2212 contemplates the presence of stipulated or conventional interest, *i.e.*, monetary interest, which has accrued when demand was judicially made. In cases where no monetary interest had been stipulated by the parties, no

accrued monetary interest could further earn compensatory interest upon judicial demand."

APPEARANCES OF COUNSEL

Jose De Luna for petitioner.
Tan Acut Lopez and Pison Law Offices for respondent.

D E C I S I O N

CARPIO, *ACTING C.J.*:

The Case

This petition for review[1] assails the 31 October 2014 Decision[2] and the 13 January 2016 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 96584. The Court of Appeals affirmed with modification the 24 June 2010 Decision[4] of the Regional Trial Court, Branch 141, Makati City in Civil Case No. 04-1111.

The Facts

Petitioner Gerry S. Mojica (petitioner) used to be a Unit Manager and Associate Branch Manager of respondent Generali Pilipinas Life Assurance Company, Inc. (respondent). Respondent is a domestic corporation engaged in the business of life and non-life insurance.

On 28 September 2004, respondent filed a Complaint[5] for collection of sum of money and damages against petitioner. Respondent sought to collect from petitioner the amount of ₱514,639.17 representing unpaid monthly drawing allowances,

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 38-51. Penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta concurring.

[3] *Id*. at 35-36.

[4] *Id*. at 165-171-A. Penned by Judge Maryann E. Corpus-Mañalac.

[5] *Id*. at 57-61.

unpaid Health Maintenance Insurance dues, group insurance premium and other liabilities, plus legal interest from the time of demand, exemplary damages, attorney's fees and litigation expense.

Respondent alleged that petitioner used to be its agent, designated as Unit Manager and later as Associate Branch Manager. Respondent maintains that under the Unit Manager's Agreement[6] and Associate Branch Manager's Agreement,[7] executed by the parties on 19 January 2001 and 24 January 2002, respectively, respondent hired petitioner as an agent and independent contractor, and not as employee of respondent. Furthermore, under the Memorandum of Agreement[8] executed by the parties on 19 February 2001, petitioner was granted a ₱40,000 monthly drawing allowance as an advance against the Unit Manager's total expected future override commission earnings. According to respondent, the monthly drawing allowance was a start-up fund for petitioner to organize, develop and maintain a strong branch sales force. The ₱40,000 monthly drawing allowance, which was later reduced to ₱30,000, was however subject to meeting monthly validation requirements and performance standards and must be repaid by petitioner over a period of eighteen (18) months or less by applying his override commission earnings and commissions on personal business. Respondent claimed that petitioner failed to comply with the premium production and manpower requirements and did not reach the targets which he himself set in his business plan. As a consequence, respondent stopped releasing monthly drawing allowances to petitioner, in accordance with the Memorandum of Agreement.

Respondent averred that petitioner resigned on 1 March 2003 without paying the monthly drawing allowances he advanced. On 6 March 2003, respondent sent petitioner a letter,[9] accepting

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[6] *Id*. at 65-70.

[7] *Id*. at 78-83.

[8] *Id*. at 93-96.

[9] *Id*. at 101.

petitioner's resignation and demanding payment of petitioner's outstanding obligations. Respondent alleged that from January 2001 to July 2002, petitioner drew a total of ₱660,000 from his monthly drawing allowances, but only repaid ₱151,368.95, leaving a balance of ₱508,631.05. In addition, petitioner had unpaid Health Maintenance Insurance dues, group insurance premium for hospitalization, and other payables amounting to ₱6,008.12.

On the other hand, petitioner asserted that he was an employee of respondent, and not its agent or independent contractor. Petitioner insisted that as an employee of respondent, he had no obligation to liquidate the monthly drawing allowances and that he was entitled to the ₱40,000 monthly drawing allowance which was not even enough to cover all his expenses in maintaining respondent's branch office and the recruitment of insurance agents for respondent. Although petitioner admitted receiving the monthly drawing allowances, petitioner claimed that he had no obligation to return such allowances since these were his salaries as full time unit manager.

Petitioner also questioned the trial court's jurisdiction and maintained that the National Labor Relations Commission (NLRC) has jurisdiction because of the existence of an employer-employee relationship between the parties. Thus, petitioner moved to dismiss the case for lack of jurisdiction,[10] which the trial court denied for lack of merit.[11] The Court of Appeals, in a Decision[12] dated 23 June 2009, affirmed the trial court's Orders denying petitioner's motion to dismiss. The Court of Appeals, in ruling that the trial court has jurisdiction and not the Labor Arbiter, held that the "three (3) agreements executed by the parties clearly stipulated that petitioner in the performance of his duties shall be considered an independent contractor and not an employee."[13]

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[10] *Id*. at 113-117.

[11] *Id*. at 118-122. Orders dated 7 July 2008 and 31 October 2008.

[12] *Id*. at 139-143. Penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court), with Associate Justices Pampio A. Abarintos and Romeo F. Barza concurring.

[13] *Id*. at 141.

The Ruling of the Trial Court

On 24 June 2010, the trial court rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff, ordering the defendant:
>
> 1. To pay the plaintiff the amount of Php514,639.17 as unpaid monthly drawing allowances he advanced, HMI membership dues, group premium and other liabilities, plus an interest computed at 6% per annum from the finality of this decision until fully paid;
>
> 2. To pay the plaintiff the amount of Php70,000 as attorney's fees and costs of suit.
>
> SO ORDERED.[14]

The trial court held that the contractual relationship between the parties as expressly provided in the Unit Manager's Agreement, Associate Branch Manager's Agreement, and the Memorandum of Agreement shows that petitioner was respondent's agent and not its employee. Under the Memorandum of Agreement, the monthly drawing allowance given to petitioner was subject to meeting monthly validation requirements. Thus, petitioner should have liquidated the allowances he received for a period of 18 months from February 2001 to July 2002 under the terms specified in the Memorandum of Agreement. Petitioner himself testified that he failed to liquidate the allowances he received. The trial court ruled that petitioner failed to prove that he satisfied the monthly validation requirements specified in the Memorandum of Agreement, and he is thus obliged to repay respondent the monthly drawing allowances he advanced.

The Ruling of the Court of Appeals

The Court of Appeals denied petitioner's appeal, and affirmed with modification the 24 June 2010 Decision of the trial court.

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[14] *Id.* at 171-171-A.

The dispositive portion of the Decision of the Court of Appeals reads:

> WHEREFORE, the decision of the Regional Trial Court of Makati City, Branch 141 in Civil Case No. 04-1111 dated June 24, 2010 is AFFIRMED with MODIFICATION. Defendant-appellant Gerry Santos Mojica shall pay plaintiff-appellee Generali Pilipinas Life Assurance Company, Inc. the principal amount of Five Hundred Fourteen Thousand Six Hundred Thirty-Nine and 17/100 Pesos (₱514,639.17), with interest of six (6%) percent delete [sic] per annum on the aforestated principal obligation computed from March-6, 2003 until finality of this decision and additional interest of six [percent] (6%) per annum on the judgment award until the same is satisfied. The award of attorney's fees is DELETED.
>
> SO ORDERED.[15]

The Court of Appeals held that petitioner is an independent contractor under the terms of the Unit Manager's Agreement and the Associate Branch Manager's Agreement. The Court of Appeals found that petitioner was authorized to: (1) recruit insurance agents with whom he exercised the right to assign, control and supervise the performance of activities necessary for the operations of his unit; (2) supply his branch with the necessary tools, with an option of availing the monthly drawing allowance to meet his requirement pursuant to the terms of the Memorandum of Agreement; and (3) choose how to conduct his business. Furthermore, petitioner received commissions and not salaries or wages. Thus, the Court of Appeals concluded that petitioner is an independent contractor and not an employee of respondent.

On the issue of unliquidated allowances, the Court of Appeals found that petitioner continuously availed of the monthly drawing allowance from January 2001 until July 2002 in the total amount of ₱660,000, as evidenced by various documents marked as exhibits and by petitioner's own admission that he availed of the monthly drawing allowance. On 6 March 2003, respondent

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[15] *Id*. at 50.

sent a letter to petitioner, accepting petitioner's resignation and demanding that he pay his outstanding balance. Petitioner was able to offset the amount of ₱151,368.95, leaving an unpaid balance of ₱508,631.05. Based on the records, the Court of Appeals concurred with the finding of the trial court that petitioner's outstanding obligation to respondent amounted to ₱514,639.17.

The Court of Appeals, however, modified the reckoning period for the application of the 6% *per annum* interest rate on the principal obligation. The Court of Appeals ruled that the interest rate of 6% *per annum* should be applied on the unpaid amount of ₱514,639.17 from the date of extrajudicial demand on 6 March 2003. Furthermore, if the obligation is still not satisfied, an interest rate of 6% *per annum* shall also be applied from the date of finality of the judgment until the total amount awarded is fully paid.

The Court of Appeals also deleted the attorney's fees awarded by the trial court for lack of factual, legal, and equitable justification.

The Issue

Whether the Court of Appeals erred in ruling that petitioner is an independent contractor and in ordering petitioner to refund the monthly drawing allowances he received.

The Court's Ruling

We find the petition without merit. We affirm the ruling of the Court of Appeals with modification.

Petitioner is an Independent Contractor

We affirm the ruling of the trial and appellate courts that petitioner is an independent contractor and not an employee of respondent, as clearly stipulated in the contractual agreements entered into between petitioner and respondent.

The Unit Manager's Agreement dated 19 January 2001 pertinently provides:

xxx. **The Unit Manager in performance of his duties defined herein, shall be considered an independent contractor and not an employee**

of Generali Pilipinas. He shall be free to exercise his own judgment as to time, place and means of soliciting insurance. However, he shall observe and conform to all existing rules and regulations as may be prescribed by Generali Pilipinas from time to time. Under no circumstance shall the Unit Manager (and/or his agents) be considered employees of Generali Pilipinas.[16] (Emphasis supplied)

The Associate Branch Manager's Agreement dated 24 January 2002 similarly states:

The Branch Manager, in the performance of his duties defined herein, shall be considered an independent contractor and not an employee of Generali Pilipinas. He shall be free to exercise his own judgment as to time, place and means of soliciting insurance. However, he shall observe and conform to all existing rules and regulations as may be prescribed by Generali Pilipinas from time to time.[17] (Emphasis supplied)

As an independent contractor, petitioner earned through commissions and was not paid a fixed salary or wage. Petitioner's remuneration on a commission basis is expressly provided under the Unit Manager's Compensation Schedule[18] which was incorporated in the Unit Manager's Agreement, and the Associate Branch Manager's Compensation Schedule[19] which formed part of the Associate Branch Manager's Agreement.

The Unit Manager's Compensation Schedule provides:

II. BASIC REMUNERATION

Override Commissions

Policy Year	% of Basic Commissions*
1	20%
2	10%
3	10%

[16] *Id*. at 65.

[17] *Id*. at 78.

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

[19] *Id*. at 84-85.

* Applies to all plans except Five-Year Renewable & Convertible Term, Decreasing Term and other Bancassurance plans. Also excludes the Unit Manager's commissions on his personal businesses.

x x x x x x x x x[20]

Similarly, the Associate Branch Manager's Compensation Schedule provides:

II. BASIC COMPENSATION

Override Commissions

Policy Year	% of Basic Commissions*
1	8%
2	4%
3	4%

* Applies to all Plans except 5-Year Renewable & Convertible Term, Decreasing Term and other Bancassurance Plans. Also excludes the Branch Manager's commissions on his personal business.

x x x x x x x x x[21]

Another factor which militates against the claim of petitioner that he is an employee of respondent is the latter's lack of control over the means and methods employed by petitioner in the performance of his duties. Under the four-fold test in determining the existence of an employer-employee relationship which considers the following elements: (1) the power to hire; (2) the payment of wages; (3) the power to dismiss; and (4) the power to control, the last is the most important factor.[22] As found by the trial court and the Court of Appeals, petitioner carried on the business of his unit independently and exercised wide latitude in the conduct of his business. In fact, as expressly stated in the Unit Manager's Agreement and the Associate Branch

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[20] *Id*. at 71.

[21] *Id*. at 84.

[22] *Royale Homes Marketing Corp. v. Alcantara*, 739 Phil. 744 (2014); *AFP Mutual Benefit Association, Inc. v. NLRC*, 334 Phil. 712 (1997).

Manager's Agreement, petitioner was "free to exercise his own judgment as to time, place and means of soliciting insurance."

Besides, the Decision of the Court of Appeals dated 23 June 2009, affirming the Orders of the trial court which declared petitioner an independent contractor and not an employee of respondent, has already attained finality.[23]

Unpaid Monthly Drawing Allowances

On the issue of the unpaid monthly drawing allowances, petitioner admits receiving the monthly drawing allowances but claims that he is not obligated to refund the allowances which should be considered as his salaries.

The monthly drawing allowance is provided in the Memorandum of Agreement[24] executed by the parties on 19 February 2001. The pertinent provisions of the Memorandum of Agreement read:

> That for and in consideration of the mutual covenants and agreements made by the parties hereto, the Company and the Unit Manager, by these presents enter into this Memorandum of Agreement, whereby the Company grants to the Unit Manager a gross MONTHLY DRAWING ALLOWANCE (MDA) of *Forty Thousand Pesos (Php40,000.00)* per month, subject to the terms and conditions embodied in the Company's Special Agency Leader Drawing Allowance Program. The Unit Manager binds himself/herself to abide by all the terms and conditions of said program as enumerated in this Memorandum of Agreement as follows:
>
> 1. Objective
>
> **To extend financial assistance to a newly appointed Unit Manager in the form of an advance against the Manager's total expected future override commission earnings over a period of eighteen (18) months or less, for the purpose of addressing his/her monthly income needs, and shall be released**

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[23] *Rollo*, p. 360. Per Entry of Judgment, the Court of Appeals' Decision dated 23 June 2009 became final and executory on 25 October 2009.

[24] *Id.* at 93-96.

by way of a MONTHLY DRAWING ALLOWANCE (MDA), subject to meeting specified monthly validation requirements. This facility (MDA) shall not negate the fact of the Unit Manager being an independent contractor who is free to exercise his own judgment as to time, place and means of soliciting insurance, and shall therefore not be construed as creating an employer-employee relationship between the Company and the Unit Manager.

x x x x x x x x x

2.5 **The monthly drawing allowance shall be repaid and validated monthly over a period of eighteen (18) months or less** as per Exhibit B-1, attaching herewith and forming part of this Memorandum of Agreement **by applying the Unit Manager's override commission earnings and commissions on personal business, if any, (net of 10% withholding tax) against total monthly drawing allowances**.

x x x x x x x x x

2.6 While enrolled in the program, all present and future commissions of the Manager (override commissions as well as agents' commissions on his/her personal business) shall be pledged to the company as security to offset any net outstanding accountability owed by the manager to the company in case of insufficient earnings as against the advances/monthly drawing allowance received by him/her.

2.7. **At the end of the eighteen (18) months or sooner, should the Unit Manager either opt to get out of the program or be disqualified from the program for the non-meeting of validation requirements, resign or be terminated, the total debits (advances) and total credits (commissions earned) will be determined and this will put the Manager on either a net debit or net credit balance.** Any net credit balance will be given in lump sum to the Manager at the end of the Program or if he opts to get out of the program sooner, or upon resignation while **a net debit balance will be paid in equal monthly installments for a maximum period of six months at 12% interest per annum if the manager completes the 18 month period, or opts to get out of the Program**

> **sooner. In case of resignation or termination however, any debit will be paid in full within three (3) days from termination or acceptance of resignation**.[25] (Boldfacing and underscoring supplied)

Under the Memorandum of Agreement executed by the parties, the monthly drawing allowance granted to petitioner is "an advance against the Manager's total expected future override commission earnings over a period of eighteen (18) months or less," and "subject to meeting specified monthly validation requirements." The Memorandum of Agreement requires petitioner to repay and validate the monthly drawing allowances by applying his commission earnings against the monthly drawing allowances.

In his testimony, petitioner admitted receiving the monthly drawing allowances and that he failed to liquidate the allowances he received. The monthly drawing allowance is not petitioner's salary as insisted by him, and he is bound to repay it pursuant to the Memorandum of Agreement.

Imposition of the Stipulated 12% Interest Per Annum on the Unpaid Monthly Drawing Allowances

Under paragraph 2.7 of the Memorandum of Agreement, petitioner is liable to pay 12% interest *per annum* on the net debit balance of the unpaid monthly drawing allowances. Thus, when petitioner resigned, respondent sent him a letter[26] dated

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

[26] *Id*. at 101. The letter reads:

March 6, 2003

Mr. Gerry S. Mojica
Lot 9 Blk. 6 G. Laurente Ave.,
Brgy. Memije GMA
Cavite

Dear Mr. Mojica,

We hereby accept your resignation as Financial Counselor effective March 01, 2003 and we are canceling your FCs appointment effective the same date.

In view of this you are hereby directed to settle in full your outstanding accountabilities with the company, as of December 2002 this amount

6 March 2003, accepting petitioner's resignation and demanding payment of petitioner's accountability, with 12% interest in case of delay in payment, pursuant to the Memorandum of Agreement.

Article 2209 of the Civil Code mandates that when a debtor incurs a delay in obligations to pay a sum of money, the indemnity for damages shall be the payment of the interest agreed upon. Article 2209 provides:

> Art. 2209. **If the obligation consists in the payment of a sum of money**, and the debtor incurs in delay, **the indemnity for damages, there being no stipulation to the contrary, *shall be the payment of the interest agreed upon***, and in the absence of stipulation, the legal interest, which is six percent *per annum*. (Emphasis and italicization supplied)

Thus, if the rate of interest is stipulated, such stipulated interest shall apply and not the legal interest,[27] provided the stipulated interest is not excessive and unconscionable.[28] **The stipulated**

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tentatively stands at *Php551,830.64* pending our Accounting Department's final determination of your accountability with us. In case however that you are unable to do so, you must settle the account over a period of [twelve] (12) months at 12% interest through twelve postdated checks. You are required to return all Company materials including, but not limited to, Provisional Receipts issued under your name.

We trust you will attend to this matter immediately.

Thank you.

(signed

Roberto D. Crisologo

AVP-Sales Operations

[27] *Isla v. Estorga*, G.R. No. 233974, 2 July 2018; *Security Bank and Trust Co. v. RTC-Makati, Br. 61*, 331 Phil. 787(1996).

[28] In *Asian Cathay Finance and Leasing Corp. v. Spouses Gravador*, 637 Phil. 504, 510-511 (2010), this Court declared: "It is true that parties to a loan agreement have a wide latitude to stipulate on any interest rate in view of Central Bank Circular No. 905, series of 1982, which suspended the Usury Law ceiling on interest rate effective January 1, 1983. However, interest rates, whenever unconscionable, may be equitably reduced or even invalidated. In several cases, this Court had declared as null and void stipulations on interest and charges that were found excessive, iniquitous and unconscionable." See also *Vitug v. Abuda*, 776 Phil. 540 (2016); *Spouses Silos v. Philippine National Bank*, 738 Phil. 156 (2014).

interest shall be applied until full payment of the obligation because that is the law between the parties.[29] The legal interest only applies in the absence of stipulated interest.

In this case, petitioner is liable for the ₱508,631.05 unpaid monthly drawing allowances, which shall earn the stipulated interest of 12% *per annum* from the time of extrajudicial demand on 6 March 2003 until full payment.

Furthermore, as found by the trial court and the Court of Appeals, petitioner is also liable for the unpaid Health Maintenance Insurance dues, group premium for hospitalization, and other payables amounting to ₱6,008.12.[30] However, since there is no stipulated interest on these other payables, such amount due shall earn the prevailing legal interest at the rate of 12% *per annum* from the date of extrajudicial demand on 6 March 2003 until 30 June 2013,[31] and thereafter at the rate of 6% *per annum* from 1 July 2013 until full payment.[32]

The interest due on the unpaid monthly drawing allowances and unpaid Health Maintenance Insurance dues, group premium for hospitalization, and other payables, accruing as of judicial demand, shall also earn legal interest at the rate of 12% *per annum* from the date of judicial demand until 30 June 2013, and thereafter at the rate of 6% *per annum* from 1 July 2013

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[29] Article 1159 of the Civil Code provides:

Art. 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

[30] The trial court found that the ₱6,008.12 which plaintiff [respondent] advanced for defendant's [petitioner's] medical insurance and group life insurance was sufficiently proven and that defendant [petitioner] failed to disprove his liability to reimburse the amount. *Rollo*, p. 171.

[31] Central Bank Circular No. 416, issued on 29 July 1974, prescribed a 12% *per annum* interest on loans, or forbearance of any money, goods or credits, and in judgments, in the absence of a stipulated interest.

[32] Bangko Sentral ng Pilipinas Monetary Board (BSP-MB) Circular No. 799, which took effect on 1 July 2013, provides that in the absence of stipulated interest, the rate of interest for loans, or forbearance of any money, goods or credits, and judgments shall be 6% *per annum.*

until full payment. This is in accord with the provision of the Civil Code under Article 2212, Chapter 2 (Actual or Compensatory Damages) of Title XVIII (Damages), which provides that: "Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point."

WHEREFORE, the Decision dated 31 October 2014 of the Court of Appeals in CA-G.R. CV No. 96584 is **AFFIRMED** with **MODIFICATION**, as follows:

Petitioner Gerry S. Mojica is ordered to pay respondent Generali Pilipinas Life Assurance Company, Inc. the following:

1. Five Hundred Eight Thousand Six Hundred Thirty-One and 5/100 Pesos (₱508,631.05) representing the unpaid monthly drawing allowances plus stipulated interest at 12% *per annum* to be computed from 6 March 2003, the date of extrajudicial demand, until full payment.

2. Six Thousand Eight and 12/100 Pesos (₱6,008.12) representing unpaid Health Maintenance Insurance dues, group premium for hospitalization, and other payables plus legal interest at the rate of 12% *per annum* to be computed from 6 March 2003, the date of extrajudicial demand, until 30 June 2013, and thereafter at the rate of 6% *per annum* from 1 July 2013 until full payment.

3. Legal interest on the interest due on the unpaid monthly drawing allowances and unpaid Health Maintenance Insurance dues, group premium for hospitalization, and other payables, accruing as of judicial demand, at the rate of 12% *per annum* from the date of judicial demand on 28 September 2004 until 30 June 2013, and thereafter at the rate of 6% *per annum* from 1 July 2013 until full payment.

SO ORDERED.

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

Caguioa, J., see dissenting opinion.

CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

I reiterate my position in my *Concurring and Dissenting Opinion in Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*,[1] and hold that:

1. Although *unpaid monthly drawing allowances* are **not** loans or forbearances[2] of money, goods, or credit, parties are free to stipulate on the payment of interest under the principle of autonomy of contracts.[3] Hence, I agree with the *ponencia* that the stipulated rate of 12% should be applied until full payment because it is the law between the parties.[4] However, while I agree that Article 2212[5] of the Civil Code applies to the stipulated interest that has already accrued on the *unpaid monthly drawing allowances* at the time of judicial demand (the last paragraph of the dispositive portion), I find that the 6% *per annum* legal rate provided under Article 2209 in relation to Article 2212 of the Civil Code should instead be applied.[6]

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[1] G.R. No. 225433, August 28, 2019.

[2] *J.* Caguioa, Concurring and Dissenting Opinion, G.R. No. 225433, August 28, 2019, p. 48. "A forbearance is (1) an agreement or contractual obligation (2) to refrain from enforcing payment or to extend the period for the payment of (3) an obligation that has become due and demandable, (4) in return for some compensation or interest."

[3] CIVIL CODE, Art. 1306.

[4] *Ponencia*, p. 10.

[5] ART. 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.

[6] See *J.* Caguioa, Concurring and Dissenting Opinion, *supra* note 2, at 49, paragraph II(a) of the Guidelines on the Imposition of Interest, which states:

II. All Other Monetary Obligations Not Constituting Loans or Forbearances

A. If the parties stipulate on the payment of interest and the rate thereof, the interest due shall be that which has been stipulated. Such interest

2. Further, I note that *unpaid health maintenance insurance dues, group premium for hospitalization, and other payable*s are likewise not loans or forbearances of money, goods, or credit. Hence, it is not subject to the BSP-prescribed interest rate of 12% *per annum*.[7] In addition, I find that no compensatory interest under Article 2212 of the Civil Code (the last paragraph of the dispositive portion) is due on the *unpaid Health Maintenance Insurance dues, group premium for hospitalization, and other payables* as no interest has been stipulated.[8] The Court has held that "Article 2212 contemplates the presence of stipulated or conventional interest, *i.e.*, monetary interest, which has accrued when demand was judicially made. In cases where no monetary interest had been stipulated by the parties, no accrued monetary interest could further earn compensatory interest upon judicial demand."[9]

WHEREFORE, I vote that the Decision dated October 31, 2014 of the Court of Appeals in CA-G.R. CV No. 96584 be **AFFIRMED** with **MODIFICATION** as follows:

Petitioner Gerry S. Mojica is ordered to pay respondent Generali Pilipinas Life Assurance Company, Inc. the following:

1. Five Hundred Eight Thousand Six Hundred Thirty-One and 5/100 Pesos (₱508,631.05) representing the unpaid monthly

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shall run in accordance with the parties' agreement, or in default thereof, from extrajudicial or judicial demand, and shall continue to run until full payment. Such stipulated interest shall, except as otherwise provided, be controlling as the compensatory interest. In addition, any stipulated interest that has accrued at the time of judicial demand shall itself earn interest from judicial demand until full payment at the 6% *per annum* legal rate provided under Article 2209 in relation to Article 2212 of the Civil Code.

[7] See *Reformina v. Tomol, Jr.*, 223 Phil. 472 (1985); *National Power Corp. v. Angas*, 284-A Phil. 39 (1992).

[8] See *Ponencia*, p. 11.

[9] *Isla v. Estorga*, G.R. No. 233974, July 2, 2018, p. 7; see also *Hun Hyung Park v. Eung Won Choi*, G.R. No. 220826, March 27, 2019, p. 17.

drawing allowances plus stipulated interest at 12% *per annum* to be computed from March 6, 2003, the date of extra-judicial demand, until full payment; and interest on the stipulated interest due that has accrued thereon from extrajudicial demand to judicial demand, at the rate of 6% per annum from September 28, 2004, the date of judicial demand, until full payment.

2. Six Thousand Eight and 12/100 Pesos (~~P~~6,008.12) representing unpaid Health Maintenance Insurance dues, group premium for hospitalization, and other payables plus legal interest at the rate of 6% *per annum* to be computed from extrajudicial demand until full payment.

SO ORDERED.

THIRD DIVISION

[G.R. No. 224562. September 18, 2019]

EXCEL GURRO *y* MAGA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 237216. September 18, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EXCEL GURRO** *y* **MAGA, WENNIE IDIAN *y* JAMINDANG and JOEL JAMINDANG *y* ZOSA,** *accused,* **WENNIE IDIAN *y* JAMINDANG and EXCEL GURRO *y* MAGA,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; KIDNAPPING FOR RANSOM WITH HOMICIDE; ELEMENTS. — In the cases of *People v.*

Dionaldo, et al. and *People v. Elizalde, et al.*, the Court explained that if the victim was detained for the purpose of extorting ransom and the victim dies during detention, then the crime committed shall be the special complex crime of Kidnapping for Ransom with Homicide. This holds true in the case at bar, considering that all the elements for the said crime were sufficiently alleged in the Information, in that: (i) the victim was detained against her will; (ii) the accused demanded ransom from the victim's family; and (iii) the victim was killed during detention. Thus, the proper nomenclature for the offense committed shall be kidnapping for ransom with homicide, and not simply kidnapping for homicide, as the prosecution charged.

2. ID.; CONSPIRACY; THE RESPONSIBILITY OF THE CONSPIRATORS IS NOT CONFINED TO THE ACCOMPLISHMENT OF THE PARTICULAR PURPOSE OF CONSPIRACY, BUT EXTENDS TO COLLATERAL ACTS AND OFFENSES INCIDENT TO AND GROWING OUT OF THE INTENDED PURPOSE. — It cannot be gainsaid that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Once conspiracy is established, the responsibility of the conspirators is collective, thereby rendering them all equally liable regardless of the extent of their respective participations. This means that each conspirator is responsible for everything done by his/her confederates which follows incidentally in the execution of a common design as one of its probable and natural consequences. Simply stated, their responsibility is not confined to the accomplishment of the particular purpose of conspiracy, but extends to collateral acts and offenses incident to and growing out of their intended purpose. In the same vein, the conspirators are deemed to have intended the consequences of their acts and by purposely engaging in conspiracy which necessarily and directly produces a prohibited result, they are, in contemplation of law, chargeable with intending that result.

3. ID.; ID.; MAY BE PRESUMED FROM, AND PROVEN BY THE ACTS OF, THE ACCUSED POINTING TO A JOINT PURPOSE, DESIGN, CONCERTED ACTION AND COMMUNITY OF INTERESTS. — [D]irect proof is not necessary to establish the fact of conspiracy. Rather, conspiracy may be presumed from, and proven by the acts of, the accused

pointing to a joint purpose, design, concerted action and community of interests. In the case at bar, the prosecution presented credible and sufficient pieces of circumstantial evidence which, when taken together, prove that Wennie conspired with Joel x x x. Certainly, the acts of Wennie, when taken together, reveal that she acted in concert with Joel and that their acts emanated from the same purpose or common design showing unity in its execution. For sure, Joel would not have been able to kidnap AAA if not for the participation of Wennie.

4. REMEDIAL LAW; EVIDENCE; ALIBI AND DENIAL; REGARDED AS NEGATIVE AND SELF-SERVING EVIDENCE UNDESERVING OF WEIGHT IN LAW, IF NOT SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE. — [A]ll that Wennie offers as proof of her innocence is the weak defense of denial. This defense cannot prevail, as it is settled that "alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted." A denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill-motive to falsely testify against the appellants.

5. CRIMINAL LAW; PERSONS CRIMINALLY LIABLE FOR FELONIES; PRINCIPAL AND ACCOMPLICE, DISTINGUISHED. — The RPC delineates the liabilities of each of the offenders by determining the extent of their respective participations in the offense committed. Relatedly, principals are those who either (i) "take a direct part in the execution of the act;" (ii) "directly force or induce others to commit it;" (iii) "or cooperate in the commission of the offense by another act without which it would not have been accomplished." While accomplices are those persons who, not having acted as principals, cooperate in the execution of the offense by previous or simultaneous acts. x x x [F]or one to be regarded as an accomplice, it must be shown that (i) he knew the criminal design of the principal by direct participation, and concurred with the latter in his purpose; (ii) he cooperated in the execution by previous or simultaneous acts, with the intention of supplying

material or moral aid in the execution of the crime in an efficacious way; and (iii) his acts bore a direct relation with the acts done by the principal.

6. ID.; ID.; ACCESSORIES; ONE IS REGARDED AS AN ACCESSORY IF HIS PARTICIPATION IN THE INCIDENT IS LIMITED TO ACTS COMMITTED AFTER THE CRIME IS ALREADY CONSUMMATED; CASE AT BAR.—[A]ccessories to the crime are described in Article 19 as: "[T]hose who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners: 1. By profiting themselves or **assisting the offender to profit by the effects of the crime.**" x x x It must be noted that the prosecution failed to prove, much less allege, any overt act on Excel's part showing his direct participation in the kidnapping itself. x x x There was no showing that Excel actually cooperated or assisted in kidnapping AAA and detaining the latter. At best, Excel's participation in the incident was limited to acts committed **after** the abduction was already consummated.

APPEARANCES OF COUNSEL

Office of the Solicitor General for People of the Philippines.
Public Attorney's Office for accused-appellants.
Bohol, Bohol II, Jimenez Law Offices for Excel Gurro *y* Maga.

D E C I S I O N

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

Assailed in these consolidated cases is the Decision[1] dated September 23, 2015 and the Resolution[2] dated May 11, 2016,

[1] Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Magdangal M. De Leon and Elihu A. Ybañez, concurring; *rollo* (G.R. No. 224562), pp. 45-65.

[2] *Id.* at 85-87.

rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 06112, which affirmed the Decision[3] dated December 5, 2012 of the Regional Trial Court (RTC) of Marikina City, Branch 192, in Criminal Case No. 2008-10454-MK, convicting Excel Gurro *y* Maga (Excel) and Wennie Idian *y* Jamindang (Wennie) of Kidnapping with Homicide.

The Antecedents

On August 12, 2008, an Information for Kidnapping for Ransom was filed against Excel.[4]

On October 3, 2008, the prosecution, with leave of court, filed an Amended Information to include Wennie and Joel Jamindang *y* Zosa (Joel) as additional accused.[5]

Then, on January 6, 2009, with leave of court, a Second Amended Information,[6] alleging the fact of death was filed and, accordingly, the offense was amended to Kidnapping with Homicide. The accusatory portion of the Second Amended Information states that:

> The undersigned State Prosecutors hereby accuse EXCEL GURRO y MAGA @ EXCEL, JOEL JAMINDANG y ZOSA @ JOJO, WENNIE IDIAN y JAMINDANG @ WINNIE, and JOHN DOE/S, of the crime of KIDNAPPING WITH HOMICIDE, defined and penalized under Article 267 of the [R]evised Penal Code committed as follows:
>
> That on or about August 2, 2008, at Malanday, Marikina City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping one another, together with other persons whose names and identities are unknown, did then and there willfully, unlawfully and feloniously kidnapped and detained victim, AAA, AN 8-YEAR- OLD MINOR, AGAINST HER WILL, FOR THE PURPOSE OF EXTORTING RANSOM FROM THE VICTIM AND THE LATTER'S FAMILY

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[3] Rendered by Judge Geraldine C. Fiel-Macaraig; CA *rollo*, pp. 113-127.

[4] *Id*. at 182.

[5] *Id*.

[6] *Id*.

AND THEREAFTER, DEMANDED THE AMOUNT OF Three Million (Php 3,000,000.00) Pesos, and actually received the amount of One Hundred Eighty-Six Thousand (Php186,000.00) pesos ransom money in exchange for AAA's life and liberty. While in captivity victim AAA was murdered by the accused while in detention.

CONTRARY TO LAW.[7]

Joel pleaded guilty to the charge of kidnapping with homicide, while Excel and Wennie pleaded not guilty to the charge.[8] Trial on the merits ensued thereafter.

The antecedent facts reveal that on August 2, 2008, Arnel Salvador (Arnel) brought his daughter AAA to the house of Wennie. Wennie is the wife of Randy, the brother of Arnel's wife, Helen Salvador (Helen).[9]

Prosecution witness Patrick Mabulac (Patrick) confirmed that he saw AAA at Wennie's house playing with the latter's daughters, at around 2:00 p.m. of August 2, 2008. Later on, he saw Wennie leave with AAA. Wennie returned alone at 3:00 p.m.[10]

AAA went missing thereafter.

At around 5:00p.m. of even date, Bernard, Helen's brother received a text message from an unknown person saying, "*hawak namin ang anak ninyo*. Don't call cops. *3 Million, kung hindi papatayin namin ang anak ninyo*."[11]

At around 6:00 to 7:00p.m., Helen, Arnel, Randy, and Helen's mother went to Wennie's house looking for AAA. When the group had left, Wennie asked Patrick to help her look for AAA. Since Wennie's cellphone battery was running low, she borrowed Patrick's cellphone and inserted her SIM card therein. She then

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[7] *Id*. at 182-183.

[8] *Id*. at 183.

[9] *Id*. at 188.

[10] *Id*.

[11] *Id*. at 273.

texted someone. After removing her SIM Card from Patrick's phone, Wennie apologized to him, claiming that she accidentally deleted all of the messages in his cellphone. Later that night, Wennie again borrowed Patrick's cellphone and deleted all of the latter's contacts.[12]

The next day, Patrick was about to send Joel a text quote, when he suddenly noticed that Joel's number had been deleted from his contact list. Patrick commented to Wennie that she had deleted Joel's number, to which Wennie casually replied that she may have erased it by accident as she was not accustomed to using Patrick's cellphone. Then, Patrick asked Wennie for Joel's number, but the latter dismissively said that Joel no longer has a cellphone. Patrick asked for Joel's number from the house helper. Later on, Patrick showed the Salvador family Joel's cellphone number and they noticed that Joel's number matched that of the kidnapper's.[13]

At around 8:00 p.m., Arnel's family received another text message from the kidnappers asking if the money was already available. The kidnappers ordered Arnel to come up with the money, otherwise, they would kill AAA.[14]

The next morning, Arnel sent a message to the kidnappers and informed them that he only had ₱186,000.00. The kidnappers instructed him to bring the money to 7-Eleven at Bayan, Marikina City. Upon reaching 7-Eleven, Arnel received another message ordering him to go to Metrobank instead and deposit the money in the account of one Jackielou Guevarra (Jackielou).[15]

Randy accompanied Arnel at Metrobank. While depositing the money, Arnel was informed that the amount he deposited was being wired to Catbalogan City. Hearing this, Randy commented that Jojo (Joel) might be involved.[16]

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[12] *Id*. at 188.

[13] *Rollo* (G.R. No. 224562), p. 54.

[14] *Id*. at 49.

[15] *Id*. at 51.

[16] *Id*. at 50.

At around 5:00 p.m., Arnel again received a text message from the kidnappers saying that AAA will be dropped off in Cubao, Quezon City. However, AAA was never released. Arnel and his family learned that AAA had been killed on August 3, 2008. They were instructed to go to a funeral parlor in Laguna to identify her body.[17]

On August 5, 2008, Wennie suddenly left for Catbalogan, Samar.[18]

During the trial, prosecution witness Jackielou testified that at around 12 noon of August 4, 2008, Excel suddenly approached her while she was standing in line at the Automated Teller Machine in Metrobank Catbalogan, Samar. She had known Excel since high school. Excel asked if he could borrow her account number so that his cousin Joel could deposit ₱20,000.00 in her account for his tuition fee.[19]

Later on, Jackielou received a text message from Excel informing her that ₱186,000.00 had been deposited to her account. She withdrew the money and handed it to Excel, who placed it inside a yellow plastic bag.[20]

The accused vehemently denied the charges leveled against them. Wennie and Joel related that they are siblings, while Excel is their cousin. Joel admitted that he kidnapped AAA and, thereafter, killed her because he got irritated with her, as she kept insisting to go home.[21]

Joel stated that Wennie had nothing to do with the crime, and that he merely used Excel to receive the ransom money. He related that he told Excel to look for somebody with a Metrobank account because Joel's father will be sending a

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[17] *Id*. at 51.

[18] *Id*. at 54.

[19] *Id*. at 51.

[20] *Id*. at 52.

[21] *Id*. at 56.

large sum of money to Excel. After withdrawing the money, Excel remitted ₱183,000.00 to Joel through ML Kwarta Padala. Thereafter, he and his cohorts went to Naga City and divided the ransom.[22]

Likewise, Joel claimed that Patrick was the mastermind of the plot to kidnap AAA. He related that he sent ₱30,000.00 to Patrick from the ransom money he received from the Salvador family.[23]

Wennie also denied the charges leveled against her. Wennie admitted that Arnel left AAA in her care. She claimed that she brought the victim to her friend's house and they went home after 15 minutes. Then, AAA left for home at around 2:00 p.m.[24]

Ruling of the RTC

On December 5, 2012, the RTC rendered a Decision[25] convicting Wennie and Joel, as principals and Excel, as an accomplice for the crime of Kidnapping with Homicide.

The dispositive portion of the RTC decision reads:

> WHEREFORE, the court finds accused [JOEL] and [WENNIE], GUILTY BEYOND REASONABLE DOUBT of KIDNAPPING WITH HOMICIDE. Both accused are hereby sentenced to suffer the penalty of *reclusion perpetua*. The accused, [EXCEL], is GUILTY BEYOND REASONABLE DOUBT as an ACCOMPLICE and hereby sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum.
>
> The accused are hereby ORDERED to pay, jointly and severally, to the heirs of the victim, AAA, civil indemnity in the amount of Fifty Thousand (Php 50,000.00) Pesos.

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[22] *Id*. at 57.

[23] *Id*. at 55.

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

[25] CA *rollo*, pp. 80-94.

SO ORDERED.[26]

Aggrieved, Wennie and Excel filed an appeal before the CA.

Ruling of the CA

On September 23, 2015, the CA rendered the assailed Decision[27] affirming the conviction meted by the RTC unto Wennie and Excel. The CA found that Joel and Wennie conspired to kidnap AAA. Also, the CA held that Excel was an accomplice of Joel and Wennie. According to the CA, Excel's act of borrowing the Metrobank account of his friend, thereby allowing him to receive the ransom was proof that he assisted in the crime.[28]

As for the damages awarded, the CA increased the amount of civil indemnity awarded by the RTC to ₱100,000.00. The CA, likewise, awarded moral damages of ₱100,000.00 and exemplary damages of ₱100,000.00. Finally, the CA apportioned the award of damages by adjudging Joel and Wennie liable to shoulder the greater share of the damages in the amount of 5/6, while holding Excel liable for merely 1/6 of the total amount of damages.[29]

The dispositive portion of the assailed CA decision reads:

WHEREFORE, premises considered, the instant appeals are DENIED. The assailed December 5, 2012 Decision is AFFIRMED with MODIFICATION, that:

1. Joel Jarmindang *y* Zosa and Wennie Idian *y* Jamindang are jointly and severally ORDERED to pay the heirs of the victim, Php 250,000.00 as civil indemnity, moral and exemplary damages;

2. Excel Gurro *y* Maga is ORDERED to pay the heirs of the victim, Php 50,000.00 as civil indemnity, moral and exemplary damages; and

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[26] *Id*. at 94.

[27] *Rollo* (G.R. No. 224562), pp. 45-65.

[28] *Id*. at 62.

[29] *Id*. at 63-64.

3. Interest is imposed on the monetary awards at the legal rate of 6% *per annum* from the finality of this judgment until fully paid.

SO ORDERED.[30]

Aggrieved, Wennie filed a Notice of Appeal[31] under Section 13(c) of Rule 124 of the Rules on Criminal Procedure.

On the other hand, Excel filed a Petition for Review on *Certiorari*[32] under Rule 45 of the Rules of Court.

On August 13, 2018, the Court issued a Resolution[33] ordering the consolidation of the two cases.

The Issue

The main issue raised for the Court's resolution rests on whether or not the prosecution sufficiently established the guilt of Wennie and Excel beyond reasonable doubt.

Both Wennie and Excel claim that the prosecution failed to establish their guilt beyond reasonable doubt. Particularly, Wennie argues that the circumstance that she was last seen with AAA is not by itself sufficient to prove her complicity to the crime. Likewise, she urges the Court to give credence to Joel's statement that she (Wennie) was not involved in kidnapping AAA.[34]

In the same vein, Excel asserts in his Petition for Review on *Certiorari*[35] that both the trial court and the CA erred in convicting him as an accomplice to the crime. He contends that he did not assist Joel in profiting from the effects of the crime. He was not aware of the kidnapping and had no idea that the amount deposited in the account of Jackielou partook of ransom money.

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[30] *Id*. at 64.

[31] *Rollo* (G.R. No. 237216), pp. 23-24.

[32] *Rollo* (G.R. No. 224562), pp. 10-43.

[33] *Rollo* (G.R. No. 237216), pp. 53-54.

[34] *Id*. at 162-180.

[35] *Rollo* (G.R. No. 224562), pp. 10-43.

On the other hand, the People of the Philippines, through the Office of the Solicitor General (OSG), counters that the prosecution sufficiently established the guilt of both Wennie and Excel. The OSG avers that the evidence shows that Wennie conspired with Joel to kidnap AAA. She was the last person seen with AAA, and her acts subsequent to the kidnapping were certainly dubious. In fact, prosecution witnesses Arnel and Patrick confirmed that AAA was last seen with Wennie. As a conspirator, Wennie was equally responsible for all the acts committed by Joel.[36]

Likewise, Excel actively cooperated with Joel and Wennie in the crime of kidnapping, by acting as the medium through which Joel received the ransom money.[37]

Ruling of the Court

The Court affirms the conviction of Wennie and Excel.

The Prosecution Established Beyond Reasonable Doubt the Guilt of Wennie as a Principal to the Crime of Kidnapping for Ransom with Homicide

Article 267 of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) No. 7659,[38] defines and penalizes the crime of kidnapping, as follows:

Article 267. *Kidnapping and serious illegal detention*. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

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[36] *Rollo* (G.R. No. 237216), pp. 205.

[37] *Rollo* (G.R. No. 224562), pp. 143-175.

[38] AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES (Approved on December 13, 1993).

1. If the kidnapping or detention shall have lasted more than three days.

2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.[39]

In the cases of *People v. Dionaldo, et al.*[40] and *People v. Elizalde, et al.*,[41] the Court explained that if the victim was detained for the purpose of extorting ransom and the victim dies during detention, then the crime committed shall be the special complex crime of Kidnapping for Ransom with Homicide. This holds true in the case at bar, considering that all the elements for the said crime were sufficiently alleged in the Information, in that: (i) the victim was detained against her will; (ii) the accused demanded ransom from the victim's family; and (iii) the victim was killed during detention. Thus, the proper nomenclature for the offense committed shall be kidnapping for ransom with homicide, and not simply kidnapping for homicide, as the prosecution charged.

More importantly, the prosecution was able to prove each of the component offenses of kidnapping for ransom with homicide. AAA was a minor, who was taken on August 2,

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[39] *People v. Dionaldo, et al.*, 739 Phil. 672, 682 (2014).

[40] 739 Phil. 672 (2014).

[41] 801 Phil. 1008 (2016).

2008 and was, thereafter, detained or deprived of her liberty, in exchange for ransom. Later on, AAA was killed while in detention.

Joel pleaded guilty to the crime but denied conspiring with his sister Wennie. In the same regard, Wennie urges that the prosecution failed to prove the alleged conspiracy between her and Joel.

The Court is not persuaded.

It cannot be gainsaid that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[42] Once conspiracy is established, the responsibility of the conspirators is collective, thereby rendering them all equally liable regardless of the extent of their respective participations.[43] This means that each conspirator is responsible for everything done by his/her confederates which follows incidentally in the execution of a common design as one of its probable and natural consequences.[44] Simply stated, their responsibility is not confined to the accomplishment of the particular purpose of conspiracy, but extends to collateral acts and offenses incident to and growing out of their intended purpose.[45] In the same vein, the conspirators are deemed to have intended the consequences of their acts and by purposely engaging in conspiracy which necessarily and directly produces a prohibited result, they are, in contemplation of law, chargeable with intending that result.[46]

Equally important, direct proof is not necessary to establish the fact of conspiracy. Rather, conspiracy may be presumed

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[42] REVISED PENAL CODE, Article 8.

[43] *People v. Dionaldo, et al.*, *supra* note 40, at 681, citing *People v. Castro*, 434 Phil. 206, 221 (2002).

[44] *People v. Montanir, et al.*, 662 Phil. 535, 563-564 (2011).

[45] *Id*., citing *People v. Bisda*, 454 Phil. 194, 218 (2003).

[46] *Id*.

from, and proven by the acts of, the accused pointing to a joint purpose, design, concerted action and community of interests.[47]

In the case at bar, the prosecution presented credible and sufficient pieces of circumstantial evidence which, when taken together, prove that Wennie conspired with Joel, to wit:

(i) At around 1:00 p.m. of August 2, 2008, AAA was brought by her father to Wennie's house;

(ii) An hour thereafter, Wennie, together with AAA, left the house on board the former's tricycle;

(iii) At 3:00 p.m., Wennie came home alone;

(iv) AAA was never seen again;

(v) Wennie started acting suspiciously after AAA's disappearance;

(vi) On the night that AAA's family went looking for her, Wennie kept secretly texting an unknown person using Patrick's cellphone;

(vii) Wennie admitted having deleted the cellphone number of Joel from Patrick's cellphone;

(viii) Wennie kept misleading Patrick as to Joel's correct cellphone number and deliberately gave him the wrong cellphone number; and

(ix) Joel's cellphone number was found to be the same as that of the kidnapper's.

It is all too apparent that Wennie's suspicious acts show her complicity to the crime. To begin with, she was the last person seen with AAA. She and AAA went outside of the house, but the former returned home alone. AAA went missing thereafter.

Likewise, Wennie's staunch efforts at protecting Joel were indeed questionable. It was certainly suspicious why Wennie

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[47] *People v. Dionaldo, et al., supra* note 40, at 682, citing *People v. Buntag*, 471 Phil. 82, 93 (2004).

constantly misled Patrick as to Joel's true cellphone number. First, she deleted all of the messages in Patrick's cellphone after using the same, and then she deleted all of Patrick's contacts. Not content, Wennie even misled Patrick, by deliberately giving a wrong number. All of these suspicious deeds cast doubt unto Wennie's innocence, especially since it was later on discovered that Joel's cellphone number matched that of the kidnapper's.

In addition, it was highly suspicious why Wennie suddenly went home to Catbalogan City — the town where the money was wired. Also, it was discovered that Wennie was heavily indebted and had pawned pieces of jewelry belonging to her husband Randy without this knowledge.[48]

Certainly, the acts of Wennie, when taken together, reveal that she acted in concert with Joel and that their acts emanated from the same purpose or common design showing unity in its execution. For sure, Joel would not have been able to kidnap AAA if not for the participation of Wennie.

Against this factual backdrop, all that Wennie offers as proof of her innocence is the weak defense of denial. This defense cannot prevail, as it is settled that "alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted."[49] A denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill-motive to falsely testify against the appellants.[50]

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[48] *Rollo* (G.R. No. 237216), p. 189.

[49] *People v. Anticamara, et al.*, 666 Phil. 484, 507 (2011), citing *People v. Togahan*, 551 Phil. 997, 1013-1014 (2007).

[50] *People v. Anticamara, et al.*, *id.*, citing *Gan v. People*, 550 Phil. 133, 157 (2007).

Excel is Guilty as an Accessory to the Crime of Kidnapping for Ransom with Homicide

The RPC delineates the liabilities of each of the offenders by determining the extent of their respective participations in the offense committed.

Relatedly, principals are those who either (i) "take a direct part in the execution of the act;"[51] (ii) "directly force or induce others to commit it;"[52] (iii) "or cooperate in the commission of the offense by another act without which it would not have been accomplished."[53] While accomplices are those persons who, not having acted as principals, cooperate in the execution of the offense by previous or simultaneous acts.[54]

On the other hand, accessories to the crime are described in Article 19 as:

> [T]hose who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:
>
> 1. By profiting themselves or **assisting the offender to profit by the effects of the crime.**
>
> 2. By concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery.
>
> 3. By harboring, concealing, or assisting in the escape of the principals of the crime, provided the accessory acts with abuse of his public functions or whenever the author of the crime is guilty of treason, parricide, murder, or an attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime.[55] (Emphasis Ours)

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[51] REVISED PENAL CODE, Article 17.

[52] *Id*.

[53] *Id*.

[54] REVISED PENAL CODE, Article 18.

[55] REVISED PENAL CODE, Article 19.

In the instant case, Excel was convicted by the trial court and the CA as an accomplice to the special complex crime of Kidnapping for Ransom with Homicide.

The Court disagrees.

It must be noted that the prosecution failed to prove, much less allege, any overt act on Excel's part showing his direct participation in the kidnapping itself. It must be remembered that for one to be regarded as an accomplice, it must be shown that (i) he knew the criminal design of the principal by direct participation, and concurred with the latter in his purpose; (ii) he cooperated in the execution by previous or simultaneous acts, with the intention of supplying material or moral aid in the execution of the crime in an efficacious way; and (iii) his acts bore a direct relation with the acts done by the principal.[56]

There was no showing that Excel actually cooperated or assisted in kidnapping AAA and detaining the latter. At best, Excel's participation in the incident was limited to acts committed **after** the abduction was already consummated. Particularly, Excel retrieved the ransom money from Metrobank and, thereafter, immediately forwarded the same to Joel, through four money transfer transactions through ML Kwarta Padala remittance on August 4, 2008, merely two hours after Arnel wired the ransom money to the kidnappers.[57] This was established through the documents presented by Atty. Heidi Caguioa (Atty. Caguioa), Compliance Officer of ML Kwarta Padala. Atty. Caguioa presented photocopies of Excel's identification card and the accomplished "Know-Your-Customer Form" of Joel, as well as the Payout Receipts issued to Joel.[58]

Likewise, there is no doubt that Excel was aware of the crime Joel committed. His actuations are certainly suspect. He deceived Jackielou by telling her that his cousin Joel will

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[56] *People v. Yau, et al.*, 741 Phil. 747, 767 (2014).

[57] See Appellee's Brief, CA *rollo* (CA-G.R. CR-HC No. 06112), pp. 238-243.

[58] *Rollo* (G.R. No. 237216), pp. 189-190.

be depositing ₱20,000.00 to her account for his tuition fee. However, he later on texted Jackielou that the amount was ₱183,000.00. He did not express any shock or surprise about suddenly receiving a hefty sum. Moreover, he immediately forwarded the money to Joel, two hours after the said amount was deposited by Arnel.[59]

The Proper Penalties

Having thus established the guilt of Wennie as Joel's co-conspirator in the special complex crime of Kidnapping for Ransom with Homicide, she shall be meted with the penalty of death. However, in view of R.A. No. 9346,[60] which suspended the imposition of the death penalty, she shall be sentenced to the penalty of *reclusion perpetua* without eligibility for parole.

On the other hand, Excel, as an accessory to the crime, shall be punished with a penalty two degrees lower than *reclusion perpetua*, which shall be *prision mayor*. Applying the Indeterminate Sentence Law, the penalty shall be two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.[61]

As for the award of damages, the Court grants ₱100,000.00 as civil indemnity; ₱100,000.00 as moral damages; and ₱100,000.00 exemplary damages, in conformity with the Court's ruling in *People v. Jugueta*.[62]

The liability of Joel, Wennie and Excel for the payment of damages shall be apportioned in accordance with the degrees of their liability, respective responsibilities and actual participation in the crime.[63] This means that the ₱100,0000.00

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[59] *Id*.

[60] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY (Approved on June 24, 2006).

[61] *People v. Yanson-Dumancas*, 378 Phil. 341, 367-368 (1999).

[62] 783 Phil. 806 (2016).

[63] *People v. Tampus, et al.*, 607 Phil. 296, 329-330 (2009).

as civil indemnity; ₱100,000.00 as moral damages; and ₱100,000.00 as exemplary damages, shall be borne solidarily by the principals Wennie and Joel, while Excel, as an accessory to the crime, shall be liable for ₱25,000.00 for each of the aforementioned damages.

Finally, all the amounts due shall earn a legal interest of six percent (6%) *per annum* from the date of the finality of the Court's Decision until full satisfaction.[64]

WHEREFORE, premises considered, the Decision dated September 23, 2015 and the Resolution dated May 11, 2016, rendered by the Court of Appeals in CA-G.R. CR-HC No. 06112, are **AFFIRMED with modification**. Wennie Idian *y* Jamindang and Joel Jamindang *y* Zosa are declared **GUILTY** beyond reasonable doubt as principals to the crime of Kidnapping for Ransom with Homicide and shall be meted with the penalty of *reclusion perpetua* without eligibility for parole. Excel Gurro *y* Maga shall be held liable as an accessory to the crime of Kidnapping for Ransom with Homicide and shall suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

Likewise, Wennie Idian *y* Jamindang and Joel Jamindang *y* Zosa, as principals, are solidarily liable for ₱100,000.00 as civil indemnity; ₱100,000.00 as moral damages; and ₱100,000.00 as exemplary damages, while Excel Gurro *y* Maga shall bear ₱25,000.00 for each of the said damages.

All amounts due shall earn a legal interest of six percent (6%) *per annum* from the date of the finality of this Decision until the full satisfaction thereof.

SO ORDERED.

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

Hernando, J. on leave.

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[64] *People v. Jugueta, supra* note 61, at 856.

SECOND DIVISION

[G.R. No. 224595. September 18, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GGG,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; THE TRIAL COURT'S FINDINGS ARE ACCORDED GREAT RESPECT UNLESS THE TRIAL COURT HAS OVERLOOKED OR MISCONSTRUED SOME SUBSTANTIAL FACTS, WHICH IF CONSIDERED MIGHT AFFECT THE RESULT OF THE CASE. — We find the appeal without merit. The CA was correct in affirming the ruling of the trial court that appellant's guilt for the crime he was accused of was clearly established by the witnesses and the evidence of the prosecution. The trial court, having the opportunity to observe the witnesses and their demeanor during the trial, can best assess the credibility of the witnesses and their testimonies. The trial court's findings are accorded great respect unless the trial court has overlooked or misconstrued some substantial facts, which if considered might affect the result of the case.

2. ID.; EVIDENCE; DENIAL AND ALIBI; THE DEFENSES OF DENIAL AND ALIBI, WHICH ARE SELF-SERVING NEGATIVE EVIDENCE AND EASILY FABRICATED, CANNOT BE ACCORDED GREATER EVIDENTIARY WEIGHT THAN THE POSITIVE TESTIMONY OF A CREDIBLE WITNESS. — Denial and alibi, which are self-serving negative evidence and easily fabricated, cannot be accorded greater evidentiary weight than the positive testimony of a credible witness. The victim's brother, CCC, who witnessed the rape incident, positively identified appellant as the person who raped his sister AAA. Furthermore, as found by the CA and the trial court, appellant's alibi is weak considering that Eneria's house where appellant slept is only 150 meters away from AAA's house, such that it was not impossible for appellant to go to AAA's house on the date and time of the rape incident.

3. CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE; COMMITTED WHERE THE INFORMATION ALLEGED, AND IT WAS PROVEN, THAT APPELLANT KNEW OF THE MENTAL DISABILITY OF THE VICTIM AT THE TIME OF THE COMMISSION OF THE CRIME; PROPER IMPOSABLE PENALTY. — [A]ppellant should be convicted of qualified rape pursuant to Article 266-B, paragraph 10 of the RPC since the Information alleged, and it was proven, that appellant knew at the time of the commission of the crime that the victim AAA is mentally retarded. Article 266-B, paragraph 10 of the RPC, as amended, provides: ART. 266-B. Penalties. — x x x **The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:** x x x 10. **When the offender knew of the mental disability**, emotional disorder and/or physical handicap **of the offended party at the time of the commission of the crime.** In this case, appellant admitted that he knew that AAA is mute and mentally retarded. Since appellant knew of AAA's mental disability when appellant raped her, the proper designation of the crime committed is qualified rape. The imposable penalty for qualified rape is death. However, in view of Republic Act No. 9346, which prohibits the imposition of death penalty, appellant's penalty is reduced to *reclusion perpetua* without eligibility for parole.

4. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT. —[P]ursuant to prevailing jurisprudence, the amount of civil indemnity, moral damages, and exemplary damages should all be increased to ₱100,000. The damages awarded should earn interest at the rate of 6% *per annum* from the date of finality of this Resolution until fully paid.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

CARPIO, *ACTING C.J.*:

The Case

This is an appeal from the 27 January 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01221-MIN, which affirmed with modification the Judgment[2] dated 27 November 2012 of the Regional Trial Court (trial court), Branch 6, Dipolog City, convicting accused-appellant GGG[3] (appellant) of rape under Article 266-A of the Revised Penal Code (RPC).

The Facts

The Information charging appellant of the crime of rape reads:

> That on March 1, 2005 at about 5:00 o'clock in the morning at XXX, Dapitan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and by means of force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge with one AAA, without her consent and against her will.
>
> CONTRARY TO LAW, with the aggravating circumstance of accused's knowledge that the victim is mentally retarded.[4]

The prosecution presented five witnesses: (1) BBB, the mother of AAA; (2) CCC, the brother of AAA; (3) SPO4 Ronnie

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[1] *Rollo*, pp. 3-28. Penned by Associate Justice Maria Filomena D. Singh, with Associate Justices Edgardo A. Camello and Perpetua T. Atal-Paño concurring.

[2] CA *rollo*, pp. 26-42. Penned by Pairing Judge Rogelio D. Laquihon.

[3] In accordance with Amended Administrative Circular No. 83-2015, the identities of the parties, records and court proceedings are kept confidential by replacing their names and other personal circumstances with fictitious initials, and by blotting out the specific geographical location that may disclose the identities of the victims.

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

Quizo, the arresting officer; (4) Dr. Rolito Cataluna; and (5) Dr. Zita Adaza.

CCC, the 14-year-old brother of AAA, testified that on 28 February 2005, a party was held at their house in Dapitan City for the birthday of his brother EEE's daughter. Among those who attended the party was appellant. After dinner, he and his sister AAA slept in one of the bedrooms, which was visible from the sala where EEE and his guests, including appellant were still drinking Tanduay Rhum. The following morning, at 5:00 a.m., on 1 March 2005, CCC was awakened when he felt the floor shake. CCC saw a man on top of AAA having sexual intercourse with her. AAA was gasping for breath and moaning in pain. When CCC switched on the light in the room, he saw appellant, who was only wearing a big t-shirt but no pants, about to leave the room. Appellant asked CCC for some salt and CCC told him to get some in the kitchen. CCC was scared because appellant just raped his sister. In the afternoon, CCC went to Zamboanga to report the rape incident to his mother BBB.

BBB testified that she is the mother of AAA, who is mute and has very low comprehension level. On 1 March 2005, she was in the house of her mother in Piñan, Zamboanga del Norte. At around 6:00 p.m., her son CCC arrived and told her that AAA was raped by appellant, who is her fourth degree cousin and neighbor. The following day, BBB left for Dapitan and brought AAA to the DSWD, where they were referred to a policeman who investigated them. Thereafter, they proceeded to the City Health Office where AAA was examined. After the examination, they went back to the police station to request the arrest of appellant.

Dr. Rolito Cataluna testified that the City Health Officer who examined AAA and signed the medical certificate had already gone to the United States of America. Dr. Cataluna then explained that the medical certificate states that AAA had lacerations in the vaginal canal which may be caused by biking, or an inserted penis, among others. He added that the

result of the urinalysis conducted on AAA indicated the presence of spermatozoa in her vagina.

SPO4 Ronnie Quizo testified that on 2 March 2005, BBB came to the police station to report that her daughter AAA was raped by appellant. SPO4 Quizo and his fellow police officers then arrested appellant and brought him to the police station for investigation.

Dr. Zita Adaza testified that on 30 August 2006, she examined AAA and found her: (1) mentally retarded and mute; (2) totally dependent on her mother; (3) has cardiovascular problem; (4) has a very low mental classification; and (5) has a profound level of 5 which is the lowest level. Dr. Adaza concluded that AAA, whose mental condition is congenital, has complete lack of intellect.

On the other hand, the defense presented two witnesses: appellant and Eneria Tobio[5] (Eneria), the wife of appellant's cousin. Appellant alleged that in the evening of 28 February 2005, he attended the birthday party of EEE's daughter at AAA's house. The party ended at around 10:00 p.m. and he left the party with Eneria, EEE and his friends. At around 12:00 midnight, he slept in the sala of Eneria's house and woke up the following day at 10:00 a.m. Appellant admitted that he went to AAA's house to ask for salt from CCC, but he was there in the evening of 28 February 2005 and not on 1 March 2005. On cross-examination, appellant stated that Eneria's house is very near AAA's house which is only 150 meters away. Appellant admitted that he knew AAA was mute and mentally retarded.

Eneria testified that on 28 February 2005, she and appellant were at the birthday party of EEE's daughter. At around 10:00 p.m., she, her children and appellant left the party and went home to her house to sleep. Eneria testified that appellant slept in her house and that he could not have raped AAA because he stayed in her house the whole night and only left the following day.

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[5] Also referred to in the records as Eneria Tubio.

The Ruling of the Trial Court

On 27 November 2012, the trial court rendered the Judgment convicting appellant of the crime of rape under Article 266-A of the RPC:

> WHEREFORE, judgment is hereby rendered finding accused [GGG] guilty beyond reasonable doubt of the crime of rape committed against AAA. Consequently, he is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay the private complainant the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages.
>
> With costs against the accused.
>
> SO ORDERED.[6]

The trial court found appellant guilty of raping AAA who is mute, mentally retarded, and incapable of giving consent. Although AAA was already 21 years old at the time of the incident, she has a "level 5" mental capacity which is the lowest mental classification. The evidence showed that the mental capacity of AAA is equivalent to an IQ of below 20 which is similar to that of an average 2-year-old child. Appellant was positively identified by CCC as the rapist, and the medical findings were consistent with the charge of rape. The trial court held that CCC's categorical and positive identification of appellant as the rapist of AAA prevails over the alibi and denial by appellant, especially since appellant has not imputed any bad faith or ill-motive on the part of AAA, BBB, or CCC. Furthermore, the trial court held that it was not impossible for appellant to be at the crime scene considering that Eneria's house, where he slept the night before the incident was only 150 meters away from AAA's house. The trial court held that "Article 266-B, in relation to Article 266-A of the [RPC], as amended, provides the penalty of *reclusion perpetua* for the carnal knowledge of a woman who is under 12 years old, as in this case, a woman who is a mental retardate which the accused knew."[7]

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[6] CA *rollo*, p. 42.

[7] *Id*. at 41.

The Ruling of the Court of Appeals

On appeal, the CA affirmed the trial court's decision with modification. The CA upheld the trial court's finding that appellant had carnal knowledge of AAA, who was proven to be a mental retardate. The CA held that appellant's denial and alibi are weak and cannot prevail over the positive identification of him as the rapist. Besides, considering that AAA's house is only 150 meters away from Eneria's house where appellant stayed, it was not impossible for appellant to go to AAA's house on the date and time of the rape incident. Under Article 266-B of the RPC, death penalty is imposed if the offender knew of the mental disability of the victim, as in this case. But since death penalty has been abolished by Republic Act No. 9346, the CA sentenced appellant to suffer the penalty of *reclusion perpetua* without eligibility for parole instead of death penalty. The CA also increased the civil indemnity and moral damages to ₱75,000 each and the exemplary damages to ₱30,000. Furthermore, the CA ruled that the damages awarded should earn interest at the rate of 6% *per annum* from the date of finality of the decision until fully paid.

The dispositive portion of the CA Decision dated 27 January 2016 states:

> WHEREFORE, the appeal is hereby DENIED. The Judgment dated 27 November 2012 of the Regional Trial Court, Branch 6, Dipolog City is hereby AFFIRMED with MODIFICATION. Accused-Appellant GGG is GUILTY beyond reasonable doubt of the crime of RAPE and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole.
>
> Accused-Appellant GGG is also ordered to pay AAA the amount of Php 75,000.00 as civil indemnity *ex delicto*, Php 75,000.00 as moral damages and Php 30,000.00 as exemplary damages. The award of damages shall earn legal interest at the rate of six percent (6%) from the finality of this judgment until fully paid.
>
> SO ORDERED.[8]

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[8] *Rollo*, p. 27.

Hence, this appeal.

The Issue

Whether appellant's guilt was proven beyond reasonable doubt.

The Ruling of the Court

We find the appeal without merit. The CA was correct in affirming the ruling of the trial court that appellant's guilt for the crime he was accused of was clearly established by the witnesses and the evidence of the prosecution. The trial court, having the opportunity to observe the witnesses and their demeanor during the trial, can best assess the credibility of the witnesses and their testimonies.[9] The trial court's findings are accorded great respect unless the trial court has overlooked or misconstrued some substantial facts, which if considered might affect the result of the case.[10]

Denial and alibi, which are self-serving negative evidence and easily fabricated, cannot be accorded greater evidentiary weight than the positive testimony of a credible witness.[11] The victim's brother, CCC, who witnessed the rape incident, positively identified appellant as the person who raped his sister AAA. Furthermore, as found by the CA and the trial court, appellant's alibi is weak considering that Eneria's house where appellant slept is only 150 meters away from AAA's house, such that it was not impossible for appellant to go to AAA's house on the date and time of the rape incident.

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[9] *People v. ZZZ*, G.R. No. 229862, 19 June 2019; *People v. Palema*, G.R. No. 228000, 10 July 2019; *People v. Ampo*, G.R. No. 229938, 27 February 2019; *People v. Dela Cruz*, G.R. No. 219088, 13 June 2018.

[10] *People v. Verona*, G.R. No. 227748, 19 June 2019; *People v. Elimancil*, G.R. No. 234951, 28 January 2019; *Fernandez v. People*, G.R. No. 217542, 21 November 2018.

[11] *People v. Dolendo*, G.R. No. 223098, 3 June 2019; *People v. Batalla*, G.R. No. 234323, 7 January 2019; *People v. Pilpa*, G.R. No. 225336, 5 September 2018.

However, appellant should be convicted of qualified rape pursuant to Article 266-B, paragraph 10 of the RPC since the Information alleged, and it was proven, that appellant knew at the time of the commission of the crime that the victim AAA is mentally retarded.[12]

Article 266-B, paragraph 10 of the RPC, as amended, provides:

> ART. 266-B. *Penalties*. — x x x
>
> x x x x x x x x x
>
> **The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:**
>
> x x x x x x x x x
>
> 10. **When the offender knew of the mental disability**, emotional disorder and/or physical handicap **of the offended party at the time of the commission of the crime.** (Boldfacing supplied)

In this case, appellant admitted that he knew that AAA is mute and mentally retarded. Since appellant knew of AAA's mental disability when appellant raped her, the proper designation of the crime committed is qualified rape. The imposable penalty for qualified rape is death. However, in view of Republic Act No. 9346,[13] which prohibits the imposition of death penalty, appellant's penalty is reduced to *reclusion perpetua* without eligibility for parole.

Furthermore, pursuant to prevailing jurisprudence, the amount of civil indemnity, moral damages, and exemplary damages should all be increased to ₱100,000.[14] The damages awarded should

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[12] *People v. Dela Rosa*, G.R. No. 206419 (Resolution), 1 June 2016; *People v. Bangsoy*, 778 Phil. 294 (2016).

[13] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. Approved on 24 June 2006.

[14] *People v. Moya*, G.R. No. 228260, 10 June 2019; *People v. Vañas*, G.R. No. 225511, 20 March 2019; *People v. Bauit*, G.R. No. 223102, 14 February 2018; *People v. Jugueta*, 783 Phil. 806 (2016).

earn interest at the rate of 6% *per annum* from the date of finality of this Resolution until fully paid.

WHEREFORE, the appeal is **DISMISSED**. We **AFFIRM** with **MODIFICATION** the Decision dated 27 January 2016 of the Court of Appeals in CA-G.R. CR-HC No. 01221-MIN. Accused-appellant GGG is **GUILTY** beyond reasonable doubt of the crime of **QUALIFIED RAPE** and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole.

Accused-appellant is ordered to pay AAA the amounts of ₱100,000 as civil indemnity, ₱100,000 as moral damages, and ₱100,000 as exemplary damages. The amounts awarded shall earn interest at the rate of 6% *per annum* from the date of finality of this Resolution until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 230356. September 18, 2019]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ERIC VARGAS *y* JAGUARIN and GINA BAGACINA,** *accused,* **ERIC VARGAS *y* JAGUARIN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; MURDER; ELEMENTS; PROVED. — For a successful prosecution of Murder under Article 248 of the RPC, the following elements must be proven: (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 neither parricide nor infanticide. In this case, we find that the prosecution sufficiently proved each element beyond reasonable doubt.

2. REMEDIAL LAW; EVIDENCE; EXCEPTION TO THE HEARSAY RULE; *RES GESTAE* RULE; A DECLARATION IS DEEMED PART OF THE *RES GESTAE* AND IS ADMISSIBLE AS AN EXCEPTION TO THE HEARSAY RULE WHEN:(1) THE PRINCIPAL ACT, THE *RES GESTAE,* IS A STARTLING OCCURRENCE; (2) THE STATEMENTS WERE MADE BEFORE THE DECLARANT HAD TIME TO CONTRIVE OR DEVISE; AND (3) STATEMENTS MUST CONCERN THE OCCURRENCE IN QUESTION AND ITS IMMEDIATELY ATTENDING CIRCUMSTANCES; PRESENT. — [W]e find that the Sworn Statement of Belen was correctly admitted by the lower courts as part of *res gestae* to positively identify Vargas as the driver of the motorcycle where the female who shot Belen was riding. Section 36 of Rule 130 of the Rules of Court provides that "a witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules." However, there are exceptions to the hearsay rule, one of which is *res gestae,* found in Section 42 of Rule 130 x x x. A declaration is deemed part of the *res gestae* and is admissible as an exception to the hearsay rule when the following requisites are present: (1) the principal act, the *res gestae*, is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) statements must concern the occurrence in question and its immediately attending circumstances. In this case, we find that all the requisites are present. The shooting incident is a startling occurrence, and the statements of Belen, which concern the shooting incident as he was identifying his assailants, were given before he had time to contrive or devise a false statement. The mere fact that it took Belen three (3) days before he was able to give his statement does not remove such statement as part of *res gestae*.

3. ID.; ID.; ID.; ID.;THE STATEMENTS ARE ADMISSIBLE AS PART OF *RES GESTAE,* WHERE THE ACT, DECLARATION OR EXCLAMATION IS SO INTIMATELY INTERWOVEN OR CONNECTED WITH THE PRINCIPAL FACT OR

EVENT THAT IT CHARACTERIZES AS TO BE REGARDED AS A PART OF THE TRANSACTION ITSELF, AND THE EVIDENCE CLEARLY NEGATES ANY PREMEDITATION OR PURPOSE TO MANUFACTURE TESTIMONY. — There are two tests in applying the *res gestae* rule to determine whether or not statements should be admissible as part of *res gestae*: (1) the act, declaration or exclamation is so intimately interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself; and (2) the evidence clearly negates any premeditation or purpose to manufacture testimony. To ascertain whether the evidence negates fabrication, spontaneity of the statements must be determined.

4. **ID.; ID.; ID.; ID.; AS LONG AS THE STATEMENTS WERE MADE VOLUNTARILY AND SPONTANEOUSLY SO NEARLY CONTEMPORANEOUS AS TO BE IN THE PRESENCE OF THE OCCURRENCE, ALTHOUGH NOT PRECISELY CONCURRENT IN POINT OF TIME, SUCH MUST BE ADMISSIBLE AS PART OF *RES GESTAE*, IF THE STATEMENTS WERE MADE UNDER CIRCUMSTANCES WHICH EXCLUDE THE IDEA OF DESIGN OR DELIBERATION; FACTORS TO DETERMINE SPONTANEITY. —** *Res gestae* comprehends a situation which presents a startling or unusual occurrence sufficient to produce a spontaneous and instinctive reaction, during which interval certain statements are made under such circumstances as to show lack of forethought or deliberate design in the formulation of their content. As long as the statements were made voluntarily and spontaneously so nearly contemporaneous as to be in the presence of the occurrence, although not precisely concurrent in point of time, such must be admissible as part of *res gestae*, if the statements were made under circumstances which exclude the idea of design or deliberation. While there is no hard and fast rule, this Court has considered a number of factors to determine spontaneity. In *People v. Estibal*, the Court held: By *res gestae*, exclamations and statements made by either the participants, victims, or spectators to a crime, immediately before, during or immediately after the commission of the crime, when the circumstances are such that the statements constitute nothing but spontaneous reaction or utterance inspired by the excitement of the occasion there being no opportunity for the declarant to deliberate and to fabricate a false statement become admissible in evidence

against the otherwise hearsay rule of inadmissibility. x x x. There is, of course, no hard and fast rule by which spontaneity may be determined although a number of factors have been considered, including, but not always confined to, **(1) the time that has lapsed between the occurrence of the act or transaction and the making of the statement, (2) the place where the statement is made, (3) the condition of the declarant when the utterance is given, (4) the presence or absence of intervening events between the occurrence and the statement relative thereto, and (5) the nature and the circumstances of the statement itself**, xxx. Based on the test mentioned, we find that the Sworn Statement of Belen is admissible in evidence as part of *res gestae*, as the statements made by Belen, the victim of the startling occurrence, refer to the circumstances of the shooting incident — particularly the actual perpetrators of the crime. We find that these statements were made spontaneously considering the circumstances under which they were made.

5. ID.; ID,; ID.; DEFENSE OF ALIBI; FOR THE DEFENSE OF ALIBI TO PROSPER, IT IS NOT ENOUGH TO PROVE THAT THE ACCUSED WAS SOMEWHERE ELSE WHEN THE OFFENSE WAS COMMITTED; IT MUST LIKEWISE BE DEMONSTRATED THAT HE WAS SO FAR AWAY THAT IT WAS NOT POSSIBLE FOR HIM TO HAVE BEEN PHYSICALLY PRESENT AT THE PLACE OF THE CRIME OR ITS IMMEDIATE VICINITY AT THE TIME OF ITS COMMISSION. — To be able to validly use the defense of alibi, two requirements must be met: (1) that the accused was not present at the scene of the crime at the time of its commission, and (2) that it was physically impossible for him to be there at the time. Therefore, for the defense of alibi to prosper, it is not enough to prove that the accused was somewhere else when the offense was committed; it must likewise be demonstrated that he was so far away that it was not possible for him to have been physically present at the place of the crime or its immediate vicinity at the time of its commission. In this case, Vargas' statement is self-serving and unreliable, especially as it remains unsubstantiated and uncorroborated. It is well-settled that alibi and denial are outweighed by positive identification that is categorical, consistent and untainted by any ill motive on the part of the eyewitness testifying on the matter.

6. ID.; ID.; CONSPIRACY; CONSPIRACY IS PRESENT WHEN THERE IS UNITY IN PURPOSE AND INTENTION IN THE COMMISSION OF A CRIME, AND A PREVIOUS PLAN OR AGREEMENT TO COMMIT ASSAULT IS NOT REQUIRED, AS IT IS SUFFICIENT THAT AT THE TIME OF SUCH AGGRESSION, ALL THE ACCUSED MANIFESTED BY THEIR ACTS A COMMON INTENT OR DESIRE TO ATTACK. — Based on the records, the lower courts were correct in finding that Vargas was in conspiracy with the female assailant of Belen. Conspiracy is present when there is unity in purpose and intention in the commission of a crime — it does not require a previous plan or agreement to commit assault as it is sufficient that at the time of such aggression, all the accused manifested by their acts a common intent or desire to attack. Given that Belen's shooter was riding the motorcycle driven by Vargas, which was the same motorcycle used to flee the scene of the shooting incident, it is clear that Vargas and the female assailant had a common purpose against Belen. Their acts were aimed at the accomplishment of the same unlawful object, each doing a part so that their combined acts indicate a closeness of personal association and a concurrence of sentiment. By driving the motorcycle which carried the person who shot Belen, there was clearly a conspiracy, a common intent and purpose, to kill Belen.

7. CRIMINAL LAW; REVISED PENAL CODE; QUALIFYING CIRCUMSTANCES; TREACHERY; CONDITIONS BEFORE TREACHERY MAY BE APPRECIATED AGAINST THE ACCUSED; PRESENT; TREACHERY ATTENDED THE KILLING WHERE THE VICTIM WAS UNARMED, UNSUSPECTING AND UNAWARE OF THE THREAT TO HIS LIFE WHEN HE WAS SHOT SEVERAL TIMES, INFLICTING UPON HIM MORTAL WOUNDS. — As to the finding of treachery, we find that the lower courts did not err in finding that the killing of Belen was attended by treachery. Treachery must be proved by clear and convincing evidence as conclusively as the killing itself. Under Article 14, paragraph 16 of the RPC, two conditions must necessarily occur before treachery or *alevosia* may be properly appreciated, namely: (1) the employment of means, methods, or manner of execution that would insure the offender's safety from any retaliatory act on the part of the offended party, who has, thus, no opportunity for self-defense or retaliation; and (2) deliberate

or conscious choice of means, methods, or manner of execution. In this case, the lower courts were correct in finding that both requisites were present — Belen was unsuspecting and unaware of the threat to his life, when he was shot several times, inflicting upon him mortal wounds. The suddenness of the attack shows that Belen, who was unarmed, had no opportunity to defend himself. Moreover, the wounds sustained by Belen show that treachery attended his killing.

8. ID.; ID.; ID.; EVIDENT PREMEDITATION; EVIDENT PREMEDITATION MUST BE CLEARLY PROVEN, ESTABLISHED BEYOND REASONABLE DOUBT AND BASED ON EXTERNAL ACTS THAT ARE EVIDENT, NOT MERELY SUSPECTED, AND WHICH INDICATE DELIBERATE PLANNING; ELEMENTS OF EVIDENT PREMEDITATION; NOT PROVED. — [A]s to the finding of evident premeditation, we find that the prosecution failed to prove the elements of evident premeditation. Similar to treachery, evident premeditation must be clearly proven, established beyond reasonable doubt and based on external acts that are evident, not merely suspected, and which indicate deliberate planning. The prosecution must prove, beyond reasonable doubt, each element of evident premeditation as follows: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused has clung to his determination; and (3) sufficient time between such determination and execution to allow him to reflect upon the consequences of his act. Absent any proof as to how and when the plan to kill was hatched or what time elapsed before it was carried out, evident premeditation cannot be appreciated.

9. ID.; ID.; ID.; ID.; TO WARRANT A FINDING OF EVIDENT PREMEDITATION, IT MUST APPEAR NOT ONLY THAT THE ACCUSED DECIDED TO COMMIT THE CRIME PRIOR TO THE MOMENT OF ITS EXECUTION BUT ALSO THAT THIS DECISION WAS THE RESULT OF MEDITATION, CALCULATION, REFLECTION, OR PERSISTENT ATTEMPT. — [T]he prosecution failed to present any evidence as to when the plan to kill Belen was determined by Vargas and the female assailant. The essence of the circumstance of evident premeditation is that the execution of the criminal act be preceded by calm thought and reflection upon the resolve to carry out the criminal intent during the

space of time sufficient to arrive at a calm judgment. To warrant a finding of evident premeditation, it must appear not only that the accused decided to commit the crime prior to the moment of its execution but also that this decision was the result of meditation, calculation, reflection, or persistent attempt. In this case, there was no showing as to whether or not sufficient time had passed from the determination to carry out their criminal plan until the execution of such plan. Thus, evident premeditation cannot qualify the killing of Belen.

10. ID.; ID.; MURDER; PENALTY OF *RECLUSION PERPETUA* IMPOSED; CIVIL LIABILITY OF ACCUSED-APPELLANT, MODIFIED. — [W]e find that the lower courts were correct in imposing the penalty of *reclusion perpetua* based on Article 248 of the RPC. However, there is a need to modify the amount of indemnity awarded as the circumstance of evident premeditation should no longer be appreciated as a generic aggravating circumstance. x x x .In light of *People v. Jugueta*, we award ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages. As no evidence was presented as to the medical treatment, burial and funeral expenses, we also award ₱50,000.00 as temperate damages, in accordance with *People v. Jugueta*. All damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO, *ACTING C.J.*:

The Case

On appeal is the 15 November 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07331, which affirmed

[1] *Rollo*, pp. 2-34. Penned by Associate Justice Sesinando E. Villon, with Associate Justices Rodil V. Zalameda (now a member of this Court) and Ma. Luisa Quijano-Padilla concurring.

with modification the Judgment[2] dated 5 February 2015 of the Regional Trial Court (RTC) of Iriga City, Branch 60, in Criminal Case No. IR-9351, finding appellant Eric Vargas *y* Jaguarin (Vargas) guilty beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code (RPC).

The Facts

On 2 August 2010, Vargas and a certain "Jane Doe" were charged as follows:

> That on or about the 9th day of July 2010 at around 8:30 in the evening, in Zone 3, Barangay San Jose Pangaraon, Nabua, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, with treachery, evident premeditation employing means to insure or afford impunity, did then and there willfully, unlawfully and feloniously attack, assault and shot Miguel Belen y Abala, with the use of unlicensed Caliber 45, hitting him on the different parts of his body, thus, inflicting mortal wounds, which was the proximate cause of his death, to the damage and prejudice of the heirs of the victim in such amount that may be proven in Court.
>
> CONTRARY TO LAW.[3]

On 12 August 2010, an Amended Information was filed to substitute "Jane Doe" with Gina Bagacina (Bagacina). A warrant of arrest was issued against Bagacina on 13 August 2010, but to this date, she remains at large. Upon arraignment, Vargas entered a plea of not guilty.

The facts, as culled from the records, are as follows:

On or about 8:30 in the evening of 9 July 2010, Miguel A. Belen (Belen), a volunteer field reporter of Radio Station DWEB was riding home aboard his motorcycle along the barangay

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[2] CA *rollo*, pp. 62-72. Penned by Judge Timoteo A. Panga, Jr.

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

road in Zone 3, Barangay San Jose Pangaraon, Nabua, Camarines Sur, when he was shot by a woman who was riding a black motorcycle driven by a man.

At around 8:55 of the same evening, the Nabua Municipal Police Station received a phone call from a concerned citizen informing them that a shooting incident happened. Police officers were immediately dispatched and upon cursory investigation of the scene, it was found that at around 8:30 in the evening, Belen was riding his red motorcycle when he was shot several times by an unidentified gunman. Belen was rushed to the Doña Josefa Hospital in Iriga City for treatment.

On 10 July 2010, SPO2 Romeo Benito Apolinar B. Hugo (SPO2 Hugo), Chief Investigator of the Nabua Municipal Police Station, was directed to conduct an investigation at the Doña Josefa Hospital where Belen was confined. However, SPO2 Hugo found Belen to be physically indisposed for verbal communication, given that he was then being treated with his mortal wounds and was intubated due to damage to his lungs.

On 13 July 2010, SPO2 Hugo returned to the hospital with SPO3 Henry Dino (SPO3 Dino), who brought two volumes of the rogue gallery of Iriga City for possible identification of the victim's assailants. On this day, Belen appeared to be aware and in full possession of his mental faculties but remained unable to engage in verbal communication due to his injuries. As Belen's wife and daughter were communicating with Belen through writing, SPO2 Hugo explained to his wife that he would be propounding questions to Belen and then he would annotate his response based on the hand or head gestures made by Belen. Congressman Salvio Fortuno, who belonged to the same political party as the victim, was also there to aid with the questioning.

SPO2 Hugo asked several questions and the victim's actual method of response — through nodding or shaking his head or other hand gestures — was annotated in the sworn statement that was later on prepared to reflect his testimony. Belen was able to identify Vargas as the driver of the motorcycle after being shown the second volume of the rogue gallery brought

by SPO3 Dino. While SPO3 Dino was flipping the pages, Belen gestured and pointed to Vargas, and motioned that Vargas was the driver of the motorcycle in the shooting incident. As for the actual shooter, Belen confirmed that his assailant was a woman — nodding his head yes when asked if the shooter was a woman — and Belen was able to describe her general description by checking the characteristics written down by SPO2 Hugo in a piece of paper. Belen also wrote the woman's height as 5'2" in the same piece of paper after much visible effort.

The transcription of the interview was confirmed by Belen, to whom it was read before he affixed his thumbmark thereto. It was also witnessed by his wife, who confirmed that Belen was giving his assent thereto, and later on signified that she witnessed the same by affixing her signature on the same document. Belen's affidavit was certified by Assistant Provincial Prosecutor Antonio V. Ramos, after personally confirming with the victim the veracity of the contents of the same. This Sworn Statement was later offered as evidence during the trial.

From the confinement until 21 July 2010, Dr. Godofredo Belmonte, Belen's attending physician, noted that Belen's condition was improving. However, on 21 July 2010, Belen suffered considerable physical deterioration, requiring further surgery to be conducted. On 29 July 2010, Belen succumbed to his injuries and passed away.

Dr. James Belgira (Dr. Belgira), the medico-legal officer of the PNP, examined Belen post-mortem and in his medico-legal report, found that Belen suffered from significant gunshot wounds, some of which were found to have entry points at his back, probably shot while Belen was lying on the ground, and were sustained through intermittent — rather than successive — gunshots. Dr. Belgira opined that, given the location of the shots and the position of the victim as he was being shot, there was manifest intent to kill and that treachery attended the shooting.

For his defense, Vargas denied the charge against him and interposed alibi as his defense. He alleged that it was impossible

for him to be at the scene of the crime as he has never been to Nabua, Camarines Sur in all his life and that at the time of the incident, he was having a drinking session with his uncle Arnulfo Abinal in San Nicolas, Iriga City, not far from the game fowl farm where he works. They were later joined by Jeffrey Manaog and Sheila Castanares. Vargas further alleged that he woke up at about 5:00 a.m. the following day and reported for work at the chicken farm.

The Ruling of the RTC

In a Judgment dated 5 February 2015, the RTC found Vargas guilty of the crime of Murder, penalized under Article 248 of the RPC, to wit:

> WHEREFORE, finding the accused Eric J. Vargas GUILTY beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code, he is hereby sentenced to suffer the penalty of *Reclusion Perpetua*.
>
> Death of the victim having occurred due to the crime, Maryjane A. Belen, the widow of the victim is entitled to moral damages of PhP 50,000 and PhP 100,000.00 in exemplary damages.
>
> There being no receipts presented as to the actual expenses incurred by the family of the victim, no actual or compensatory damages can be awarded. However, jurisprudence allows the award of temperate damages considering that, as records show, the victim underwent medical treatment before his demise. For this, the court awards the widow of the victim the amount of PhP75,000.00 as temperate damages.
>
> All monetary awards shall earn an interest of six percent (6%) per annum from the finality of judgment until fully paid.
>
> Costs against the accused.
>
> SO ORDERED.[4]

The RTC found that the prosecution was able to clearly establish that Belen was shot several times, and despite the medical attention received, he nonetheless died. The RTC also

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[4] CA *rollo*, p. 72.

found that the killing of Belen was attended by the qualifying circumstances of treachery and evident premeditation, and thus the crime committed was murder. Moreover, the RTC found that Belen, through his sworn statement, positively identified Vargas as the driver of the motorcycle of the shooting incident, and that Belen's statement against his assailant, while not a dying declaration, was credible and spontaneous, and was admissible as part of *res gestae*.

The Ruling of the CA

In a Decision dated 15 November 2016, the CA affirmed, with modification, the Decision of the RTC. The dispositive portion of the Decision of the CA reads:

> WHEREFORE, in view of the foregoing, the appeal is DENIED. The [Judgment] dated February 5, 2015 of the Regional Trial Court of Iriga City, Branch 6, finding accused-appellant Eric Vargas guilty beyond reasonable doubt of the crime of MURDER, is hereby AFFIRMED with the MODIFICATION. ACCORDINGLY, appellant is hereby ordered to indemnify the family of the victim Miguel Belen the following damages which shall bear interest at the rate of six per cent (6%) *per annum* until fully paid, namely:
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> 1. One Hundred Thousand Pesos (₱100,000.00) as Moral Damages;
> 2. One Hundred Thousand Pesos (₱100,000.00) as Civil Indemnity;
> 3. One Hundred Thousand Pesos (₱100,000.00) as Exemplary Damages; and
> 4. Seventy Five Thousand Pesos (₱75,000.00) as Temperate Damages.
>
> In all other respects, the herein appealed [Judgment] of the RTC of Iriga City, Branch 60, is hereby AFFIRMED.
>
> SO ORDERED.[5]

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[5] *Rollo*, p. 33.

The CA found that the sworn statement of Belen, identifying Vargas as the driver of the motorcycle of the shooting incident, is admissible as part of *res gestae,* even if the statement was made in a question-and-answer format, three (3) days after the shooting incident. The CA held that the statement was still made under the influence of a startling event, given that Belen had to undergo extensive surgery immediately after the incident. The CA held that the RTC correctly admitted the Sworn Statement of Belen, and as the admissibility of specific statements is a matter within the sound discretion of the trial court, such determination of admissibility is conclusive upon appeal, especially if there is no clear abuse of discretion.

The CA also found that the killing of Belen was attended by treachery and evident premeditation, qualifying the crime as murder. Conspiracy between Vargas and Bagacina was also duly proven by the prosecution, as they were convincingly shown to have acted in concert to achieve a common purpose of killing Belen. The conspiracy was manifest as Vargas was the driver of the motorcycle which Bagacina, the shooter, rode at the time of the commission of the crime. The motorcycle driven by Vargas was also the means by which he and Bagacina fled the scene.

The CA modified the amount of damages awarded to the family of Belen, but affirmed the decision of the RTC finding that the prosecution sufficiently proved beyond reasonable doubt the guilt of Vargas.

The Issue

The issue to be resolved in this appeal is whether or not the CA erred in finding Vargas guilty of the crime of Murder under the RPC.

The Ruling of the Court

We find the appeal to be without merit.

For a successful prosecution of Murder under Article 248 of the RPC, the following elements must be proven: (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 neither parricide nor infanticide.[6] In this case, we find that the prosecution sufficiently proved each element beyond reasonable doubt.

The first and fourth elements are not contested by Vargas. The death of Belen has been established by the Medico-Legal Certificate dated 14 July 2010, Belen's Certificate of Death, and the testimony of Dr. Belgira. Moreover, there is no allegation that Vargas and Belen are related. Thus, the killing is neither parricide nor infanticide. Vargas only questions the finding of the lower courts as to the second and third elements — whether Vargas was positively identified, by admissible and credible evidence, as the person in conspiracy with the woman who shot Belen, and whether the killing of Belen was qualified by the circumstances of treachery and evident premeditation.

In particular, Vargas argues that the statements of Belen in his Sworn Statement cannot be admitted as part of *res gestae* because the statement was given three (3) days after the shooting incident.

We disagree.

In this case, we find that the Sworn Statement of Belen was correctly admitted by the lower courts as part of *res gestae* to positively identify Vargas as the driver of the motorcycle where the female who shot Belen was riding.

Section 36 of Rule 130 of the Rules of Court provides that "a witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules." However, there are exceptions to the hearsay rule, one of which is *res gestae*, found in Section 42 of Rule 130, which provides:

SEC. 42. *Part of res gestae*. — Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent

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[6] *People v. Sota*, G.R. No. 203121, 29 November 2017, 847 SCRA 113, citing *People v. Camat*, 692 Phil. 55, 73 (2012).

thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance may be received as part of the *res gestae*.

A declaration is deemed part of the *res gestae* and is admissible as an exception to the hearsay rule when the following requisites are present: (1) the principal act, the *res gestae*, is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) statements must concern the occurrence in question and its immediately attending circumstances.[7]

In this case, we find that all the requisites are present. The shooting incident is a startling occurrence, and the statements of Belen, which concern the shooting incident as he was identifying his assailants, were given before he had time to contrive or devise a false statement. The mere fact that it took Belen three (3) days before he was able to give his statement does not remove such statement as part of *res gestae*.

There are two tests in applying the *res gestae* rule to determine whether or not statements should be admissible as part of *res gestae*: (1) the act, declaration or exclamation is so intimately interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself; and (2) the evidence clearly negates any premeditation or purpose to manufacture testimony.[8] To ascertain whether the evidence negates fabrication, spontaneity of the statements must be determined.

Res gestae comprehends a situation which presents a startling or unusual occurrence sufficient to produce a spontaneous and instinctive reaction, during which interval certain statements are made under such circumstances as to show lack of forethought

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[7] *People v. Palanas*, 760 Phil. 964 (2015), citing *People v. Villarico, Sr.*, 662 Phil. 399, 418 (2011).

[8] *People v. Estibal*, 748 Phil. 850 (2014), citing *People v. Salafranca*, 682 Phil. 470, 484 (2012).

or deliberate design in the formulation of their content.[9] As long as the statements were made voluntarily and spontaneously so nearly contemporaneous as to be in the presence of the occurrence, although not precisely concurrent in point of time, such must be admissible as part of *res gestae*, if the statements were made under circumstances which exclude the idea of design or deliberation.[10] While there is no hard and fast rule, this Court has considered a number of factors to determine spontaneity. In *People v. Estibal*, the Court held:

> By *res gestae*, exclamations and statements made by either the participants, victims, or spectators to a crime, immediately before, during or immediately after the commission of the crime, when the circumstances are such that the statements constitute nothing but spontaneous reaction or utterance inspired by the excitement of the occasion there being no opportunity for the declarant to deliberate and to fabricate a false statement become admissible in evidence against the otherwise hearsay rule of inadmissibility. x x x.
>
> There is, of course, no hard and fast rule by which spontaneity may be determined although a number of factors have been considered, including, but not always confined to, **(1) the time that has lapsed between the occurrence of the act or transaction and the making of the statement, (2) the place where the statement is made, (3) the condition of the declarant when the utterance is given, (4) the presence or absence of intervening events between the occurrence and the statement relative thereto, and (5) the nature and the circumstances of the statement itself**, xxx.[11] (Emphasis supplied)

Based on the test mentioned, we find that the Sworn Statement of Belen is admissible in evidence as part of *res gestae*, as the statements made by Belen, the victim of the startling occurrence, refer to the circumstances of the shooting incident — particularly

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[9] *People v. Peña*, 427 Phil. 129 (2002), citing *People v. Nartea*, 74 Phil. 8, 10 (1942).

[10] *People v. Estibal*, *supra*, citing *People v. Ner*, 139 Phil. 390 (1969).

[11] *People v. Estibal*, *supra* note 8, at 868-869, citing *People v. Dianos*, 357 Phil. 871, 885-886 (1998).

the actual perpetrators of the crime. We find that these statements were made spontaneously considering the circumstances under which they were made. Immediately after the shooting incident, Belen had to undergo extensive surgery for the gunshot wounds he sustained. He was unable to talk and had difficulty in breathing, but he managed to convey his answers to the questions propounded to him through writing and moving his head and hands. During the three (3) days that intervened the shooting incident and when the statements were made, Belen had no time to deliberately fabricate a story. He was in the hospital, receiving treatment for his numerous wounds, fighting for his life. He could not even speak or communicate verbally because of the intubation in his lungs. Given this situation, it is clear that he had no time to contrive a false statement against Vargas or Bagacina.

Belen positively identified Vargas as the driver of the motorcycle of the shooting incident. SPO2 Hugo corroborated this statement, and testified as to how Belen identified Vargas as the driver of the motorcycle in the shooting incident. SPO2 Hugo testified that when Belen was shown the rogue gallery, he saw Belen shake his head to signify that he did not recognize the pictures in the particular page shown to him. After going through the first volume, SPO2 Hugo testified that SPO3 Dino also clarified with Belen that he did not recognize anyone from the first volume of the rogue gallery. SPO2 Hugo continued his testimony by stating that while looking at the second volume, he saw Belen wave his hand to SPO3 Dino who was flipping the pages, signaling him to go back to the previous page. SPO2 Hugo then saw Belen point to one of the pictures in that particular page. When SPO2 Hugo, while pointing to one of the pictures, asked him "*Amo adi*?" (Is this the one?), Belen nodded. Belen pointed to the person in the photograph and made a motion of wiping his face, and then acted by his hands of a motion of driving a motorcycle. When SPO2 Hugo asked if the person he was pointing to was the driver of the motorcycle of the shooting incident, Belen nodded, still making the gesture of driving a motorcycle. When a copy of a picture was shown during trial, SPO2 Hugo testified that it was the very same picture

referred to by Belen in his Sworn Statement, which was the photograph of Vargas. Based on the foregoing, it is clear that despite not being able to communicate verbally, Belen had positively identified Vargas as the driver of the motorcycle which his female assailant was riding.

Moreover, we find that the lower courts did not err in giving weight to these statements, especially given Vargas' weak defenses of denial and alibi. Vargas' claim that he was having a drinking session when the incident happened cannot prevail over the positive identification presented by the prosecution.

To be able to validly use the defense of alibi, two requirements must be met: (1) that the accused was not present at the scene of the crime at the time of its commission, and (2) that it was physically impossible for him to be there at the time.[12] Therefore, for the defense of alibi to prosper, it is not enough to prove that the accused was somewhere else when the offense was committed; it must likewise be demonstrated that he was so far away that it was not possible for him to have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[13] In this case, Vargas' statement is self-serving and unreliable, especially as it remains unsubstantiated and uncorroborated. It is well-settled that alibi and denial are outweighed by positive identification that is categorical, consistent and untainted by any ill motive on the part of the eyewitness testifying on the matter.[14]

Vargas further argues that the courts gravely erred in finding that there was conspiracy between him and the female assailant in the shooting incident.

We disagree.

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[12] *Ditche v. Court of Appeals*, 384 Phil. 35 (2000).

[13] *Id*., citing *People v. Cañete*, 350 Phil. 933 (1998).

[14] *People v. Casimero*, G.R. No. 231122, 16 January 2019, citing *People v. Rarugal*, 701 Phil. 592, 600-601 (2013), further citing *Malana v. People*, 573 Phil. 39, 53 (2008).

Based on the records, the lower courts were correct in finding that Vargas was in conspiracy with the female assailant of Belen. Conspiracy is present when there is unity in purpose and intention in the commission of a crime — it does not require a previous plan or agreement to commit assault as it is sufficient that at the time of such aggression, all the accused manifested by their acts a common intent or desire to attack.[15] Given that Belen's shooter was riding the motorcycle driven by Vargas, which was the same motorcycle used to flee the scene of the shooting incident, it is clear that Vargas and the female assailant had a common purpose against Belen. Their acts were aimed at the accomplishment of the same unlawful object, each doing a part so that their combined acts indicate a closeness of personal association and a concurrence of sentiment.[16] By driving the motorcycle which carried the person who shot Belen, there was clearly a conspiracy, a common intent and purpose, to kill Belen.

Finally, we address the argument of Vargas that the lower courts erred in appreciating the qualifying circumstances of treachery and evident premeditation.

As to the finding of treachery, we find that the lower courts did not err in finding that the killing of Belen was attended by treachery. Treachery must be proved by clear and convincing evidence as conclusively as the killing itself.[17] Under Article 14, paragraph 16 of the RPC, two conditions must necessarily occur before treachery or *alevosia* may be properly appreciated, namely: (1) the employment of means, methods, or manner of execution that would insure the offender's safety from any retaliatory act on the part of the offended party, who has, thus,

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[15] *People v. Rivera*, 458 Phil. 856 (2003).

[16] *People v. Bermudo*, G.R. No. 225322, 4 July 2018, citing *People v. De Leon*, 608 Phil. 701, 718 (2009).

[17] *People v. Belludo*, G.R. No. 219884, 17 October 2018, citing *Cirera v. People*, 739 Phil. 25, 45 (2014), and *People v. Paracale*, 442 Phil. 32, 51 (2002).

no opportunity for self-defense or retaliation; and (2) deliberate or conscious choice of means, methods, or manner of execution.[18]

In this case, the lower courts were correct in finding that both requisites were present — Belen was unsuspecting and unaware of the threat to his life, when he was shot several times, inflicting upon him mortal wounds. The suddenness of the attack shows that Belen, who was unarmed, had no opportunity to defend himself. Moreover, the wounds sustained by Belen show that treachery attended his killing. The following findings of the trial court support the finding of treachery: (1) the gun was fired not in succession but intermittently, meaning that there was sufficient time for the assailant to have observed the condition of Belen after each and every fire; (2) the quantity of bullets indicates the intent of the assailant to kill the victim; and (3) the locations of the wounds — with two coming from the back — show that it is possible that Belen was already lying down when the shots were fired.[19] The combination of the six (6) gunshot wounds was found to be fatal and life-threatening, according to Dr. Belgira, who examined Belen post mortem. Dr. Belgira opined that given the locations of the gunshot wounds and the position of the victim as he was being shot, treachery attended the shooting.

However, as to the finding of evident premeditation, we find that the prosecution failed to prove the elements of evident premeditation. Similar to treachery, evident premeditation must be clearly proven, established beyond reasonable doubt and based on external acts that are evident, not merely suspected, and which indicate deliberate planning.[20] The prosecution must prove, beyond reasonable doubt, each element of evident premeditation as follows: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused has clung to his determination; and (3) sufficient

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[18] *People v. Marzan*, G.R. No. 207397, 24 September 2018, citing *People v. Guzman*, 542 Phil. 152, 170 (2007).

[19] *Rollo*, pp. 26-27.

[20] *People v. Belaje*, 399 Phil. 358 (2000).

time between such determination and execution to allow him to reflect upon the consequences of his act.[21] Absent any proof as to how and when the plan to kill was hatched or what time elapsed before it was carried out, evident premeditation cannot be appreciated.[22]

In this case, the prosecution failed to present any evidence as to when the plan to kill Belen was determined by Vargas and the female assailant. The essence of the circumstance of evident premeditation is that the execution of the criminal act be preceded by calm thought and reflection upon the resolve to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.[23] To warrant a finding of evident premeditation, it must appear not only that the accused decided to commit the crime prior to the moment of its execution but also that this decision was the result of meditation, calculation, reflection, or persistent attempt.[24] In this case, there was no showing as to whether or not sufficient time had passed from the determination to carry out their criminal plan until the execution of such plan. Thus, evident premeditation cannot qualify the killing of Belen.

Based on the foregoing, we find that the lower courts were correct in imposing the penalty of *reclusion perpetua* based on Article 248 of the RPC. However, there is a need to modify the amount of indemnity awarded as the circumstance of evident premeditation should no longer be appreciated as a generic aggravating circumstance. The CA awarded ₱100,000.00 as moral damages; ₱100,000.00 as civil indemnity; ₱100,000.00 as exemplary damages; and ₱75,000.00 as temperate damages.

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[21] *People v. Abdul*, 369 Phil. 506 (1999), citing *People v. Bahenting*, 363 Phil. 181, 190 (1999); *People v. Realin*, 361 Phil. 422 (1999).

[22] *People v. Tortosa*, 391 Phil. 497 (2000), citing *People of the Philippines v. Timblor*, 348 Phil. 847 (1998); *People v. Medina*, 349 Phil. 718 (1998).

[23] *People v. Moreno*, G.R. No. 217889, 14 March 2018, citing *People v. Macaspac*, 806 Phil. 285 (2017).

[24] *People v. Iligan*, 369 Phil. 1005 (1999), citing *People v. Eribal*, 364 Phil. 829 (1999).

However, as evident premeditation was not attendant in the killing of Belen, this will no longer be appreciated as a generic aggravating circumstance which would have meted the penalty of death, which in turn would have justified the amounts awarded by the CA. In light of *People v. Jugueta*,[25] we award ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages. As no evidence was presented as to the medical treatment, burial and funeral expenses, we also award ₱50,000.00 as temperate damages, in accordance with *People v. Jugueta*.[26] All damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

WHEREFORE, the appeal is **DISMISSED**. The 15 November 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07331 affirming the Judgment dated 5 February 2015 of the Regional Trial Court of Iriga City, Branch 60, in Criminal Case No. IR-9351 is **AFFIRMED with MODIFICATION**. The award of civil indemnity, moral damages, and exemplary damages is reduced to ₱75,000.00 each. The award of temperate damages is also reduced to ₱50,000.00. Interest at the rate of 6% *per annum* is imposed on all damages awarded from the date of finality of this Decision until fully paid.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Inting,*[*] *JJ.,* concur.

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[25] 783 Phil. 806 (2016).

[26] *Id*.

[*] Designated additional member per Raffle dated 4 September 2019.

THIRD DIVISION

[G.R. Nos. 233280-92. September 18, 2019]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **HON. SANDIGANBAYAN (Second Division) and FELICIDAD B. ZURBANO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENTS; FINALITY-OF-ACQUITTAL DOCTRINE; A JUDGMENT OF ACQUITTAL IS FINAL AND UNAPPEALABLE; RATIONALE, EXPLAINED. — In this jurisdiction, We adhere to the *finality-of-acquittal* doctrine, that is, a judgment of acquittal is final and unappealable. The reason for the *finality-of-acquittal* doctrine was explained by this Court in *People v. CA,* thus: In our jurisdiction, the finality-of-acquittal doctrine as a safeguard against double jeopardy faithfully adheres to the principle first enunciated in *Kepner v. United States*. In this case, verdicts of acquittal are to be regarded as absolutely final and irreviewable. The cases of *United States v. Yam Tung Way, People v. Bringas, Gandicela V. Lutero, People v. Cabarles*, *People v. Bao*, to name a few, are illustrative cases. The fundamental philosophy behind the constitutional proscription against double jeopardy is to afford the defendant, who has been acquitted, final repose and safeguard him from government oppression through the abuse of criminal processes. As succinctly observed in *Green v. United* State the underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty.

2. ID.; ID.; ID.; DOUBLE JEOPARDY; ELEMENTS; PRESENT; THE ACCUSED CAN BE BARRED FROM INVOKING HIS RIGHT AGAINST DOUBLE JEOPARDY WHEN IT CAN BE DEMONSTRATED THAT THE TRIAL COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO

LACK OR EXCESS OF JURISDICTION, SUCH AS WHERE THE PROSECUTION WAS NOT ALLOWED THE OPPORTUNITY TO MAKE ITS CASE AGAINST THE ACCUSED OR WHERE THE TRIAL WAS SHAM. — The proscription against placing the accused in double jeopardy is expressly mandated in the 1987 Constitution which provides that, "No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." The elements of double jeopardy are (1) the complaint or information was sufficient in form and substance to sustain a conviction; (2) the court had jurisdiction; (3) the accused had been arraigned and had pleaded; and (4) the accused was convicted or acquitted or the case was dismissed without his express consent. The only instance when the accused can be barred from invoking his right against double jeopardy is when it can be demonstrated that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, such as where the prosecution was not allowed the opportunity to make its case against the accused or where the trial was sham. In this case, all the elements of double jeopardy are present: (1) the Informations for thirteen(13) counts of violation of Section 3(h) of R.A. No. 3019 were sufficient in form and substance to sustain the conviction of the respondent; (2) the court *a quo* definitely had jurisdiction over the cases; (3) arraignment took place on July 13, 2006 where the respondent entered a negative plea; and (4) the court *a quo*, on motion for reconsideration filed by the respondent, acquitted the latter of the offense charged.

3. ID.; ID.; ID.; ID.; THE PARTY QUESTIONING THE ACQUITTAL OF AN ACCUSED SHOULD BE ABLE TO CLEARLY ESTABLISH THAT THE TRIAL COURT BLATANTLY ABUSED ITS DISCRETION SUCH THAT IT WAS DEPRIVED OF ITS AUTHORITY TO DISPENSE JUSTICE; GRAVE ABUSE OF DISCRETION, DEFINED. — Petitioner's claim of grave abuse of discretion on part of the Sandiganbayan does not persuade Us. Grave abuse of discretion has been defined as that capricious or whimsical exercise of judgment which is tantamount to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or virtual refusal to perform a

duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. The party questioning the acquittal of an accused should be able to clearly establish that the trial court blatantly abused its discretion such that it was deprived of its authority to dispense justice. Contrary to petitioner's assertions, the conclusions of the Sandiganbayan were not whimsical, capricious or arbitrary, considering that material and relevant evidence and existing jurisprudence were indeed considered in the assailed Resolutions dated February 21, 2017 and June 15, 2017.

4. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A WRIT OF *CERTIORARI* CAN ONLY CORRECT ERRORS OF JURISDICTION OR THOSE INVOLVING THE COMMISSION OF GRAVE ABUSE OF DISCRETION, NOT THOSE WHICH CALL FOR THE EVALUATION OF EVIDENCE AND FACTUAL FINDINGS. —** At the core of the present petition is the Sandiganbayan's finding that not all the elements of violation of Section 3(h) of R.A. No. 3019 were present which necessarily involves a review of the evidence presented during trial. A writ of *certiorari* can only correct errors of jurisdiction or those involving the commission of grave abuse of discretion, not those which call for the evaluation of evidence and factual findings. Simply put, the petition basically raises issues pertaining to alleged errors of judgment, not errors of jurisdiction, which is tantamount to an appeal, contrary to express injunction of the Constitution, the Rules of Court, and prevailing jurisprudence.

5. **CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (REPUBLIC ACT NO. 3019), SECTION 3 (h) THEREOF; THE EXISTENCE OF INDIRECT PECUNIARY BENEFIT ON THE PART OF THE ACCUSED IN THE SUBJECT GOVERNMENT CONTRACTS CANNOT BE PRESUMED FROM THE MERE FACT THAT SHE ASSISTED HER SIBLING IN OBTAINING THE AWARD THEREOF. —** Under the facts obtaining in this case, indirect pecuniary benefit cannot be presumed from the mere fact of assistance being rendered by Zurbano to her sister in obtaining the award of TESDA-Cavite. Article 291 of the Civil Code cannot be made to apply in this case, since the record is bereft of proof that Zurbano was obliged

to financially support or that she was, in fact, providing financial support to her sister. Or that the latter was financially dependent on the former. What is borne by the evidence was that Zurbano's sister is the registered owner of CDZ Enterprises. Hence, Zurbano's sister is presumed to be financially independent from Zurbano. There is, likewise, absence of evidence that Zurbano has financial interests in the said company.

LEONEN, *J., dissenting opinion*:

1. CRIMINAL LAW; ANTI-GRAFT CORRUPT PRACTICES ACT (REPUBLIC ACT NO. 3019); SECTION 3 (h) THEREOF; WHERE A PUBLIC OFFICER, IN HER OFFICIAL CAPACITY, INTERVENED IN A TRANSACTION INVOLVING HER SISTER, THERE IS A DISPUTABLE PRESUMPTION THAT THEY INDIRECTLY BENEFIT FROM EACH OTHER'S FINANCIAL SUCCESSES BECAUSE OF THEIR RELATIONSHIP AS SIBLINGS; THE PUBLIC OFFICER HAS THE BURDEN TO CONTRADICT THIS PRESUMPTION OF INDIRECT FINANCIAL INTEREST IN HER SIBLING'S SUCCESS. — Public office is a public trust. When determining whether this public trust has been violated, the courts must recall the constitutional mandate that public officers must be, at all times, "accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency[.]" Republic Act No. 3019 should be applied to the facts of this case with this guiding principle in mind. Republic Act No. 3019, Section 3(h) declares it unlawful for public officers to intervene in certain transactions: (h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest. x x x. Although the prosecution did not provide evidence specifically showing respondent Zurbano's pecuniary interest in her sister's company, x x x because of their relationship as siblings, there is a disputable presumption that they indirectly benefit from each other's financial successes. Close family ties are a common Filipino trait, and the relationship between respondent Zurbano and her sister cannot be brushed aside as if that relationship has no implications. Arguably, the prosecution should have exerted more effort to show that respondent Zurbano

had some financial interest in her sister's winning the award. Arguably, a close family relationship does not conclusively entail financial interest in each other's successes. After all, a person may assist her sibling out of love or some concept of familial duty, without necessarily contemplating any monetary gain. However, under the law, immediate relatives are obliged to support each other to varying degrees. Under certain conditions, siblings are legally obliged to provide for their siblings' needs, and this legal obligation may extend even to expenses related to education. This family support is, among others, personal, based on family ties, intransmissible, and cannot be renounced or compromised. This family support is financial. Thus, one's financial success or ruin will generally have some financial effect on his or her siblings. Certainly, not all sibling relationships are identical, and some siblings may be all but estranged. However, x x x in the ordinary course of life in the Filipino family, when a person assists his or her sibling in obtaining an award, that person will presumably indirectly benefit financially. Thus, while respondent Zurbano's financial interest in her sister's success may not necessarily be conclusive, she had the burden to contradict this presumption.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENTS; THE DOCTRINE OF FINALITY OF ACQUITTAL; A JUDGMENT OF ACQUITTAL IS FINAL AND UNAPPEALABLE, EXCEPT UPON CLEAR SHOWING BY THE PETITIONER THAT THE LOWER COURT, IN ACQUITTING THE ACCUSED, COMMITTED NOT MERELY REVERSIBLE ERRORS OF JUDGMENT BUT ALSO GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION OR A DENIAL OF DUE PROCESS, RENDERING THE ASSAILED JUDGMENT VOID, THUS, CANNOT BE FINAL. — [S]andiganbayan committed grave abuse of discretion in reversing its earlier ruling. Despite properly citing and applying *Republic v. Tuvera* in its Decision, it later inexplicably reduced in its Resolution this Court's pronouncement in *Tuvera* as pertaining to *delicadeza*: The Sandiganbayan ignored that in *Tuvera*, this Court expressly found that a relationship in itself can establish the indirect pecuniary interest of someone charged with violation of Republic Act No. 3019, Section 3(h). x x x. Grave abuse of discretion has no precise definition, but the Sandiganbayan's muddling

of this Court's pronouncements in *Tuvera* to acquit respondent Zurbano of a crime she had already been convicted of amounts to grave abuse of discretion. Notably, the doctrine of finality of acquittal does not apply when the acquittal was rendered with grave abuse of discretion. In *People v. Asis*, this Court explained that there are exceptions to this doctrine: A petition for *certiorari* under Rule 65, not appeal, is the remedy to question a verdict of acquittal whether at the trial court or at the appellate level. In our jurisdiction, We adhere to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and unappealable. The rule, however, is not without exception. In several cases, the Court has entertained petitions for *certiorari* questioning the acquittal of the accused in, or the dismissals of, criminal cases. Thus, in *People v. Louel Uy*, the Court has held: Like any other rule, however, the above said rule is not absolute. By way of exception, a judgment of acquittal in a criminal case may be assailed in a petition for *certiorari* under Rule 65 of the Rules of Court upon clear showing by the petitioner that the lower court, in acquitting the accused, committed not merely reversible errors of judgment but also grave abuse of discretion amounting to lack or excess of jurisdiction or a denial of due process, thus rendering the assailed judgment void. . . . x x x. In other words, an acquittal that was rendered with grave abuse of discretion "does not exist in legal contemplation" and, thus, cannot be final.

APPEARANCES OF COUNSEL

Jacinto Magtanong Esguerra & Uy for respondent.

D E C I S I O N

PERALTA, *J.*:

In this Petition for *Certiorari* under Rule 65 of the Rules of Court, the State, as petitioner, seeks to annul and set aside the Resolution[1] of the Sandiganbayan dated February 21, 2017, which

[1] Penned by Associate Justice Michael Frederick L. Musngi, with Associate Justices Samuel R. Martires (later on appointed Associate Justice of this Court) and Geraldine Faith A. Econg concurring; *rollo*, pp. 33-40.

granted respondent Felicidad Zurbano's Motion for Reconsideration and Supplemental Motion for Reconsideration, and reversed and set aside the Decision[2] dated April 12, 2016 finding her guilty beyond reasonable doubt for violation of Section 3(h) of Republic Act (*R.A.*) No. 3019, and Resolution[3] dated June 15, 2017, which denied petitioner's Very Urgent Motion for Reconsideration dated March 8, 2017.

Respondent was indicted for thirteen (13) counts of violation of Section 3(h) of R.A. No. 3019 before the Sandiganbayan. When arraigned upon Informations that contain similar allegations of violation of the said law with difference only with regard to Purchase Order Number and date of issue for each count, respondent entered a negative plea. In a Joint Stipulation of Facts submitted before the court *a quo* on February 26, 2007, the parties stipulated on the following facts:

1. At all times material to the case, accused Felicidad Brillon Zurbano was a public officer, a CESO IV, being then the Provincial Director of TESDA-CAVITE, holding office at Trece Martires City, Cavite;

2. On January 2, 2003, accused Felicidad B. Zurbano assumed the Provincial Directorship of TESDA-CAVITE by virtue of the Central Office-directed rotation of Provincial Directors nationwide replacing Provincial Director Remedios Flestado who was re-assigned to TESDA-Rizal;

3. At all times material to the case and during the term of the accused as Provincial Director of TESDA-Cavite, Arnold S. Campos, Lleonor C. Hulguin, Julita Osia, Wilfredo Bathan, Eva Defiesta, Lorena P. Lim, and Rizal Bautista were permanent employees of TESDA-Cavite;

4. At all times material to the case, the Isuzu Highlander with plate number SFU-969, was under Memorandum Receipt to the accused with Mr. Arnold Campos as the official driver thereof;

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[2] Penned by Associate Justice Teresita V. Diaz-Baldos, with Associate Justices Napoleon E. Inoturan and Maria Cristina J. Cornejo concurring; *id*. at 62-108.

[3] Penned by Associate Justice Michael Frederick L. Musngi, with Associate Justices Oscar C. Herrera, Jr. and Lorifel L. Pahimna concurring; *id.* at 42-46.

5. Two (2) weeks after her assumption to the Provincial Directorship, or on January 15, 2003, the accused by virtue of an Office Order designated Arnold Campos as canvasser for their office on top of other additional functions contained in the subject office order without any additional compensation;

6. At all times material to the case, Lleonor Hulguin was with an item of Financial Analyst and among her functions were the preparation of purchase orders, disbursement vouchers and checks for payment to the suppliers of their office materials and technical supplies;

7. During the period covering March to October 2003, Julita Osia, Eva Defiesta and Rizal Bautista in their capacity as Bids and Awards Committee (BAC) members, recommended the award to supply materials to CDZ Enterprises resulting in the issuance of the thirteen (13) purchase orders subject matter of the instant cases;

8. At all times material to the case, the office supplies and materials of TESDA-CAVITE were being obtained from different suppliers such as D.M. Austria Trading, Mark Karl Trading and CDZ Enterprises, among others;

9. At all times material to the case, TESDA-CAVITE had at least thirteen (13) Purchase Orders (PO) from CDZ Enterprises respecting its office and technical supplies;

10. Ms. Nieves B. Cabigan is a sister of the accused Felicidad B. Zurbano, Ms. [Cabigan] is the sole proprietor of CDZ Enterprises per Department of Trade and Industry (DTI) records;

11. On March 17, 2005, the TESDA Provincial Office and Training Center of Trece Martires City was burned by fire including all of its records and documents.

12. On September 20, 2004, accused filed an Administrative case against Arnold Campos, but with no action taken by the Director General of TESDA, the complaint was filed before the Office of the Ombudsman which later referred the same to the Civil Service Commission now pending and docketed as Disciplinary Case No. D-04-0183 for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.

13. On September 30, 2004, accused filed administrative cases against Julita U. Osia, but with no action taken by the Director General of TESDA, the complaint was filed before the Office of the Ombudsman which decided to suspend her for one (1) month without

pay for simple misconduct. Accused also filed a criminal case for malversation against Julita U. Osia before the Office of the Ombudsman.

14. On September 30, 2004, accused filed administrative and criminal cases against Petra A. Ferrer, but with no action taken by the Director General of TESDA, the complaint was filed before the Office of the Ombudsman. The Deputy Ombudsman for Luzon resolved to indict her for Malversation of Public Funds. However, with respect to the administrative case, the Ombudsman deferred to TESDA's jurisdiction.

15. On September 30, 2004, accused filed administrative and criminal cases against Lleonor C. Hulguin, but with no action taken by the Director General of TESDA, the complaints were filed before the Office of the Deputy Ombudsman for Luzon.[4]

Petitioner presented two (2) witnesses to prove its theory that respondent took advantage of her official position as TESDA-Cavite Provincial Director by willfully, unlawfully and feloniously had an indirect financial or pecuniary interest in the thirteen (13) contracts entered into by her office with CDZ Enterprises, which was owned by her sister, Nieves Brillo Cabigan.

First to testify was Arnold Subia Campos, who worked as driver and later on designated as canvasser, on top of other additional functions, without additional compensation by virtue of an Office Order issued by the respondent.

Campos detailed the procurement procedure adopted at TESDA-Cavite in the following manner: purchase requests from the end-user agency of the supplies and materials were submitted to their office and forwarded to the Administrator and Provincial Director for their signatures. After these requests were brought back to him, he would then prepare three (3) canvass forms containing the needed supplies and materials which were encoded in each canvass form to be signed by the respondent. After being signed by the respondent, only two of these canvass forms were circulated to possible suppliers, while the remaining canvass form was retained by the respondent.

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[4] *Rollo,* pp. 72-74.

Upon respondent's instructions, Campos would give back to respondent Zurbano the two (2) canvass forms which contained the prices and quotations submitted by the bidder supplier. After one to three days, respondent would give to him three canvass forms, including the one that retained with her, which already have prices and quotation from CDZ Enterprises that have the lowest bids as compared to the other two suppliers. Respondent Zurbano would then prepare the abstract of canvass and call on the Bids and Awards Committee (*BAC*), which would recommend the winning supplier. Campos would, thereafter, receive the Purchase Order prepared by the respondent.

As the designated driver of the respondent, Campos knew personally that the respondent used the TESDA-Cavite service vehicle to deliver the supplies from CDZ Enterprises to their office. He was the one who unloaded the supplies and materials from their service vehicle and brought them to the office of the respondent. He also testified that he acted as payment collector for CDZ Enterprises. Upon orders of the respondent, Campos followed up on the checks of CDZ Enterprises with the Financial Analyst of TESDA-Cavite and turned over these checks, including the vouchers, to the respondent.

Petitioner's last witness was Julita Osia, who was the Senior TESD Specialist of TESDA-Cavite and also a BAC member. She testified that she and the other members of the BAC were tasked to evaluate the bid documents, specifically, the canvass forms and abstract of canvass which they received from Campos. These documents were already completely prepared and they had nothing more to do except to sign them. After affixing their signatures thereon, the documents were returned to Campos, who was waiting for further instructions from the respondent.

Osia admitted that part of Campos' duty was to prepare the Abstract of Canvass and that the duty of the BAC members was limited to the evaluation of said documents and affixing their signatures upon finding that the entries were true and correct.

After the petitioner rested its case, respondent filed a Motion with Leave of Court to File Demurrer which was granted by

the Sandiganbayan in its Order dated July 10, 2009. Respondent's Demurrer to Evidence, which was grounded on the prosecution's failure to establish and prove all the elements of violation of Section 3(h) of R.A. 3019, was subsequently denied by the Sandiganbayan in its Resolution dated January 12, 2011. The motion for reconsideration filed by respondent was, likewise, denied by the court *a quo* in its Resolution dated June 27, 2011.

Respondent Zurbano took the witness stand and testified on her defense. She alleged that when she assumed office in TESDA-Cavite in January 2003, there was no turn-over of properties, accountabilities and responsibilities because her predecessor, Director Remedios Flestado was also assigned to TESDA-Rizal. She averred that there were three (3) operating units, *i.e.*, the TESDA Provincial Office and two Provincial Training Centers located in Trece Martires City and in Rosario, Cavite. She had nine staff members at the Provincial Office who included Arnold Campos. Upon her assumption as TESDA-Cavite Provincial Director, respondent Zurbano called for a staff meeting in order to know them and their responsibilities, and to know their issues and concerns. She also held regular meetings to facilitate the updating of programs and activities of the Field Operating Units.

Respondent Zurbano asserted that it was former Provincial Director Remedios Flestado who appointed the members of the BAC which examined and reviewed the bids submitted by the suppliers, and selected and recommended to the Provincial Director the lowest responsive bid. The signing authority of the Provincial Director was for transactions up to ₱500,000.00, while transactions above ₱500,000.00 belonged to the Regional Director.

According to respondent Zurbano, her involvement in the procurement process was only in the approval of the Purchase Request, the signing of the canvass form and the Purchase Order, and that she had no participation in the other steps undertaken by the procurement officer, the BAC and the Financial Analyst. She denied that she retained one canvass form that would stay with her for 2 to 3 days and which would be returned

to Campos already filled up. She asserted that she signed only one canvass form for every Purchase Order, since it may be faxed or reproduced by those suppliers requesting for quotations.

Zurbano disclaimed Campos' testimony that she was using the TESDA-Cavite service vehicle to deliver the supplies from CDZ Enterprises to their office. She stated that she was informed of the arrangement between her sister and Mr. Campos who offered to bring the supplies to TESDA-Cavite through the said service vehicle. She allege that the supplies that were procured could either be delivered by the supplier or picked up by TESDA-Cavite and were brought to a place agreed upon with the inspector for inspection by the designated TESDA-Cavite personnel.

Respondent Zurbano testified that her sister was invited to join the procurement process and that the latter submitted documents regarding her company and forwarded quotations to the canvasser, who accepted them. She cited the price quotation of CDZ Enterprises for certain supplies and materials which were lower than those submitted by other suppliers.

Respondent Zurbano admitted that CDZ Enterprises only became an accredited supplier in TESDA-Cavite when she became its Provincial Director and CDZ Enterprises never participated in any public bidding because the procurement involved small items which could be done through canvass.

The defense also presented Asuncion Mercado Ordona and Rowena Villena Bacos. Ms. Ordona represented herself as the Supervising Technical Education and Skills Development (TESD) Specialist at TESDA-Cavite and testified on her duties at TESDA-Cavite.

Ms. Bacos, on the other hand, testified that the staff of the Provincial Office led the move to oust the respondent during a meeting attended by other TESDA-Cavite operating units. The staff of TESDA-Cavite prepared a complaint against respondent and filed it before the Director General of the TESDA, which was, however, later on retracted after the latter talked with them.

Ms. Bacos confirmed respondent's testimony that there was only one canvass form that was prepared by Mr. Campos and submitted to the respondent for signature and that these forms were logged in her logbook. She testified that the delivered supplies were inspected by the Inspector Officer and were stored in the storage room in TESDA-Cavite. She added that she had no way of knowing what happened to the canvass form once it came out from the office of the respondent after signing it until it came back to their office as attachment to the Purchase Order.

After the respondent terminated the presentation of her evidence and formally rested her case, the prosecution opted not to adduce rebuttal evidence. Both parties complied with the Sandiganbayan's directive to file their respective memorandum.

On April 12, 2016, the Sandiganbayan rendered its Decision finding respondent Zurbano guilty beyond reasonable doubt of thirteen counts of violation of Section 3(h) of R.A. No. 3019, as amended, and sentenced her to the indeterminate penalty of imprisonment ranging from six (6) years and one (1) month, as minimum, to twelve (12) years, as maximum, with the accessory penalty of disqualification from holding any public office.

On May 3, 2016, respondent Zurbano filed a Motion for Reconsideration and followed it up with a Supplemental Motion for Reconsideration on June 27, 2016. On July 18, 2016, the prosecution filed its Comment/Opposition which drew a Motion to Admit Attached Reply and Reply separately filed by the respondent on August 23, 2016 and August 25, 2016, respectively.

In its Resolution dated February 21, 2017, the Sandiganbayan granted respondent's Motion for Reconsideration and Supplemental Motion for Reconsideration and, accordingly, acquitted the respondent of the offense charged. The Sandiganbayan ratiocinated the reversal in its previous decision based on the following disquisitions and conclusion:

> However, a review of the records of this case shows that the prosecution was not able to sufficiently prove the second element of

the crime. In its *Decision*, this Court applied the case of *Republic vs. Tuvera, et al*., where the Supreme Court held that the fact that the principal stockholder of Twin Peaks was the son of accused Presidential Executive Assistant Juan Tuvera establishes the latter's indirect pecuniary interest in the transaction he appears to have intervened in. However, it is important to note that the Supreme Court also mentioned that kinship alone may not be enough to disqualify the accused's son from seeking the timber license agreement.

In this case, the prosecution merely assumed the pecuniary interest of the accused when her sister's company, CDZ Enterprises, was able to submit the lowest price quotations for the contracts due to the accused's intervention. This Court finds that the existence of relationship *per se* does not automatically translate to having direct or indirect financial interest in the subject contracts. The prosecution was not able to present evidence that the accused received any financial benefit from these transactions. Mere allegation that the parties are related to each other is not conclusive proof of such pecuniary interest.

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Indeed, the accused personally intervened in the procurement of office supplies in order to ensure that her sister, who was the sole proprietor of CDZ Enterprises, would be granted the contracts. The accused also admitted that CDZ Enterprises became a supplier of TESDA-Cavite only during her incumbency as Provincial Director. Therefore, it appears that the accused took advantage of her position and used her knowledge of the prices of the other suppliers to safeguard the bid of CDZ Enterprises. Since CDZ Enterprises would end up with the lowest prices for the supplies, then the BAC will eventually grant the contracts to said company. Nonetheless, Section 3(h) of R.A. No. 3019 primarily requires the existence of a direct or pecuniary interest on the part of the accused on the contracts with CDZ Enterprises to which she intervened in. Unfortunately, the prosecution failed to show how the accused is connected with CDZ Enterprises or how this intervention led to her acquisition of any financial interest or benefit.

Moreover, even if the accused's driver was ordered by the accused to collect and follow up on the checks of CDZ Enterprises with the Financial Analyst of TESDA-Cavite and that the checks were then physically turned over the accused, the checks were still under the name of CDZ Enterprises. The prosecution did not present any other

evidence that would link the accused to CDZ Enterprises. The totality of evidence and circumstances fails to convince this Court that the accused has direct or indirect pecuniary interest in the subject contracts.

In the case of *Jaime H. Domingo vs. Sandiganbayan, et al.*, the Supreme Court found Domingo and Garcia guilty for violating Section 3(h) of R.A. No. 3019. The Supreme Court found that Garcia, the godson of Domingo in marriage, was a mere dummy of public officer Domingo in contracting with the municipality for the supply and delivery of gravel and sand to the barangays. In this case, the prosecution was able to prove the direct or indirect financial or pecuniary interest of accused Domingo for the following reasons: (a) accused was the co-drawer and payee of the subject checks, (b) accused's trucks were being used for the delivery of gravel and sand to different barangays, (c) undisputed testimony of Garcia on the subject transactions that he was the contractor for the supply and delivery of gravel and sand, among others, (d) supporting documents which showed manifest irregularities, (e) absence of the contract for the supply and delivery of gravel and sand, and (f) encashment of the checks by accused Domingo and his wife.

Unlike the *Domingo* case, there was an apparent lack of factual basis in this case that the accused has direct or indirect pecuniary interest in her sister's contract with TESDA-Cavite. To reiterate, the prosecution merely relied on the existence of relationship of the accused and her sister as basis of pecuniary interest. The intervention of the accused in the procurement process definitely favored and benefitted her sister's company. Nonetheless, in order to be liable for violation of Section 3(h) of R.A. No. 3019, the prosecution must also sufficiently show that the accused has a pecuniary interest over the contracts which she intervened in.

In the case of *Republic vs. Tuvera, et al.*, the Supreme Court mentioned that the legal principle of *delicadeza* embodied in the provisions of R.A. No. 3019, specifically in paragraphs (a) and (h), should have dissuaded the accused from any official participation or intervention in behalf of Twin Peaks request for a timber license. However, the absence of *delicadeza* on the part of the accused does not make her liable for violation of Section 3(h) of R.A. No. 3019. This law prohibits such actual intervention by a public officer in a transaction over which he/she has a financial or pecuniary interest because the law aims to prevent the dominant use of influence,

authority and power. All the elements of the crime must be sufficiently proven in order to convict the accused.[5]

On March 9, 2017, the prosecution filed a Very Urgent Motion for Reconsideration,[6] which was denied in the Resolution issued by the Sandiganbayan on June 15, 2017. Hence, this petition.

Petitioner ascribes grave abuse of discretion on the part of the Sandiganbayan in issuing the assailed Resolutions dated February 21, 2016 and June 15, 2017 and contends that it was able to establish by clear and convincing evidence respondent's indirect financial or pecuniary interest in the thirteen (13) contracts for acquisition of office supplies and materials of TESDA-Cavite with CDZ Enterprises. It posits that respondent's active intervention in the accomplishment of the canvass forms; the surreptitious inclusion of CDZ Enterprises in the three (3) suppliers canvassed for their respective quotations; personally undertaking the delivery of procured supplies and materials to TESDA-Cavite from CDZ Enterprises using the former's government-issued service vehicle; requiring her office driver to follow-up the checks due to CDZ Enterprises; and, by personally receiving such payment for and in behalf of CDZ Enterprises, were all considered overt acts of her pecuniary interest in the subject transactions since CDZ Enterprises was owned by her sister.

In issuing the assailed resolutions, petitioner, thus, argues that the court *a quo* misapplied the ruling in *Domingo v. Sandiganbayan, et al.*,[7] which refer to the commission of Section 3(h) of R.A. No. 3019 by a public officer having direct financial or pecuniary interest in government transactions. It insisted on the application of the ruling in *Republic v. Tuvera, et al.*,[8] where former Executive Secretary Juan Tuvera was

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[5] *Id.* at 37-39. (Citations omitted)

[6] *Id.* at 135-147; 282-294.

[7] 379 Phil. 708 (2000).

[8] 545 Phil. 21 (2007).

found guilty of having indirect pecuniary interest in the transaction of Twin Peaks where his son appeared as the principal stockholder of the said corporation.

The petition is not impressed with merit.

In this jurisdiction, We adhere to the *finality-of-acquittal* doctrine, that is, a judgment of acquittal is final and unappealable.[9] The reason for the *finality-of-acquittal* doctrine was explained by this Court in *People v. CA*,[10] thus:

> In our jurisdiction, the finality-of-acquittal doctrine as a safeguard against double jeopardy faithfully adheres to the principle first enunciated in Kepner v. United States. In this case, verdicts of acquittal are to be regarded as absolutely final and irreviewable. The cases of *United States v. Yam Tung Way*, *People v. Bringas*, *Gandicela V. Lutero*, *People v. Cabarles*, *People v. Bao*, to name a few, are illustrative cases. The fundamental philosophy behind the constitutional proscription against double jeopardy is to afford the defendant, who has been acquitted, final repose and safeguard him from government oppression through the abuse of criminal processes. As succinctly observed in *Green v. United States* the underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty.

The proscription against placing the accused in double jeopardy is expressly mandated in the 1987 Constitution which provides that, "No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act."[11] The elements

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[9] *People v. Lino Alejandro y Pimentel*, G.R. No. 223099, January 11, 2018.

[10] 468 Phil. 1, 12-13 (2004).

[11] 1987 Constitution, Art. 3, Sec. 21.

of double jeopardy are (1) the complaint or information was sufficient in form and substance to sustain a conviction; (2) the court had jurisdiction; (3) the accused had been arraigned and had pleaded; and (4) the accused was convicted or acquitted or the case was dismissed without his express consent.[12] The only instance when the accused can be barred from invoking his right against double jeopardy is when it can be demonstrated that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, such as where the prosecution was not allowed the opportunity to make its case against the accused or where the trial was sham.[13]

In this case, all the elements of double jeopardy are present: (1) the Informations for thirteen (13) counts of violation of Section 3(h) of R.A. No. 3019 were sufficient in form and substance to sustain the conviction of the respondent; (2) the court *a quo* definitely had jurisdiction over the cases; (3) arraignment took place on July 13, 2006 where the respondent entered a negative plea; and (4) the court *a quo*, on motion for reconsideration filed by the respondent, acquitted the latter of the offense charged.

Petitioner's claim of grave abuse of discretion on part of the Sandiganbayan does not persuade Us. Grave abuse of discretion has been defined as that capricious or whimsical exercise of judgment which is tantamount to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. The party questioning the acquittal of an accused should be able to clearly establish that the trial court blatantly abused its discretion such that it was deprived of its authority to dispense justice.[14] Contrary to

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[12] *Tiu v. Court of Appeals*, 604 Phil. 48, 56 (2009).

[13] *Bangayan, Jr. v. Bangayan*, 675 Phil. 656, 667-668 (2011).

[14] *Id.* at 669.

petitioner's assertions, the conclusions of the Sandiganbayan were not whimsical, capricious or arbitrary, considering that material and relevant evidence and existing jurisprudence were indeed considered in the assailed Resolutions dated February 21, 2017 and June 15, 2017.

At the core of the present petition is the Sandiganbayan's finding that not all the elements of violation of Section 3(h) of R.A. No. 3019 were present which necessarily involves a review of the evidence presented during trial. A writ of *certiorari* can only correct errors of jurisdiction or those involving the commission of grave abuse of discretion, not those which call for the evaluation of evidence and factual findings.[15] Simply put, the petition basically raises issues pertaining to alleged errors of judgment, not errors of jurisdiction, which is tantamount to an appeal, contrary to express injunction of the Constitution, the Rules of Court, and prevailing jurisprudence.[16]

The dissenting opinion of Justice Marvic Mario Victor F. Leonen favors the grant of the People's Petition on the ground that the Sandiganbayan committed grave abuse of discretion in decreeing the acquittal of respondent Felicidad Zurbano from the charge of violation of Section 3(h) of Republic Act (*R.A.*) No. 3019.

The dissent raised three (3) grounds for the grant of the petition, to wit: (1) Zurbano has the burden to contradict the presumption that she indirectly benefitted financially from the transaction of her sister with TESDA-Cavite where she holds the position of Provincial Director; (2) the Sandiganbayan ignored the ruling in *Republic v. Tuvera*, where it was expressly found that a relationship, in and of itself, can establish the indirect pecuniary interest of someone charged with violation of R.A. No. 3019, Section 3(h); and 3) the Sandiganbayan's citation of *Tuvera* is misleading. Thus, the dissenting opinion argued that

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[15] *Villareal v. Aliga*, 724 Phil. 47, 64 (2014).

[16] *Id.* at 65.

the muddling of this Court's pronouncements in *Tuvera* to acquit Zurbano amounted to grave abuse of discretion.

In shifting to Zurbano the burden to contradict the presumption that she indirectly benefitted from the transaction of her sister, the dissenting opinion advanced the proposition that when a person assists her sibling in obtaining an award, that person will indirectly benefit financially following the ordinary course of life in the Filipino family. It cited Article 291 of the Civil Code which provides for the obligation of brothers and sisters, whether full or half-blood, to render support to each other.

The Court disagrees.

Under the facts obtaining in this case, indirect pecuniary benefit cannot be presumed from the mere fact of assistance being rendered by Zurbano to her sister in obtaining the award at TESDA-Cavite. Article 291 of the Civil Code cannot be made to apply in this case, since the record is bereft of proof that Zurbano was obliged to financially support or that she was, in fact, providing financial support to her sister or that the latter was financially dependent on the former. What is borne by the evidence was that Zurbano's sister is the registered owner of CDZ Enterprises. Hence, Zurbano's sister is presumed to be financially independent from Zurbano.

There is, likewise, absence of evidence that Zurbano has financial interests in the said company. As admitted in the dissenting opinion, "a close family relationship does not conclusively entail financial interest in each other's successes. After all, a person may assist her sibling out of love or some concept of familial duty, without necessarily contemplating any monetary gain."

With regard to the failure of the Sandiganbayan to consider the alleged explicit ruling of the Supreme Court in the *Tuvera* case concerning the establishment of the presumption of indirect pecuniary benefit by reason of relationship and the "muddling" of the said case, the Court has not read in the text of *Tuvera*, the pronouncement of the Court "which expressly found that a relationship, in and of itself, can establish the indirect pecuniary

interest of someone charged with violation of Republic Act No. 3019, Section (h)."

In the *Tuvera case*, the Court imposed the burden upon Mr. Tuvera the presumption that he indirectly benefitted financially from the transaction of Twin Peaks' request for timber license because of the evidence on record which showed that there was "failure to undergo public bidding or to comply with the requisites for the grant of such agreement by negotiation, and in favor of a corporation that did not appear legally capacitated to be granted such agreement." Said the Court, "Certainly, the circumstances presented by the evidence of the prosecution are sufficient to shift the burden of evidence to Tuvera in establishing that he did not violate the provisions of the Anti- Graft and Corrupt Practices Act in relation to the Twin Peaks' 'request'."[17] The burden was shifted to Mr. Tuvera because he waived his right to present evidence to disprove that he violated the allegations against him.

None of the foregoing circumstances were present in Zurbano's case. Unlike in the *Tuvera* case where the totality of the prosecution evidence created a presumption of indirect pecuniary benefit against the accused, the Sandiganbayan ruled that the prosecution failed to show the connection of Zurbano to CDZ Enterprises or how Zurbano's intervention led to her acquisition of any financial interest or benefit. As stated earlier, the assistance rendered to a sibling maybe by reason of love or some other concept of familial duty, without not necessarily contemplating any monetary gain.

On the matter of "muddling" of the *Tuvera* case, it maybe conceded that the Sandiganbayan misread the import of the discussions of the Court on *delicadeza* in the said case. However, the Sandiganbayan's acquittal of Zurbano was not only based on the *Tuvera* ruling. In fact, petitioner's position, in the instant petition, was that the Sandiganbayan misapplied, in the assailed decision, the case of *Jaime Domingo vs. Sandiganbayan, et al.*, and insisted on the application of the *Tuvera* case.

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[17] Emphasis supplied.

Evidently, the Sandiganbayan reviewed the entire case after Zurbano filed a Motion for Reconsideration and acquitted her because of its subsequent finding that the prosecution failed to prove all the elements of the crime charged. Its basis for the acquittal was that:

> In this case, the prosecution merely assumed the pecuniary interest of the accused when her sister's company, CDZ Enterprises, was able to submit the lowest price quotations for the contracts due to the accused's intervention. This Court finds that the existence of relationship *per se* does not automatically translate to having direct or indirect financial interest in the subject contracts. The prosecution was not able to present evidence that the accused received any financial benefit from these transactions. Mere allegation that the parties are related to each other is not conclusive proof of such pecuniary interest.
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> x x x x x x x x x
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> Unlike the *Domingo* case, there was an apparent lack of factual basis in this case that the accused has direct or indirect pecuniary interest in her sister's contract with TESDA-Cavite. To reiterate, the prosecution merely relied on the existence of relationship of the accused and her sister as basis of pecuniary interest. The intervention of the accused in the procurement process definitely favored and benefitted her sister's company. Nonetheless, in order to be liable for violation of Section 3(h) of R.A. No. 3019, the prosecution must also sufficiently show that the accused has a pecuniary interest over the contracts which she intervened in."

At any rate, the issues raised in the instant petition pertain to errors of judgment, not errors of jurisdiction. As held in one case,[18] the only instance when the accused can be barred from invoking his right against double jeopardy is when it can be demonstrated that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, such as where the prosecution was not allowed the opportunity to make its case against the accused or where the trial was sham. Here, the prosecution was not denied due process as it was given

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[18] *Bangayan v. Bangayan*, 675 Phil. 656, 667-668 (2011).

opportunity to present its evidence. All the elements of double jeopardy are present.

WHEREFORE, the instant petition is **DISMISSED** for lack of merit. The acquittal of respondent FELICIDAD B. ZURBANO by the Sandiganbayan in its Resolutions dated February 21, 2017 and June 15, 2017, entitled *People of the Philippines v. Felicidad B. Zurbano,* is **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

Leonen, J., see separate opinion.

Hernando, J., on leave.

DISSENTING OPINION

LEONEN, *J.*:

Public office is a public trust.[1] When determining whether this public trust has been violated, the courts must recall the constitutional mandate that public officers must be, at all times, "accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency[.]"[2] Republic Act No. 3019[3] should be applied to the facts of this case with this guiding principle in mind.

Republic Act No. 3019, Section 3(h) declares it unlawful for public officers to intervene in certain transactions:

> (h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

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[1] CONST., Art. XI, Sec. 1.

[2] CONST., Art. XI, Sec. 1.

[3] Anti-Graft and Corrupt Practices Act.

In its Resolution,[4] while the Sandiganbayan found that respondent Felicidad B. Zurbano (Zurbano), a public officer, intervened in a transaction in her official capacity, it nonetheless acquitted her. This was after it had found that the prosecution failed to establish the financial or pecuniary interest in the transaction in which she intervened.

Notably, in its earlier Decision[5] on the case, the Sandiganbayan held that respondent Zurbano's intervention in the process that led to the award of the contracts of the Technical Education and Skills Development Authority-Cavite to her sister's business sufficiently established her indirect pecuniary interest in the transactions. However, in the Resolution, the Sandiganbayan reversed this finding:

> In this case, the prosecution merely assumed the pecuniary interest of the accused when her sister's company, CDZ Enterprises, was able to submit the lowest price quotations for the contracts due to the accused's intervention. This Court finds that the existence of relationship *per se* does not automatically translate to having direct or indirect financial interest in the subject contracts. The prosecution was not able to present evidence that the accused received any financial benefit from these transactions. Mere allegation that the parties are related to each other is not conclusive proof of such pecuniary interest.
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> The third element of the crime enumerates the two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3 (h) of R.A. No. 3019. As previously mentioned, the first mode is when the public officer intervenes or takes part in his official capacity in any business, contract or transaction. The second mode is when the public officer is prohibited by the Constitution or by

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[4] *Rollo*, pp. 33-40. The February 21, 2017 Resolution was penned by Associate Justice Michael Frederick L. Musngi and concurred in by Associate Justices Samuel R. Martires and Geraldine Faith A. Econg of the Second Division, Sandiganbayan, Quezon City.

[5] *Id*. at 62-108. The April 12, 2016 Decision was penned by Chairperson Teresita V. Diaz-Baldos and concurred in by Associate Justices Napoleon E. Inoturan and Maria Cristina J. Cornejo of the Second Division, Sandiganbayan, Quezon City.

law from having such interest. This Court found the accused guilty of the first mode when she intervened as Provincial Director in the procurement or acquisition of office supplies for TESDA-Cavite.

Indeed, the accused personally intervened in the procurement of office supplies in order to ensure that her sister, who was the sole proprietor of CDZ Enterprises, would be granted the contracts. The accused also admitted that CDZ Enterprises became a supplier of TESDA-Cavite only during her incumbency as Provincial Director. Therefore, it appears that the accused took advantage of her position and used her knowledge of the prices of the other suppliers to safeguard the bid of CDZ Enterprises. Since CDZ Enterprises would end up with the lowest prices for the supplies, then the BAC will eventually grant the contracts to said company. Nonetheless, Section 3 (h) of R.A. No. 3019 primarily requires the existence of a direct or pecuniary interest on the part of the accused on the contracts with CDZ Enterprises to which she intervened in. Unfortunately, the prosecution failed to show how the accused is connected with CDZ Enterprises or how this intervention led to her acquisition of any financial interest or benefit.[6]

I agree with the Sandiganbayan's earlier disquisition that when it was established that respondent Zurbano had intervened in the transaction involving her sister, the burden shifted to her to prove that she did not have any direct financial or pecuniary interest in her sister's business.

Although the prosecution did not provide evidence specifically showing respondent Zurbano's pecuniary interest in her sister's company, I submit that, because of their relationship as siblings, there is a disputable presumption that they indirectly benefit from each other's financial successes.

Close family ties are a common Filipino trait,[7] and the relationship between respondent Zurbano and her sister cannot be brushed aside as if that relationship has no implications.

Arguably, the prosecution should have exerted more effort to show that respondent Zurbano had some financial interest

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[6] *Id.* at 37-38.

[7] *Son v. Son*, 321 Phil. 951 (1995) [Per *J.* Kapunan, First Division].

in her sister's winning the award. Arguably, a close family relationship does not conclusively entail financial interest in each other's successes. After all, a person may assist her sibling out of love or some concept of familial duty, without necessarily contemplating any monetary gain.

However, under the law, immediate relatives are obliged to support each other to varying degrees. Under certain conditions, siblings are legally obliged to provide for their siblings' needs, and this legal obligation may extend even to expenses related to education.[8] This family support is, among others, personal, based on family ties, intransmissible, and cannot be renounced or compromised.[9] This family support is financial.

Thus, one's financial success or ruin will generally have some financial effect on his or her siblings.

Certainly, not all sibling relationships are identical, and some siblings may be all but estranged. However, I submit that, in the ordinary course of life in the Filipino family, when a person assists his or her sibling in obtaining an award, that person will presumably indirectly benefit financially. Thus, while respondent

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[8] CIVIL CODE, Arts. 290 and 291 provide:

ARTICLE 290. Support is everything that is indispensable for sustenance, dwelling, clothing and medical attendance, according to the social position of the family.

Support also includes the education of the person entitled to be supported until he completes his education or training for some profession, trade or vocation, even beyond the age of majority. (142a)

ARTICLE 291. The following are obliged to support each other to the whole extent set forth in the preceding article:

. . . . . .

Brothers and sisters owe their legitimate and natural brothers and sisters, although they are only of the half-blood, the necessaries for life, when by a physical or mental defect, or any other cause not imputable to the recipients, the latter cannot secure their subsistence. This assistance includes, in a proper case, expenses necessary for elementary education and for professional or vocational training.

[9] *Patricio v. Dario III*, 537 Phil. 595 (2006) [Per *J.* Ynares-Santiago, First Division].

Zurbano's financial interest in her sister's success may not necessarily be conclusive, she had the burden to contradict this presumption.[10]

The Sandiganbayan recognized this twice: first, when it denied Zurbano's Demurrer to Evidence;[11] and second, when it convicted her in its Decision, reasoning that:

> . . . the intervention of the accused in the process that led to the award of the contracts of TESDA-Cavite to CDZ Enterprises which is a business owned by her sister established the latter's indirect pecuniary interest in the transactions, applying the ruling of the Supreme Court in the *Tuviera* (*sic*) case cited therein.
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> Under the circumstances, therefore, it was incumbent upon the accused to rebut the charge that she had direct or indirect pecuniary interest in the business transactions of CDZ Enterprises with TESDA Cavite wherein she intervened or took part in her official capacity as Provincial Director of TESDA Cavite. As stated by the Court in its aforementioned Resolutions, "*the burden of evidence had shifted to the accused to prove that her intervention in the eventual award of the contract for the supply of office and technical materials of TESDA-Cavite to CDZ Enterprises was not because of her indirect financial or pecuniary interest in the said company*."

Every criminal case starts with the constitutionally-protected presumption of innocence in favor of the accused that can only be defeated by proof beyond reasonable doubt. The prosecution starts the trial process by presenting evidence showing the presence of all the elements of the offense charged. If the prosecution proves all the required elements, the burden of evidence shifts to the accused to disprove the prosecution's case.

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[10] RULES OF COURT, Rule 131, Sec. 3 provides:

SECTION 3. *Disputable presumptions*.— The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

. . . . . .

(y) That things have happened according to the ordinary course of nature and the ordinary habits of life[.]

[11] *Rollo*, p. 60.

Evaluating the evidence presented by the accused, however, the Court finds that with respect to the specific charge of having directly or indirectly had pecuniary interest in any business, contract or transaction in connection with which she intervened or took part in her official capacity, the accused has failed to discharge that burden of overthrowing the positive evidence of the prosecution.[12] (Emphasis in the original, citations omitted)

I submit that the Sandiganbayan committed grave abuse of discretion in reversing its earlier ruling. Despite properly citing and applying *Republic v. Tuvera*[13] in its Decision,[14] it later inexplicably reduced in its Resolution this Court's pronouncement in *Tuvera* as pertaining to *delicadeza*:

In the case of *Republic vs. Tuvera, et al.*, the Supreme Court mentioned that the legal principle of *delicadeza* embodied in the provisions of R.A. No. 3019, specifically in paragraphs (a) and (h), should have dissuaded the accused from any official or unofficial participation or intervention in behalf of Twin Peaks' request for a timber license. However, the absence of *delicadeza* on the part of the accused does not make her liable for violation of Section 3 (h) of R.A. No. 3019. This law prohibits such actual intervention by a public officer in a transaction over which he/she has a financial or pecuniary interest because the law aims to prevent the dominant use of influence, authority and power. All the elements of the crime must be sufficiently proven in order to convict the accused.[15] (Citations omitted)

The Sandiganbayan ignored that in *Tuvera*,[16] this Court expressly found that a relationship in itself can establish the indirect pecuniary interest of someone charged with violation of Republic Act No. 3019, Section 3(h).

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[12] *Id*. at 103-104.

[13] 545 Phil. 21 (2007) [Per *J*. Tinga, Second Division].

[14] *Rollo*, p. 103.

[15] *Id*. at 38-39.

[16] 545 Phil. 21 (2007) [Per *J*. Tinga, Second Division].

To further support its new conclusion that respondent Zurbano's intervention and relationship with her sister are not enough to show indirect financial interest, the Sandiganbayan also muddled two (2) separate instances where this Court discussed the question of relationship in *Tuvera*. It stated:

> However, a review of the records of this case shows that the prosecution was not able to sufficiently prove the second element of the crime. In its *Decision*, this Court applied the case of *Republic vs. Tuvera, et al.* where the Supreme Court held that the fact that the principal stockholder of Twin Peaks was the son of accused Presidential Executive Assistant Juan Tuvera establishes the latter's indirect pecuniary interest in the transaction he appears to have intervened in. However, it is important to note that the Supreme Court also mentioned that kinship alone may not be enough to disqualify the accused's son from seeking the timber license agreement.[17] (Citation omitted)

The Sandiganbayan's citation of *Tuvera* is misleading. This Court's discussion regarding kinship and indirect pecuniary interest was completely separate from its discussion on *delicadeza* and the question of whether the accused's son was disqualified from seeking a timber license agreement. For clarity, on indirect pecuniary interest, which is the very issue in this case, *Tuvera* states:

> The Memorandum signed by Juan Tuvera can be taken as proof that he "persuaded, induced or influenced" the Director of Forestry to accommodate a timber license agreement in favor of Twin Peaks, despite the failure to undergo public bidding, or to comply with the requisites for the grant of such agreement by negotiation, and in favor of a corporation that did not appear legally capacitated to be granted such agreement. ***The fact that the principal stockholder of Twin Peaks was his own son establishes his indirect pecuniary interest in the transaction he appears to have intervened in.*** It may have been possible on the part of Juan Tuvera to prove that he did not persuade, induce or influence the Director of Forestry or any other official in behalf of the timber license agreement of Twin Peaks,

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[17] *Rollo*, p. 37.

but then again, he waived his right to present evidence to acquit himself of such suspicion. Certainly, the circumstances presented by the evidence of the prosecution are sufficient to shift the burden of evidence to Tuvera in establishing that he did not violate the provisions of the Anti-Graft and Corrupt Practices Act in relation to the Twin Peaks "request." Unfortunately, having waived his right to present evidence, Juan Tuvera failed to disprove that he failed to act in consonance with his obligations under the Anti-Graft and Corrupt Practices Act.[18] (Emphasis supplied)

The pronouncement pertaining to "kinship alone" was not made in relation to indirect pecuniary interest. It was pertinent only to the question of whether the accused's son was disqualified, by reason of kinship alone, from seeking a timber license agreement:

The causes of action against respondents allegedly arose from Juan Tuvera's abuse of his relationship, influence and connection as Presidential Executive Assistant of then President Marcos. Through Juan Tuvera's position, the Republic claims that Twin Peaks was able to secure a Timber License Agreement despite its lack of qualification and the absence of a public bidding. On account of the unlawful issuance of a timber license agreement, the natural resources of the country were unlawfully exploited at the expense of the Filipino people. Victor Tuvera, as son of Juan Tuvera and a major stockholder of Twin Peaks, was included as respondent for having substantially benefited from this breach of trust. The circumstance of kinship alone may not be enough to disqualify Victor Tuvera from seeking a timber license agreement. Yet the basic ethical principle of *delicadeza* should have dissuaded Juan Tuvera from any official or unofficial participation or intervention in behalf of the "request" of Twin Peaks for a timber license.[19]

Grave abuse of discretion has no precise definition,[20] but the Sandiganbayan's muddling of this Court's pronouncements

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[18] *Republic v. Tuvera*, 545 Phil. 21, 56 (2007) [Per *J*. Tinga, Second Division].

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

[20] *People v. Sandiganbayan*, 581 Phil. 419 (2008) [Per *J*. Quisumbing, Second Division].

in *Tuvera* to acquit respondent Zurbano of a crime she had already been convicted of amounts to grave abuse of discretion.

Notably, the doctrine of finality of acquittal does not apply when the acquittal was rendered with grave abuse of discretion. In *People v. Asis*,[21] this Court explained that there are exceptions to this doctrine:

> A petition for *certiorari* under Rule 65, not appeal, is the remedy to question a verdict of acquittal whether at the trial court or at the appellate level. In our jurisdiction, We adhere to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and unappealable. The rule, however, is not without exception. In several cases, the Court has entertained petitions for *certiorari* questioning the acquittal of the accused in, or the dismissals of, criminal cases. Thus, in *People v. Louel Uy*, the Court has held:
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> > Like any other rule, however, the above said rule is not absolute. By way of exception, a judgment of acquittal in a criminal case may be assailed in a petition for certiorari under Rule 65 of the Rules of Court upon clear showing by the petitioner that the lower court, in acquitting the accused, committed not merely reversible errors of judgment but also grave abuse of discretion amounting to lack or excess of jurisdiction or a denial of due process, thus rendering the assailed judgment void. . . .
>
> In *People v. Laguio, Jr.*, where the acquittal of the accused was via the grant of his demurrer to evidence, We pointed out the propriety of resorting to a petition for certiorari. Thus:
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> > By this time, it is settled that the appellate court may review dismissal orders of trial courts granting an accused's demurrer to evidence. This may be done via the special civil action of certiorari under Rule 65 based on the ground of grave abuse of discretion, amounting to lack or excess of jurisdiction. Such dismissal order, being considered void judgment, does not result in jeopardy. Thus, when the order of dismissal is annulled or set aside by an appellate court in an original special civil action

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[21] 643 Phil. 462 (2010) [Per *J.* Mendoza, Second Division].

via certiorari, the right of the accused against double jeopardy is not violated.[22] (Citations omitted)

In other words, an acquittal that was rendered with grave abuse of discretion "does not exist in legal contemplation"[23] and, thus, cannot be final.

Accordingly, I vote to **GRANT** the Petition.

SECOND DIVISION

[G.R. No. 234273. September 18, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EMALYN N. MORENO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY RULE MUST BE STRICTLY COMPLIED WITH. — In cases involving dangerous drugs, the State bears not only the burden of proving the elements of the crime charged, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law. While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires **strict** compliance with procedures laid down by it to ensure that rights are safeguarded. In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any

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[22] *Id*. at 469-470.

[23] *People v. Sandiganbayan*, 581 Phil. 419, 429 (2008) [Per *J*. Quisumbing, Second Division].

prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/ confiscation, to receipt in the forensic laboratory, to safekeeping, to presentation in court until destruction. The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt.

2. **ID.; ID.; ID.; SECTION 21, ARTICLE II ON THE PROCEDURE THAT POLICE OPERATIVES MUST FOLLOW TO MAINTAIN THE INTEGRITY OF THE CONFISCATED DRUGS USED AS EVIDENCE. —** Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof. x x x Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation.** The said inventory must be done **in the presence of the aforementioned required witnesses**, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the IRR of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension

— **a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**. Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.

3. ID.; ID.; ID.; ID.; NON-COMPLIANCE THEREOF REQUIRES SATISFACTORY PROOF OF JUSTIFIABLE GROUND AND THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS WERE PROPERLY PRESERVED. —Concededly, Section 21 of the IRR of RA 9165 provides 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." For this provision to be effective, however, the prosecution must (1) first recognize any lapse on the part of the police officers and (2) then be able to justify the same. Breaches of the procedure contained in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* would been compromised.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is an ordinary appeal[1] filed by the accused-appellant Emalyn N. Moreno (Moreno) assailing the Decision[2] dated March 9, 2017 of the Court of Appeals (CA) in CA-G.R.

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[1] See Notice of Appeal dated April 7, 2017, *rollo*, pp. 13-14.

[2] *Id*. at 2-12. Penned by Associate Justice Manuel M. Barrios with Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy concurring.

CR-HC No. 07977, which affirmed the Decision[3] dated September 29, 2015 of the Regional Trial Court of Calapan City, Oriental Mindoro, Branch 39 (RTC) in Criminal Case No. CR-12-10,539, finding Moreno guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002,"[4] as amended.

The Facts

An Information was filed against Moreno in this case, the accusatory portion of which reads as follows:

> That on or about the 12th day of July 2012, at around 12:00 midnight, more or less, [in] Barangay Salong, City of Calapan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any legal authority nor corresponding license or prescription, did then and there willfully, unlawfully and feloniously sell, deliver, or distribute to a poseur-buyer, one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride (shabu), a dangerous drug weighing of 0.016 (zero point zero one six) gram, more or less.
>
> CONTRARY TO LAW.[5]

Upon arraignment, Moreno pleaded not guilty. Thereafter, pre-trial and trial on the merits ensued.

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

> The prosecution's evidence shows that on 11 July 2012, at around 9:00 p.m., Marleo B. Sumale (Agent Sumale), an agent of the Philippine Drug Enforcement Agency (PDEA), was informed by a fellow PDEA agent that a certain person named "Ara," a waitress at the WRJ Resto Bar in Barangay Salong, Calapan City, Oriental Mindoro, was peddling

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[3] CA *rollo*, pp. 50-57. Penned by Judge Manuel C. Luna, Jr.

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

[5] *Rollo*, pp. 3-4.

dangerous drugs in said establishment. Acting on this information, Agent Sumale — along with other PDEA agents — formed a team to conduct a buy-bust operation against subject Ara. Agent Sumale was designated as the poseur-buyer, while Rosemarie Catain (Agent Catain), was assigned to be the arresting officer. Before the operation, Agent Sumale marked the money to be used with "SMB."

In accordance with the plan, Agent Sumale and the informant proceeded to the establishment. At around 12:00 midnight, a woman approached them. The informant identified the woman as the same "Ara" who was the alleged drug-seller. After having been introduced to Agent Sumale, accused-appellant handed to him a plastic sachet containing suspected *shabu*. Upon receipt of the sachet, Agent Sumale handed to accused-appellant the marked ₱500.00 bill. Thereafter, Agent Sumale removed his baseball cap, signifying the completion of the transaction, upon which the other agents, originally positioned in strategic spots around the area, converged on the scene and effected the arrest of accused-appellant. Agent Catain frisked accused-appellant and found the marked bill. Agent Sumale then placed the marking "SMB 12/07/12" on the sachet containing suspected *shabu*. The apprehending team, along with the accused-appellant, then proceeded to the PDEA office where the inventory of the confiscated arms was done.

At around 3:10 a.m., Agent Sumale personally brought a letter-request from PDEA to the PNP Regional Crime Laboratory for the conduct of laboratory examination on the powdery white substance inside in the sachet sold by accused-appellant. Agent Sumale endorsed the sachet to PO1 Alex Redruco, who, in turn, turned it over to PSI Eugenio Garcia, a forensic chemist, for the conduct of chemical examinations.

In Chemistry Report No. D-065-12 dated 12 July 2012, PSI Garcia concluded that the white crystalline substance in the sachet was positive for methamphetamine hydrochloride, more commonly known as *shabu*.[6]

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

For her part, accused-appellant interposed the defense of denial and frame-up. She alleged that at around 6:00 p.m. of 11 July 2012,

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

she reported for work at the WRJ Resto Bar. Three (3) hours later, she returned home to check on her child. At around 11:00 p.m., while on board a tricycle returning to said establishment, a group of persons flagged down said tricycle and forced her to alight. The group then asked if she was "for hire" in her workplace, to which she answered in the negative. The group then forced accused-appellant into their vehicle and brought her to the PDEA office. After twenty (20) minutes of waiting in said vehicle, the group brought accused-appellant back to where she was taken. Upon arrival thereat, the group took pictures of her, after which accused-appellant was again forced into the vehicle. At around 3:00 a.m., accused-appellant was brought to the PDEA office and was placed in a detention cell.[7]

Ruling of the RTC

After trial on the merits, in its Decision dated September 29, 2015, the RTC convicted Moreno of the crime charged. The dispositive portion of the said Decision reads:

> **A C C O R D I N G L Y**, in view of the foregoing, judgment is hereby rendered finding the accused EMALYN MORENO y NAPOLITANO ***GUILTY*** beyond reasonable doubt as principal of the crime charged in the aforequoted Information and in default of any modifying circumstances attendant, hereby sentences her to suffer the penalty of imprisonment of ***LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND (₱500,000.00) PESOS***, with the accessory penalties provided by law and with credit for preventive imprisonment undergone, if any.
>
> The 0.016 gram of "*shabu*" subject matter of this case is hereby ordered confiscated in favor of the government to be disposed of in accordance with law.
>
> **SO ORDERED**.[8]

The RTC ruled that the prosecution proved all the essential elements of the crimes charged.[9] It further held that "[a]lthough it may be true that the inventory of the confiscated item was

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[7] *Id.* at 5.

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

[9] *Id.* at 54-55.

conducted at the PDEA office in Calapan City, and not at the crime scene, the Court finds no sufficient reason to suspect that the "*shabu*" and buy-bust money recovered from the accused were unduly compromised. Besides, granting *arguendo* that the PDEA agents failed to strictly comply with Section 21(1), Article II of R.A. No. 9165, such omission is not fatal and does not automatically render the accused's arrest as illegal or the items seized/confiscated from her inadmissible."[10] The RTC further held that Moreno's defense of denial and frame-up could not overcome the testimonies of the police officers as to the conduct of the buy-bust operation. The RTC therefore convicted Moreno of the crime.

Aggrieved, the Moreno appealed to the CA.

Ruling of the CA

In the questioned Decision dated March 9, 2017 the CA affirmed the RTC's conviction of Moreno, holding that the prosecution was able to prove the elements of the crimes charged, namely: (1) the identity of the buyer, as well as the seller, the object, and the consideration of the sale; (2) the delivery of the thing sold and the payment therefor.[11] The CA gave credence to the testimonies of the prosecution witnesses over the accused-appellant's claim of denial and frame-up.

As regards compliance with Section 21, Article II of the Implementing Rules and Regulations (IRR) of RA 9165, the CA held that strict compliance with the said provision was the ideal, although substantial compliance with the same may suffice provided the integrity of the evidence is properly preserved.[12] It then held that, in this case, there was substantial compliance with the requirements of Section 21. Thus, Moreno's guilt beyond reasonable doubt was sufficiently established.

Hence, the instant appeal.

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[10] *Id*. at 56.

[11] *Rollo*, p. 7.

[12] *Id*. at 10, citing *People v. Dela Cruz*, 794 Phil. 516 (2016).

Issue

For resolution of this Court is the issue of whether the RTC and the CA erred in convicting Moreno.

The Court's Ruling

The appeal is meritorious.

In cases involving dangerous drugs, the State bears not only the burden of proving the elements of the crime charged, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law.[13] While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,[14] the law nevertheless also requires **strict** compliance with procedures laid down by it to ensure that rights are safeguarded.

In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation, to receipt in the forensic laboratory, to safekeeping, to presentation in court until destruction.[15] The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt.[16]

In this connection, Section 21, Article II of RA 9165,[17] the applicable law at the time of the commission of the alleged

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[13] *People v. Guzon*, 719 Phil. 441, 451 (2013).

[14] *People v. Mantalaba*, 669 Phil. 461, 471 (2011).

[15] *People v. Guzon*, *supra* note 13 at 451, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

[16] *Id*., citing *People v. Remigio*, 700 Phil. 452, 464-465 (2012).

[17] The said Section reads as follows:

crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

This must be so because the possibility of abuse is great given the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals.[18]

Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation.** The said inventory must be done **in the presence of the aforementioned required witnesses**, all of whom

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

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

[18] *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the IRR of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.[19] In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — **a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**. Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.

It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However, this is with the caveat, as the CA itself pointed out, that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[20] The Court has **repeatedly** emphasized that the prosecution should explain the reasons behind the procedural lapses.[21]

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[19] IRR of RA 9165, Art. II, Sec. 21(a).

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

[21] *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, accessed at < http://elibrary.judiciary.gov.ph/ thebookshelf/showdocs/1/64112 >; *People v. Descalso*, G.R. No. 230065, March 14, 2018, accessed at < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64066 >; *People v. Año*, G.R. No. 230070, March 14,2018, accessed at < http://elibrary. judiciary.gov.ph/thebookshelf/showdocs/1/63982 >; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, accessed at < http://elibrary.judiciary.gov.ph/the bookshelf/

In the present case, none of the three required witnesses was present at the time of seizure and apprehension, and only two of them were present during the conduct of the inventory. As Agent Marleo Sumale (Agent Sumale), the one who acted as poseur-buyer, himself testified:

Q Who handed to you this buy bust money?
A Agent Naulgan.

Q Who were to assist you in the conduct of the operation?
A Agent Naulgan assigned Agent Rosemarie and Agent Quitain.

Q What time did you jump off the operation?
A Twelve o' clock midnight of July 13, Ma'am.

Q Who was with you when you went to the place of the operation?
A I was with the confidential informant.

Q How about Agent Quitain who was with her?
A We both boarded the same vehicle.

x x x x x x x x x

Q What happened next after you executed the pre-arranged signal?
A The tram rushed to the place where alyas Ara was standing.

Q When the arresting team was apprehending Ara where were you?
A I was with the team.

Q What did Agent Quitain do to Ara?

/showdocs/1/63985 >; *People v. Magsano*, G.R. No. 231050, February 28, 2018, accessed at < http://elibrary.judiciary.gov.ph/the bookshelf/showdocs/1/63959 >; *People v. Ramos*, G.R. No. 233744, February 28, 2018, accessed at < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63948 >; *People v. Manansala*, G.R. No. 229092, February 21, 2018, accessed at < http://elibrary.judiciary.gov.ph/ thebookshelf/showdocs/1/63936 >; *People v. Paz*, 854 SCRA 23, 37; *People v. Miranda*, 854 SCRA 42, 55; *People v. Mamangon*, 853 SCRA 303, 316; *People v. Jugo*, 853 SCRA 321, 333; *People v. Alvaro*, 850 SCRA 464, 476; *People v. Almorfe*, 631 Phil. 51, 60 (2010).

A She arrested her and informed Ara of her rights. She also informed her of the nature of her offense and then she frisked Ara.

Q What was the result of the search?
A The Five Hundred Peso (Php 500.00) bill was found in her possession.

Q Which Five Hundred Peso (Php 500.00) bill did Agent Quitain retrieved (*sic*) from Ara?
A The buy bust money Ma'am.

Q After the arrest of Ara what happened?
A We brought alyas Ara to the office and conducted an inventory.

x x x x x x x x x

Q On page 18 of the records is the Inventory of Confiscated/ Seized Items. Is this the one you were referring to?
A Yes Ma'am.

Q Who prepared this?
A I was the one who wrote everything on this document.

Q There appears a signature above the name IO1 Marleo Sumale. Whose signature is that?
A Mine Ma'am.

PROS. JOYA:

We pray that the Inventory of Confiscated/Seized Items be marked as Exhibit "F", the items inventories as "F-1" and the signature of the witness as Exhibit "F-2".

Q Whose signature is this that appears above the name Anacleto Vergara?
A That is the signature of the elected official.

Q How about the signature above the name of Maricris de Jaro?
A That is the signature of the media representative.

Q Why do you know that those are their signatures?
A They signed in my presence.[22] (Emphasis supplied)

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[22] TSN, July 2, 2013, pp. 6-8.

The foregoing testimony confirms that only the agents of the Philippine Drug Enforcement Agency (PDEA) were present in the conduct of the buy-bust operation, and that the inventory was not immediately conducted and was only done subsequently at the PDEA office. Worse, only two of the three required witnesses — the media representative and the elected official —were present in the conduct of the inventory done at the PDEA office.

The records of this case are bereft of any explanation as to why no representative from the DOJ was present in the inventory. The prosecution, despite its burden to prove the officers' compliance with the procedure outlined in Section 21, did not address the issue in their pleadings, and the RTC and the CA instead had to rely on supposed substantial compliance with the rules to justify Moreno's conviction.

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,[23] the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

> The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,[24] without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

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

[24] 736 Phil. 749 (2014).

The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."[25] (Emphasis in the original)

It is important to stress that the prosecution has the burden of (1) proving its 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 case of *People v. Lim*:[26]

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:

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[25] *People v. Tomawis, supra* note 23.

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

(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**.[27]

In *People v. Umipang*[28] the Court dealt with the same issue where the police officers involved did not show any genuine effort to secure the attendance of the required witnesses before the buy-bust operation was executed. In the said case, the Court held:

Indeed, the absence of these representatives during the physical inventory and the marking of the seized items does not *per se* render the confiscated items inadmissible in evidence. However, we take note that, in this case, the SAID-SOTF did not even attempt to contact the *barangay* chairperson or any member of the *barangay* council. There is no indication that they contacted other elected public officials. Neither do the records show whether the police officers tried to get in touch with any DOJ representative. Nor does the SAID-SOTF adduce any justifiable reason for failing to do so — especially considering that it had sufficient time from the moment it received information about the activities of the accused until the time of his arrest.

Thus, we find that there was no genuine and sufficient effort on the part of the apprehending police officers to look for the said representatives pursuant to Section 21(1) of R.A. 9165. **A sheer**

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

[28] 686 Phil. 1024 (2012).

statement that representatives were unavailable — without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances — is to be regarded as a flimsy excuse. We stress that it is the prosecution who has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21(1) of R.A. 9165, or that there was a justifiable ground for failing to do so.[29] (Emphasis and underscoring supplied)

The Court emphasizes that while it is laudable that police officers exert earnest efforts in catching drug pushers, they must always do so within the bounds of the law.[30] Without the insulating presence of the representative from the media and the DOJ, and any elected public official during the seizure and marking of the sachets of *shabu*, the evils of switching, "planting" or contamination of the evidence would again rear their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachet of *shabu* that was evidence herein of the *corpus delicti*. Thus, this failure adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.[31]

Concededly, Section 21 of the IRR of RA 9165 provides 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." For this provision to be effective, however, the prosecution must (1) first recognize any lapse on the part of the police officers and (2) then be able to justify the same.[32] Breaches of the procedure contained in Section 21 committed by the police officers, left unacknowledged and

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[29] *Id*. at 1052-1053.

[30] *People v. Ramos*, 791 Phil. 162, 175 (2016).

[31] *People v. Mendoza*, *supra* note 24 at 764.

[32] *People v. Alagarme*, 754 Phil. 449, 461 (2015).

unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* would have been compromised.[33] As the Court explained in *People v. Reyes*:[34]

> Under the last paragraph of Section 21 (a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism**. Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.** With the chain of custody having been compromised, the accused deserves acquittal.[35] (Emphasis supplied)

In sum, the prosecution failed to provide justifiable grounds for the apprehending team's deviation from the rules laid down in Section 21 of RA 9165. The integrity and evidentiary value of the *corpus delicti* have thus been compromised. In light of this, Moreno must perforce be acquitted.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated March 9, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07977 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Emalyn N. Moreno is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless she is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

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[33] See *People v. Sumili*, 753 Phil. 342, 350 (2015).

[34] 797 Phil. 671 (2016).

[35] *Id.* at 690.

Let a copy of this Decision be furnished the Superintendent of the Correctional Institution for Women, Mandaluyong 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 she has taken.

SO ORDERED.

Carpio,[*] *Acting C.J.* (*Chairperson*), *Reyes, J. Jr., Lazaro-Javier,* and *Zalameda, JJ.*, concur.

THIRD DIVISION

[G.R. No. 237172. September 18, 2019]

MARIO JOEL T. REYES,[1] *petitioner*, *vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (REPUBLIC ACT NO. 3019); SECTION 3 (e) THEREOF; CAUSING UNDUE INJURY TO ANY PARTY OR GIVING UNWARRANTED BENEFITS; ELEMENTS. — Section 3(e) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, provides: SECTION 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt

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[*] Acting Chief Justice as per Special Order No. 2703 dated September 10, 2019.

[1] Referred to by the Sandiganbayan and the Office of the Special Prosecutor as "Joel Tolentino Reyes." He is not to be confused with his brother, Mario Tolentino Reyes, who was the former Mayor of Coron, Palawan.

practices of any public officer and are hereby declared to be unlawful: … (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions. To prove guilt, the prosecution must establish the following elements: 1) The accused must be a public officer discharging administrative, judicial or official functions; 2) He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and 3) That his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. Here, the prosecution has duly proven the existence of the first element.

2. ID.; ID.; ID.; ID.; MODE OF COMMISSION; "MANIFEST PARTIALITY", "EVIDENT BAD FAITH", "GROSS INEXCUSABLE NEGLIGENCE" DEFINED; TO PROVE A VIOLATION OF THE ANTI-GRAFT AND CORRUPT PRACTICES ACT, THE PROSECUTION MUST ESTABLISH THAT PETITIONER'S APPROVAL OF THE SMALL SCALE MINING PERMITS WAS DONE THROUGH MANIFEST PARTIALITY, EVIDENT BAD FAITH, OR INEXCUSABLE NEGLIGENCE. — Petitioner was the Palawan Governor during the alleged commission of the crime. As provincial governor, he had the duty under the Local Government Code to adopt measures for the conservation of the natural resources within the province x x x. Petitioner's approval of small scale mining permits was within his official duties as the local chief executive of the province. To prove a violation of the Anti-Graft and Corrupt Practices Act, however, the prosecution must also establish that his approval of these permits was done through manifest partiality, evident bad faith, or inexcusable negligence. Commission of the offense through any of these three (3) modes is sufficient for a conviction. These modes, however, are distinct from one another. In *Albert v. Sandiganbayan*, this Court defines each mode of commission: There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another.

"Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

3. ID.; ID.; ID.; ID.; RENEWAL OF SMALL SCALE MINING PERMITS, DESPITE A BLATANT VIOLATION OF THE TERMS OF THE PERMIT, CONSTITUTES GROSS INEXCUSABLE NEGLIGENCE; THE PROVINCIAL GOVERNOR'S DUTY TO APPROVE SMALL SCALE MINING PERMITS IS DISCRETIONARY, NOT MINISTERIAL. — In this case, the Sandiganbayan found that from May 30, 2005 to April 3, 2006, Platinum Group transported a total of *203,399.135 dry metric tons of nickel ore* under Olympic Mines' SSMP PLW No. 37 and Platinum Group's SSMP PLW No. 39. This is clearly beyond the 100,000-dry metric ton threshold of the combined permits, a fact that petitioner does not dispute. His act of renewing Olympic Mines' Small Scale Mining Permits, despite a blatant violation of the terms of the permit, was correctly characterized as gross inexcusable negligence. In an attempt to disclaim liability, petitioner argues that he merely relied on the recommendation of the Provincial Mining Regulatory Board to renew Olympic Mines' permit. This argument, however, is unmeritorious. x x x. Thus, while the Provincial Mining Regulatory Board is the technical body that recommends the approval of applications for small scale mining permits, the provincial governor still has the correlative duty to review its recommendation. The duty to approve was, therefore, discretionary on petitioner, not ministerial. Petitioner, as the local chief executive, had the duty to act within the best interests of his constituents and to safeguard the environment's natural resources. The dry metric ton threshold set by the law ensures that small scale mining activities will not result in environmental damage. Petitioner's gross inexcusable negligence, thus, caused undue injury to the Province of

Palawan, as it exposed the province to various environmental threats resulting from irresponsible mining.

4. ID.; ID.; ID.; ID.; CONVICTION OF PETITIONER FOR VIOLATION OF SECTION 3 (e) OF THE ANTI-GRAFT AND CORRUPT PRACTICES ACT, AFFIRMED; PROPER IMPOSABLE PENALTY. — There was, x x x no error in the Sandiganbayan's finding that petitioner was guilty beyond reasonable doubt of violating Section 3(e) of the Anti-Graft and Corrupt Practices Act. Under Section 9 of the law, the offense is punishable by "imprisonment for not less than six years and one month nor more than fifteen years [and] perpetual disqualification from public office[.]" The Sandiganbayan, therefore, did not err in imposing the indeterminate penalty of six (6) years and one (1) month as minimum to eight (8) years as maximum with perpetual disqualification from public office.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; BAIL IS A MATTER OF RIGHT IN BAILABLE OFFENSES BEFORE CONVICTION; AFTER CONVICTION OF AN OFFENSE NOT PUNISHABLE BY DEATH, *RECLUSION PERPETUA*, OR LIFE IMPRISONMENT, THE GRANT OF BAIL BECOMES DISCRETIONARY UPON THE COURT, WHICH MAY EITHER DENY OR GRANT IT. — Bail after conviction is not a matter of right. Its grant or cancellation is within the sound discretion of the court. As early as 1936, this Court has already recognized that the grant of bail after conviction, not being a constitutional right, is left to the discretion of the courts: x x x. Indeed, even the 1987 Constitution mandates that bail is a matter of right in bailable offenses *before conviction*: x x x. *After conviction* of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, the grant of bail becomes discretionary upon the court, which may either deny or grant it. In circumstances where the penalty imposed exceeds six (6) years, the court is not precluded from cancelling the bail previously granted upon a showing by the prosecution of the circumstances enumerated in Rule 114, Section 5 of the Rules of Court. The presence of even one (1) of the enumerated circumstances is sufficient cause to deny or cancel bail.

6. ID.; ID.; ID.; ID.; THE RIGHT TO BAIL AFTER CONVICTION IS NOT ABSOLUTE, AND WHILE THE PERSON CONVICTED MAY, UPON APPLICATION BE

BAILED AT THE DISCRETION OF THE COURT, THAT DISCRETION — PARTICULARLY WITH RESPECT TO EXTENDING THE BAIL — SHOULD BE EXERCISED, NOT WITH LAXITY, BUT WITH CAUTION AND ONLY FOR STRONG REASONS WITH THE END IN VIEW OF UPHOLDING THE MAJESTY OF THE LAWS AND THE ADMINISTRATION OF JUSTICE; CANCELLATION OF PETITIONER'S BAIL, AFFIRMED. — Indeed, the factual findings show the presence of two (2) circumstances stated in Rule 114, Section 5 of the Rules of Court: (1) petitioner had previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without a valid justification; and (2) he poses a flight risk if admitted to bail. The Sandiganbayan did not act arbitrarily or capriciously, but rather, arrived at its decision with due consideration of the arguments presented by the prosecution. In *People v. Caderao*: The right to bail after conviction is not absolute, and while the person convicted may, upon application be bailed at the discretion of the court, that discretion — particularly with respect to extending the bail — should be exercised, not with laxity, but with caution and only for strong reasons with the end in view of upholding the majesty of the laws and the administration of justice. Here, when petitioner fled the country in 2011 after a warrant of arrest for murder had been filed against him, he has been a proven flight risk. He has since been acquitted of this charge by the Court of Appeals for lack of evidence. Petitioner had the propensity to evade the lawful orders of the court even before he could be convicted of murder. Since petitioner had already been convicted, the Sandiganbayan had to be more circumspect in examining the condition for petitioner's bail in this case. x x x. There was, thus, no error in the Sandiganbayan's exercise of its discretion to cancel petitioner's bail.

APPEARANCES OF COUNSEL

Custodio Acorda Sicam & De Castro Law Offices for petitioner.

D E C I S I O N

LEONEN, *J.*:

The approval of small scale mining permits is a discretionary act of provincial governors. A provincial governor is considered to have been grossly and inexcusably negligent in renewing a small scale mining permit despite knowing that the extraction limits have already been exhausted by the applicant mining company.

Likewise, the grant of bail after a judgment of conviction is discretionary upon the courts. Bail may be denied if the courts find any of the circumstances present in Rule 114, Section 5 of the Rules of Court.[2]

This Court resolves a Petition for Review on *Certiorari*[3] filed by Mario Joel T. Reyes (Reyes), then Governor of Palawan, assailing the Decision[4] and Resolution[5] of the Sandiganbayan,

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[2] Rules of Court, Rule 114, Sec. 5 provides:

SECTION 5. *Bail, when discretionary.* —

. . . . . .

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

(a) That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;

(b) That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without a valid justification;

(c) That he committed the offense while under probation, parole, or conditional pardon;

(d) That the circumstances of his case indicate the probability of flight if released on bail; or

(e) That there is undue risk that he may commit another crime during the pendency of the appeal.

[3] *Rollo*, pp. 3-61.

[4] *Id*. at 62-90. The August 29, 2017 Decision was penned by Associate Justice Sarah Jane T. Fernandez and concurred in by Presiding Justice Amparo

which found him guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, when he renewed the small scale mining permit of a mining company despite it violating the terms and conditions of its previous permit. In an Urgent Motion to Review Resolution Revoking Bail, he also assails the Sandiganbayan Resolution[6] revoking his bail due to previous violations of the conditions of bail and for possibility of flight.

Olympic Mines and Development Corporation (Olympic Mines) is a grantee of mining lease contracts in Narra and Española, Palawan.[7]

On July 18, 2003, the company entered into a 25-year Operating Agreement, under which it granted Platinum Group Metal Corporation (Platinum Group) exclusive privilege to control, possess, manage or operate, and conduct mining operations within the Toronto Nickel Mine in Narra and Pulot Nickel Mine in Española. Olympic Mines "also authorized Platinum Group to market or dispose minerals and mineral products obtained from the areas."[8]

On January 21, 2004, Olympic Mines and Platinum Group separately applied for small scale mining permits before the Provincial Mining Regulatory Board.[9]

M. Cabotaje-Tang and Associate Justice Bernelito R. Fernandez of the Third Division, Sandiganbayan, Quezon City.

[5] *Id*. at 91-104. The January 25, 2018 Resolution was penned by Associate Justice Sarah Jane T. Fernandez and concurred in by Presiding Justice Amparo M. Cabotaje-Tang and Associate Justice Bernelito R. Fernandez of the Third Division, Sandiganbayan, Quezon City.

[6] *Id*. at 105-122. The January 17, 2018 Resolution was signed by Presiding Justice Amparo M. Cabotaje-Tang and Associate Justices Bernelito R. Fernandez and Zaldy V. Trespeces of the Third Division, Sandiganbayan, Quezon City.

[7] *Id*. at 70.

[8] *Id*.

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

The two (2) applications were approved by Reyes, then the Palawan Governor. He issued SSMP PLW No. 37 for a 19.800-hectare property in San Isidro, Narra, Palawan in favor of Olympic Mines. Under the permit, which was valid from November 4, 2004 to November 3, 2006, Olympic Mines was allowed to extract 50,000 dry metric tons of laterite ore.[10] Within the same duration, Platinum Group was similarly allowed, under SSMP PLW No. 39, to extract 50,000 dry metric tons of laterite ore in San Isidro, Narra and in Pulot, Española.[11]

On October 22, 2004, the Department of Environment and Natural Resources issued Olympic Mines' and Platinum Group's Environmental Compliance Certificates, which imposed a limit of 50,000 dry metric tons of nickel/ore mineral to be extracted per year.[12]

From May 30, 2005 to April 3, 2006, Platinum Group transported, for itself and on behalf of Olympic Mines, a total of 203,399.135 dry metric tons of nickel ore extracted under their permits.[13]

On March 10, 2006, Olympic Mines applied for the renewal of SSMP PLW No. 37 before the Provincial Mining Regulatory Board. At the time of its application, Olympic Mines had already exhausted its 50,000-dry metric ton limit under SSMP PLW No. 37 and its 100,000-dry metric ton limit under its Environmental Compliance Certificates.[14]

In Resolution No. 024-2006, the Provincial Mining Regulatory Board unanimously recommended to then Governor Reyes that the application be approved.[15]

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[10] *Id*. at 71.

[11] *Id*.

[12] *Id*.

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

[14] *Id*. at 72.

[15] *Id*.

On April 6, 2006, then Governor Reyes issued SSMP PLW No. 37.1, valid from April 6, 2006 to April 5, 2008, granting Olympic Mines the right to extract 50,000 dry metric tons of laterite ore per year within the same area covered by SSMP PLWNo. 37.[16]

From June 2, 2006 to July 31, 2006, Platinum Group transported, on behalf of Olympic Mines and on its own behalf, 79,330 dry metric tons of nickel ore under SSMP PLW No. 37.1 and SSMP PLW No. 39.1.[17]

In a September 25, 2006 Order, then Environment and Natural Resources Secretary Angelo Reyes, acting on Citinickel Mines' complaint, cancelled Olympic Mines' Environmental Compliance Certificates for over-extraction of minerals.[18]

On appeal, the Office of the President reversed this Order and reinstated the cancelled Environmental Compliance Certificates on the following grounds: (1) Republic Act No. 7076[19] has already repealed the limit of 50,000 dry metric tons on ore extraction; (2) the condition in the Environment Compliance Certificates referred to nickel and not nickel ore; and (3) there was no proof on the amount of nickel extracted from the nickel ore.[20]

Reyes and Andronico J. Baguyo (Baguyo), Head of the Provincial Mining Regulatory Board, however, were charged with violation of Section 3(e) of Republic Act No. 3019 when they allegedly gave unwarranted benefits, preference, and advantage to Olympic Mines in the renewal of its Small Scale Mining Permit.[21] The Information against them read:

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[16] *Id*.

[17] *Id*. The Sandiganbayan did not discuss the particulars of the issuance of SSMP PLW No 39.1.

[18] *Id*. at 73.

[19] People's Small-Scale Mining Act of 1991.

[20] *Rollo*, p. 73.

[21] *Id*.

That on or about April 6, 2006, or sometime prior or subsequent thereto, in Puerto Princesa City, Palawan, and within the jurisdiction of this Honorable Court, accused JOEL T. REYES, a high ranking public officer being Governor of the Province of Palawan and accused ANDRONICO J. BAGUYO, Mining Operations Officer IV, Provincial Environment and Natural Resources Office and concurrent Head of the Provincial Mining Regulatory Board (PMRB) Technical Secretariat, taking advantage of their respective positions and committing the offense in relation to office, conspiring and confederating with each other, did then and there willfully, knowingly and criminally, with manifest partiality, evident bad faith or, at the very least, gross and inexcusable negligence, grant and issue Small Scale Mining Permit Number SSMP PLW No. 37-1 to Olympic Mines and Development Corporation (OMDC) for a period of April 6, 2006 to April 5, 2008 as renewal of its previous mining permit (SSMP PLW No. 37) despite the fact that said previous mining permit is valid and subsisting up to November 3, 2006 and even as said OMDC already mined and extracted the annual maximum 50,000 dry metric tons (DMT) of ore set forth in its previous permit (or 100,000 DMT for the two-year period), allowing in the process OMDC to mine and extract ore in excess of the allowable limit; and despite OMDC's violations of its prior mining permit such as, but not limited to: (1) over-extraction of ore and (2) the use of heavy equipment in its mining operations which is prohibited by Republic Act 7076 and Presidential Decree 1899, as amended, thereby giving unwarranted benefits, preference and advantage to OMDC, to the damage and prejudice of the government and People of Palawan.

CONTRARY TO LAW.[22] (Citation omitted)

Upon arraignment, Reyes and Baguyo pleaded not guilty to the charge.[23] Trial on the merits then ensued.

As his defense, Reyes contended that there was no criminal intent or negligence on his part since he signed and approved SSMP PLW No. 37.1 based on the favorable recommendation of the Provincial Mining Regulatory Board. He also argued that over-extraction of nickel could not have been proven through

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[22] *Id*. at 62-A.

[23] *Id*.

Olympic Mines' Ore Transport Permits since these only showed the transport of the minerals. Moreover, he pointed out that the volume in the permits referred to the combined volume of ore extracted by Olympic Mines and Platinum Group.[24]

On August 29, 2017, the Sandiganbayan rendered its Decision[25] finding Reyes guilty of violation of Republic Act No. 3019, Section 3(e).[26] Baguyo, however, was acquitted. The dispositive portion of the Decision read:

> WHEREFORE, accused JOEL TOLENTINO REYES is found GUILTY beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019, and is sentenced to an indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum, with perpetual disqualification from holding public office.
>
> Accused ANDRONICO JARA BAGUYO is ACQUITTED of the crime charged for failure of the prosecution to establish his guilt beyond reasonable doubt.
>
> SO ORDERED.[27]

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[24] *Id*. at 74.

[25] *Id*. at 62-90.

[26] Republic Act No. 3019 (1960), Sec. 3 provides:

> SECTION 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
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> . . . . . .
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> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[27] *Rollo*, p. 89.

According to the Sandiganbayan, there was no manifest partiality since the renewal of SSMP PLW No. 37 was not shown to have been granted to favor Olympic Mines alone and no other mining company.[28] It also found no evident bad faith since the applicable laws did not expressly prohibit the renewal of small scale mining permits before they expired.[29]

The Sandiganbayan, however, found that there was gross inexcusable negligence when Reyes renewed SSMP PLW No. 37.1 during the validity of SSMP PLW No. 37. Citing *SR Metals, Inc. v. Reyes*,[30] it stated that the 50,000-dry metric ton limit under Presidential Decree No. 1899[31] was not repealed by Republic Act No. 7076. It explained that the annual production limit in Republic Act No. 7076 includes other materials lumped together with the sought-after material, while Presidential Decree No. 1899 refers to ore in its unprocessed form. The Sandiganbayan ruled that by renewing SSMP PLW No. 37 before it expired, Reyes allowed Olympic Mines to extract nickel ore after its privilege had been exhausted for the period. Reyes allowed Olympic Mines, through Platinum Group, to do an act which it would have been otherwise prohibited.[32]

The Sandiganbayan found no merit in Reyes' argument that he merely relied on the Provincial Mining Regulatory Board's recommendation, stating that "his authority to approve small mining permits calls for the dual role of allowing the exploration and exploitation of, and conserving and preserving the natural resources within the provinces' territorial jurisdiction."[33] It noted that the Board's recommendation was subject to certain

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[28] *Id*. at 77.

[29] *Id*. at 77-78.

[30] 735 Phil. 54 (2014) [Per *J*. Del Castillo, Second Division].

[31] Establishing Small-Scale Mining as a New Dimension in Mineral Development (1984).

[32] *Rollo*, pp. 79-82.

[33] *Id*. at 83.

conditions, and that Reyes failed to inquire if they had been met before approving the renewal.[34]

The Sandiganbayan likewise found that Reyes acted with gross inexcusable negligence when Olympic Mines' agent, Platinum Group, used heavy machinery in its operations. It noted that the use of sophisticated mining equipment was not allowed in small scale mining.[35]

Thus, through his gross inexcusable negligence, Reyes was found to have given Olympic Mines unwarranted benefits when he allowed it to extract nickel ore beyond the limits allowed by law, as well as when he failed to impose sanctions for the violation of the Small Scale Mining Permit's terms, which caused undue injury to the government.[36]

The Sandiganbayan acquitted Baguyo since his signature on SSMP PLW No. 37.1 appears to be a "Certified Machine Copy." It also found no indication that he participated in the preparation and issuance of the permit.[37]

Reyes filed a Motion for Reconsideration, which was denied by the Sandiganbayan in its January 25, 2018 Resolution.[38] Hence, he filed this Petition.[39]

Petitioner maintains that he relied in good faith on the recommendation of the Provincial Mining Regulatory Board, it being the specialized agency with the duty and technical expertise to evaluate small scale mining permit applications. He points out that it is the Mines and Geosciences Bureau, not the provincial governor, which has the duty to ensure that the

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[34] *Id*. at 82-83.

[35] *Id*. at 84.

[36] *Id*. at 85-86.

[37] *Id*. at 87.

[38] *Id*. at 91-104.

[39] *Id*. at 3-61. A Comment (*rollo*, pp. 624-642) was filed on July 16, 2018 while a Reply (*rollo*, pp. 695-716) was filed on December 7, 2018.

terms and conditions of small scale mining applications are complied with.[40]

Petitioner further argues that *SR Metals* should not have been given retroactive application when it is prejudicial to the accused. In any case, he points out that this Decision only shows that there has already been an issue as to how to interpret the 50,000-dry metric ton threshold. Therefore, he insists, there was reasonable doubt in his case.[41]

Petitioner likewise submits the Urgent Motion to Review the Revocation of Bail assailing the Sandiganbayan's January 17, 2018 Resolution,[42] which had revoked his bail. The Sandiganbayan cited that: (1) he violated the conditions of his bail without any justification after he had failed to appear before the Sandiganbayan despite a directive for him to do so; and (2) there was a probability of flight.[43]

The Sandiganbayan had previously granted petitioner bail in the amount of ₱60,000.00 on August 29, 2017, right after his conviction. Petitioner explains that this was distinct from the bail he posted on September 1, 2011 to stay the warrant of his arrest. He states that any violation of the conditions of his bail was prior to his conviction; thus, the bail he posted on September 1, 2011 was considered cancelled. He likewise argues that this violation was justified since he did not believe that he would be tried fairly if he stayed in the country.[44]

Petitioner argues that he was "vindicated"[45] when the Court of Appeals, in CA-G.R. SP. No. 132847, through Associate Justice Normandie Pizarro, found no probable cause to find him liable for the murder of radio personality Gerry Ortega

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[40] *Id*. at 23-32.

[41] *Id*. at 46-48.

[42] *Id*. at 105-122.

[43] *Id*. at 49-50.

[44] *Id*. at 50-52.

[45] *Id*. at 52.

and dismissed the case against him. He argues that there was no reason to revoke his bail in this case since the Court of Appeals had already dismissed the case against him, negating any possibility of flight. He points out that he even voluntarily surrendered when the Sandiganbayan issued its January 17, 2018 Resolution.[46]

Respondent People of the Philippines, through the Office of the Ombudsman, counters that all the elements of violation of Section 3(e) of Republic Act No. 3019 were sufficiently established by the prosecution. It points out that based on the evidence presented, Olympic Mines violated the terms and conditions of its Small Scale Mining Permit when Platinum Group extracted, on Olympic Mines' behalf, more than the 50,000-dry metric ton limit under the law. It contends that the Office of the Governor of Palawan, through petitioner, acted with gross inexcusable negligence in allowing the renewal of Olympic Mines and Platinum Group's Small Scale Mining Permit despite their blatant violations of law.[47]

Respondent likewise asserts that the Sandiganbayan did not commit grave abuse of discretion when it cancelled petitioner's bail. It states that petitioner had already been convicted, and that the Sandiganbayan cited two (2) grounds for the bail's cancellation: (a) when petitioner failed to appear in court despite a directive to do so; and (b) the probability of flight.[48]

Additionally, respondent submits that the Sandiganbayan's factual findings are conclusive on this Court since there was no grave abuse of discretion on its part when it arrived at its conclusions.[49]

In rebuttal, petitioner maintains that the questions raised in his Petition were proper in a petition for review on *certiorari*

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[46] *Id*. at 52-55.

[47] *Id*. at 629-636.

[48] *Id*. at 636-638.

[49] *Id*. at 638-639.

since he argued that the assailed judgment was issued by the Sandiganbayan without any legal basis.[50] He likewise insists that he merely relied on the Provincial Mining Regulatory Board's recommendation when he renewed the Small Scale Mining Permit, which cannot be considered gross inexcusable negligence on his part.[51]

This Court is now asked to resolve the following issues:

First, whether or not the Sandiganbayan erred in finding petitioner Mario Joel T. Reyes guilty of violation of Section 3(e) of Republic Act No. 3019 when he approved the renewal of Olympic Mines' Small Scale Mining Permit; and

Second, whether or not the Sandiganbayan erred in revoking his bail on the ground of violation of the conditions of his bail and for possibility of flight.

I

Section 3(e) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, provides:

> SECTION 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
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> . . . . . .
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> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

To prove guilt, the prosecution must establish the following elements:

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[50] *Id*. at 695-697.

[51] *Id*. at 697-702.

1) The accused must be a public officer discharging administrative, judicial or official functions;

2) He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and

3) That his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[52] (Citation omitted)

Here, the prosecution has duly proven the existence of the first element. Petitioner was the Palawan Governor during the alleged commission of the crime. As provincial governor, he had the duty under the Local Government Code to adopt measures for the conservation of the natural resources within the province:

ARTICLE I
The Provincial Governor

SECTION 465. The Chief Executive: Powers, Duties, Functions, and Compensation. —

. . . . . .

(3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for agro-industrial development and country-wide growth and progress and, relative thereto, shall:

. . . . . .

(v) Adopt adequate measures to safeguard and conserve land, mineral, marine, forest and other resources of the province, in coordination with the mayors of component cities and municipalities;

(vi) Povide efficient and effective property and supply management in the province; and protect the funds, credits, rights, and other properties of the province[.]

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[52] *Soriano v. Marcelo*, 610 Phil. 72, 80 (2009) [Per *J.* Carpio, First Division].

Petitioner was likewise tasked with approving the permits for small scale mining operations within the province:

> Section 8. Role of Local Government
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> Subject to Section 8 of the Act and pursuant to the Local Government Code and other pertinent laws, the Local Government Units (LGUs) shall have the following roles in mining projects within their respective jurisdictions:
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> . . . . . .
>
> b. In coordination with the Bureau/Regional Office(s) and subject to valid and existing mining rights, to approve applications for small-scale mining, sand and gravel, quarry, guano, gemstone gathering and gratuitous permits and for industrial sand and gravel permits not exceeding five (5) hectares [.][53]

Petitioner's approval of small scale mining permits was within his official duties as the local chief executive of the province. To prove a violation of the Anti-Graft and Corrupt Practices Act, however, the prosecution must also establish that his approval of these permits was done through manifest partiality, evident bad faith, or inexcusable negligence.

Commission of the offense through any of these three (3) modes is sufficient for a conviction.[54] These modes, however, are distinct from one another. In *Albert v. Sandiganbayan*,[55] this Court defines each mode of commission:

> There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively

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[53] DENR Administrative Order No. 96-40 (1996), Revised Implementing Rules and Regulations of Republic Act No. 7942, Otherwise Known as the "Philippine Mining Act of 1995".

[54] See *Fonacier v. Sandiganbayan*, 308 Phil. 660 (1994) [Per *J.* Vitug, *En Banc*].

[55] 599 Phil. 439 (2009) [Per *J.* Carpio, First Division].

operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.[56]

Here, since the renewal of Olympic Mines' SSMP PLW No. 37.1 was not exclusively granted to Olympic Mines, the Sandiganbayan found that petitioner was not proven to be manifestly partial to Olympic Mines.[57] It also could not find any evident bad faith when petitioner approved SSMP PLW No. 37.1 before the expiration of SSMP PLW No. 37 since the law existing at the time did not expressly prohibit the renewal of small scale mining permits before their expiration.[58]

The Sandiganbayan, however, found that petitioner committed gross inexcusable negligence when he approved Olympic Mines' SSMP PLW No. 37.1, considering that Olympic Mines violated the terms and conditions of SSMP PLW No. 37.

Small scale mining was first defined in Presidential Decree No. 1899,[59] which was issued on January 23, 1984. Section 1 of the law states:

SECTION 1. Small-scale mining refers to any single unit mining operation having an annual production of not more than 50,000 metric tons of ore and satisfying the following requisites:

1. The working is artisanal, either open cast or shallow underground mining, without the use of sophisticated mining equipment;

2. Minimal investment on infrastructures and processing plant;

3. Heavy reliance on manual labor; and

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[56] *Id.* at 450-451 citing *Uriarte v. People*, 540 Phil. 477 (2006) [Per *J.* Callejo, Sr., First Division].

[57] *Rollo*, p. 77.

[58] *Id.* at 77-78.

[59] Establishing Small-Scale Mining as a New Dimension in Mineral Development.

4. Owned, managed or controlled by an individual or entity qualified under existing mining laws, rules and regulations.

Considering that the operative phrase is "small scale," Presidential Decree No. 1899 limits production to only 50,000 metric tons of ore. Tasked with implementing the law,[60] the Department of Environment and Natural Resources issued Mines Administrative Order No. MRD-41, series of 1984, which provided:

SECTION 2. Who May Qualify for the Issuance of a Small Scale Mining Permit. — Any qualified person as defined in Sec. 1 of these Regulations, preferably claim owners and applicants for or holders of quarry permits and/or licenses may be issued a small scale mining permit provided that their mining operations, whether newly-opened, existing or rehabilitated, involve:

(a) a single mining unit having an annual production not exceeding 50,000 metric tons of run-of-mine ore, either an open cast mine working or a sub-surface mine working which is driven to such distance as safety conditions and practices will allow[.][61]

In 1991, Congress enacted Republic Act No. 7076, or the People's Small-scale Mining Act of 1991. This law defined "small scale mining" as "mining activities which rely heavily on manual labor using simple implements and methods and do not use explosives or heavy mining equipment[.]"[62] Unlike Presidential Decree No. 1899, Republic Act No. 7076 did not include an extraction threshold of 50,000 metric tons of ore. This led the Department of Justice to issue Opinion No. 74, series of 2006, opining that Republic Act No. 7076 effectively repealed the 50,000-metric ton threshold mandated by Presidential Decree No. 1899.[63]

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[60] Pres. Decree No. 1899 (1984), Sec. 8.

[61] Mines Administrative Order No. MRD-41 (1984) as cited in *SR Metals v. Reyes*, 735 Phil. 54, 62-63 (2014) [Per *J.* Del Castillo, Second Division].

[62] Republic Act No. 7076 (1991), Sec. 3(b).

[63] See *SR Metals v. Reyes*, 735 Phil. 54 (2014) [Per *J.* Del Castillo, Second Division].

This erroneous interpretation by the Department of Justice has since been rectified in *SR Metals*.[64] In any case, petitioner contends that at the time of the mining activities in this case, there had already been a controversy on whether Republic Act No. 7076 impliedly repealed Presidential Decree No. 1899's 50,000-dry metric ton threshold. To find any merit in this argument, however, would be to misread *SR Metals*.

In *SR Metals*[65] SAN R Mining and Construction Corporation and Galeo Equipment and Mining Company, Inc. were each granted small scale mining permits to extract nickel and cobalt in a mining site in Agusan del Norte. Subsequently, however, Agusan del Norte Governor Erlpe John M. Amante (Governor Amante) questioned the amounts being extracted by the mining companies since they had already extracted 177,297 dry metric tons of nickel and cobalt. The mining companies explained to Governor Amante that they, in reality, only extracted 1,699.66 metric tons of nickel and cobalt "ore," or the material that had already undergone a scientific process to separate the metal from the unwanted rocks and minerals.[66]

Unsatisfied with this explanation, Governor Amante sought the opinion of the Department of Justice on the matter. This was why, on November 30, 2006, then Justice Secretary Raul M. Gonzalez issued Department of Justice Opinion No. 74, where it was opined that Republic Act No. 7076 had already repealed the 50,000-dry metric ton threshold set by Presidential Decree No. 1899. It was also opined that even assuming that there was no repeal, "ore" should be confined only to material that has economic value to the mining companies.[67]

This Court proceeded to resolve the main issue of the proper interpretation of "ore" within the context of the dry metric ton

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[64] *Id*.

[65] *Id*.

[66] *Id*. at 59.

[67] *Id*. at 60.

threshold. To resolve this issue, however, it had to first pass upon the issue of the "implied repeal." It was then categorically held that Republic Act No. 7076 did not repeal the dry metric ton threshold set by Presidential Decree No. 1899 since "[Presidential Decree No.] 1899 applies to individuals, partnerships[,] and corporations while [Republic Act No.] 7076 applies to cooperatives."[68]

This Court likewise recognized that the Department of Environment and Natural Resources had already issued Memorandum Circular No. 2007-07, or the "Clarificatory Guidelines in the Implementation of the Small-Scale Mining Laws," which provides:

> V. Maximum Annual Production
>
> For metallic minerals, the maximum annual production under an SSMP/SSMC shall be 50,000 dry metric tons (DMT[s]) of ore, while for non-metallic minerals, the maximum annual production shall be 50,000 DMT[s] of the material itself, e.g., 50,000 DMT[s] of limestone, 50,000 DMT[s] of silica, or 50,000 DMT[s] of perlite.
>
> The maximum annual production above shall include low-grade and/or marginal ore, and/or minerals or rocks that are intended for sampling and/or metallurgical testing purpose/s.[69]

Thus, contrary to petitioner's contention, the "implied repeal" only became a controversy when Department of Justice Opinion No. 74 was issued on November 30, 2006, or after the mining activities in this case had occurred from May 2005 to April 2006. At the time the mining activities occurred, mining companies were aware of the existence of the 50,000-dry metric ton threshold. Petitioner, as the local chief executive, is presumed to have been aware of it as well.

In this case, the Sandiganbayan found that from May 30, 2005 to April 3, 2006, Platinum Group transported a total of *203,399.135 dry metric tons of nickel ore* under Olympic

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[68] *Id*. at 66.

[69] *Rollo*, p. 236.

Mines' SSMP PLW No. 37 and Platinum Group's SSMP PLW No. 39.[70] This is clearly beyond the 100,000-dry metric ton threshold of the combined permits, a fact that petitioner does not dispute. His act of renewing Olympic Mines' Small Scale Mining Permits, despite a blatant violation of the terms of the permit, was correctly characterized as gross inexcusable negligence.

In an attempt to disclaim liability, petitioner argues that he merely relied on the recommendation of the Provincial Mining Regulatory Board to renew Olympic Mines' permit. This argument, however, is unmeritorious.

Samson A. Negosa (Negosa), a member of the Provincial Mining Regulatory Board from 1993 to 2010,[71] appeared on petitioner's behalf and testified:

> The role of PMRB is only recommendatory. The PMRB's recommendation is not automatically approved by the Governor. The Governor issues the SSMP on the basis of the PMRB's recommendation. The Governor has the prerogative to review the recommendation of PMRB.[72]

Thus, while the Provincial Mining Regulatory Board is the technical body that recommends the approval of applications for small scale mining permits, the provincial governor still has the correlative duty to review its recommendation.

The duty to approve was, therefore, discretionary on petitioner, not ministerial.

Negosa, petitioner's own witness, likewise testified that the Provincial Mining Regulatory Board did not have jurisdiction over ore transport permits. Thus, when the Provincial Mining Regulatory Board recommended the permit's renewal, it would have been unaware that Olympic Mines had already exhausted its extraction limit. Negosa stated:

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

[71] *Id*. at 65-A.

[72] *Id*. at 66.

He has no personal knowledge of the contents, veracity and truthfulness of Ore Transport Permits (OTPs) issued before 2007 because the PMRB had no jurisdiction over OTPs prior to 2007.[73] (Citation omitted)

In contrast, petitioner, as provincial governor, signs the ore transport permits of small scale miners.[74] Therefore, it can be presumed that unlike the Provincial Mining Regulatory Board, petitioner was aware of the amounts of ore being transported by Olympic Mines. Had he taken the slightest care, he would have taken the Provincial Mining Regulatory Board's recommendation together with the amounts in the Ore Transport Permits and realized that he should not have renewed Olympic Mines' Small Scale Mining Permit after all.

The controversy in *SR Metals*, by contrast, arose because a provincial governor questioned the over-extraction of minerals by mining companies within his province. This Court recognized that irresponsible mining activities posed an environmental threat:

It must be emphasized that mining, whether small or large-scale, raises environmental concerns. To allow such a scenario will further cause damage to the environment such as erosion and sedimentation, landslides, deforestation, acid rock drainage, etc. As correctly argued by the Solicitor General, extracting millions of DMTs of run-of-mine ore will mean irreversible degradation of the natural resources and possible landslides and flashfloods.[75] (Citation omitted)

Petitioner, as the local chief executive, had the duty to act within the best interests of his constituents and to safeguard the environment's natural resources. The dry metric ton threshold set by the law ensures that small scale mining activities will not result in environmental damage. Petitioner's gross inexcusable negligence, thus, caused undue injury to the Province of Palawan,

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[73] *Id*.

[74] *Id*. at 214-221.

[75] *SR Metals v. Reyes*, 735 Phil. 54, 69-70 (2014) [Per *J*. Del Castillo, Second Division].

as it exposed the province to various environmental threats resulting from irresponsible mining.

There was, thus, no error in the Sandiganbayan's finding that petitioner was guilty beyond reasonable doubt of violating Section 3(e) of the Anti-Graft and Corrupt Practices Act. Under Section 9 of the law, the offense is punishable by "imprisonment for not less than six years and one month nor more than fifteen years [and] perpetual disqualification from public office[.]" The Sandiganbayan, therefore, did not err in imposing the indeterminate penalty of six (6) years and one (1) month as minimum to eight (8) years as maximum with perpetual disqualification from public office.

II

Bail after conviction is not a matter of right. Its grant or cancellation is within the sound discretion of the court.

As early as 1936, this Court has already recognized that the grant of bail after conviction, not being a constitutional right, is left to the discretion of the courts:

> Under the law, persons convicted of non-capital crimes, who appeal from a judgment sentencing them to penalties other than death, have no absolute right to bail, except when said penalties are imposed upon them by the justice of the peace courts, as *the right to bail after conviction is not authorized by the Constitution and is, as a general rule, not recognized* (3 Ruling Case Law, par. 14, p. 15), it being clearly stated in section 64 of General Orders, No. 58, as amended by section 2 of Act No. 4178, that:
>
> > "After judgment by a justice of the peace, the defendant shall be admitted to bail as of right, and, in all non-capital cases after judgment by any other court, as a matter of judicial discretion. . . ."[76] (Emphasis supplied)

Indeed, even the 1987 Constitution mandates that bail is a matter of right in bailable offenses *before conviction*:

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[76] *People v. Follantes*, 63 Phil. 474, 475 (1936) [Per J. Diaz, *En Banc*].

Article III
Bill of Rights

SECTION 13. All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

Rule 114, Section 5 of the Rules of Court, therefore, provides:

SECTION 5. Bail, when discretionary. — *Upon conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua, or life imprisonment, admission to bail is discretionary.* The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

(a) That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;

(b) That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without valid justification;

(c) That he committed the offense while under probation, parole, or conditional pardon;

(d) That the circumstances of his case indicate the probability of flight if released on bail; or

(e) That there is undue risk that he may commit another crime during the pendency of the appeal.

> The appellate court may, *motu proprio* or on motion of any party, review the resolution of the Regional Trial Court after notice to the adverse party in either case. (Emphasis supplied)

After conviction of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, the grant of bail becomes discretionary upon the court, which may either deny or grant it. In circumstances where the penalty imposed exceeds six (6) years, the court is not precluded from cancelling the bail previously granted upon a showing by the prosecution of the circumstances enumerated in Rule 114, Section 5 of the Rules of Court. The presence of even one (1) of the enumerated circumstances is sufficient cause to deny or cancel bail.

Here, the Sandiganbayan initially granted petitioner's application for bail on August 29, 2017. The dispositive portion of the Order[77] read:

> In today's scheduled promulgation of decision, only the dispositive portion of the decision was read upon the request of both accused. Accused Joel Tolentino Reyes was found GUILTY as charged of Violation of Section 3(e) of Republic Act No. 3019 while accused Andronico Jara Baguyo was ACQUITTED of the same charge.
>
> Upon motion of accused Reyes and over the objection of the prosecution, let his bail be set at Sixty Thousand Pesos (PhP60,000.00) or double the amount originally set by the Court for said accused, to be posted today.
>
> In view of the acquittal of accused Andronico Jara Baguyo, his bail bond is ordered released, subject to accounting rules and regulations. Further the Hold Departure Order of accused Baguyo is lifted.
>
> SO ORDERED.[78]

The prosecution filed an Urgent Omnibus Motion[79] to cancel petitioner's bail, stating that petitioner was a flight risk and

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[77] *Rollo*, p. 510.

[78] *Id*.

[79] *Id*. at 512-514.

that his counsel could not produce him before the Sandiganbayan on several occasions:

> In spite of his conviction, accused Reyes was allowed bail, over the objections of the prosecution that accused Reyes was and remains to be a flight risk; and notwithstanding the fact that during the trial of the case, his counsel could not produce the accused before the Honorable Court nor categorically state or account for his whereabouts on several occasions.
>
> . . . It will be recalled that accused Reyes was a fugitive. He, together with his brother, were arrested in Thailand. Had it not been for the intervention of Thai authorities, accused Reyes would not have been deported to face the criminal charges against him.[80] (Citation omitted)

On January 17, 2018, the Sandiganbayan issued a Resolution[81] granting the Urgent Omnibus Motion and cancelling petitioner's bail. According to the Sandiganbayan, petitioner had initially been granted bail when he voluntarily surrendered on September 1, 2011, after he had filed a Waiver of Appearance/Identity and a Hold Departure Order was issued against him.[82] But on the scheduled hearings on October 22 and 23, 2013, petitioner failed to appear,[83] and it was later discovered that he managed to escape to Thailand. He was only returned to the country with the assistance of Thai authorities.[84] For these reasons, the Sandiganbayan deemed it necessary to cancel petitioner's bail.

Indeed, the factual findings show the presence of two (2) circumstances stated in Rule 114, Section 5 of the Rules of Court: (1) petitioner had previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without a valid justification; and (2) he poses a flight risk if admitted to bail. The Sandiganbayan did not act arbitrarily or capriciously, but rather, arrived at its decision with due

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[80] *Id*. at 512.

[81] *Id*. at 105-122.

[82] *Id*. at 116 and 120.

[83] *Id*. at 117.

[84] *Id*. at 120.

consideration of the arguments presented by the prosecution. In *People v. Caderao*:[85]

> The right to bail after conviction is not absolute, and while the person convicted may, upon application be bailed at the discretion of the court, that discretion — particularly with respect to extending the bail — should be exercised, not with laxity, but with caution and only for strong reasons with the end in view of upholding the majesty of the laws and the administration of justice.[86]

Here, when petitioner fled the country in 2011 after a warrant of arrest for murder had been filed against him, he has been a proven flight risk. He has since been acquitted of this charge by the Court of Appeals for lack of evidence.[87]

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[85] 117 Phil. 650 (1963) [Per *J.* Regala, *En Banc*].

[86] *Id*. at 654 citing 8 C.J.S. pp. 69-70.

[87] *Rollo*, pp. 533-556. See *Reyes v. Regional Trial Court of Puerto Princesa City, Palawan, Branch 52*, CA-G.R. SP No. 132847, January 4, 2018. The Decision was penned by Court of Appeals Associate Justice Normandie B. Pizarro, who has since been found guilty of conduct unbecoming a member of the judiciary for gambling in casinos (*Re: Anonymous Letter Complaint against Justice Pizzaro*, A.M. No. 17-11-06-CA, March 13, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64024 > [Per *J.* Martires, *En Banc*]).

In *De Lima v. Reyes*, 776 Phil. 623 (2016) [Per *J.* Leonen, Second Division], this Court was confronted with the issue of whether Mario Joel T. Reyes could still question the finding of probable cause for murder by the Special Panel of Prosecutors despite the trial court's issuance of a warrant of arrest. Reyes had filed a Petition before the Court of Appeals questioning the Department of Justice's creation of the Second Special Panel of Prosecutors and a separate Petition with the Court of Appeals questioning the Resolution of the Special Panel of Prosecutors. This Court, however, held that all petitions before the Court of Appeals questioning the *executive* determination of probable cause have become moot due to the trial court's finding of probable cause and subsequent issuance of the warrant of arrest.

Reyes, however, filed *another* Petition with the Court of Appeals, docketed as CA-G.R. SP No. 132847, assailing the *trial court's* finding of probable cause. In the Decision dated January 4, 2018, the Court of Appeals Division of Five acquitted Reyes due to lack of evidence.

Petitioner had the propensity to evade the lawful orders of the court even before he could be convicted of murder. Since petitioner had already been convicted, the Sandiganbayan had to be more circumspect in examining the condition for petitioner's bail in this case. As the Sandiganbayan pointed out, petitioner fled despite the existence of a Hold Departure Order, and thus, "there is indeed a distinct probability that he would once again escape considering that the [Sandiganbayan] already found him guilty and ordered his imprisonment for more than six (6) years."[88] In *Obosa v. Court of Appeals*:[89]

> [T]he grave caution that must attend the exercise of judicial discretion in granting bail to a convicted accused is best illustrated and exemplified in Administrative Circular No. 12-94 amending Rule 114, Section 5 which now specifically provides that, although the grant of bail is discretionary in non-capital offenses [,] nevertheless, when imprisonment has been imposed on the convicted accused in excess of six (6) years and circumstances exist (inter alia, where the accused is found to have previously escaped from legal confinement or evaded sentence, or there is an undue risk that the accused may commit another crime while his appeal is pending) that point to a considerable likelihood that the accused may flee if released on bail, then the accused must be denied bail, or his bail previously granted should be cancelled.

But the same rationale obtained even under the old rules on bail (i.e., prior to their amendment by Adm. Circular 12-94). Senator Vicente J. Francisco's eloquent explanation on why bail should be denied as a matter of wise discretion after judgment of conviction reflects that thinking, which remains valid up to now:

> The importance attached to conviction is due to the underlying principle that bail should be granted only where it is uncertain whether the accused is guilty or innocent, and therefore, where that uncertainty is removed by conviction it would, generally speaking, be absurd to admit to bail. After a person has been tried and convicted the presumption of innocence which may be relied upon in prior applications is

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[88] *Id.* at 121.

[89] 334 Phil. 253 (1997) [Per *J.* Panganiban, Third Division].

> rebutted, and the burden is upon the accused to show error in the conviction. From another point of view it may be properly argued that the probability of ultimate punishment is so enhanced by the conviction that the accused is much more likely to attempt to escape if liberated on bail than before conviction[.][90]

The Sandiganbayan, in its January 17, 2018 Resolution, emphasized:

> In ordering the revocation of the grant of bail to accused Reyes, the Court is also guided by the teaching of the Supreme Court that after conviction by the trial court, the presumption of innocence terminates and, accordingly, the constitutional right to bail ends. From then on, the grant of bail is subject to judicial discretion. In the exercise of that discretion, the proper courts are to be guided by the fundamental principle that the allowance of bail pending appeal should be exercised not with laxity but with grave caution and only for strong reasons, considering that the accused has been in fact convicted by the trial court.[91] (Citations omitted)

There was, thus, no error in the Sandiganbayan's exercise of its discretion to cancel petitioner's bail. In any case, the review of the Resolution cancelling his bail has become unnecessary in view of this Court's finding that petitioner is guilty beyond reasonable doubt of violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act.

WHEREFORE, the Petition is **DENIED**. Petitioner Mario Joel T. Reyes is found **GUILTY** beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019. He is sentenced to an indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum, with perpetual disqualification from holding public office.

SO ORDERED.

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

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[90] *Id.* at 273-274 citing RULES OF COURT, Rules 110-127.

[91] *Rollo,* p. 121.

SECOND DIVISION

[G.R. No. 237871. September 18, 2019]

MARGARITA FERNANDO, FELIX FERNANDO and MANUEL FERNANDO, substituted by his legal heirs, namely: JOSEFINA FERNANDO ANDAYA and MARIA CONSOLACION FERNANDO PARASO, *petitioners, vs.* **ROSALINDA RAMOS PAGUYO; HEIRS OF LEONARDO RAMOS, namely: EDNA RAMOS DIMLA, ANDREA RAMOS MIRASOL, and ERMINIA RAMOS SAUL; VIRGILIO RAMOS represented by CHARLIE RAMOS ALZATE; TEODORICO RAMOS; AURORA RAMOS DELA CRUZ; VIRGINIA RAMOS PADILLA; RODOLFO RAMOS; and ROSITA RAMOS FLORES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULE 47 ON ANNULMENT OF DECISION.— Under Rule 47 of the Rules of Court, the remedy of annulment of decision "is resorted to in cases where the ordinary remedies of new trial, appeal, petition for relief from judgment, or other appropriate remedies are no longer available through no fault of the petitioner, and is based on only two grounds: extrinsic fraud, and lack of jurisdiction or denial of due process." According to Section 3 of Rule 47, if based on extrinsic fraud, the action must be filed within four (4) years from its discovery; and if based on lack of jurisdiction, before it is barred by laches or estoppel.

2. ID.; ID.; ID.; FAILURE TO IMPLEAD THE INDISPENSABLE PARTIES IS AMPLE BASIS FOR ANNULMENT OF JUDGMENT. — The Court held in *Dr. Orbeta v. Sendiong*, that **a petition for annulment grounded on lack of jurisdiction, owing to the failure to implead the indispensable parties, "is ample basis for annulment of judgment. We have long held that the joinder of all indispensable parties is a condition *sine qua non* of the exercise of judicial power. The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the**

> **absent parties but even as to those present.”** In the instant case, it goes without saying that in an action for specific performance compelling the transfer of the subject property co-owned by nine heirs who have already been adjudged by a final and executory decision as co-owners of the subject property, the latter are indispensable parties in such an action. Jurisprudence has indubitably held that **in a suit involving co-owned property, all the co-owners of such property are indispensable parties**. x x x Therefore, with the joinder of all indispensable parties being a condition *sine qua non* to the exercise of judicial power, the petitioners Fernandos' assertion that the RTC validly acquired jurisdiction in Civil Case No. 31-SD(97) fails to convince.

APPEARANCES OF COUNSEL

Fernandez Laminato Fernandez Law Office for petitioners.
Ferdinand A. Paguyo 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 filed by petitioners Margarita Fernando (Margarita), Felix Fernando (Felix) and Manuel Fernando (Manuel) (collectively the petitioners Fernandos) against respondents Rosalinda Ramos Paguyo (Rosalinda); the Heirs of Leonardo Ramos, namely: Edna Ramos Dimla (Edna), Andrea Ramos Mirasol (Andrea) and Erminia Ramos Saul (Erminia) (collectively the Heirs of Leonardo); Virgilio Ramos (Virgilio), represented by Charlie Ramos Alzate (Charlie); Teodorico Ramos (Teodorico); Aurora Ramos Dela Cruz (Aurora); Virginia Ramos Padilla (Virginia); Rodolfo Ramos (Rodolfo); and Rosita Ramos Flores (Rosita) (collectively the respondents), assailing the Decision[2] dated May 17, 2017 (assailed

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[1] *Rollo*, pp. 11-31.

[2] *Id*. at 32-42. Penned by Associate Justice Ramon Paul L. Hernando (now a member of this Court) with Associate Justices Stephen C. Cruz and Jhosep Y. Lopez, concurring.

Decision) and Resolution[3] dated February 28, 2018 (assailed Resolution) rendered by the Court of Appeals (CA) in CA-G.R. SP No. 95641.

The Facts and Antecedent Proceedings

As narrated by the CA in its assailed Decision and as culled from the records of the instant case, the essential facts and antecedent proceedings of the case are as follows:

> [The respondents and] x x x Lucena Ramos [(Lucena)] are the nine (9) children and heirs of the spouses Dominador Ramos and Damiana Porciuncula ("spouses Ramos"). On the other hand, [petitioners Margarita, Felix, and] Remigia Fernando [(Remigia)] are the collateral heirs of Tomas Fernando [(Tomas)].
>
> The spouses Ramos owned a piece of agricultural land located at Barrio, Agricultura (now Licaong) Muñoz, Nueva Ecija with a total area of 3.1541 hectares covered by Transfer Certificate of Title ("TCT") No. NT-1889 [(the subject property)]. The Ramoses both died intestate in the year 1945.
>
> Thereafter, on October 30, 1952, [Lucena unilaterally] executed a Declaration of Heirship declaring that she is the sole heir of the spouses Ramos. Hence, Lucena was able to transfer the ownership of the [subject property] in her name and as a result, TCT No. NT-12647 was issued in her favor.
>
> [Subsequently, Lucena sold to Tomas the subject property through a *pacto de retro* sale dated August 14, 1955 for ₱8,800.00, with Lucena having been granted the right to redeem the subject property within three years from the date of the sale.]
>
> Aggrieved [by Lucena's unilateral act of executing a Declaration of Heirship], [in 1955, the respondents] filed a complaint docketed as **Civil Case No. 2146** against [the] spouses [Lucena] and Alfredo Mateo [(Alfredo)] before the then Court of First Instance ("CFI") of Nueva Ecija. In its **Decision dated January 25, 1961**, the CFI disposed of the complaint as follows:
>
> > "WHEREFORE, the judgment appealed from is hereby modified as follows[:] (1) ordering the cancellation of T.C.T.

[3] *Id.* at 44-46.

> No. NT-12647 in the name of [Lucena], and the issuance of a new title covering the land described in the complaint in favor of all the legal heirs of [Spouses Ramos], namely Lucena; Leonardo; Virgilio; Teodorico; Aurora (sic) Virginia; Rodolfo; Rosalia and Rosita, all surnamed Ramos; (2) ordering the partition of the property aforesaid among the above-mentioned heirs in the proportion of 1/9 each; (3) sentencing cross-defendant [Lucena] to pay cross-complainant [Tomas] the sum of ₱8,800.00 with legal interest thereon from August 15, 1955 until fully paid, and as security for the payment of such amounts the appertaining to Lucena; Leonardo; Virgilio and Teodorico, surnamed Ramos, shall be subject, among others, to the lien of equitable mortgage in favor of [Tomas]. Costs are against defendant [Lucena]."

On appeal, the Court of Appeals affirmed the Decision dated January 25, 1961 in Civil Case No. 2146 and the same became **final and executory** on February 18, 1961 as per Entry of Judgment docketed as CA-G.R. No. 20833-R.

[The respondents then alleged that as a consequence of the final and executory Decision in Civil Case No. 2146, the subject property was subdivided by and among the heirs of the spouses Ramos, who are in open, continuous, exclusive, adverse, and notorious possession in the concept of owners.][4]

Sometime in 1993, [the petitioners Fernandos] learned of the Decision dated January 25, 1961 in Civil Case No. 2146 which is embodied in the Entry of Judgment dated February 18, 1961 issued by the Court of Appeals. Thus, [petitioner] Margarita went to the residence of spouses [Lucena] and [Alfredo] to demand that the latter comply with the said Decision. [An alleged] **verbal agreement** was entered into between the [petitioners] Fernandos and spouses [Lucena] and [Alfredo] wherein the latter were given more time to pay or surrender the title of the subject property to the [petitioners] Fernandos. During this time, the spouses [Lucena] and [Alfredo] were in possession of the 2-hectare portion of the subject property while [one] Vicente Tobias was in possession of the remaining 1 hectare.

Four years thereafter or sometime in 1997, the [petitioners] Fernandos again demanded that the spouses [Lucena] and [Alfredo]

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[4] *Id*. at 63-64.

comply with their verbal agreement. However, the spouses refused to pay nor surrender the title of the subject property to the [petitioners] Fernandos. Hence, on May 8, 1997, [the petitioners Fernandos] filed **a complaint for specific performance and damages** [to enforce the oral agreement covering the entire subject property] against [the] spouses [Lucena] and [Alfredo] before the [Regional Trial Court of Baloc, Sto. Domingo, Nueva Ecija, Branch 37 (RTC)] which was docketed as **Civil Case No. 31-SD(97)**. The [petitioners Fernandos] alleged that sometime in 1993, spouses [Lucena] and [Alfredo] entered into an [oral] agreement with the [petitioners] Fernandos with the following terms and conditions:

> a). That the [spouses Lucena and Alfredo] will abide by the Decision in CA-G.R. No. 20833-R (2146 of NuevaEcija);
>
> b). That the [spouses Lucena and Alfredo] allowed the [petitioners Fernando] to take possession and control of the Owner's Copy of TCT No. NT-12647;
>
> c). That the [spouses Lucena and Alfredo] will remain in control of the land covered by TCT No. NT-12647 except VICENTE TOBIAS who has already recognized the [petitioners Fernandos] as the landowner of the land in question;
>
> d). That by the first month of 1997, the [spouses Lucena and Alfredo] will execute the necessary documents over the land covered by TCT No. NT-12647 in favor of the [petitioners Fernandos] in order that the Decision in Civil Case No. 2146 in favor of [TOMAS] may be completely satisfied and transfer possession of said land to the [petitioners Fernandos];

On September 21, 2001, the RTC rendered its Decision,[5] the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered:
>
> 1. Declaring and confirming consolidation of ownership in [Tomas] of the real property covered by Transfer Certificate of Title No. NT-12647 and ordering the proper Registry of Deeds to issue another title in lieu thereof in the name of said [Tomas] upon payment of the fees due therefor; and

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[5] *Id*. at 51-58. Penned by Judge Lauro G. Sandoval.

> 2. Ordering the defendant-spouses, [Lucena] and [Alfredo], to pay [petitioners Fernandos] the sum of Twenty Thousand Pesos (₱20,000.00) as and for reasonable attorney's fees plus the costs of suit.[6]

[The aforementioned Decision of the RTC in Civil Case No. 31-SD(97) was appealed by the Spouses Lucena and Alfredo before the Court of Appeals in CA G.R. No. CV 72875. On December 9, 2002, a Resolution was issued by the CA dismissing the Spouses Lucena and Alfredo's appeal due to their failure to file an appellants' brief within the prescribed period. An Entry of Judgment was then issued, certifying that the aforesaid Resolution became final and executory on November 13, 2003.][7]

As a result thereof, TCT No. N-32644 was [subsequently] issued in the name of [Tomas]. Consequently, the title over the subject property was transferred to [the petitioners Fernandos] as collateral heirs of [Tomas]. TCT No. 34698 was then issued in their names in lieu of TCT No. N-32644.

x x x x x x x x x

Hence, on August 11, 2006, [the respondents] filed this **Petition [for Annulment of Decision and Damages**[8] **(Petition for Annulment of Decision)] under Rule 47 of the Rules of Court** [before the CA] praying for the annulment of the Decision dated September 21, 2001 in Civil Case No. 31-SD(97). x x x The [respondents] prayed for the following:

> WHEREFORE, it is most respectfully prayed that after notice and hearing an order shall be issued enjoining the [petitioners] "FERNANDO'S" from taking the land in question and enjoining the public respondent the Honorable Santiago M. Arenas from further hearing of Civil Case No. SD (05)-452 and for this Honorable Court of Appeals to annul the decision in Civil Case No. 21-SD (97) dated September 21, 2001 for being rendered with grave abuse of discretion amounting to lack or in excess of jurisdiction and ordering further the cancellation of Transfer Certificate of Title No. N-34698 registered in the name of

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

[7] *Id.* at 59.

[8] *Id.* at 60-73.

[petitioners] "FERNANDO'S and in lieu thereof ordering the Register of Deeds of Talavera, Nueva Ecija who issued the said title to issue a new one in favor of the [respondents].

Ordering further the [petitioner Fernandos] to pay:

1. Attorneys Fee in the amount of Thirty thousand (₱30,000.00) plus Five Thousand (₱5,000.00) as appearance fee;

2. Moral damages in the total amount of ONE HUNDRED SIXTY THOUSAND (₱160,000.00) and Exemplary Damages in the total amount of not less than ONE HUNDRED THOUSAND (₱100,000.00) Pesos.

[The respondents maintained that the complaint in Civil Case No. 31-SD(97) sought to recover only the shares of spouses Lucena and Alfredo over the subject property and did not cover the shares which pertained to the other heirs. Moreover, the respondents alleged that **they were not impleaded as defendants in Civil Case No. 31-SD(97) and the spouses Lucena and Alfredo did not have any authority to enter into a verbal agreement with the petitioners Fernandos with respect to the other co-heirs' shares over the subject property**.]

Thereafter, on October 24, 2010, a Resolution was issued by the [CA] declaring [the] spouses [Lucena] and [Alfredo] in default for failure to submit the required Answer to the instant Petition for Annulment of Decision and Damages despite receipt of the notices therein. Furthermore, the case was remanded to the Executive Judge of the RTC x x x for reception of evidence.[9] (Emphasis supplied)

The Ruling of the CA

In the assailed Decision, the CA found merit in the Petition for Annulment of Decision. The dispositive portion of the assailed Decision reads:

WHEREFORE, the instant petition is **GRANTED**. The assailed Decision dated September 21, 2001 of the Regional Trial Court, Branch 37 of Baloc, Sto. Domingo, Nueva Ecija in Civil Case No. 31-SD(97) is hereby **ANNULLED** and **SET ASIDE** for lack of jurisdiction.

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[9] *Id*. at 33-37.

SO ORDERED.[10]

In sum, the CA held that the RTC lacked jurisdiction over Civil Case No. 31-SD(97) because of the undisputed fact that **the respondents, who are indispensable parties, were not impleaded in the said case**:

> Petitioners are rightfully co-owners of the subject property, without whom no relief is available and without whom the court can render no valid judgment. Section 7, Rule 3 of the Revised Rules of Court provides for the compulsory joinder of indispensable parties without whom no final determination can be had of an action. It is the duty of the [petitioners] Fernandos to implead all the necessary or indispensable parties for the complete determination of the action. Considering that [petitioners] knew that TCT No. NT-12647 in the name of [Lucena] was ordered canceled by the x x x RTC in Civil Case No. 2146 and that the subject property was partitioned among the nine heirs of spouses [Ramos] yet they did not implead them as indispensable defendants in Civil Case No. 31-SD (97). [Petitioners] Fernandos have only themselves to blame. In other words, the judgment ordering the cancellation of TCT No. NT-12647 and the issuance of another title in the name of [Tomas] is not binding on the [respondents] being co-owners of the subject property, who were not impleaded as defendants in Civil Case No. 31-SD (97). A person not included as a party to a case cannot be bound by the decision made by a court. As explained by the Supreme Court in the case of *Sepulveda, Sr. v. Pelaez*:
>
> > Section 7, Rule 3 of the Rules of Court reads:
> >
> > SEC. 7. Compulsory joinder of indispensable parties. — Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.
> >
> > Indeed, the presence of all indispensable parties is a condition sine qua non for the exercise of judicial power. It is precisely when an indispensable party is not before the court that the action should be dismissed. **Thus, the plaintiff is mandated to implead all the indispensable parties, considering that the absence of one such party renders all subsequent actions of the court null and void for want of authority to act, not only**

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[10] *Id*. at 42.

> **as to the absent parties but even as to those present. One who is a party to a case is not bound by any decision of the court, otherwise, he will be deprived of his right to due process. Without the presence of all the other heirs as plaintiffs, the trial court could not validly render judgment and grant relief in favor of the private respondent. The failure of the private respondent to implead the other heirs as parties-plaintiffs constituted a legal obstacle to the trial court and the appellate court's exercise of judicial power over the said case, and rendered any orders or judgments rendered therein a nullity.** [Emphasis supplied.]

The absence of [the respondents] as indispensable parties to Civil Case No. 31-SD(97) effectively rendered all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present. [The respondents] are all co-heirs and persons having an interest in the subject property as indispensable parties. To reiterate, [the petitioners] Fernandos even alleged in their complaint that spouses [Lucena] and [Alfredo] should abide by the Decision dated January 25, 1961. Consequently, [the petitioners Fernandos] knew of the existence of [respondents] as co-heirs of [Lucena] over the subject property as stated in the Decision dated January 25, 1961.[11]

Feeling aggrieved, the petitioners Fernandos filed their Motion for Reconsideration[12] on June 13, 2017, which was denied by the CA in the assailed Resolution.

Hence, the instant appeal before the Court.

On August 20, 2018, the petitioners Fernandos filed their Comment to the Petitioners' Petition for Review.[13]

On February 27, 2019, the petitioners Fernandos filed a Notice of Death, Motion for Substitution, and Entry of Appearance,[14] informing the Court that petitioner Manuel passed away as

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[11] *Id*. at 39-40.

[12] *Id*. at 74-77.

[13] *Id*. at 91-96.

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

evidenced by his Certificate of Death[15] and praying that petitioner Manuel be substituted by his legal heirs.

Issue

In the instant Petition, the petitioners Fernandos raise the sole issue of whether the CA "gravely erred in giving due course to the Complaint for Annulment of Decision filed by the respondents and declaring the Decision of the Regional Trial Court in Civil Case No. 31-SD(97) annulled and set aside for lack of jurisdiction."[16]

The Court's Ruling

To reiterate the essential facts of the instant case, it is not disputed that through the CFI of Nueva Ecija's final and executory Decision dated January 25, 1961 in Civil Case No. 2146, the respondents were recognized as the co-owners of the subject property, being the co-heirs of the intestate estate of the spouses Ramos. The Declaration of Heirship unilaterally executed by Lucena, which adjudicated the subject property unto the latter alone, was nullified. As a result, the subject property was partitioned among all the heirs in the proportion of 1/9 each.

Despite full knowledge of the foregoing, the petitioners Fernandos entered into a supposed verbal agreement with the spouses Lucena and Alfredo, asking the latter to execute all the necessary documents to facilitate the complete transfer of possession and control of the subject property to the petitioners Fernandos on the basis of the *pacto de retro* sale entered into by their predecessor-in-interest Tomas with the spouses Lucena and Alfredo.

The petitioners Fernandos subsequently filed an action for specific performance for the execution of the alleged oral contract covering the subject property in Civil Case No. 31-SD(97). It is not disputed whatsoever that the petitioners Fernandos, despite

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[15] *Id*. at 102.

[16] *Id*. at 14.

knowing fully well that the respondents were adjudged to be the co-owners of the subject property, failed to implead the latter.

Eventually, in Civil Case No. 31-SD(97), the RTC rendered its Decision dated September 21, 2001 in favor of the petitioners Fernandos. Not having been impleaded, the respondents naturally did not file an appeal and the aforesaid Decision in Civil Case No. 31-SD(97) became final and executory, thus compelling the respondents to file their Petition for Annulment of Decision under Rule 47 of the Rules of Court before the CA, which was granted by the latter in the assailed Decision and Resolution.

Upon exhaustive review of the facts and the law surrounding the instant case, the Court finds that the CA did not err in granting the respondents' Petition for Annulment of Decision. The instant Petition is unmeritorious.

Under Rule 47 of the Rules of Court, the remedy of annulment of decision "is resorted to in cases where the ordinary remedies of new trial, appeal, petition for relief from judgment, or other appropriate remedies are no longer available through no fault of the petitioner, and is based on only two grounds: extrinsic fraud, and lack of jurisdiction or denial of due process."[17] According to Section 3 of Rule 47, if based on extrinsic fraud, the action must be filed within four (4) years from its discovery; and if based on lack of jurisdiction, before it is barred by laches or estoppel.

The Court held in *Dr. Orbeta v. Sendiong*,[18] that **a petition for annulment grounded on lack of jurisdiction, owing to the failure to implead the indispensable parties, "is ample basis for annulment of judgment. We have long held that the joinder of all indispensable parties is a condition *sine qua non* of the exercise of judicial power. The absence of an indispensable party renders all subsequent actions**

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[17] *Alaban v. Court of Appeals*, 507 Phil. 682, 694 (2005).

[18] 501 Phil. 478 (2005).

of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.”[19]

In the instant case, it goes without saying that in an action for specific performance compelling the transfer of the subject property co-owned by nine heirs who have already been adjudged by a final and executory decision as co-owners of the subject property, the latter are indispensable parties in such an action. Jurisprudence has indubitably held that **in a suit involving co-owned property, all the co-owners of such property are indispensable parties**.[20]

The petitioners Fernandos cannot feign ignorance of the fact that the respondents have been declared with finality as the co-owners of the subject property, being the co-heirs of the original owners of the subject property, *i.e.*, the spouses Ramos. In fact, the petitioners Fernandos themselves alleged that in the very verbal agreement they sought to enforce, they agreed that the parties should “abide by the decision in CA-G.R. No. 20833-R (2146 of Nueva Ecija)” and that “the decision in Civil Case No. 2146 x x x may be completely satisfied.”[21]

Therefore, with the joinder of all indispensable parties being a condition *sine qua non* to the exercise of judicial power, the petitioners Fernandos’ assertion that the RTC validly acquired jurisdiction in Civil Case No. 31-SD(97) fails to convince.

As their central argument, the petitioners Fernandos allege that the respondents have no more right over the subject property because of prescription and laches, arguing that the “respondents can no longer assert their right based on a judgment which was never enforced nor implemented for a period of more than 30 long years, then they can no longer be considered as indispensable parties. They have no more interest over the subject

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[19] *Id*. at 489-490; emphasis and underscoring supplied.

[20] *Quilatan v. Heirs of Lorenzo Quilatan*, 614 Phil. 162, 167 (2009), citing *Arcelona v. CA*, 345 Phil. 250, 268-269 (1997).

[21] *Rollo*, p. 51.

matter considering that they failed to have the judgment enforced. As such, they have no more right over the property."[22]

The factual allegation that the respondents never enforced or implemented the final and executory Decision in Civil Case No. 2146 is not well-taken. The respondents assert that the subject property was subdivided among the siblings at the proportion of 1/9 each.[23] As likewise noted by the CA, the respondents maintain that "all the annexes appended to the [P]etition [for Annulment of Decision] were admitted by the [petitioners Fernandos] except for the Special Power of Attorney which was executed by [Virgilio] in favor of [Charlie], and the Subdivision Plan which was approved on June 18, 1984 partitioning the subject property in accordance with the Decision dated January 25, 1961 in Civil Case No. 2146 x x x [and that the respondents] had already established their respective occupations before the conduct and approval of the subdivision plan."[24]

The petitioners Fernandos do not offer any serious refutation that the respondents had already subdivided the subject property in the proportion of 1/9 each in accordance with the Decision dated January 25, 1961 in Civil Case No. 2146. Hence, it cannot be said that the respondents slept on their rights and failed to enforce the Decision dated January 25, 1961.

The petitioners Fernandos likewise assert that the CA erred in granting the respondents' Petition for Annulment of Decision because the said Petition is not a substitute for a lost appeal.[25]

According to jurisprudence, an annulment of decision may not be invoked (1) where the party has availed himself of the remedy of new trial, appeal, petition for relief, or other appropriate

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[22] *Id*. at 23.

[23] *Id*. at 92.

[24] *Id*. at 38.

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

remedy and lost; or (2) where he has failed to avail himself of those remedies through his own fault or negligence.[26]

It must be stressed that the respondents were not able to avail at all of the remedy of new trial, appeal, petition for relief or any other remedy against the RTC's Decision in Civil Case No. 31-SD(97), not due to their own fault or negligence, but precisely because they were not impleaded by the petitioners Fernandos.

Hence, considering the foregoing, the CA did not err in granting the respondents' Petition for Annulment of Judgment, annulling the RTC's Decision dated September 21, 2001 in Civil Case No. 31-SD(97) for lack of jurisdiction. Necessarily, TCT No. N-32644, which was issued in the name of Tomas in accordance with the null and void Decision of the RTC in Civil Case No. 31-SD(97), which was eventually transferred in the names of the petitioners Fernandos under TCT No. N-34698, must be cancelled.

WHEREFORE, the instant Petition is **DENIED**. The Decision dated May 17, 2017 and Resolution dated February 28, 2018 rendered by the Court of Appeals in CA-G.R. SP No. 95641 are hereby **AFFIRMED**. Consequently, the Register of Deeds is hereby ordered to **CANCEL** Transfer Certificate of Title No. N-34698 and any certificate of title derived therefrom, if any.

SO ORDERED.

Carpio,[*] *Acting C.J.* (*Chairperson*), *Reyes, J. Jr., Lazaro-Javier,* and *Zalameda, JJ.*, concur.

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[26] *Heirs of Maura So v. Obliosca,* 566 Phil. 397, 406 (2008).

[*] Designated as Acting Chief Justice per Special Order No. 2703 dated September 10, 2019.

THIRD DIVISION

[G.R. No. 238457. September 18, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOJO BACYAAN *y* SABANIYA, RONNIE FERNANDEZ *y* GONZALES, and RYAN GUEVARRA *y* SIPRIA,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN THE DECISION HINGES ON THE CREDIBILITY OF WITNESSES AND THEIR RESPECTIVE TESTIMONIES, THE TRIAL COURT'S OBSERVATIONS AND CONCLUSIONS DESERVE GREAT RESPECT AND ARE OFTEN ACCORDED FINALITY, UNLESS IT APPEARS THAT THE LOWER COURTS HAD OVERLOOKED, MISUNDERSTOOD OR MISAPPRECIATED SOME FACT OR CIRCUMSTANCE OF WEIGHT, WHICH, IF PROPERLY CONSIDERED, WOULD ALTER THE RESULT OF THE CASE. — It is settled that "when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality," unless it appears that the lower courts had overlooked, misunderstood or misappreciated some fact or circumstance of weight, which, if properly considered, would alter the result of the case. Thus, we ruled in *People v. Dela Cruz*, that: x x x By and large, the instant case basically revolves around the question of credibility of witnesses. The well-entrenched rule in this jurisdiction, of course, is that the matter of assigning values to the testimonies of witnesses is best discharged by the trial court, and appellate courts will not *generally* disturb the findings of the trial court in this respect. The reason is quite simple: the trial judge is in a better position to determine the conflicting testimonies of witnesses after having heard them and observed their deportment and manner of testifying. x x x In this case, the Court finds no cogent reason to overturn the findings of the RTC, as affirmed by the CA, as it was not shown that the lower courts had *overlooked, misunderstood*, or

misappreciated facts or circumstances of weight that could have altered the result of the case.

2. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS; PRESENT; A CONVICTION REQUIRES CERTITUDE THAT THE ROBBERY IS THE MAIN PURPOSE AND OBJECTIVE OF THE MALEFACTOR, AND THE KILLING IS MERELY INCIDENTAL TO THE ROBBERY, WHICH MAY OCCUR BEFORE, DURING OR AFTER THE ROBBERY. — There is robbery with homicide under Article 294, paragraph 1 of the RPC when a homicide is committed by reason of or on occasion of a robbery. In order to sustain a conviction for robbery with homicide, the following elements must be proven by the prosecution: (1) the taking of personal property belonging to another; (2) with intent to gain or *animus lucrandi*; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. "A conviction requires certitude that the robbery is the main purpose and objective of the malefactor, and the killing is merely incidental to the robbery." Thus, it follows that "[t]he intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery. x x x. In the present case, there is no doubt that the above-mentioned elements are present. The candid testimony of Cuadro, one of the passengers of the bus held-up by appellants, unmistakably produces a conviction beyond reasonable doubt.

3. REMEDIAL LAW; EVIDENCE; ALIBI; FOR THE DEFENSE OF ALIBI TO PROSPER, THE ACCUSED MUST PROVE NOT ONLY THAT HE WAS AT SOME OTHER PLACE AT THE TIME THE CRIME WAS COMMITTED, BUT THAT IT WAS LIKEWISE IMPOSSIBLE FOR HIM TO BE AT THE *LOCUS CRIMINIS* AT THE TIME OF THE ALLEGED CRIME. — The Court is not convinced with the appellants' defenses. They merely denied participating in the robbery but their presence during the commission of the crime was well-established by the testimonies of the prosecution witnesses. It bears stating that "[f]or the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time the crime was committed, but that it was likewise impossible for him to be at the *locus criminis* at the time of the alleged crime."

Such physical impossibility was not sufficiently proven by appellants in this case.

4. ID.; ID.; DEFENSE OF DENIAL; A CATEGORICAL AND CONSISTENT POSITIVE IDENTIFICATION WITHOUT ANY SHOWING OF ILL MOTIVE ON THE PART OF THE EYEWITNESSES TESTIFYING ON THE MATTER PREVAIL OVER A DENIAL. — As properly observed by the RTC and the CA, appellants' denial, too, cannot be given more weight over their positive identification by the prosecution witnesses. Furthermore, "[a] categorical and consistent positive identification without any showing of ill motive on the part of the eyewitnesses testifying on the matter prevail over a denial."

5. CRIMINAL LAW; ROBBERY WITH HOMICIDE; THE USE OF UNLICENSED FIREARM AS AN AGGRAVATING CIRCUMSTANCE CANNOT BE APPRECIATED WHERE THE PROSECUTION FAILED TO PRESENT ANY WRITTEN OR TESTIMONIAL EVIDENCE TO PROVE THAT APPELLANTS DID NOT HAVE A LICENSE TO CARRY OR OWN A FIREARM.— The Court also agrees with the CA that the use of an unlicensed firearm was not duly proven by the prosecution. While it is true that the existence of the firearm can be established by mere testimony, the fact that an accused was not a licensed firearm holder must still be established. Here, the prosecution failed to present any written or testimonial evidence to prove that appellants did not have a license to carry or own a firearm. Therefore, the use of an unlicensed firearm as an aggravating circumstance cannot be appreciated.

6. ID.; ID.; THE ELEMENT OF BAND, APPRECIATED AS A GENERIC AGGRAVATING CIRCUMSTANCE, MERITS THE IMPOSITION OF DEATH PENALTY; PENALTY OF *RECLUSION PERPETUA* IMPOSED IN LIEU OF DEATH PENALTY. — The special complex crime of robbery with homicide under Article 294, paragraph 1 of the RPC is penalized with *reclusion perpetua* to death. Under the circumstances, the element of band, appreciated as a generic aggravating circumstance, would have merited the imposition of the death penalty. In view of RA 9346, however, "the imposition of the penalty of death has been prohibited and in lieu thereof, the penalty of *reclusion perpetua* is to be imposed."

7. ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANTS. — The Court resolves, x x x, to modify the damages awarded by the CA. "In robbery with homicide, civil indemnity and moral damages are awarded automatically without need of allegation and evidence other than the death of the victim owing to the crime." Both the RTC and the CA were correct in granting these awards, except that the award should be ₱100,000.00 each. Recent jurisprudence provides that when the penalty to be imposed is death, civil indemnity and moral damages shall be awarded at ₱100,000.00 each. Apart from civil indemnity and moral damages, the lower courts likewise properly awarded exemplary damages under Article 2230 of the Civil Code because of the presence of an aggravating circumstance and to serve as a deterrent to others similarly inclined. The Court, however, increases the awarded amount from ₱30,000.00 to ₱100,000.00 to conform to prevailing jurisprudence. The Court likewise increases the amount of temperate damages awarded to the heirs of Renato James Veloso from ₱25,000.00 to ₱50,000.00 in accordance with *People v. Jugueta*. In addition, interest at the rate of 6% *per annum* shall be imposed on all monetary awards from the date of finality of this Decision until fully paid. Finally, the Court orders appellants to restitute the stolen items or to pay their monetary value, *if* restitution is no longer possible.

APPEARANCES OF COUNSEL

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

D E C I S I O N

INTING, *J.*:

We reiterate the doctrine that in the assessment of the credibility of witnesses and their testimonies, the findings of the trial courts deserve utmost respect. In this case, appellants invariably interposed alibi and denial as their defenses. Needless to say, these are inherently weak defenses as they constitute self-serving, negative evidence and may easily be fabricated. These cannot be accorded greater

evidentiary weight than the declaration of the prosecution witnesses who testify on affirmative matters.[1]

Brought to fore is an appeal from the Decision[2] dated January 18, 2017 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 07670 which affirmed with modification the Decision[3] dated March 30, 2015 of Branch 215 of the Regional Trial Court of Quezon City (RTC), finding appellants Jojo Bacyaan *y* Sabaniya (Bacyaan), Ronnie Fernandez *y* Gonzales (Fernandez), and Ryan Guevarra *y* Sipria (Guevarra), guilty beyond reasonable doubt of the special complex crime of robbery with homicide as defined and penalized under Article 294, paragraph 1 of the Revised Penal Code (RPC).

Appellants were charged with the crimes of robbery with homicide and serious illegal detention under the following Informations:

Criminal Case No. O-07-147516

That on or about the 31st day of May, 2007, in Quezon City, Philippines, the above-named accused, conspiring and confederating with three others namely; RIC MENDOZA, ERWIN MASAN y MORENA and MANUEL SAGAYAP y ARIRIO, who were killed by policemen, and mutually helping each other, all armed with unlicensed firearm and constituting themselves as armed band, with intent to gain, by means of force, violence and intimidation against person, did then and there willfully, unlawfully and feloniously rob a JMK Bus with [Plate] No. TWH-291[,] driven by LAURO SANTOS and [traveling] on its route from Baclaran to Balintawak, Caloocan City[,] in the following manner, to wit: pretending to be passengers, above-named accused boarded the public utility bus, and when it reached EDSA [en route] to Quezon City, accused brought out their hidden firearms and announced a hold-up, and, thereafter, robbed and divested the passengers of the bus of their cash money, cellphones

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[1] *People v. Gonzales*, G.R. No. 230909, June 17, 2019.

[2] *Rollo*, pp. 2-17; penned by Associate Justice Jhosep Y. Lopez with Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba, concurring.

[3] CA *rollo*, pp. 27-42; penned by Acting Presiding Judge Wilfredo L. Maynigo.

and other personal belongings of undetermined amounts, to the damage and prejudice of said passengers, namely: MARGIE VILLATIMA y AVILA, SHIENA NEGRETE, NAOMI M. CRUZ, CECILLE P. MAMARIL, CHRISTIAN N. RUGAS, LIWILYN T. OPALALIC, JOEMAR M. PAULINO, BOBBY DAMO, SAMPAGUITA CORTUNA *y* TIBAYAN, ANNE MARIE P. BAMBALAN, MARIE P. BAMBALAN, MARINO BANTILAN, RICHMOND D. TELEBANGCO, LLOYD S. BALAGTAS, GIOVANNI CUADRO *y* REYES and HERMAN MENDOZA *y* JANDONERO;

That on the occasion or by reason of the robbery, accused[,] pursuant to their conspiracy, with intent to kill, evident premeditation, treachery[,] and abuse of superior strength, attack, assault and employ personal violence upon LAURO SANTOS, the driver of the bus, and upon RENATO JAMES VELOSO, a passenger, at Balintawak, Quezon City, by then and there shooting them with their (accused) firearms, thereby causing said LAURO SANTOS and RENATO JAMES serious and mortal wounds[,] which were the direct and immediate cause of their death. (Emphasis in the original.)

CONTRARY TO LAW.[4]

Criminal Case No. O-07-147515

That on or about the 31st day of May, 2007, in Quezon City, Philippines, the said accused, private individuals, conspiring, confederating and mutually helping each other, did then and there willfully, unlawfully[,] and feloniously and illegally seize, drag and detain the persons of SAMPAGUITA CORTUNA *y* TIBAYAN and MARGIE VILLATIMA, both female, and GIOVANNI CUADRO *y* REYES, in a Mitsubishi Adventure with plate number CSX-806, under threats to kill them, thereby depriving them of their liberty, to the damage and prejudice of the said offended parties.

CONTRARY TO LAW.[5] (Emphasis in the original.)

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[4] CA *rollo*, pp. 27-29.

[5] *Id*. at 29.

The two cases were consolidated before the RTC. On arraignment, appellants entered their respective pleas of not guilty.[6] Trial on the merits thereafter ensued.

The facts are as follows:

Giovanni Cuadro[7] (Cuadro) testified that on May 31, 2017, he boarded the JMK bus along Ayala Avenue, Makati City. When the bus reached the EDSA-Ayala Flyover, six men, armed with guns and a grenade, declared a hold-up. He identified appellant Bacyaan as the one who announced the hold-up, while appellants Guevarra and Fernandez were the ones who divested himself and the other passengers of their personal belongings including money. Meanwhile, policemen started pursuing the bus. When the bus reached the Muñoz Market in Caloocan City, the policemen flagged it down. As the passengers tried to escape by jumping off the bus, Bacyaan shot passenger Renato James Veloso in the back which resulted in his death. Bacyaan also shot Lauro Santos, the bus driver, in the head, causing his immediate death.[8]

Thereafter, appellants grabbed a passenger to be used as a shield. They also grabbed Cuadro and two female passengers outside the bus as they looked for a vehicle to commandeer. They saw a [Mitsubishi] Adventure van with the driver inside, boarded it, pointed a gun at the driver, and ordered him to take the vehicle to the North Luzon Expressway and look for an exit route. Appellants continued to exchange gunshots with the pursuing policemen until the vehicle finally ditched into a gutter and became immobile because of blown tires, just inside the Lawang Bato exit. According to Cuadro, he escaped through a broken windshield and saw appellants commandeering a dump truck to escape.[9]

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[6] *Id.*

[7] Referred to as Geovani Cuadro in some parts of the records.

[8] *Rollo*, pp. 4-5.

[9] *Id.* at 5.

Police Officer I Engracio Baluya also testified that a concerned citizen approached him and reported that appellants had boarded a dump truck with Plate No. PDL 127. Together with his team, they pursued appellants and another exchange of gunshots ensued until the driver of the dump truck jumped out causing the vehicle to stop. Three male persons, later identified as appellants, also jumped out and surrendered. The police officers searched the dump truck and recovered a bag containing several amounts of money, cellphones, and guns.[10]

In their defense, appellants denied that they were participants in the robbery incident. Guevarra, in particular, averred that he was an innocent passenger of the bus and was on his way home. He was wrongfully arrested and imputed of the crime charged. Meanwhile, Fernandez claimed that at the time of the incident, he was in the Balintawak Market waiting for a ride on his way home to Bulacan when he heard gunshots being fired. He ran towards a street corner and dropped to the ground. After the commotion subsided, he returned to where he was previously waiting for a ride to gather his things but a policeman grabbed him and implicated him as one of the hold-uppers. Lastly, Bacyaan narrated that on the day of the incident, at around 11:00 a.m., he was selling fruits in front of the Balintawak Market when policemen in civilian clothes approached and invited him for questioning at the Valenzuela Police Station. When they reached the station, they had his picture and fingerprints taken. He was then brought to Camp Karingal, where he was detained and informed that he was a suspect in the robbery incident.[11]

In its Decision[12] dated March 30, 2015, the trial court rendered a verdict of conviction, thus:

WHEREFORE, this Court finds the accused **Ryan Guevarra, Ronnie Fernandez** and **Jojo Bacyaan, GUILTY** of the crime lodged

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[10] *Id.*

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

[12] CA *rollo*, pp. 27-42.

against them beyond reasonable doubt, they are hereby sentenced to suffer the following:

1. For the crime of Serious Illegal Detention, without mitigating but aggravated by the used (sic) of unlicensed firearm, the maximum penalty of Reclusion Perpetua.

2. As to the crime of Robbery with Homicide with the used of Unlicensed Firearm, without mitigating but aggravated by the used of Unlicensed Firearm, the maximum penalty of Reclusion Perpetua.

3. All the accused are further ordered to [pay] the heirs of LAURO SANTOS and RENATO JAMES VELOSO, the amount of ₱75,000.00 as civil indemnity, ₱50,836.00 as actual damages supported with credible receipts, ₱50,000.00 as moral damages, and ₱30,000 as exemplary damages[,] respectively.

4. Costs against the accused.

SO ORDERED.[13] (Emphasis in the original)

The RTC held that appellants' bare defenses of alibi and denial cannot be appreciated against the positive identification of appellants as well as the categorical and consistent testimonies of the prosecution witnesses.[14]

On appeal, the CA affirmed appellants' conviction for the crime of robbery with homicide but dismissed the criminal case for serious illegal detention. It held that the detention of the victims was only incidental to the main crime of robbery; hence, it was deemed absorbed.[15]

Thus, this appeal.

On June 25, 2018, the Court issued a Resolution[16] requiring the parties to file their respective supplemental briefs, if they so desired, within ten days from notice. On September 7, 2018, the Office of the Solicitor General (OSG) filed its Manifestation

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[13] *Id.* at 41-42.

[14] *Id*. at 40-41.

[15] *Rollo*, p. 8.

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

in lieu of Supplemental Brief,[17] adopting its arguments in its Appellee's Brief. On October 1, 2018, appellants also filed a Manifestation in lieu of Supplemental Brief,[18] stating that they will no longer file a supplemental brief as the filing thereof would only be a repetition of the arguments raised in their Appellants' Brief.

Issues

Appellants assigned the following errors in their Brief:[19]

1. THE RTC ERRED IN GIVING CREDENCE TO THE TESTIMONY OF GIOVANNI CUADRO DESPITE ITS INCONSISTENCIES;

2. THE RTC ERRED IN DISREGARDING THEIR DEFENSE AND CONVICTING THEM OF THE CRIMES CHARGED; AND

3. THE RTC ERRED IN APPRECIATING THE ALLEGED USE OF UNLICENSED FIREARMS AS AN AGGRAVATING CIRCUMSTANCE.[20]

The Court's Ruling

After due consideration, the Court affirms appellants' conviction for robbery with homicide but *modifies* the award of damages.

It is settled that "when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality,"[21] unless it appears that the lower courts had overlooked, misunderstood or misappreciated some fact or circumstance of weight, which, if properly considered, would alter the result of the case.[22]

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[17] *Id*. at 26-28.

[18] *Id*. at 33-35.

[19] CA *rollo*, pp. 70-85.

[20] *Id*. at 70.

[21] *People v. Espino, Jr.*, 577 Phil. 546, 562 (2008).

[22] *Id*.

Thus, we ruled in *People v. Dela Cruz*,[23] that:

> x x x By and large, the instant case basically revolves around the question of credibility of witnesses. The well-entrenched rule in this jurisdiction, of course, is that the matter of assigning values to the testimonies of witnesses is best discharged by the trial court, and appellate courts will not *generally* disturb the findings of the trial court in this respect. The reason is quite simple: the trial judge is in a better position to determine the conflicting testimonies of witnesses after having heard them and observed their deportment and manner of testifying. xxx[24]

In this case, the Court finds no cogent reason to overturn the findings of the RTC, as affirmed by the CA, as it was not shown that the lower courts had *overlooked, misunderstood*, or *misappreciated* facts or circumstances of weight that could have altered the result of the case.

The Elements of Robbery with Homicide.

Article 294, paragraph 1 of the RPC, as amended by Republic Act No. (RA) 7659,[25] states:

> Art. 294. *Robbery with violence against or intimidation of persons; Penalties*.— Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:
>
> l.The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed or when the robbery shall have been accompanied by rape or intentional mutilation or arson. x x x x

There is robbery with homicide under Article 294, paragraph 1 of the RPC when a homicide is committed by reason of or on occasion of a robbery. In order to sustain a conviction for robbery with homicide, the following elements must be proven by the

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[23] 452 Phil. 1080 (2003).

[24] *Id*. at 1088.

[25] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as Amended, Other Special Penal Laws, and for Other Purposes.

prosecution: (1) the taking of personal property belonging to another; (2) with intent to gain or *animus lucrandi*; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed.[26]

"A conviction requires certitude that the robbery is the main purpose and objective of the malefactor, and the killing is merely incidental to the robbery."[27] Thus, it follows that [t]he intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery.[28] Elucidating on the nature of the crime of robbery with homicide, the Court explained in *People v. Palema, et al.*,[29] that:

> In robbery with homicide, the original criminal design of the malefactor is to commit robbery, with homicide perpetrated on the occasion or by reason of the robbery. **The intent to commit robbery must precede the taking of human life**. The homicide may take place before, during or after the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime that has to be taken into consideration. There is no such felony of robbery with homicide through reckless imprudence or simple negligence. The constitutive elements of the crime, namely, robbery and homicide, must be consummated.
>
> It is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed or that aside from the homicide, rape, intentional mutilation, or usurpation of authority, is committed by reason or on the occasion of the crime. Likewise immaterial is the fact that the victim of homicide is one of the robbers; the felony would still be robbery with homicide. **Once a homicide is committed by or on the occasion of the robbery, the felony committed is robbery with homicide. All the felonies committed by reason of or on the**

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[26] See *People v. Villamor, et al.*, G.R. No. 202705, January 13, 2016.

[27] *Id*.

[28] *Id*.

[29] G.R. No. 228000, July 10, 2019.

occasion of the robbery are integrated into one and indivisible felony of robbery with homicide. The word "homicide" is used in its generic sense. Homicide, thus, includes murder, parricide, and infanticide.

Intent to rob is an internal act but may be inferred from proof of violent unlawful taking of personal property. When the fact of asportation has been established beyond reasonable doubt, conviction of the accused is justified even if the property subject of the robbery is not presented in court. After all, the property stolen may have been abandoned or thrown away and destroyed by the robber or recovered by the owner. The prosecution is not burdened to prove the actual value of the property stolen or amount stolen from the victim. Whether the robber knew the actual amount in the possession of the victim is of no moment because the motive for robbery can exist regardless of the exact amount or value involved.

When homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same.

If a robber tries to prevent the commission of homicide after the commission of the robbery, he is guilty only of robbery and not of robbery with homicide. All those who conspire to commit robbery with homicide are guilty as principals of such crime, although not all profited and gained from the robbery. One who joins a criminal conspiracy adopts the criminal designs of his co-conspirators and can no longer repudiate the conspiracy once it has materialized.[30] (Emphasis and italics supplied.)

In the present case, there is no doubt that the above-mentioned elements are present. The candid testimony of Cuadro, one of the passengers of the bus held-up by appellants, unmistakably produces a conviction beyond reasonable doubt, *viz*.:

Private complainant Geovani Cuadro in his testimony vividly recalled the incident of [the] [r]obbery, and x x x the shooting by one of the accused Jojo Bacyaan of a passenger named Renato James

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[30] *People v. Palema, et al., supra* note 30, citing *People v. De Jesus*, 473. Phil. 405, 427-428 (2004).

Veloso and the driver of the bus[,] Lauro Santos[,] which caused their death. He identified all the herein accused as the persons who[,] armed with guns[,] had declared a hold-up in that morning of May 31, 2007, and thereafter [divested them of] their belongings x x x, and among [which were] his Ipod and an Oakley shades. Positive identification[,] where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter[,] prevails over a denial which if not substantiated by clear and convincing evidence is negative and self-serving evidence[,] undeserving of weight in law. They cannot be given greater evidentiary value over the testimony of credible witnesses who testify in affirmative matters, x x x[31]

From these circumstances, there is no mistaking from the actions of appellants that their main intention was to rob the passengers of the JMK bus and that on the occasion of the robbery, a homicide was committed. Accordingly, personal properties, such as cellphones and money, belonging to the passengers were taken by appellants by means of force and with obvious intent to gain. During the robbery, passenger Renato James Veloso and bus driver Lauro Santos were both mercilessly gunned down by Bacyaan.

Appellants deny the foregoing accusations. Guevarra claims that he was a mere innocent passenger of the bus. He was on his way home when he was arrested. Similarly, Fernandez asserts that he was only standing somewhere in the Balintawak Market when a shooting incident involving a bus occurred. After the commotion subsided, a policeman suddenly grabbed and accused him of being one of the hold-uppers. Meanwhile, Bacyaan insists that he was selling fruits in the Balintawak Market when policemen invited him to go to the Valenzuela Police Station for questioning. Later, he was detained in Camp Karingal, and thereafter, charged in connection with the robbery incident.

The Court is not convinced with the appellants' defenses. They merely denied participating in the robbery but their presence during the commission of the crime was well-established by

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[31] CA *rollo*, p. 40.

the testimonies of the prosecution witnesses. It bears stating that "[f]or the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time the crime was committed, but that it was likewise impossible for him to be at the *locus criminis* at the time of the alleged crime."[32] Such physical impossibility was not sufficiently proven by appellants in this case.

As properly observed by the RTC and the CA, appellants' denial, too, cannot be given more weight over their positive identification by the prosecution witnesses. Furthermore, "[a] categorical and consistent positive identification without any showing of ill motive on the part of the eyewitnesses testifying on the matter prevail over a denial."[33]

The Court also agrees with the CA that the use of an unlicensed firearm was not duly proven by the prosecution. While it is true that the existence of the firearm can be established by mere testimony, the fact that an accused was not a licensed firearm holder must still be established. Here, the prosecution failed to present any written or testimonial evidence to prove that appellants did not have a license to carry or own a firearm. Therefore, the use of an unlicensed firearm as an aggravating circumstance cannot be appreciated.[34]

The penalty, damages, and civil liability.

The special complex crime of robbery with homicide under Article 294, paragraph 1 of the RPC is penalized with *reclusion perpetua* to death. Under the circumstances, the element of band, appreciated as a generic aggravating circumstance, would have merited the imposition of the death penalty. In view of RA 9346,[35] however, "the imposition of the penalty of death

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[32] *People v. Butaslac*, G.R. No. 218274, March 13, 2019.

[33] *People v. Espia*, 792 Phil. 794, 805 (2016).

[34] *People v. De Leon*, 608 Phil. 701, 725-726 (2009).

[35] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

has been prohibited and in lieu thereof, the penalty of *reclusion perpetua* is to be imposed."[36]

The Court resolves, at this point, to modify the damages awarded by the CA. "In robbery with homicide, civil indemnity and moral damages are awarded automatically without need of allegation and evidence other than the death of the victim owing to the crime."[37] Both the RTC and the CA were correct in granting these awards, except that the award should be ₱100,000.00 each. Recent jurisprudence provides that when the penalty to be imposed is death, civil indemnity and moral damages shall be awarded at ₱100,000.00 each.[38]

Apart from civil indemnity and moral damages, the lower courts likewise properly awarded exemplary damages under Article 2230 of the Civil Code because of the presence of an aggravating circumstance and to serve as a deterrent to others similarly inclined. The Court, however, increases the awarded amount from ₱30,000.00 to ₱100,000.00 to conform to prevailing jurisprudence.[39]

The Court likewise increases the amount of temperate damages awarded to the heirs of Renato James Veloso from ₱25,000.00 to ₱50,000.00 in accordance with *People v. Jugueta*.[40]

In addition, interest at the rate of 6% *per annum* shall be imposed on all monetary awards from the date of finality of this Decision until fully paid.

Finally, the Court orders appellants to restitute the stolen items or to pay their monetary value, *if* restitution is no longer possible.

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[36] *People v. Fernandez, et al.,* 796 Phil. 258, 273 (2016).

[37] See *People v. Villamor, et al., supra* note 26.

[38] *Id*.

[39] See *People v. Villamor, et al., supra* note 26, citing *People v. Buyagan,* 681 Phil. 569, 576-577 (2012). See also *People v. Gambao,* 718 Phil. 507, 531 (2013).

[40] 783 Phil. 806, 853 (2016).

WHEREFORE, the appeal is **DISMISSED**. The assailed Decision dated January 18, 2017 of the Court of Appeals in CA-G.R. CR-H.C. No. 07670 is **AFFIRMED** with **MODIFICATION**. Appellants Jojo Bacyaan *y* Sabaniya, Ronnie Fernandez *y* Gonzales, and Ryan Guevarra *y* Sipria are found **GUILTY** beyond reasonable doubt of the crime of Robbery with Homicide and shall suffer the penalty of *reclusion perpetua*, without eligibility for parole.

Appellants are **ORDERED** to pay the heirs of Lauro Santos the following amounts: (1) ₱100,000.00 as civil indemnity; (2) ₱100,000.00 as moral damages; (3) ₱100,000.00 as exemplary damages; and (4) ₱50,536.00 as actual damages.

Appellants are likewise **ORDERED** to pay the heirs of Renato James Veloso the following amounts: (1) ₱100,000.00 as civil indemnity; (2) ₱100,000.00 as moral damages; (3) ₱100,000.00 as exemplary damages; and (4) ₱50,000.00 as temperate damages.

All monetary awards for damages shall earn interest at the legal rate of 6% *per annum* from the time of finality of this decision until fully paid.

Appellants are **ORDERED** to **RETURN** the value of the stolen items *if* restitution is no longer possible.

SO ORDERED.

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

Hernando, J., on leave.

FIRST DIVISION

[G.R. No. 240311. September 18, 2019]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **FELINA GIRON-ROQUE, DR. GLORIA M. APOSTOL and husband, DR. EDWARD APOSTOL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE COURT IS INCLINED TO UPHOLD THE FACTUAL FINDINGS OF THE COURTS *A QUO* ABSENT ANY COGENT REASON TO OVERTURN THE SAME. — [I]t must be pointed out that PNB commenced extrajudicial foreclosure proceedings on Felina's real property on the ground of the latter's non-payment of the first and second loans inclusive of interests and penalties, which as per the Statement of Account provided by PNB to Felina, amounted to ₱14,565.58 for the first loan and ₱148,608.33 for the second loan, or a grand total of ₱163,173.91. However, and as unanimously found by the courts *a quo*: (*a*) Felina did not avail of the second loan, as her signature in the subject check was forged; (*b*) Gloria was not duly authorized to obtain the second loan from PNB; and (*c*) PNB was remiss of the diligence required of a banking institution in allowing the withdrawal and encashment of the subject check representing the second loan. Absent any cogent reason to overturn the aforesaid findings, the Court is inclined to uphold the same.

2. ID.; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; ANNULMENT OF THE EXTRAJUDICIAL PROCEEDINGS OF THE REAL PROPERTY SUBJECT OF THE REAL ESTATE MORTGAGE, AFFIRMED. — In view of the nullity of the second loan, Felina's outstanding balance to PNB has been significantly reduced to the value of the first loan, plus interests and penalties, amounting to ₱14,565.58. Significantly, Felina tried to fully settle the same by tendering to PNB a cashier's check in the amount of ₱16,000.00, which was refused by the latter — on the notion that it was insufficient to fully pay Felina's total loan obligations to it, considering that at that time, the second loan was yet to be nullified by judicial fiat. Verily, the remaining balance of the first loan remains outstanding, due, and demandable, albeit

without fault of Felina as she already tendered the aforementioned cashier's check through her letter dated December 10, 1998 which PNB received on December 21, 1998. In this light, and in the interest of substantial justice, the Court deems it prudent to give Felina a reasonable opportunity to fully settle her remaining obligation to PNB, in the amount of ₱14,565.58, plus interests and penalties from the date of the Statement of Account on September 15, 1998 until the date of PNB's receipt of the cashier's check on December 21, 1998. In the meantime, the Court affirms the annulment of the extrajudicial proceedings, without prejudice to PNB's availment of the proper remedies, should Felina fail to settle her loan obligation despite being given the opportunity to do so.

APPEARANCES OF COUNSEL

Aguila Aguila & Aguila Law Office for petitioner.

Enrique Jesus P. Molina for respondent Felina Giron-Roque.

Romero Law Office for respondents Dr. Gloria M. Apostol and Dr. Edward Apostol.

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 October 27, 2017 and the Resolution[3] dated June 13, 2018 of the Court of Appeals (CA) in CA-G.R. CV No. 100017, which affirmed with modification the Decision[4] dated August 1, 2012 and the Order[5] dated November 29,

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[1] *Rollo*, pp. 12-23.

[2] *Id*. at 30-39. Penned by Associate Justice Myra V. Garcia-Fernandez with Associate Justices Romeo F. Barza and Ramon Paul L. Hernando (now a member of this Court), concurring.

[3] *Id*. at 41-42.

[4] *Id*. at 51-70. Penned by Presiding Judge Consuelo Amog-Bocar.

[5] *Id*. at 71.

2012 of the Regional Trial Court of Iba, Zambales, Branch 71 (RTC) in Civil Case No. RTC-1551-I, and accordingly, ordered respondents Dr. Gloria M. Apostol (Gloria) and her husband, Dr. Edward Apostol (collectively, Spouses Apostol), to pay petitioner Philippine National Bank (PNB) the amount of ₱119,820.00, and deleted the award of attorney's fees in favor of respondent Felina Giron-Roque (Felina).

The Facts

On April 7, 1995, Felina, a Filipino resident of the United States of America (USA), obtained a credit line from PNB in the amount of ₱230,000.00, which was secured by a real estate mortgage of a real property registered under Transfer Certificate of Title No. T-45548.[6] On February 10, 1997, she availed of a ₱50,000.00 loan (first loan) from the credit line, as evidenced by a promissory note[7] of even date, with a due date on August 9, 1997. When Felina was in the USA sometime between April to August 1997, she purportedly filed, through Gloria, a stand-by application for further availment of the credit line in the amount of ₱120,000.00 (second loan). Subsequently, she discovered that Gloria withdrew from her account with PNB a check (subject check) for the second loan in the amount of ₱119,820.00. PNB demanded payment of both loans but instead of paying, Felina requested for an in-depth investigation of the second loan.[8]

On December 10, 1998, Felina sent a letter[9] to PNB and included therein a cashier's check[10] in the amount of ₱16,000.00 as full payment of the first loan, which the latter received on December 21, 1998.[11] In response, PNB wrote Felina a

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[6] Records, Vol. I, pp. 11-12.

[7] Records, Vol. II, p. 477, including dorsal portion.

[8] See *rollo*, pp. 31-32 and 51-52.

[9] See records, Vol. I, pp. 21-22.

[10] *Id.* at 20.

[11] See *rollo*, pp. 32 and 52. See also records, Vol. I, p. 25.

letter[12] dated December 22, 1998, returning the aforesaid cashier's check as the same was insufficient to cover for the amount, interests, and penalties of both loans.[13] Thereafter, PNB proceeded with the extrajudicial foreclosure of Felina's real property.[14]

Claiming that her signature in the subject check was forged and that Gloria was not authorized to withdraw from her PNB account, Felina filed a complaint[15] for annulment of foreclosure sale and reinstatement of unused credit accommodation with damages before the RTC against both PNB and Spouses Apostol, praying, *inter alia*, that: (*a*) the second loan in the amount of ₱120,000.00, together with interests and penalties, be declared null and void; (*b*) the amount of ₱16,000.00 be declared as valid payment of her only availment of the credit arrangement; and (*c*) the extrajudicial foreclosure over her property be declared null and void.[16]

In defense, Spouses Apostol maintained, among others, that Gloria was duly authorized by Felina to withdraw from the latter's credit line. For its part, PNB claimed that it had exercised the required due diligence before allowing the withdrawal. It added that there was no valid tender of payment of the first loan, as it was tendered one (1) day before the foreclosure date and the amount was not enough to cover interest and penalty. By way of a cross-claim, PNB averred that in the event Felina's claim is sustained, Spouses Apostol should be ordered to reimburse the amount of ₱119,820.00 which the latter received from it.[17]

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[12] See records, Vol. I, pp. 25-26.

[13] As per the Statement of Account as of September 15, 1998, Felina's outstanding balance for the loans, inclusive of interests and penalties, are as follows: (*a*) ₱14,565.58 for the first loan; and (*b*) ₱148,608.33 for the second loan. (See *id.* at 19)

[14] See *rollo*, pp. 32 and 52.

[15] Dated February 16, 1999. *Id.* at 43-49.

[16] *Id.* at 49.

[17] See *rollo*, pp. 32-33 and 53.

The RTC Ruling

In a Decision[18] dated August 1, 2012, the RTC ruled in Felina's favor, and accordingly: (*a*) declared the extrajudicial foreclosure null and void; (*b*) directed PNB to reinstate the unused credit accommodation of Felina; and (*c*) ordered PNB and Spouses Apostol to pay Felina attorney's fees in the amount of ₱100,000.00, plus costs of suit.[19]

In so ruling, the RTC found that the subject check was forged, considering that Felina could not have executed it as she was in the USA at that time, and upon comparison with the promissory note dated February 10, 1997, her alleged signature in the subject check was found to have not been written by one and the same person.[20] Thus, the RTC concluded that PNB was remiss of the diligence required of banking institutions in allowing the withdrawal and encashment of the forged check in favor of Gloria, who was not proven to be duly authorized by Felina.[21] Notably, however, the RTC made no pronouncement as to the validity of Felina's tender of payment in relation to the first loan.

PNB moved for reconsideration which was, however, denied in an Order[22] dated November 29, 2012. Aggrieved, both PNB and Spouses Apostol appealed[23] to the CA.

The CA Ruling

In a Decision[24] dated October 27, 2017, the CA affirmed the RTC ruling with modification, further ordering Spouses Apostol

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[18] *Id*. at 51-70.

[19] *Id*. at 70.

[20] See *id*. at 65-66.

[21] See *id*. at 67-69.

[22] *Id*. at 71.

[23] See PNB's Appellant's Brief dated August 8, 2013 (*id*. at 72-84) and Spouses Apostol's Appellant's Brief dated July 15, 2013 (CA *rollo*, pp. 51-61).

[24] *Rollo*, pp. 30-39.

to pay PNB the amount of ₱119,820.00, and deleting the award of attorney's fees in favor of Felina.[25] It held that the foreclosure sale had no basis since the loan in the amount of ₱120,000.00 was void, considering that the subject check was forged and Gloria was not duly authorized to withdraw from PNB. It emphasized that, for being in an industry imbued with public interest, PNB should have exercised extraordinary diligence in handling the transaction.[26] However, similar with the RTC, the CA also made no pronouncement as to the validity of Felina's tender of payment in relation to the first loan.

Dissatisfied, PNB and Felina separately moved for reconsideration[27] but both were denied in a Resolution[28] dated June 13, 2018; hence, this petition by PNB.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly affirmed the nullification of the extrajudicial foreclosure proceedings covering Felina's real property subject of the real estate mortgage.

The Court's Ruling

The petition is without merit.

At the outset, it must be pointed out that PNB commenced extrajudicial foreclosure proceedings on Felina's real property on the ground of the latter's non-payment of the first and second loans inclusive of interests and penalties, which as per the Statement of Account[29] provided by PNB to Felina, amounted

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[25] *Id*. at 38.

[26] See *id*. at 36-37.

[27] See PNB's Motion for Partial Reconsideration dated December 6, 2017 (CA *rollo*, pp. 188-191) and Felina's Motion for Reconsideration dated December 12, 2017 (CA *rollo*, pp. 181-185).

[28] *Rollo*, pp. 41-42.

[29] Dated September 15, 1998. Records, Vol. I, p. 19.

to ₱14,565.58 for the first loan and ₱148,608.33 for the second loan, or a grand total of ₱163,173.91.

However, and as unanimously found by the courts *a quo*: (*a*) Felina did not avail of the second loan, as her signature in the subject check was forged; (*b*) Gloria was not duly authorized to obtain the second loan from PNB; and (*c*) PNB was remiss of the diligence required of a banking institution in allowing the withdrawal and encashment of the subject check representing the second loan.[30] Absent any cogent reason to overturn the aforesaid findings, the Court is inclined to uphold the same.[31]

In view of the nullity of the second loan, Felina's outstanding balance to PNB has been significantly reduced to the value of the first loan, plus interests and penalties, amounting to ₱14,565.58. Significantly, Felina tried to fully settle the same by tendering to PNB a cashier's check in the amount of ₱16,000.00, which was refused by the latter — on the notion that it was insufficient to fully pay Felina's total loan obligations to it, considering that at that time, the second loan was yet to be nullified by judicial fiat. Verily, the remaining balance of the first loan remains outstanding, due, and demandable, albeit without fault of Felina as she already tendered the aforementioned cashier's check through her letter dated December 10, 1998 which PNB received on December 21, 1998.

In this light, and in the interest of substantial justice, the Court deems it prudent to give Felina a reasonable opportunity to fully settle her remaining obligation to PNB, in the amount of ₱14,565.58, plus interests and penalties from the date of the Statement of Account on September 15, 1998 until the date of PNB's receipt of the cashier's check on December 21, 1998. In the meantime, the Court affirms the annulment of the

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[30] See *rollo*, pp. 36-37 and 67-69.

[31] It is settled that when the factual findings of the trial court are confirmed by the CA, said facts are final and conclusive on the Court, unless the same are not supported by the evidence on record. (*Gatan v. Vinarao*, G.R. No. 205912, October 18, 2017, 842 SCRA 602, 618, citing *Bank of the Philippine Islands v. Leobrer*a, 461 Phil. 461, 469 [2003]).

extrajudicial proceedings, without prejudice to PNB's availment of the proper remedies, should Felina fail to settle her loan obligation despite being given the opportunity to do so.

WHEREFORE, the petition is **DENIED**. The Decision dated October 27, 2017 and the Resolution dated June 13, 2018 of the Court of Appeals in CA-G.R. CV No. 100017 are hereby **AFFIRMED** with **MODIFICATION**, in that: (*a*) respondent Felina Giron-Roque is given a period of sixty (60) days to settle the remaining balance of her outstanding loan obligation to petitioner Philippine National Bank (PNB) amounting to ₱14,565.58 plus interests and penalties from September 15, 1998 to December 21, 1998; and (*b*) the annulment of the extrajudicial foreclosure of the real property registered under Transfer Certificate of Title No. T-45548 shall be without prejudice to PNB's availment of the proper remedies, should the loan obligation remain unsettled after the lapse of the aforementioned period. The rest of the Decision **STANDS**.

SO ORDERED.

Jardeleza and *Carandang, JJ.,* concur.

Bersamin, C.J. (Chairperson) and *Gesmundo, J.,* on official leave.

SECOND DIVISION

[G.R. No. 242213. September 18, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROGER ENERO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; MURDER; ELEMENTS. —To successfully prosecute the crime of murder, the following elements must be

established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) that the killing is not parricide or infanticide.

2. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; TO BE GIVEN CREDENCE AS BASIS FOR CONVICTION, IT IS BUT INDISPENSABLE THAT: THERE IS MORE THAN ONE CIRCUMSTANCE; THE FACTS FROM WHICH THE INFERENCES ARE DERIVED ARE PROVEN; AND THE COMBINATION OF ALL THE CIRCUMSTANCES IS SUCH AS TO PRODUCE A CONVICTION BEYOND A REASONABLE DOUBT. — [A]ccused-appellant's participation in the crime of murder was based on circumstantial evidence. For the latter to be given credence as basis for conviction, it is but indispensable that: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt. Circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, **to the exclusion of the others**, as the guilty person. Culling the records of the case, this Court finds that the tapestry of circumstances does not merit the conviction of accused-appellant.

3. ID.; ID.; CONSPIRACY; CONSPIRACY CANNOT BE APPRECIATED WHERE THERE IS WANT OF EVIDENCE PROVING THAT ALL THE ACCUSED EXECUTED CONCERTED ACTS SO AS TO ACHIEVE THEIR COMMON DESIGN OF KILLING THE VICTIMS; EXTRAJUDICAL ADMISSION BY A CO-CONSPIRATOR DOES NOT BIND THE ACCUSED-APPELLANT ABSENT PROOF OTHER THAN SAID ADMISSION. — Neither can conspiracy be appreciated so as to consider accused-appellant as principal by direct participation. As a rule, once conspiracy is shown, the act of one is the act of all the conspirators. As in all crimes, the existence of conspiracy must be proven beyond reasonable doubt. While direct proof is unnecessary, the same degree of proof necessary in establishing the crime, is required to support the attendance thereof, *i.e.*, it must be shown to exist as clearly and convincingly as the commission of the offense

itself. In this case, however, there is want of evidence proving that all the accused executed concerted acts so as to achieve their common design of killing the victims. In fact, the prosecution seemed to dispense with the theory of conspiracy as there appears no evidence to such effect. The extrajudicial confession executed by Mervin and Ernesto does not bind the accused-appellant as it is considered as hearsay evidence under the *res inter alios acta rule*. Even the exception to such rule, *i.e.*, an admission made by a conspirator, does not apply here for proof other than said admission is necessary. Here, the lone evidence of conspiracy is such confessional statement of Mervin and Ernesto.

4. ID.; CRIMINAL PROCEDURE; RIGHTS OF THE ACCUSED; THE COURT IS BOUND BY ITS CONSTITUTIONAL DUTY TO RENDER A JUDGMENT OF ACQUITTAL WHEN THE PROSECUTION FAILS TO OVERTURN THE PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED. — It is a basic principle of constitutional law that the accused shall be presumed innocent until the contrary is proved. Thus, when the prosecution failed to overturn this presumption, this Court is bound by its constitutional duty to render a judgment of acquittal. While this Court abhors the dreadful fate which had cast upon the victims, to sustain conviction sans proof beyond reasonable doubt is to permit an innocent man's ontological demise.

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

This is an appeal filed by Roger Enero (accused-appellant) assailing the Decision[1] dated March 27, 2018 of the Court of

[1] Penned by Associate Justice Maria Filomena D. Singh, with Associate Justices Sesinando E. Villon and Edwin D. Sorongon, concurring; *rollo*, pp. 2-30.

Appeals (CA) in CA-G.R. CR HC No. 08097, which convicted him of the crime of Murder.

The Relevant Antecedents

Accused-appellant, together with Mervin Verbo (Mervin), Mario Agbayani (Mario), and John Doe, was charged with the complex crime of robbery with homicide which resulted in the unlawful asportation of personal property and the death of three individuals, namely: Mabel Ulita (Mabel), Medirose Paat (Medirose), and Clark John John Ulita (Clark) in an Information[2] that reads:

> That on **AUGUST 10, 2010 or thereabout** (sic) in the Municipality of **Gattaran**, province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, armed with knives, with violence against or intimidation of persons, conspiring together and helping one another, did then and there willfully, unlawfully, and feloniously enter the house/residence of **Mabel Ulita**, once inside took, stole and carted away [₱]2**0,000.00 cash; a gold ring and gold earring with pendant, and by reason or on occasion of the Robbery, the same was aggravated**, the above-named accused, with intent to kill, conspiring together and helping one another, did then and there wilfully, unlawfully, and feloniously assault, attack and stab **said Mabel Ulita y Bumanglang, Medirose Paat y Berbano, and Clark John Ulita y Bumanglang, a minor, eleven (11) years of age**, inflicting upon them multiple stab wounds which caused their deaths, and that **the same was further aggravated the act having been accompanied by the Rape of Mabel Ulita.**
>
> CONTRARY TO LAW.[3]

According to SPO3 Dennis Aguilor (SPO3 Aguilor), he received a phone call at about 6:30 a.m. on August 10, 2010, relaying the killing of Mabel, her son Clark, and their housemaid, Medirose. In response to said call, Police Chief Inspector Abraham Lopez (PCI Lopez), Police Inspector Mallillin, Police Inspector Rodante Albano, SPO4 Carlito Supapo, SPO1 Elmer

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[2] CA *rollo*, p. 16.

[3] *Id.*

Juan, and the witness proceeded to the crime scene and investigated the area.[4]

At about 9:00 a.m. of the same day, the team of the Regional PNP Crime Laboratory arrived and processed the crime scene. They collected specimens of hair, pubic hair, and latent prints on suspicion that Mabel was raped. They also found a claw hammer on top of the septic tank at the back of the house of the victims. The specimens gathered were brought to the Crime Laboratory and examined.[5]

Bernard Javier (Bernard), one of the witnesses, testified that he was watching television in his house when he heard screams coming from the house of Mabel, which is about 20 meters away from his place. When he peeped through the window, he saw four persons coming out of the house of Mabel and he identified them as their neighbors, accused-appellant, Mervin, Ernesto Verbo (Ernesto), and Mario, who have noticeable traces of blood on their clothes. He was certain as to their identity because of the light coming from the house of Mabel and from the street.[6]

The following morning, Bernard went to the house of Arnold to narrate to him what he noticed that early morning. They then both decided to go to the house of Mabel as they suspected that the occupants had *bangungot*. When nobody responded to their call, Arnold threw stones at the house of Mabel to get the attention of the occupants therein. Eventually, Bernard decided to peep on the flooring using the gap between the bottom portion of the door. There, he saw blood scattered on the floor. It was at this time that people started to arrive. Bernard went to the house of SPO3 William Asuncion who immediately responded to the crime scene.[7]

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[4] *Supra* note 1, at 4.

[5] *Id.*

[6] *Id.* at 5.

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

On cross examination, Bernard, however, narrated that he saw about five persons coming out of the house of Mabel. Out of the five persons, he can identify four of them as accused-appellant, Mervin, Ernesto, and Mario. After seeing them, Bernard went back to sleep.[8]

On the other hand, Arnold testified that on August 10, 2010, he heard loud screams which prompted him to go outside his house and walk towards the road to observe where the screams emanated. Subsequently, he heard the screams coming from Mabel's house and suddenly saw five persons coming out of the house. As the lights were surrounding said house, he was able to ascertain that said five persons were male. However, he failed to identify anyone.[9]

The following morning, Arnold talked to Bernard and relayed to him what he saw in the morning of August 10, 2010. Bernard then told Arnold that he saw four of the five persons coming out of Mabel's house and named them as accused-appellant, Mervin, Ernesto, and Mario. Arnold then stated that he knew accused-appellant because he is the husband of his niece, while Mervin and Ernesto were his companions in harvesting *palay*.[10]

On cross-examination, Arnold reiterated that he saw five male persons coming out of Mabel's house after he heard loud screams emanating from said house. He likewise affirmed that he was not able to identify such persons despite the light coming from the house and street lights.[11]

Atty. Cicero Elizaga (Atty. Elizaga) testified that he was called by the police officers to assist Mervin and Ernesto in executing their confession. After informing the latter of their rights and the consequences of a confessional statement, Mervin and Ernesto still proceeded and decided to give the same.[12]

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[8] *Id.* at 6-7.

[9] *Id.* at 7.

[10] *Id.*

[11] *Id.* at 8.

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

The medico-legal expert who conducted the autopsy on the bodies of the victims was Dr. Cherry Anne Ayunon-Carreon (Dr. Ayunon-Carreon), who found multiple stab wounds on the upper extremities, lower and upper left arm, lower right arm. On the back side, she found wounds in the nape area, right shoulder, left and right scapular area, middle of the back, and right lower back of Medirose.[13]

As to Mabel, Dr. Ayunon-Carreon found multiple stab wounds on the nape area, both on the interior and anterior area, the right clavicular area, the chest, the right upper quadrant and left upper quadrant of the abdomen, all of which are at the frontal side of the victim. At the back of the ventral side, she found seven stab wounds. The fatal wounds are located at the right and lower back part where the kidneys are located. The most serious wound was found on the anterior part of the neck and on both the left and right side of the chest, where the heart and lungs are located. Dr. Ayunon-Carreon reiterated that more than one bladed weapon was used in inflicting wounds upon Mabel.[14]

As to Clark, Dr. Ayunon-Carreon found only one wound on the frontal side located at the right chest. At the back portion, two wounds were found at the right upper and lower back. She also found a hematoma at the left frontal area of the head and an abrasion on the left psychosomatic area.[15]

During cross-examination, Dr. Ayunon-Carreon said that it was possible that one weapon caused the multiple wounds. During re-cross examination, she said that based on the multiple wounds received by the victims, it was not possible that only one assailant caused the same.[16]

For his defense, accused-appellant denied the accusations against him and averred that when he was at the waiting shed,

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[13] *Id* at 10.

[14] *Id*.

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

[16] *Id*. at 11.

which was 20 meters away from the house of Mabel, he heard screams coming from the northern direction. He then went to said direction and saw Arnold and Bernard. They informed accused-appellant that Mabel was dead. He further testified that Arnold and Bernard peeped through a small opening and saw bodies lying on the ground covered with blood. Accused-appellant likewise peeped through said opening and saw the arm and feet of a person covered with blood. Upon seeing such, he ordered Arnold and Bernard to call the barangay captain and Mabel's brother, as he claimed to be a "private" *barangay tanod*.[17]

Accused-appellant, likewise, testified that earlier on that day, while he was conditioning his fighting cocks, he saw Mario holding the right side of his stomach and his clothes were torn. He likewise noticed red stains on Mario's shirt and presumed it was blood. He was afraid to inquire as to why Mario's shirt was covered with blood and so he went back to his house to sleep.[18]

The Regional Trial Court (RTC), in a Decision[19] dated January 27, 2016, convicted accused-appellant of the crime as charged. By circumstantial evidence, the RTC found that the prosecution sufficiently proved that robbery with homicide was committed by accused-appellant. The following circumstances were considered by the trial court in ruling for accused-appellant's conviction: (a) Bernard claimed to have seen the accused-appellant near the place of the incident at the time or near at such time; (b) Bernard's statement was corroborated in some material points by Arnold's testimony that he saw four to five male persons coming out of the fence of Mabel's house; (c) Accused-appellant did not deny that on the date and time of the incident, he was at Palagao, Norte, Gattaran, Cagayan; (d) The investigation of the police officers yielded to the fact

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[17] *Id*. at 12.

[18] *Id*. at 12.

[19] Penned by Presiding Judge Nicanor S. Pascual, Jr.; CA *rollo*, pp. 18-38.

that money and jewelry were taken from Mabel's house; and (e) Mervin and Ernesto executed their respective confessions, which implicated accused-appellant in the commission of the robbery and death of the victims.[20]

Notably, the RTC deemed it improper to discuss the existence of conspiracy "considering that only one accused was arraigned and tried."[21] Thus:

WHEREFORE, premises considered, the court finds [accused-appellant] **ROGER ENERO** guilty beyond reasonable doubt of the crime of **ROBBERY WITH MULTIPLE HOMICIDE** and hereby imposes upon him:

1. The penalty of **RECLUSION PERPETUA** for **the death of Mabel Ulita**;

2. The penalty of **RECLUSION PERPETUA** for the death of John Clark Ulita;

3. The penalty of **RECLUSION PERPETUA** for the death of Medirose Paat.

The accused is further directed to pay the heirs of Mabel Ulita, Clark John Ulita and Medirose Paat the total amount of **Three Hundred Thousand (PhP300,000.00) Pesos** as actual damages, **Seventy Five Thousand (PhP 75,000.00)** each victim as death indemnity; **Fifty Thousand Pesos (PhP 50,000.00)** pesos each victim as Moral damages and the amount of **Twenty Five Thousand (PhP 25,000.00) Pesos** each victim as Exemplary Damages and to pay the costs.

Considering that accused Mervin Verbo, Mario Agbayani and John Doe are still at large, let the records of the case be sent to the archived (sic) to be reinstated upon their arrest. For this purpose, let an Alias Warrant of Arrest be issued for their immediate apprehension.

SO ORDERED.[22]

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[20] *Id*. at 32-35.

[21] *Id*. at 36.

[22] *Id*. at 37.

On appeal, the CA, in a Decision[23] dated March 27, 2018, maintained that there was no evidence presented which would prove that the complex crime of robbery with homicide took place. Accused-appellant's complicity to such crime, which was entirely based on the extrajudicial confessions of Mervin and Ernesto, remained unproven. Such confessional statements constitute hearsay evidence.[24]

The CA found that no evidence was presented to prove that the elements of the crime of robbery were present nor the intent of accused-appellant and his cohorts to rob the place and the killings were only incidental so as to convict accused-appellant of such complex crime.[25]

However, the CA found that the crime of murder, qualified by treachery, was committed, as circumstantial evidence exists which proves that accused-appellant participated in the killing of Mabel, Clark, and Medirose. The *fallo* thereof reads:

WHEREFORE, the appeal is hereby **DENIED**. The Decision of the Regional Trial Court, Branch 8, Aparri, Cagayan in Criminal Case No. 11-10717 is **AFFIRMED with MODIFICATIONS**.

Accused-Appellant **ROGER ENERO** is hereby found guilty beyond reasonable doubt of the Murder of Mabel Ulita y Bumanglag, Clark John John Ulita y Bumanglag, and Medirose Paat y Berbano and thus he is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility of parole, for each of the three killings.

The accused-appellant Roger Enero is also held liable for civil damages to the heirs of Mabel Ulita y Bumanglag, Clark John John Ulita y Bumanglag and Medirose Paat y Berbano, separately, in the following amounts:

1. [₱] 100,000.00 as civil indemnity *ex delicto*;
2. [₱] 100,000.0 as moral damages;

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[23] *Supra* note 1.

[24] *Rollo*, p. 20.

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

3. [₱] 100,00.00 as exemplary damages; and

4. [₱]50,000.00 as temperate damages.

All amounts awarded, including the temperate damages, shall earn an interest of 6% [per annum] from date of finality of this Decision, until full payment.

SO ORDERED.[26]

Hence, accused-appellant filed an appeal before this Court.

The Issue

Whether or not the guilt of accused-appellant was proven beyond reasonable doubt.

The Court's Ruling

The appeal is impressed with merit.

To successfully prosecute the crime of murder, the following elements must be established; (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) that the killing is not parricide or infanticide.[27]

The existence of the first and the fourth elements is undisputed. However, the determination as to whether the second element is present in this case deserves a re-examination by this Court.

Significantly, accused-appellant's participation in the crime of murder was based on circumstantial evidence. For the latter to be given credence as basis for conviction, it is but indispensable that: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt.[28]

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[26] *Id*. at 29.

[27] *People of the Philippines v. Racal*, 817 Phil. 665, 677 (2017).

[28] RULES OF COURT, Rule 133, Section 4.

Circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, **to the exclusion of the others,** as the guilty person.[29] (Emphasis supplied)

Culling the records of the case, this Court finds that the tapestry of circumstances does not merit the conviction of accused-appellant.

Mainly, the factual circumstances which were considered by the RTC and the C A in ruling that accused-appellant committed the killings of Mabel, Clark, and Medirose were as follows: (a) loud screams were heard by witnesses Arnold and Bernard; (b) the screams came from the house of Mabel; (c) Bernard and Arnold saw four to five men coming out of the house of Mabel; (d) Bernard positively identified accused-appellant as one of the men; (e) Bernard and Arnold discovered the dead bodies of Mabel, Clark, and Medirose.

The foregoing narration failed to establish that accused-appellant was the one who committed the killings. The evidence linking accused-appellant to the crime of murder, as held by the CA, was the fact that he was seen by both Bernard and Arnold coming out of Mabel's house after hearing the screams therefrom. However, it is significant to consider that Bernard likewise, testified that there were three to four persons, aside from accused-appellant, who came out from Mabel's house. Thus, the presence of other men does not exclude the possibility that they were the perpetrators. Also, a considerable amount of time had lapsed from the time that Bernard and Arnold saw accused-appellant and his alleged cohorts, to the time that they actually saw the lifeless bodies of the victims. Both Bernard and Arnold testified that they went to the house of Mabel hours after they saw accused-appellant with three or four others. It was unclear as to whether the victims were already dead when they saw accused-appellant and others coming out of Mabel's house or there were others who went inside or outside said

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[29] *Zabala v. People of the Philippines*, 752 Phil. 59, 68 (2015).

house. The endless possibilities which may arise in this case sanction reasonable doubt on accused-appellant's guilt. The conclusion of the RTC and the CA that it was indeed accused-appellant who was the perpetrator of the crime, is a mere speculation and based on conjecture.

Neither can conspiracy be appreciated so as to consider accused-appellant as principal by direct participation. As a rule, once conspiracy is shown, the act of one is the act of all the conspirators.[30] As in all crimes, the existence of conspiracy must be proven beyond reasonable doubt. While direct proof is unnecessary, the same degree of proof necessary in establishing the crime, is required to support the attendance thereof, *i.e.*, it must be shown to exist as clearly and convincingly as the commission of the offense itself.[31]

In this case, however, there is want of evidence proving that all the accused executed concerted acts so as to achieve their common design of killing the victims. In fact, the prosecution seemed to dispense with the theory of conspiracy as there appears no evidence to such effect. The extrajudicial confession executed by Mervin and Ernesto does not bind the accused-appellant as it is considered as hearsay evidence under the *res inter alios acta rule*. Even the exception to such rule, *i.e.*, an admission made by a conspirator, does not apply here for proof other than said admission is necessary. Here, the lone evidence of conspiracy is such confessional statement of Mervin and Ernesto.[32]

It is a basic principle of constitutional law that the accused shall be presumed innocent until the contrary is proved. Thus, when the prosecution failed to overturn this presumption, this Court is bound by its constitutional duty to render a judgment of acquittal.

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[30] *People of the Philippines v. Jesalva*, 811 Phil. 299, 308, citing *People v. Medice*, 679 Phil. 338, 349 (2012).

[31] See *People of the Philippines v. Anabe*, 644 Phil. 261, 278 (2010).

[32] *People of the Philippines v. Cachuela*, 710 Phil. 728, 741 (2013).

While this Court abhors the dreadful fate which had cast upon the victims, to sustain conviction sans proof beyond reasonable doubt is to permit an innocent man's ontological demise.

WHEREFORE, premises considered, the appeal is hereby **GRANTED**. The Decision dated March 27, 2018 of the Court of Appeals in CA-G.R. CR HC No. 08097 is **REVERSED and SET ASIDE**. Accordingly, accused-appellant **ROGER ENERO** is hereby **ACQUITTED** of the crime of murder for failure of the prosecution to prove his guilt beyond reasonable doubt.

His immediate release from the National Penitentiary is hereby **ORDERED** unless there are other lawful causes warranting his continuing confinement thereat. The Director of the Bureau of Corrections is **DIRECTED** to implement the release of accused-appellant **ROGER ENERO** in accordance with this decision, and to report on his compliance, within ten (10) days from receipt.

SO ORDERED.

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

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[*]Acting Chief Justice per Special Order No. 2703 dated September 10, 2019.

THIRD DIVISION

[G.R. No. 242570. September 18, 2019]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **ELENITA V. ABELLO, MA. ELENA ELIZABETH A. FIDER, JONATHAN V. ABELLO, MANUEL V. ABELLO, JR. and VINCENT EDWARD V. ABELLO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; DISMISSAL OF ACTION ON GROUND OF "FAILURE TO STATE CAUSE OF ACTION" AND "LACK OF CAUSE OF ACTION," DISTINGUISHED. — A complaint that fails to state ***or*** lacks cause of action is dismissible. The Court, in *Dabuco v. CA*, discussed the difference between the dismissal of the complaint on the ground of "failure to state cause of action" and "lack of cause of action," to wit: As a preliminary matter, we wish to stress the distinction between the two grounds for dismissal of an action: failure to state a cause of action, on the one hand, and lack of cause of action, on the other hand. The former refers to the **insufficiency of allegation in the pleading,** the latter to the **insufficiency of factual basis for the action.** Failure to state a cause may be raised in a Motion to Dismiss under Rule 16, while lack of cause may be raised any time. Dismissal for failure to state a cause can be made at the earliest stages of an action. Dismissal for lack of cause is usually made after questions of fact have been resolved on the basis of stipulations, admissions or evidence presented. Thus, in "failure to state a cause of action," the examination is limited to the complaint in that whether it contains an *averment* of the three (3)essential elements of a cause of action, namely: (a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (b) an obligation on the part of the named defendant to respect or not to violate such right; and (c) an act or omission on the part of the named defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery. The test is

whether or not, admitting hypothetically the allegations of fact made in the complaint, a judge may validly grant the relief demanded. In contrast, a complaint "lacks of cause of action" when it presents questions of fact that goes into *proving the existence* of the elements of the plaintiff's cause of action. Thus, in dismissing the complaint on this ground, the court, in effect, declares that the plaintiff is not entitled to a favorable judgment for failure to substantiate his or her cause of action by preponderance of evidence. Considering that questions of fact are involved, the dismissal of the complaint due to "lack of cause of action" is usually made after trial, when the parties are given the opportunity to present all relevant evidence on such question of fact. Succinctly, "failure to state cause of action" refers to insufficiency of allegation in the pleading; whereas, "lack of cause of action" deals with insufficiency of evidence or insufficiency of factual basis for the action.

2. CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; PRESCRIPTION RUNS IN A MORTGAGE CONTRACT NOT FROM THE TIME OF ITS EXECUTION, BUT WHEN THE LOAN BECAME DUE AND DEMANDABLE, FOR INSTANCES WHEN DEMAND IS NOT NECESSARY, OR FROM THE DATE OF DEMAND. — The Court ruled in the recent case of *Mercene v. Government Service Insurance System*, that the commencement of the prescriptive period for REMs is crucial in determining the existence of cause of action. Prescription, in turn, runs in a mortgage contract not from the time of its execution, but rather a) when the loan became due and demandable, for instances covered under the exceptions set forth under Article 1169 of the New Civil Code, or b) from the date of demand.

3. ID.; ID.; ID.; FOR AN ACTION TO FORECLOSE REAL ESTATE MORTGAGE TO PROSPER, THE CREDITOR-MORTGAGEE MUST ESTABLISH HIS RIGHT BY ALLEGING THE TERMS AND CONDITIONS OF THE MORTGAGE CONTRACT, PARTICULARLY THE MATURITY OF THE LOAN WHICH IT SECURES, THE FAILURE TO ALLEGE, MUCH MORE PROVE THESE INFORMATION, RENDERS THE ACTION DISMISSIBLE FOR FAILURE TO PROVE THE CAUSE OF ACTION. — A REM is an accessory contract constituted to protect the creditor's interest to ensure the fulfillment of the principal contract of loan. By its nature,

therefore, the enforcement of a mortgage contract is dependent on whether or not there has been a violation of the principal obligation. Simply, it is the debtor's failure to pay that sets the mortgage contract into operation. Prior to that, the creditor-mortgagee has no right to speak of under the REM as it remains contingent upon the debtor's failure to pay his or her loan obligation. Thus, contrary to the opinion of the CA, for an action to foreclose REM to prosper, it is crucial that the creditor-mortgagee establishes his right by alleging the terms and conditions of the mortgage contract, particularly the maturity of the loan which it secures. The respondents' failure to allege, much more prove these information, renders the action dismissible for failure to prove their cause of action.

4. ID.; ID.; ID.; ID.; THE MORTGAGOR WOULD BE UNABLE TO ESTABLISH HIS OR HER RIGHT TO PRAY FOR THE CANCELLATION OF THE ENCUMBRANCES WITHOUT FIRST ESTABLISHING THAT THE DEBT HAS ALREADY BECOME DUE, AS IT IS ONLY AT THAT TIME THAT THE CREDITOR'S RIGHT TO FORECLOSE THE PROPERTY ARISE AND THE PRESCRIPTIVE PERIOD BEGINS TO RUN. — [T]he respondents pray for the cancellation of the encumbrances on the TCTs which refer to the REMs constituted on the property. Consequently, the cancellation of these annotations is dependent on whether the action for REM has already prescribed. Therefore, an allegation of the date of maturity of the loan is also vital in this case as it signifies the commencement of the running of the period of prescription for an action for foreclosure REM. Stated otherwise, the mortgagor would be unable to establish his or her right to pray for the cancellation of the encumbrances without first establishing that the debt has already become due, as it is only at that time that the [creditor's] right to foreclose the property arise and the prescriptive period begins to run.

5. ID.; ID.; ID.; ID.; THE DATE OF ANNOTATION IS IRRELEVANT ON THE ISSUE OF WHETHER THE INSTITUTION OF A MORTGAGE ACTION HAS ALREADY PRESCRIBED, FOR WHAT IS CRUCIAL IS THE DATE OF MATURITY OF THE LOAN IN INSTANCES WHEN DEMAND IS NOT NECESSARY, OR THE DATE OF DEMAND, WITHOUT THESE DETAILS, THE INFORMATION SUPPLIED IS INSUFFICIENT TO ENABLE THE COURT TO GRANT RELIEF TO THE PARTIES.

— It is evident from a cursory reading of the x x x allegations that the respondents made no mention of the particulars of the mortgage. In arguing prescription, the respondents instead anchor on the fact that the latest entry related to the loan from the petitioner was in 1975. But, the date of annotation is irrelevant on the issue of whether the institution of a mortgage action has already prescribed. Instead, x x x, what is crucial is the date of maturity of the loan in instances when demand is not necessary, or the date of demand. Without these crucial details, the information supplied is insufficient to enable the court to grant relief to the respondents. With this, the complaint could have been dismissed by the court *a quo* on the ground of the complaint's failure to state cause of action. However, the parties proceeded to trial, which, therefore, means that the period within which the dismissal for failure to state a cause of action would have already lapsed.

6. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; AN ACTION FOR CANCELLATION OF THE ANNOTATED ENCUMBRANCES ON THE PROPERTY ON THE BASIS OF PRESCRIPTION MUST BE DENIED AND THE COMPLAINT DISMISSED FOR WANT OF CAUSE OF ACTION, WHERE THE PARTIES FAILED TO ALLEGE AND ADDUCE SUFFICIENT EVIDENCE TO ESTABLISH THAT PRESCRIPTION HAS SET IN. — While it is true that the petitioner has timely and repeatedly raised the same as affirmative defense in their Answer, and a ground in their Motion to Dismiss, still, the court *a quo*'s power to dismiss on the ground of "failure to state a cause of action" had already passed when the parties went into trial. Dismissal on the ground of "failure to state a cause of action" is a procedural remedy to resolve a complaint saving the parties the costs of going into trial. However, when the parties have entered trial, Section 34, Rule 132 of the Rules of Court, requires the parties to formally offer their evidence for the court's consideration. Even then, evidence excluded by the court may still be attached to the records of the case by tendering it under Section 40, Rule 132 of the Rules of Court. This allows the possibility for presentation of evidence not admitted, thus, raising the possibility for the parties to deal with their genuine issues without [refiling] the case. However, in this case, during trial, the respondents failed to adduce evidence to establish when the loan became due, and

consequently, when the right to foreclose the mortgage accrued. Indubitably, the presentation of the contracts evidencing the loan and the mortgage is necessary as the respondents' cause of action is anchored on these documents. As the respondents failed to allege more so, adduce sufficient evidence to establish that prescription has set in, it is clear that the action must be denied and the complaint dismissed for want of cause of action.

APPEARANCES OF COUNSEL

April C. Pintor for petitioner.
Cirilo C. Yuro, Jr. for respondents.

D E C I S I O N

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

Before this Court is a petition for review on *certiorari*[1] filed by Philippine National Bank (petitioner) under Rule 45 of the 1997 Rules of Civil Procedure seeking to annul and set aside the Decision[2] dated January 31, 2018 of the Court of Appeals (CA) Cebu City in CA-G.R. CV No. 05501 and its Resolution[3] dated September 4, 2018, denying the Motion for Reconsideration thereof. The assailed decision dismissed the appeal and affirmed the Decision[4] dated August 26, 2014 of the Regional Trial Court (RTC) of Bacolod City, Branch 49, in Civil Case No. 08-13309, which ordered the cancellation of memorandum of encumbrances annotated on Transfer Certificates of Title (TCT) Nos. T-127632, T-82974 and T-58311.

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[1] *Rollo,* pp. 51-33.

[2] Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Gabriel T. Ingles and Gabriel T. Robeniol, concurring; *id*. at 14-27.

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

[4] Rendered by Judge Manuel O. Cardinal, Jr.; *id*. at 256-267.

The Antecedent Facts

On November 21, 2008, a Complaint for Cancellation/ Discharge of Mortgage/Mortgage Liens was filed by Elenita V. Abello (Elenita), Ma. Elena Elizabeth A. Fider, Jonathan Abello, Manuel V. Abello (Manuel) and Vincent Edward B. Abello (collectively, the respondents) against the petitioner before the RTC of Bacolod City, Branch 49.[5]

The complaint involves parcels of land covered by TCT Nos. T-127632, T-82974, and T-58311, all located at Bacolod City, registered under the names of Manuel and Elenita (the Spouses Abello). Inscribed on the TCTs were various encumbrances. On TCT No. T-127632, the following mortgages, all in favor of the petitioner, were entered:

Date of Mortgage	**Amount in Php**	**Date Inscribed**
September 18, 1963	5,890.00	August 9, 1968
February 21, 1968	6,600.00	February 22, 1968
August 14, 1973	50,000.00	August 23, 1973
October 8, 1973 (amendment to August 14 1973)	Increasing 50,000.00 to 94,200.00	October 11, 1973
Deed of Agreement dated March 18, 1974 increasing Respondents credit limit accommodations of Manuel Abello	75,000	March 18, 1974

Over the two other lots covered by TCT Nos. T-82974 and T-58311, inscribed were the real estate mortgage (REM) obtained by the Spouses Abello from the petitioner on October 30, 1975 for the amount of ₱227,000.00, under Entry No. 80024, which was made on November 4, 1975.[6]

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

[6] *Id*. at 16.

Manuel died on October 14, 1998, consequently, his heirs, herein respondents, executed a Declaration of Heirship[7] on June 5, 2003 authorizing Elenita to act as administrator of the estate.

In their complaint, the respondents sought for the cancellation of the inscriptions claiming that since the petitioner made no action against them since 1975, the action has already prescribed. Accordingly, the respondents argued that they should be discharged as a matter of right and the encumbrances cancelled.[8]

Ruling of the RTC

After trial, the RTC rendered its Decision[9] on August 26, 2014, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered in favor of the Plaintiffs and against the Defendants:
>
> 1.) The Register of Deeds of the Province of Negros Occidental, is directed to cancel the memorandum of encumbrances (Real Estate Mortgage) appearing at the back of TCT No. T-127632, as Entry Nos. 91194, 131237, 181203, 182910 and 188486.
>
> 2.) The Register of Deeds of Bacolod City is directed to cancel the memorandum of encumbrance (Real Estate Mortgage) appearing at the back of TCT No. T-82974 and T-58311, as Entry No. 80024.
>
> 3.) The Counterclaim of the Defendant PNB is ordered dismissed.
>
> 4.) No costs.
>
> SO ORDERED.[10]

In its decision, the RTC found merit in the respondents' complaint on the basis of prescription. In holding that prescription has already set in, the RTC reckoned the period of prescription from the date of inscription on the TCT. Thus, it explained that

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[7] *Id.* at 115-116.

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

[9] *Id.* at 256-267.

[10] *Id.* at 266-267.

the right to foreclose the mortgage on TCT No. T-127632 accrued on March 19, 1984, while those in TCT Nos. T-82974 and T-58311 on November 5, 1985.[11]

The parties herein separately filed their appeal *via* petitions for *certiorari* with the CA.[12]

Ruling of the CA

On appeal to the CA, the latter dismissed the petition in its Decision[13] dated January 31, 2018, *viz.*:

> WHEREFORE, the instant appeal is DENIED. The Decision dated August 26, 2014 rendered by the [RTC], Branch 49 of Bacolod City is AFFIRMED *in toto*.
>
> SO ORDERED.[14]

In so ruling, the CA found the allegations of the complaint sufficient to establish a cause of action. The CA held that the type of credit, loan terms and condition, and the date of maturity of the principal loan are not material elements of the case, and as such need not be alleged.[15]

The CA also found, on the basis of the accounting notice sent by the petitioner, that the institution of a mortgage action has already prescribed. The CA explained that the period of prescription begin to run from the time Manuel stopped paying the mortgage debt on December 31, 1985, whereas the petitioner sent a demand only on January 8, 2002.[16]

The petitioner filed a Motion for Reconsideration of the said decision, but the same was denied by the CA in its Resolution[17] dated September 4, 2018.

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[11] *Id*. at 265.

[12] *Id*. at 467-504; 505-525.

[13] *Id*. at 14-27.

[14] *Id*. at 26.

[15] *Id*. at 22.

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

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

Thus, this petition for review for *certiorari* whereby, the petitioner submits that the CA and the RTC erred in ordering the cancellation of the subject encumbrances. The petitioner argues first, that the complaint filed by the respondents should have been dismissed for failure to state a cause of action. Then, even assuming the existence of such cause of action, the action cannot prosper as the respondents, by their admission of liability, in effect, waived the right to raise the defense of prescription.

For their part, the respondents aver in their Comment[18] that there is no merit in the instant petition. The respondents argue that the petitioner's own admissions as to the particulars of the loan and REM could be relied upon in determining the period of prescription, and ultimately, cause of action.

Verily, the issue in this appeal is whether or not the CA erred in ordering the cancellation of the annotated encumbrances on the subject TCTs.

Ruling of the Court

The petition is ***meritorious.***

A complaint that fails to state ***or*** lacks cause of action is dismissible. The Court, in *Dabuco v. CA*,[19] discussed the difference between the dismissal of the complaint on the ground of "failure to state cause of action" and "lack of cause of action," to wit:

> As a preliminary matter, we wish to stress the distinction between the two grounds for dismissal of an action: failure to state a cause of action, on the one hand, and lack of cause of action, on the other hand. The former refers to the **insufficiency of allegation in the pleading,** the latter to the **insufficiency of factual basis for the action.** Failure to state a cause may be raised in a Motion to Dismiss under Rule 16, while lack of cause may be raised any time. Dismissal for failure to state a cause can be made at the earliest stages of an action. Dismissal for lack of cause is usually made after questions of fact

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[18] *Id.* at 343-348.

[19] 379 Phil. 939 (2000).

have been resolved on the basis of stipulations, admissions or evidence presented.[20] (Emphases Ours)

Thus, in "failure to state a cause of action," the examination is limited to the complaint[21] in that whether it contains an *averment* of the three (3) essential elements of a cause of action, namely: (a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (b) an obligation on the part of the named defendant to respect or not to violate such right; and (c) an act or omission on the part of the named defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery.[22] The test is whether or not, admitting hypothetically the allegations of fact made in the complaint, a judge may validly grant the relief demanded.[23]

In contrast, a complaint "lacks of cause of action" when it presents questions of fact that goes into *proving the existence* of the elements of the plaintiff's cause of action. Thus, in dismissing the complaint on this ground, the court, in effect, declares that the plaintiff is not entitled to a favorable judgment for failure to substantiate his or her cause of action by preponderance of evidence. Considering that questions of fact are involved, the dismissal of the complaint due to "lack of cause of action" is usually made after trial, when the parties are given the opportunity to present all relevant evidence on such question of fact.[24]

Succinctly, "failure to state cause of action" refers to insufficiency of allegation in the pleading; whereas, "lack of

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[20] *Id.* at 944-945.

[21] *Aquino, et al. v. Quiazon, et al.*, 755 Phil. 793 (2015).

[22] *Mercene v. Government Service Insurance System*, G.R. No. 192971, January 10, 2018, 850 SCRA 209, 218.

[23] *Aquino, et al. v. Quiazon, et al.*, *supra* note 21, at 810.

[24] *Dabuco v. CA, supra* note 19, at 944-945.

cause of action" deals with insufficiency of evidence[25] or insufficiency of factual basis for the action.[26]

The Court ruled in the recent case of *Mercene v. Government Service Insurance System*,[27] that the commencement of the prescriptive period for REMs is crucial in determining the existence of cause of action. Prescription, in turn, runs in a mortgage contract not from the time of its execution, but rather a) when the loan became due and demandable, for instances covered under the exceptions set forth under Article 1169[28] of the New Civil Code, or b) from the date of demand.[29]

A REM is an accessory contract constituted to protect the creditor's interest to ensure the fulfillment of the principal contract of loan. By its nature, therefore, the enforcement of a mortgage contract is dependent on whether or not there has been a violation

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[25] *Zuniga-Santos v. Santos-Gran and Register of Deeds of Marikina City*, 745 Phil. 171, 353 (2014), citing *Macaslang v. Spouses Zamora*, 664 Phil. 337, 354 (2011).

[26] *Aquino, el al. v. Quiazon, et al., supra* note 21, at 808.

[27] G.R. No. 192971, January 10, 2018, 850 SCRA 209.

[28] **Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.**

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declare; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins. (Emphases Ours)

[29] *Mercene v. Government Service Insurance System, supra*, citing *University of Mindanao, Inc. v. Bangko Sentral ng Pillpinas, et al.*, 776 Phil. 401, 425 (2016).

of the principal obligation.[30] Simply, it is the debtor's failure to pay that sets the mortgage contract into operation. Prior to that, the creditor-mortgagee has no right to speak of under the REM as it remains contingent upon the debtor's failure to pay his or her loan obligation.

Thus, contrary to the opinion of the CA, for an action to foreclose REM to prosper, it is crucial that the creditor-mortgagee establishes his right by alleging the terms and conditions of the mortgage contract, particularly the maturity of the loan which it secures. The respondents' failure to allege, much more prove these information, renders the action dismissible for failure to prove their cause of action.

In this controversy, the respondents pray for the cancellation of the encumbrances on the TCTs which refer to the REMs constituted on the property. Consequently, the cancellation of these annotations is dependent on whether the action for REM has already prescribed. Therefore, an allegation of the date of maturity of the loan is also vital in this case as it signifies the commencement of the running of the period of prescription for an action for foreclosure REM.

Stated otherwise, the mortgagor would be unable to establish his or her right to pray for the cancellation of the encumbrances without first establishing that the debt has already become due, as it is only at that time that the creditor's right to foreclose the property arise and the prescriptive period begins to run.

Pertinent to the REM, the respondents put forth the following allegations in their Complaint:

COMPLAINT

x x x x x x x x x

1. Spouses Manuel E. Abello, Sr. (in life) and Elenita V. Abello are the registered and lawful owners of a parcel of land located in the Municipality of Binalbagan, Negros Occidental, covered by [TCT]

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[30] *Dev't. Bank of the Phils. v. Guariña Agricultural and Realty Dev't. Corp.,* 724 Phil. 209, 221 (2014).

No. T-127632 of the Registry of Deeds, Province of Negros Occidental. (Copy of the title is marked as Annex "C" hereof). They are also the registered and lawful owners of parcels of land located at Bacolod City, Negros Occidental, covered by [TCT Nos]. T-82974 and T-58311 of the Registry of Deeds of Bacolod City (Copies of the titles are marked as Annexes "D" and "E", respectively).

2. To secure a loan of FIVE THOUSAND EIGHT HUNDRED NINETY PESOS (₱5,890.00), spouses Manuel E. Abello and Elenita V. Abello, executed a Deed of Real Estate Mortgage in favor of [the petitioner] last September 18, 1963, over the property covered TCT No, T-127632. As a result of said Real Estate Mortgage, Entry No. 91194 was duly entered upon the Memorandum of Encumbrance, Annex "C" shows the annotation;

3. Thereafter, Entries No. 131237 (February 21, 1968), No. 181203 (August 14, 1973), No. 182910 (October 8, 1973 and No. 188486 (March 18, 1974) were likewise inscribed in the same Memorandum of Encumbrances to reflect amendments made to the original mortgage. No further entry in favor of defendant Bank appears after March 18, 1974;

4. On October 30, 1975, spouses Manuel and Elenita Abello executed a Deed of Real Estate Mortgage in favor of [the petitioner] over their properties covered by [TCT] Nos. T-82974 and T-58311 of the Registry of Deeds for the City of Bacolod, in order to secure a loan of ₱227, 000.00. As a consequence of said Real Estate Mortgage, Entry No. 80024 was entered upon the Memorandum of Encumbrances and appears at the back of TCT No. T-82974 and TCT No. T-58311. No further entry in favor of defendant Bank appears in these Certificates of Title.[31]

It is evident from a cursory reading of the foregoing allegations that the respondents made no mention of the particulars of the mortgage. In arguing prescription, the respondents instead anchor on the fact that the latest entry related to the loan from the petitioner was in 1975. But, the date of annotation is irrelevant on the issue of whether the institution of a mortgage action has already prescribed. Instead, as previously elucidated, what is crucial is the date of maturity of the loan in instances when

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[31] *Rollo,* pp. 110-111.

demand is not necessary, or the date of demand. Without these crucial details, the information supplied is insufficient to enable the court to grant relief to the respondents. With this, the complaint could have been dismissed by the court *a quo* on the ground of the complaint's failure to state cause of action. However, the parties proceeded to trial, which, therefore, means that the period within which the dismissal for failure to state a cause of action would have already lapsed.

While it is true that the petitioner has timely and repeatedly raised the same as affirmative defense in their Answer, and a ground in their Motion to Dismiss, still, the court *a quo*'s power to dismiss on the ground of "failure to state a cause of action" had already passed when the parties went into trial. Dismissal on the ground of "failure to state a cause of action" is a procedural remedy to resolve a complaint saving the parties the costs of going into trial. However, when the parties have entered trial, Section 34, Rule 132 of the Rules of Court, requires the parties to formally offer their evidence for the court's consideration. Even then, evidence excluded by the court may still be attached to the records of the case by tendering it under Section 40,[32] Rule 132 of the Rules of Court. This allows the possibility for presentation of evidence not admitted, thus, raising the possibility for the parties to deal with their genuine issues without refiling the case.

However, in this case, during trial, the respondents failed to adduce evidence to establish when the loan became due, and consequently, when the right to foreclose the mortgage accrued. Indubitably, the presentation of the contracts evidencing the loan and the mortgage is necessary as the respondents' cause of action is anchored on these documents.[33] As the respondents

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[32] Section 40. Tender of excluded evidence. — If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony.

[33] Section 7, Rule 8 of the Rules of Court.

failed to allege more so, adduce sufficient evidence to establish that prescription has set in, it is clear that the action must be denied and the complaint dismissed for want of cause of action.

In light of the foregoing disposition, the Court sees no reason to delve into the other issue raised by the petitioner.

WHEREFORE, in view of the foregoing, the instant petition for review on *certiorari* is hereby **GRANTED**. Accordingly, the Decision dated January 31, 2018 and the Resolution dated September 4, 2018 of the Court of Appeals in CA-G.R. CV No. 05501 are hereby **REVERSED and SET ASIDE**. The respondents' Complaint dated October 18, 2007 is hereby ordered **DISMISSED.**

SO ORDERED.

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

Hernando, J., on leave.

SECOND DIVISION

[G.R. No. 243639. September 18, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSE RASOS, JR.** ***y*** **PADOLLO @ "JOSE",** *accused-appellant.*

Section 7. Action or defense based on document. — Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. —** In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution is required to prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor. In cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law.

2. **ID.; ID.; CHAIN OF CUSTODY RULE; PROCEDURE THAT POLICE OPERATIVES MUST FOLLOW TO MAINTAIN THE INTEGRITY OF THE CONFISCATED DRUGS USED AS EVIDENCE; STRICT COMPLIANCE IS REQUIRED. —** While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires **strict compliance** with procedures laid down by it to ensure that rights are safeguarded. In this connection, Section 21, Article II of RA 9165, which was amended by RA 10640 in 2014, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The said provision requires that: **(1) the seized items be inventoried and photographed at the place of seizure or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable; (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, *and* (c) a representative of the National Prosecution Service (NPS) or the media; and (3) the accused or his/her representative and all of the aforesaid witnesses shall be required to sign the copies of the inventory and be given a copy thereof.** x x x The Court cannot stress enough that the presence of the required witnesses at the time of the inventory and photographing of the seized evidence is ***mandatory,*** and that the law imposes the said requirement because their presence serves an essential purpose.

3. ID.; ID.; ID.; ID.; NON-COMPLIANCE UNDER JUSTIFIABLE GROUNDS, AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED, SHALL NOT RENDER INVALID SUCH SEIZURES AND THEIR CUSTODY. — Concededly, Section 21 of RA 9165, as amended, provides that "noncompliance of these requirements *under justifiable grounds*, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items." In connection with the foregoing, jurisprudence has held that breaches of the procedure outlined in Section 21 commited by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* would necessarily have been compromised. As the Court explained in *People v. Reyes*: x x x **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism.** x x x **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.** x x x In the *Guidelines on the Implementing Rules and Regulations of Section 21 of Republic Act No. 9165 as amended by Republic Act No. 10640* (IRR Guidelines), x x x **Simply stated, the law mandates that (1) if there are *no justifiable grounds* offered by the police when the requirements under Section 21 of RA 9165 are not complied with, *or* (2) even if there are justifiable grounds that warrant the non-compliance of the requirements under Section 21 of RA 9165, but *such grounds were not clearly stated in the sworn statements/affidavits of the apprehending/seizing officers*: such non-compliance shall render void and invalid the seizures and custody over seized items.**

4. ID.; ID.; ID.; ID.; IRR GUIDELINES ON THE ELECTED PUBLIC OFFICIALS REQUIRED TO BE PRESENT AS WITNESSES TO BUY-BUST OPERATIONS. — [T]he IRR Guidelines state that "[t]he elected public official is any incumbent public official regardless of the place where he/she is elected." Hence, the authorities are not limited to seeking assistance from local

barangay officials. Therefore, the authorities' allegation in the Joint Affidavit that they failed to secure the assistance of local barangay officials is a lame and unconvincing excuse that deserves scant consideration. To simply dismiss the mandatory requirement of the presence of elected public officials as witnesses to buy-bust operations as a trivial and excusable requirement would be to negate the clear legislative intent of Section 21 of RA 9165, as amended.

5. **ID.; ID.; ID.; ID.; IT IS MANDATORY REQUIREMENT THAT THE ACCUSED OR REPRESENTATIVE AND ALL OF THE REQUIRED WITNESSES SIGN THE COPIES OF THE INVENTORY AND BE GIVEN A COPY THEREOF. —** [I]t is a mandatory requirement under Section 21 of RA 9165 that the accused or his/her representative and all of the aforesaid witnesses sign the copies of the inventory and be given a copy thereof. As testified under oath by PO2 Garchitorena on cross-examination, Rasos, Jr. was not able to sign the aforementioned document x x x [and] the reason why he was not able to do so was not even explained. There was no testimony on record that alleges and proves that Rasos, Jr. refused to sign the document. [U]nder the IRR Guidelines, in cases wherein the accused refuses to sign the certificate of inventory, "it shall be stated 'refused to sign' above their names in the certificate of inventory of the apprehending or seizing officer." In the certificate of inventory, both the name of Rasos, Jr. and the words "refused to sign" were not inscribed therein.

6. **ID.; ID.; ID.; ID.; ID.; THE REQUIREMENT IS THAT THE PHOTOGRAPHING OF THE SEIZED DRUG SPECIMENS SHALL BE DONE DURING THE CONDUCT OF THE PHYSICAL INVENTORY OF THE SEIZED ITEMS, UNDERTAKEN IMMEDIATELY AFTER SEIZURE AND CONFISCATION. —** Section 21 of RA 9165 requires that the photographing of the seized drug specimens shall be done during the conduct of the physical inventory of the seized items, which shall be undertaken immediately after seizure and confiscation. Hence, while the prosecution was able to present a photograph of the alleged marked money and the two sachets, considering that PO2 Garchitorena unequivocally admitted under oath that *no photographs were taken during the inventory and marking*, such photograph was taken at some other time other than during the conduct of the physical inventory.

Therefore, the mandatory requirement of photographing under Section 21 was not satisfied. *Lastly,* to prevent switching or contamination, the IRR Guidelines require that "[t]he marking is the placing by the apprehending officer or the poseur-buyer of his/her initial and signature on the item/s seized." The photograph of the two sachets allegedly retrieved by the police indubitably shows that the initials inscribed on the sachets are those of [appellant] Rasos, Jr. and not the apprehending officer/poseur-buyer. Nor were the sachets signed by the latter.

7. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; IN CRIMINAL CASES, THE GUILT OF ACCUSED MUST BE PROVEN BEYOND REASONABLE DOUBT. — [P]utting much reliance on the presumption of regularity of the police operations seriously overlooked the long-standing legal tenet that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent. And this presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases that it has proven the guilt of the accused beyond reasonable doubt, with each and every element of the crime charged in the information proven to warrant a finding of guilt for that crime or for any other crime necessarily included therein. Differently stated, there must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction. It is worth emphasizing that ***this burden of proof never shifts.*** Indeed the accused need not present a single piece of evidence in his defense if the State has not discharged its *onus*. The accused can simply rely on his right to be presumed innocent. In this connection, the prosecution therefore, in cases involving dangerous drugs, **always** has the burden of proving compliance with the procedure outlined in Section 21.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Given the very nature of the anti-illegal drugs campaign, the nature of entrapment and buy-bust operations, the usual practice of utilizing unreliable characters as informants, and the great ease by which drug specimen can be planted in the pockets or hands of unsuspecting persons, most of whom come from the marginalized sectors of society, *the propensity for police abuse is great.* This is precisely why the innocent is provided refuge under the protective mantle of the law – through the mandatory requirements laid down in Republic Act No. 9165, as amended. The instant case is yet another example of how the lowly, through the majesty of the law, triumphs over the daunting and all-powerful prosecutorial power of the State.

The Case

Before the Court is an ordinary appeal[1] filed by accused-appellant Jose Rasos, Jr. *y* Padollo @ "Jose" (Rasos, Jr.), assailing the Decision[2] dated July 27, 2018 (assailed Decision) of the Court of Appeals[3] (CA) in CA-G.R. CR-H.C. No. 09737, which affirmed the Judgment[4] dated July 14, 2017 rendered by the Regional Trial Court of Manila, Branch 20 (RTC) in Criminal Case Nos. 15-319894 and 15-319895, entitled *People of the Philippines v. Jose Rasos, Jr. y Padollo @ "Jose"*, finding Rasos, Jr. guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[5] otherwise known

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[1] *Rollo*, pp. 19-21; see Manifestation and Notice of Appeal dated August 16, 2018.

[2] *Id*. at 2-18. Penned by Associate Justice Ramon R. Garcia with Associate Justices Myra V. Garcia-Fernandez and Germano Francisco D. Legaspi, concurring.

[3] Thirteenth Division.

[4] CA *rollo*, pp. 52-60. Penned by Presiding Judge Marivic Balisi-Umali.

[5] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT

as the "Comprehensive Dangerous Drugs Act of 2002," as amended. Rasos, Jr. was acquitted of the charge of violating Section 11, Article II of RA 9165 on the ground of reasonable doubt.

The Facts and Antecedent Proceedings

As narrated by the CA in the assailed Decision, and as culled from the records of the instant case, the essential facts and antecedent proceedings of the instant case are as follows:

> In two (2) separate Informations filed before the RTC of Manila, [Rasos, Jr.] was charged with violations of Section 5 and Section 11, Article II of R.A. No. 9165 committed as follows:
>
> Criminal Case No. 15-319894
>
> That on or about September 12, 2015, in the City of Manila, Philippines, the said accused, not being authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell, or offer for sale one (1) heat-sealed transparent plastic sachet containing ZERO POINT ZERO SIX ONE (0.061) [gram] of white crystalline substance marked as "JRP" known as "SHABU" containing methamphetamine hydrochloride, a dangerous drug.
>
> Contrary to law.
>
> Criminal Case No. 15-319895
>
> That on or about September 12, 2015, in the City of Manila, Philippines, the said accused, not having been authorized by law to possess any dangerous drug, did then and there willfully, unlawfully, and knowingly have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet containing white crystalline substance weighing ZERO POINT ZERO NINE EIGHT (0.098) gram of methamphetamine hydrochloride marked as "JRP-1", otherwise known as "SHABU", a dangerous drug.

NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES" (2002).

Contrary to law.

Upon arraignment on October 8, 2015, [Rasos, Jr.], with the assistance of counsel, pleaded *not guilty* to the crimes charged.

Trial on the merits ensued thereafter.

The prosecution presented four (4) witnesses, namely: poseur-buyer PO2 Jesse Garchitorena [(PO2 Garchitorena)]; back-up operative PO2 Eric de Guzman [(PO2 De Guzman)]; police investigator PO2 Bernie Rusiana; and Police Inspector Jeffrey Reyes, a forensic chemist at the Manila Police District Crime Laboratory Office.

The testimony of PI Jeffrey Reyes was dispensed with after both parties agreed to stipulate on the following: (a) his qualification as an expert forensic chemical officer; (b) the receipt of the letter-request for laboratory examination, together with the two (2) heat-sealed plastic sachets marked as "JRP" and "JRP1"; (c) he conducted a qualitative examination on the said specimens; (d) the result of his examination was reflected in Chemistry Report No. D-882-15 dated September 12, 2015; and (e) he submitted the said pieces of evidence to the court on February 18, 2016.

The version of the prosecution may be summarized as follows:

In the evening of September 11, 2015, a confidential asset reported to the Station Anti-Illegal Drugs-Special Operation Task Unit (SAID-SOTU) of the Manila Police District-Ermita Police Station (PS-5), the illegal drug trade activity of [Rasos, Jr.] along L. Guerrero St., Ermita, Manila. Immediately thereafter, a buy-bust team was formed to entrap [Rasos, Jr.], with SPO4 Rowell Robles as team leader and PO2 Garchitorena as poseur-buyer, together with six (6) other police officers as back-up operatives. A Pre-Operation Report and Authority to Operate were sent to the Philippine Drug Enforcement Agency (PDEA). Upon receipt of the documents, the PDEA faxed Control No. 10001-042015-0154 authorizing the buy-bust team to proceed with the operation. During the briefing, poseur-buyer PO2 Garchitorena was given two (2) pieces of ₱100 bill bearing his initials "JC" to be used as buy-bust money. It was agreed that PO2 Garchitorena will remove his cap after the sale transaction.

At 3:00 o'clock in the morning of September 12, 2015, PO2 Garchitorena and the confidential informant proceeded to the target area on board a motorcycle while the rest of the team strategically positioned themselves nearby. PO2 Garchitorena and the confidential

informant alighted from the motorcycle then walked towards [Rasos, Jr.]. Upon seeing the confidential informant, [Rasos, Jr.] approached them. After a short conversation, the confidential informant introduced PO2 Garchitorena to [Rasos, Jr.] as a buyer of *shabu.* Noticing the big physique of PO2 Garchitorena, [Rasos, Jr.] asked him, *"Ano ito? Gagamitin mo pampayat?"* [Rasos, Jr.] answered, *"Hindi bibili lang ako panggamit, dalawang tarya"*. [Rasos, Jr.] then pulled out from his pocket two (2) plastic sachets of *shabu.* PO2 Garchitorena gave the two (2) pieces of ₱100 bill to [Rasos, Jr.]. [Rasos, Jr.] made PO2 Garchitorena choose between the two (2) plastic sachets of *shabu.* After PO2 Garchitorena picked one (1) plastic sachet of shabu, [Rasos, Jr.] placed the money and the remaining plastic sachet in his pocket. At the conclusion of the transaction, PO2 Garchitorena removed his cap which was the pre-arranged signal to his teammates that the sale has already been consummated. Seeing this, the back-up operatives rushed to the crime scene, introduced themselves as police officers and effected the arrest of [Rasos, Jr.]. PO2 Garchitorena directed [Rasos, Jr.] to empty his pockets, to which he obliged. As a result thereof, the two (2) pieces ₱100 bill buy-bust money and a plastic sachet of shabu was recovered from [Rasos, Jr.]. As the rain then started to pour, the team decided to conduct the marking and inventory of the seized evidence at the police station. PO2 Garchitorena held in his custody the two (2) plastic sachets of *shabu* until it was brought to the police station.

At the police station, PO2 Garchitorena marked the two (2) plastic sachets as "JRP" and "JRP-1". He also prepared an Inventory of the Property Seized in the presence of [Rasos, Jr.], with a certain Robert Amoroso, a member of the MPD Press Corps, signing the inventory as a witness. [Rasos, Jr.] together with the pla[s]tic sachet and buy-bust money, was also photographed. The police officers likewise prepared the Booking Sheet and Arrest Report of [Rasos, Jr.] All the pieces of evidence were then turned over to police investigator PO2 Bernie Rusiana. Thereafter, Station Commander Police Superintendent Albert Barot signed the letter-request dated September 12, 2015 addressed to the MPD Crime Laboratory Office to determine the presence of any form of dangerous drugs in the items seized from [Rasos, Jr.]. PO2 Garchitorena delivered the letter-request and the specimens to the MPD Crime Laboratory Office which were received by PI Jeffrey Reyes, a forensic chemist, at 3:25 p.m. of September 12, 2015 as shown by the rubber stamped delivery receipt on the letter.

In Chemistry Report No: D-882-15 dated September 12, 2015, PI Reyes found that the plastic sachet marked as "JRP" weighing zero point zero six one (0.061) gram as well as the other plastic sachet marked as "JRP-1" weighing zero point zero nine eight (0.098) gram, both tested positive for methamphetamine hydrochloride or *shabu*.

For the defense, [Rasos, Jr.] and his live-in partner Sanilyn Rasos were presented as witnesses.

[Rasos, Jr.] offered the defenses of denial and extortion. He alleged that at 3:00 a.m. of September 12, 2015, he was soundly sleeping at his house when several men in civilian clothes who introduced themselves as police officers, suddenly stormed inside and arrested him. [Rasos, Jr.] was brought to Police Station 5 where he was placed in a detention cell. He was shocked when the police officers showed him the two (2) plastic sachets of *shabu* that were allegedly confiscated from him. It was only a day after his arrest that he learned that he had been charged with violations of Sections 5 and 11 of R.A. No. 9165.

Sanilyn Rasos testified that she and [Rasos, Jr.] were asleep in their room at the second floor of their house when two (2) men in civilian clothes barged in and ordered them to go downstairs. [Rasos, Jr.] was handcuffed and bodily searched but nothing was recovered from him. She came to know that [Rasos, Jr.] was arrested because a confidential informant reported him to be selling *shabu*. Before proceeding to the police station, a police officer demanded from her ₱5,000.00 for [Rasos, Jr.'s] freedom. As she was unable to produce the said amount, the charges of illegal sale and possession of dangerous drugs were pursued against [Rasos, Jr.].[6]

The Ruling of the RTC

On July 14, 2017, the RTC rendered a Judgment convicting Rasos, Jr. for committing illegal sale of dangerous drugs under Section 5, Article II of RA 9165. With respect to illegal possession of dangerous drugs under Section 11, Article II of RA 9165, the RTC acquitted Rasos, Jr. on the ground of reasonable doubt.

The dispositive portion of the RTC's Judgment reads:

Premises considered[,] in Criminal Case No. 15-319894, the Court finds the accused Jose Rasos y Padollo GUILTY beyond reasonable

[6] *Rollo,* pp. 3-7.

doubt of the offense of violation of Section 5, RA 9165 and hereby imposes on him the penalty of LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00).

On the ground of reasonable doubt, accused Jose Rasos y Padollo is ACQUITTED of the charge of violation of Section 11, RA 9165 in Criminal Case No. 15-319895.

The ZERO POINT ZERO SIX ONE (0.061) gram of shabu and ZERO POINT ZERO NINE EIGHT (0.098) gram of shabu subject of the instant criminal cases are ordered confiscated in favor of the government.

SO ORDERED.[7]

The RTC found that "[s]ave for their barren allegations that [Rasos, Jr.] was arrested inside his house, [Rasos, Jr.] and his partner have not presented convincing evidence to prove the same. x x x The testimony of the poseur[-buyer] clearly established that [Rasos, Jr.] offered for sale to the poseur[-buyer] two plastic sachets of *shabu* albeit only one was purchased by the latter."[8]

Feeling aggrieved, Rasos, Jr. filed an appeal before the CA.

The Ruling of the CA

In the assailed Decision, the CA affirmed the RTC's conviction of Rasos, Jr. The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED.** The Judgment dated July 14, 2017 of the Regional Trial Court, Branch 20, Manila is **AFFIRMED.**

SO ORDERED.[9]

The CA held that "[a]fter a thorough and careful review of the records, [the CA] was convinced that the prosecution has

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[7] CA *rollo,* p. 60.

[8] *Id*. at 59-60.

[9] *Rollo,* p. 18.

sufficiently proven beyond reasonable doubt [Rasos, Jr.'s] guilt of illegal sale of dangerous drugs."[10]

Hence, the instant appeal.

Issue

Stripped to its core, for the Court's resolution is the issue of whether the RTC and CA erred in convicting Rasos, Jr. for violating Section 5, Article II of RA 9165.

The Court's Ruling

The appeal is meritorious. The Court acquits Rasos, Jr. for failure of the prosecution to prove his guilt beyond reasonable doubt.

Rasos, Jr. was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165.

In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution is required to prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.[11]

In cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law.[12] While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,[13] the law

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[10] *Id*. at 11.

[11] *People v. Opiana,* 750 Phil. 140, 147 (2015).

[12] *People v. Guzon,* 719 Phil. 441, 451 (2013).

[13] *People v. Mantalaba,* 669 Phil. 461, 471 (2011).

nevertheless also requires **strict compliance** with procedures laid down by it to ensure that rights are safeguarded.

In this connection, Section 21,[14] Article II of RA 9165, which was amended by RA 10640[15] in 2014, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence.

The said provision requires that: **(1) the seized items be inventoried and photographed at the place of seizure or at the nearest police station or at the nearest office of**

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[14] The said section reads as follows:

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

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

[15] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002'" (2014).

the apprehending officer/team, whichever is practicable; (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, *and* (c) a representative of the National Prosecution Service (NPS) or the media; and (3) the accused or his/her representative and all of the aforesaid witnesses shall be required to sign the copies of the inventory and be given a copy thereof.

The strict observance of the aforesaid requirements is a necessity because, with "the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great."[16]

The Court cannot stress enough that the presence of the required witnesses at the time of the inventory and photographing of the seized evidence is ***mandatory,*** and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,[17] the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

> The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,[18] without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation

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[16] *People v. Santos, Jr.*, 562 Phil. 458, 472 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

[17] G.R. No. 228890, April 18, 2018, 862 SCRA 131.

[18] 736 Phil. 749, 764 (2014).

of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."[19] (Emphasis supplied)

Concededly, Section 21 of RA 9165, as amended, provides that "noncompliance of these requirements *under justifiable grounds*, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items."[20]

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[19] *People v. Tomawis, supra* note 17 at 149-150.

[20] Italics and underscoring supplied.

In connection with the foregoing, jurisprudence has held that breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity an evidentiary value of the *corpus delicti* would necessarily have been compromised.[21] As the Court explained in *People v. Reyes:*[22]

> Under the last paragraph of Section 21 (a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism.** Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti.*** With the chain of custody having been compromised, the accused deserves acquittal, x x x.[23] (Emphasis supplied)

In the *Guidelines on the Implementing Rules and Regulations of Section 21 of Republic Act No. 9165 as amended by Republic Act No. 10640* (IRR Guidelines), it is also required that "[a]ny justification or explanation in cases of noncompliance with the requirements of Section 21(1) of RA No. 9165, as amended, **shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers**."[24]

Simply stated, the law mandates that (1) if there are *no justifiable grounds* offered by the police when the

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[21] See *People v. Sumili*, 753 Phil. 342, 352 (2015).

[22] 797 Phil. 671 (2016).

[23] *Id.* at 690-691.

[24] IRR Guidelines, Section A.1.10. (Emphasis supplied).

requirements under Section 21 of RA 9165 are not complied with, *or* (2) even if there are justifiable grounds that warrant the non-compliance of the requirements under Section 21 of RA 9165, but *such grounds were not clearly stated in the sworn statements/affidavits of the apprehending/ seizing officers:* such non-compliance shall render void and invalid the seizures and custody over seized items.

Applying the foregoing in the instant case, it is not disputed that the *authorities failed to comply with Section 21 of RA 9165* when they conducted the subject buy-bust operation. As readily admitted by the CA in the assailed Decision, "the arresting officers may not have strictly complied with requirements of Section 21, Article II of RA No. 9165."[25]

First, it is undisputed that there was **no elected official who witnessed the inventory of the alleged seized evidence and the photographing of the same.**

To reiterate, under Section 21 of RA 9165, as amended, aside from a representative of the NPS or the media, it is mandatory that an elected public official is there to witness the physical inventory of the alleged seized items and the photographing of the same.

A careful review of the records shows that the testimonies of the prosecution's witnesses *do not offer any justifiable reason* why the presence of an elected public official was not obtained. Worse, the prosecution's witnesses *failed to acknowledge or recognize* the failure to secure the presence of an elected public official.

To stress, breaches of Section 21 committed by the authorities, if left unacknowledged and unexplained, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* would necessarily have been compromised.

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[25] *Rollo*, p. 16.

While it is true that the Joint Affidavit of Complaint and Apprehension dated September 12, 2015 (Joint Affidavit) executed by PO2 Garchitorena and PO2 De Guzman states that the authorities sought "the assistance of the barangay officials to witness the inventory but to no avail,"[26] such *cannot* be considered compliance with the abovementioned rule that non-observance of rules under Section 21 shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers.

Needless to say, the said statement does not proffer any explanation as to why the seeking of assistance from barangay officials was "to no avail." The Court cannot take cognizance of such hollow excuse that is not even supported by even a semblance of elucidation.

Further, the IRR Guidelines likewise state that "[t]he elected public official is any incumbent public official regardless of the place where he/she is elected."[27] Hence, the authorities are not limited to seeking assistance from local barangay officials. Therefore, the authorities' allegation in the Joint Affidavit that they failed to secure the assistance of local barangay officials is a lame and unconvincing excuse that deserves scant consideration.

To simply dismiss the mandatory requirement of the presence of elected public officials as witnesses to buy-bust operations as a trivial and excusable requirement would be to negate the clear legislative intent of Section 21 of RA 9165, as amended.

To recall, prior to the amendment of Section 21 of RA 9165 under RA 10640 in 2014, the following witnesses were required to witness buy-bust operations: (1) the accused or his/her representative or counsel, (2) an elected public official, (3) a representative from the media, and (4) a representative from the Department of Justice (DOJ).

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[26] Records, p. 5.

[27] IRR Guidelines, Section A.1.6.

However, in order to prevent the dismissal of drug cases due to the failure of law enforcers to follow the stringent requirements of Section 21 Congress saw fit to reduce the required witnesses to: (1) the accused or his/her representative or counsel, (2) an elected public official, and (3) a representative from the NPS *or* the media.[28]

Therefore, in passing RA 10640, Congress, in the exercise of its legislative power, *deliberately decided to retain* the mandatory requirement of securing elected public officials as witnesses. To simply do away with the said requirement without any justifiable reason would be to unduly supplant the legislative intent of RA 9165, as amended by RA 10640.

The authorities cannot now bemoan that the securing of elected public officials as witnesses is too strict a rule because, with the passage of RA 10640, the strict requirement on the presence of witnesses was already made less stringent and cumbersome in order to aid the police in complying with Section 21.

Second, the prosecution likewise admits without hesitation that Rasos, Jr.'s signature on the Receipt/Inventory of Property/ Seized Evidence/s[29] dated September 12, 2015 is unavailing.

To reiterate, it is a mandatory requirement under Section 21 of RA 9165 that the accused or his/her representative and all of the aforesaid witnesses sign the copies of the inventory and be given a copy thereof.

As testified under oath by PO2 Garchitorena on cross-examination, Rasos, Jr. was not able to sign the aforementioned document:

Q And you will agree with me that the inventory that you earlier identified does not reflect the signature of the accused as witness?

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[28] See Committee Report No. 88 on House Bill Number 2285, House of Representatives, 16th Congress.

[29] Records, p. 12.

A Yes, ma'am. He did not.[30]

Hence, while testifying that Rasos, Jr. was not able to sign the certificate of inventory, the reason why he was not able to do so was not even explained. There was no testimony on record that alleges and proves that Rasos, Jr. refused to sign the document.

Moreover, under the IRR Guidelines, in cases wherein the accused refuses to sign the certificate of inventory, "it shall be stated 'refused to sign' above their names in the certificate of inventory of the apprehending or seizing officer."[31] In the certificate of inventory, both the name of Rasos, Jr. and the words "refused to sign" were not inscribed therein. Hence, Rasos, Jr.'s failure to sign the inventory certificate cannot be ascribed to a refusal to sign.

Third, the prosecution's main witness, PO2 Garchitorena, admitted on cross-examination that there were no photographs taken during the inventory and markings of the alleged seized drug specimens:

Q **Were photographs taken during the inventory and markings of the recovered items?**

A **None[,] ma'am**.[32] (Emphasis supplied)

An examination of the prosecution's evidence reveals that the police were only able to take a photograph of Rasos, Jr.'s mugshot, as well as a photograph of the alleged marked money and the two sachets.[33]

To stress, Section 21 of RA 9165 requires that the photographing of the seized drug specimens shall be done during the conduct of the physical inventory of the seized items, which shall be undertaken immediately after seizure and confiscation.

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[30] TSN, May 25, 2016, p. 20.

[31] IRR Guidelines, Section A.1.5.

[32] TSN dated May 25, 2016, p. 21.

[33] Records, p. 13.

Hence, while the prosecution was able to present a photograph of the alleged marked money and the two sachets, considering that PO2 Garchitorena unequivocally admitted under oath that *no photographs were taken during the inventory and marking,* such photograph was taken at some other time other than during the conduct of the physical inventory. Therefore, the mandatory requirement of photographing under Section 21 was not satisfied.

Lastly, to prevent switching or contamination, the IRR Guidelines require that "[t]he marking is the placing by the apprehending officer or the poseur-buyer of his/her initial and signature on the item/s seized."[34]

The photograph of the two sachets allegedly retrieved by the police indubitably shows that the initials inscribed on the sachets are those of Rasos, Jr. and not the apprehending officer/ poseur-buyer. Nor were the sachets signed by the latter.

The Last Word

On a final note, the Court observed that both the RTC and CA, in putting much reliance on the presumption of regularity of the police operations, seriously overlooked the long-standing legal tenet that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent.[35] And this presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases that it has proven the guilt of the accused beyond reasonable doubt,[36] with each and every element of

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[34] IRR Guidelines, Section A.1.2. Underscoring supplied.

[35] 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."

[36] The Rules of Court provides that proof beyond reasonable doubt does not mean such a degree of proof as excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind. (RULES OF COURT, Rule 133, Sec. 2).

the crime charged in the information proven to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[37] Differently stated, there must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction.

It is worth emphasizing that ***this burden of proof never shifts*****.** Indeed, the accused need not present a single piece of evidence in his defense if the State has not discharged its *onus*. The accused can simply rely on his right to be presumed innocent.

In this connection, the prosecution therefore, in cases involving dangerous drugs, **always** has the burden of proving compliance with the procedure outlined in Section 21. As the Court stressed in *People v. Andaya*:[38]

> x x x We should remind ourselves that we cannot presume that the accused committed the crimes they have been charged with. **The State must fully establish that for us.** If the imputation of ill motive to the lawmen is the only means of impeaching them, then that would be the end of our dutiful vigilance to protect our citizenry from false arrests and wrongful incriminations. We are aware that there have been in the past many cases of false arrests and wrongful incriminations, and that should heighten our resolve to strengthen the ramparts of judicial scrutiny.
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> **Nor should we shirk from our responsibility of protecting the liberties of our citizenry just because the lawmen are shielded by the presumption of the regularity of their performance of duty. The presumed regularity is nothing but a purely evidentiary tool intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime**.[39] (Emphasis and underscoring supplied)

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[37] *People v. Belocura,* 693 Phil. 476, 503-504 (2012).

[38] 745 Phil. 237 (2014).

[39] *Id.* at 250-251.

The Court cannot stress enough that the accused can rely on his right to be presumed innocent. It is thus immaterial, in this case or in any other cases involving dangerous drugs, that the accused put forth a weak defense.

In sum, RA 9165 as well as the numerous decisions of the Court state that non-compliance of Section 21 of RA 9165 shall render void and invalid the seizures and custody over alleged seized drug specimen if such non-compliance is left unrecognized and unjustified by the police. With the clear failure on the part of the prosecution to recognize and justify the numerous violations of Section 21 committed by the police, the Court renders the alleged seized drug specimen in relation to the illegal sale of dangerous drugs charge inadmissible. Consequently, the prosecution failed to establish the *corpus delicti* of the crime.

Rasos, Jr. must perforce be acquitted.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated July 27, 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 09737 is hereby **REVERSED** and **SET ASIDE.** Accordingly, accused-appellant Jose Rasos, Jr. *y* Padollo @ "Jose" is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

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

SO ORDERED.

Carpio,[*] *Acting C.J.* (*Chairperson*), *Reyes, J. Jr., Lazaro-Javier,* and *Zalameda, JJ.*, concur.

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[*] Designated as Acting Chief Justice per Special Order No. 2703 dated September 10, 2019.

SECOND DIVISION

[G.R. No. 224186. September 23, 2019]

SPOUSES EMILIO MANGARON, JR. and ERLINDA MANGARON, *petitioners, vs.* **HANNA VIA DESIGN & CONSTRUCTION, owned and managed by ENGR. JAMES STEPHEN B. CARPE,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY TO ASSAIL AN ORDER DENYING A DEMURRER TO EVIDENCE WHICH IS AN INTERLOCUTORY ORDER. —** An order denying a demurrer to evidence is an interlocutory order for it does not completely dispose of a case. As an interlocutory order, the remedy of an appeal is expressly excluded by Rule 41 of the Rules of Court. Alternatively, as an exception to the general rule that a writ of *certiorari* is not available to challenge interlocutory orders of the trial court, a party may file a *certiorari* petition under Rule 65 of the Rules of Court, alleging that the denial is tainted with grave abuse of discretion amounting to lack or in excess of jurisdiction. x x x A demurrer to evidence is defined as an objection or exception by one of the parties in an action at law, to the effect that the evidence which his adversary produced is insufficient in point of law (whether true or not) to make out his case or sustain the issue.

2. **CIVIL LAW; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; AS BETWEEN THE REGISTERED OWNER OF A VEHICLE AND THE DRIVER, THE FORMER IS CONSIDERED AS THE EMPLOYER OF THE LATTER AND PRIMARILY LIABLE FOR TORT. —** In accordance with the law on compulsory motor vehicle registration, this Court has consistently ruled that, with respect to the public and third persons, the registered owner of a motor vehicle is directly and primarily responsible for the consequences of its operation regardless of who the actual vehicle owner might be. x x x Truly, what the law seeks to prevent is the avoidance of liability in case of accidents to the detriment of the public. In case an accident occurs, the liability becomes definite and fixed as

against a specific person, so that the victim may be properly indemnified without having to go through the rigorous and tedious task of trying to identify the owner or driver of the concerned vehicle. Thus, the registration of the vehicle's ownership is indispensable in determining imputation of liability; thus, whoever has his/her name on the Certificate of Registration of the offending vehicle becomes liable in case of any damage or injury in connection with the operation of such vehicle inasmuch as the public is concerned. x x x As between the registered owner and the driver, the former is considered as the employer of the latter, and is made primarily liable for the tort under Article 2176 in relation with Article 2180 of the Civil Code. However, the application of the registered owner rule does not serve as a shield of the offending vehicle's *real* owner from any liability. The law is not inequitable. Under the principle of unjust enrichment, the registered owner who shouldered such liability has a right to be indemnified by means of a cross-claim as against the actual employer of the negligent driver. In this way, the preservation of the rights of the parties concerned would be upheld while championing the public policy behind the registered owner rule.

APPEARANCES OF COUNSEL

Urbano Palamos and Fabros for petitioners.
Duray Law Office for respondent.

D E C I S I O N

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

Before the Court is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated October 20, 2015 and the Resolution[3]

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[1] *Rollo*, pp. 25-35.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Priscilla J. Baltazar-Padilla and Socorro B. Inting, concurring; *id.* at 9-18.

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

dated April 14, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 138259.

The Relevant Antecedents

The case stemmed from a complaint for damages under Article 2184 of the Civil Code, in relation to Article 2180 of the same Code filed by spouses Emilio Mangaron, Jr. and Erlinda Mangaron (petitioners) against Hanna Via Design and Construction - Deepwell Drilling Division (respondent), Power Supply and Equipment Parts (Power Supply) and their company driver, Crestino T. Bosquit (Bosquit).[4]

In said complaint, petitioners invoked respondent's vicarious liability for the negligent driving of Bosquit of an Isuzu Truck with Plate Number PLM 612 (subject vehicle), which bumped and dragged their vehicle, a Ford Ranger Pick-Up with Plate Number XJZ-830. Said collision caused serious physical injuries to petitioners, who were confined for a whole month at the Davao Doctors Hospital in Davao City.[5]

After the petitioners presented their evidence and rested their case, respondent filed a Motion for Demurrer to Evidence.[6] Among others, respondent questioned the jurisdiction of the RTC over the case, contending that the complaint is actually a criminal action for reckless imprudence resulting to physical injuries. Thus, the complaint should have been filed in Davao City where the vehicular incident happened.

In an Order[7] dated May 20, 2014, the Regional Trial Court of Malolos City, Bulacan, Branch 11 (RTC), denied the motion. The RTC held that the issues raised, that is, the ownership of the subject vehicle, respondent's working relationship with Bosquit, and its culpability, are matters of evidence. Moreover,

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[4] *Id* at 10.

[5] *Id*.

[6] *Id*.

[7] Penned by Judge Basilio R. Gabo, Jr.; *id.* at 55.

the RTC maintained its jurisdiction over the case as the case is clearly civil in nature, a complaint for damages.

Respondent filed a Motion for Reconsideration, which was denied in an Order[8] dated September 26, 2014.

Impugning the jurisdiction of the RTC, respondent filed a Petition for *Certiorari* before the CA.

In a Decision[9] dated October 20, 2015, the CA upheld the jurisdiction of the RTC as the complaint spelled out a civil complaint for damages. However, the CA reversed the ruling of the RTC insofar as the denial of respondent's demurrer to evidence. Ruling that the RTC committed grave abuse of discretion, the CA opined that the case should have been dismissed because the registered owner of the Isuzu Truck is Power Supply, and not respondent. Thus:

> **WHEREFORE**, premises considered, the petition is **GRANTED**. The Orders dated May 20, 2014 and September 26, 2014 of the Regional Trial Court, Branch 11 (XI), Malolos City, Bulacan in Civil Case No. 103-M-2011 are hereby **REVERSED AND SET ASIDE**.
>
> **SO ORDERED.**

Unsatisfied, petitioners filed a Motion for Reconsideration, which was denied in a Resolution[10] dated April 14, 2016.

Hence, this Petition.

In essence, petitioners assail the ruling of the CA in: (a) giving due course to the Petition for *Certiorari* filed by respondent, as the assailed May 20, 2014 Order is an interlocutory order denying a motion for demurrer to evidence; and (b) setting aside such Order when there exists sufficient basis for the same.

The Issue

Summarily, the issue in this case is the propriety of the denial of the motion for demurrer to evidence.

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[8] *Id*. at 56.

[9] *Supra* note 2.

[10] *Supra* note 3.

The Court's Ruling

Petitioners argue that the CA erred in giving due course to the Petition for *Certiorari*, being the improper remedy.

The Court disagrees.

An order denying a demurrer to evidence is an interlocutory order for it does not completely dispose of a case. As an interlocutory order, the remedy of an appeal is expressly excluded by Rule 41[11] of the Rules of Court. Alternatively, as an exception to the general rule that a writ of *certiorari* is not available to challenge interlocutory orders of the trial court, a party may file a *certiorari* petition under Rule 65 of the Rules of Court, alleging that the denial is tainted with grave abuse of discretion amounting to lack or in excess of jurisdiction.[12]

As the remedy of *certiorari* lies, the determination as to whether the instant case falls under the exception, *i.e.*, whether the trial court's denial of the demurrer to evidence is issued with grave abuse of discretion, is now subject of this Court's judicial power of review.

A demurrer to evidence is defined as an objection or exception by one of the parties in an action at law, to the effect that the evidence which his adversary produced is insufficient in point of law (whether true or not) to make out his case or sustain the issue.[13]

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

No appeal may be taken from:

x x x x x x x x x

(c) An interlocutory order;

x x x x x x x x x

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

[12] See *Choa v. Choa*, 441 Phil. 175, 182 (2002).

[13] *Id.* at 183.

After a careful review of the case, the Court agrees with the CA in finding that the denial of the motion for demurrer to evidence was tainted with grave abuse of discretion. In reversing and setting aside the May 20, 2014 and September 26, 2014 Orders, the CA essentially found that the RTC failed to consider the application of the registered owner rule.

In accordance with the law on compulsory motor vehicle registration, this Court has consistently ruled that, with respect to the public and third persons, the registered owner of a motor vehicle is directly and primarily responsible for the consequences of its operation regardless of who the actual vehicle owner might be.[14]

In this case, it is undisputed that the registered owner of the subject vehicle is Power Supply. However, petitioners try to convince this Court to pronounce a ruling moored on a pragmatic stance, that is, by ruling on respondent's liability based on its admission of its ownership over the subject vehicle.

On this note, the Court stresses that the registered owner rule is clear and straightforward. Its rationale is to fix liability on the owner of a motor vehicle involved in an accident by clear identification through registration, to wit:

> Registration is required not to make said registration the operative act by which ownership in vehicles is transferred, as in land registration cases, because the administrative proceeding of registration does not bear any essential relation to the contract of sale between the parties, but to permit the use and operation of the vehicle upon any public highway (section 5 [a], Act No. 3992, as amended.) The main aim of motor vehicle registration is to identify the owner so that if any accident happens, or that any damage or injury is caused by the vehicle on the public highways, responsibility therefore can be fixed on a definite individual, the registered owner. Instances are numerous where vehicles running on public highways caused accidents or injuries to pedestrians or other vehicles without positive identification of the owner or drivers, or with very scant

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[14] *FEB Leasing and Finance Corporation v. Spouses Baylon*, 668 Phil. 184, 195 (2011).

means of identification. It is to forestall these circumstances, so inconvenient or prejudicial to the public, that the motor vehicle registration is primarily ordained, in the interest of the determination of persons responsible for damages or injuries caused on public highways.[15] (Citation omitted)

Truly, what the law seeks to prevent is the avoidance of liability in case of accidents to the detriment of the public. In case an accident occurs, the liability becomes definite and fixed as against a specific person, so that the victim may be properly indemnified without having to go through the rigorous and tedious task of trying to identify the owner or driver of the concerned vehicle.

Thus, the registration of the vehicle's ownership is indispensable in determining imputation of liability; thus, whoever has his/her name on the Certificate of Registration of the offending vehicle becomes liable in case of any damage or injury in connection with the operation of such vehicle inasmuch as the public is concerned. The case of *Equitable Leasing Corporation v. Suyom*[16] is illustrative:

Regardless of sales made of a motor vehicle, the registered owner is the lawful operator insofar as the public and third persons are concerned; consequently, it is directly and primarily responsible for the consequences of its operation. In contemplation of law, the owner/operator of record is the employer of the driver, the actual operator and employer being considered as merely its agent. x x x

As between the registered owner and the driver, the former is considered as the employer of the latter, and is made primarily liable for the tort under Article 2176 in relation with Article 2180 of the Civil Code.[17]

However, the application of the registered owner rule does not serve as a shield of the offending vehicle's *real* owner

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[15] *Metro Manila Transit Corporation v. Cuevas*, 759 Phil. 286, 292-293 (2015).

[16] 437 Phil. 244, 255 (2002).

[17] See *Filcar Transport Services v. Espinas*, 688 Phil. 430, 436 (2012).

from any liability. The law is not inequitable. Under the principle of unjust enrichment, the registered owner who shouldered such liability has a right to be indemnified by means of a cross-claim as against the actual employer of the negligent driver.[18] In this way, the preservation of the rights of the parties concerned would be upheld while championing the public policy behind the registered owner rule.

WHEREFORE, premises considered, the Petition is hereby **DENIED**. Accordingly, the Decision dated October 20, 2015 and the Resolution dated April 14, 2016 of the Court of Appeals in CA-G.R. SP No. 138259 are **AFFIRMED *in toto*.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 224511. September 23, 2019]

EXCHANGE CAPITAL CORPORATION, *petitioner, vs.* **BANK OF COMMERCE and BANCAPITAL DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; FAILURE TO PROSECUTE; RULING IN THE

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[18] *Id.* at 442.

[*] Acting Chief Justice per Special Order No. 2703 dated September 10, 2019.

CASES OF *MALAYAN INSURANCE CO., INC. V. IPIL INTERNATIONAL, INC.* (532 PHIL. 70), AND *SOLIMAN V. FERNANDEZ* (735 PHIL. 45) APPLICABLE TO CASE AT BAR.— Contrary to EXCAP's arguments, the appellate court properly applied the pronouncements in the *Malayan Insurance* and *Soliman* cases. In *Malayan Insurance*, the petitioner therein failed to have the case set for pre-trial despite the lapse of eight months from the date of the last order of the trial court. x x x. In reversing both the trial and appellate courts, the Court noted that the Clerk of Court has the duty to have the case set for pre-trial. While it agreed with the appellate court that this duty does not excuse the plaintiff, the petitioner therein, from prosecuting its case diligently, it opined that there is reason to believe that the petitioner therein awaited further orders from the trial court which would explain its failure to have the case set for pre-trial. The Court also noted that the petitioner had been diligent in the prosecution of its case before the order of dismissal. Ultimately, the Court ruled that the trial court erred in dismissing the case as there was no apparent pattern to delay the case and the supposed period of delay is insufficient for one to conclude the party's disinterest in pursuing its case. In *Soliman*, the respondent therein failed to set the case for trial despite receipt of the copy of the petitioner's answer. x x x. The Court ruled that the trial court erred when it ordered the dismissal of the case considering that the duty to set the case for pre-trial is not the sole responsibility of the therein respondent, but also of the branch clerk of court. Moreover, the Court did not consider the delay to be unreasonable to warrant dismissal considering that it was only a little over four months. The Court also emphasized that in the absence of a pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, the courts should decide to dispense with rather than wield their authority to dismiss, as in the case at bar.

2. ID.; ID.; APPEALS; THE DUTY TO TRANSMIT THE RECORDS OF FINAL AND EXECUTORY CASES FROM THE SUPREME COURT TO THE COURT OF ORIGIN BELONGS TO THE CLERK OF COURT. — The considerations which moved this Court to rule for the reinstatement of the cases in *Malayan Insurance* and *Soliman* are also present here. Here, similar to

the petitioner in *Malayan Insurance* and the respondent in *Soliman*, the duty to perform the task in question does not fall on BANCOM — the duty to transmit the records of final and executory cases from this Court to the court of origin belongs to the Clerk of Court. In fact, pursuant to this duty, the Clerk of Court transmitted the records pertaining to *Bank of Commerce* to the Makati RTC as shown by its letter dated July 5, 2011. In the said letter which was addressed to the RTC of Makati, Branch 138, the Clerk of Court, through the then Deputy Clerk of Court, stated that it returned the records of Receivership and *Certiorari* cases together with a photocopy of the October 20, 2010 Decision in *Bank of Commerce*, and a photocopy of the Entry of Judgment therein.

3. ID.; ID.; DISMISSAL OF ACTIONS; FAILURE TO PROSECUTE; COURTS SHOULD DISPOSE CASES ON THEIR MERITS, RATHER THAN EXERCISE THEIR DISCRETION TO DISMISS ON THE GROUND OF FAILURE TO PROSECUTE, IF THERE IS NO PATTERN OR SCHEME TO DELAY THE DISPOSITION OF THE CASE OR A WANTON FAILURE TO OBSERVE THE MANDATORY REQUIREMENTS OF THE RULES ON THE PART OF THE COMPLAINANT. — As stressed by the Court in *Malayan Insurance* and *Soliman*, the power of trial courts to dismiss cases for failure to prosecute is not unlimited. Courts should dispose cases on their merits, rather than exercise their discretion to dismiss on the ground of failure to prosecute if there is no pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirements of the rules on the part of the complainant. Here, there is no pattern or scheme to delay the case or a wanton failure to observe the mandatory requirements of the rules. BANCOM is not even guilty of failing to perform an order of the court. As already stated, BANCOM's inaction has been sufficiently explained by it. While Judge Untalan enjoined its counsel to follow-up the transmittal of the records to Branch 149, it believed, in good faith, that the said directive has already been complied with upon the receipt of the records by the RTC of Makati City. Further, as aptly observed by the CA, BANCOM has actively prosecuted the cases, particularly the Receivership case, from 1996. In fact, the case have already weathered numerous proceedings, from the SEC, to the RTC of Makati City, to the CA, to this Court, until they were finally

remanded to the RTC of Makati Ciity. The Court concurs with the CA that these efforts by BANCOM are clear manifestations of its determination to pursue its causes of action. Certainly, dismissing these cases on mere technicality would not serve the interest of substantial justice.

APPEARANCES OF COUNSEL

Zamora & Poblador for petitioner.

Custodio Accorda Sicam De Castro Law Offices for respondent Bank of Commerce.

D E C I S I O N

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

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks to reverse and set aside the Decision[1] dated January 4, 2016 and the Resolution[2] dated April 28, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 136949, which reversed and set aside the Order[3] dated August 14, 2014, of the Regional Trial Court (RTC) of Makati City, Branch 149 in Civil Case Nos. 01-974 and 01-855 which dismissed the said cases for failure to prosecute.

The Facts

The present case is an offshoot of G.R. No. 172393, entitled *Bank of Commerce v. Hon. Estela Perlas-Bernabe* (*Bank of Commerce*),[4] promulgated on October 20, 2010 and became

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[1] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Japar B. Dimaampao and Carmelita Salandanan Manahan, concurring; *rollo* (Vol. I), pp. 67-76.

[2] *Id.* at 78-80.

[3] Penned by Acting Presiding Judge Mona Lisa V. Tiongson-Tabora; *id.* at 81.

[4] 648 Phil. 326 (2010).

final and executory on January 11, 2011.[5] The present case, thus, shares some factual antecedents with the *Bank of Commerce* case. As could be gathered from the *Bank of Commerce*, the background facts could be summarized as follows:

> On February 7, 1996, herein respondent Bank of Commerce (BANCOM) filed with the Securities and Exchange Commission (SEC) a petition for the involuntary dissolution, liquidation, and receivership of respondent Bancapital Development Corporation (BANCAP), docketed as SEC Case No. 02-96-5259 (Receivership case). BANCOM alleged that BANCAP defrauded it by engaging in the unauthorized trade of government securities and deliberately transferring its assets to petitioner Exchange Capital Corporation (EXCAP) in order to keep them beyond the reach of its creditors. EXCAP was allowed to intervene in the case. Thereafter, a Receivership Committee was constituted by the SEC.
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> After evaluating the evidence of the parties, the Receivership Committee submitted a report to the SEC stating that it found BANCAP to be insolvent. The Receivership Committee further admitted that it was unable to take custody or control of any of BANCAP's assets. Commenting on the report, EXCAP advanced that the hearing officer must only affirm the Receivership Committee's finding that it (EXCAP) had never been in possession of BANCAP's assets. In reply, BANCOM pointed out that contrary to EXCAP's understanding, the Receivership Committee did not make a categorical finding that EXCAP was not in possession of BANCAP's assets.
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> On October 22, 1999, Hearing Officer Marciano Bacalla, Jr. (Hearing Officer Bacalla) issued an Order accepting the Committee Report and holding, in explicit terms, that EXCAP was not in possession of BANCAP's assets. BANCOM moved for reconsideration, but it was denied. This prompted BANCOM to file on January 18, 2000, a

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[5] *Rollo* (Vol. II), p. 731.

Petition for *Certiorari* dated January 6, 2006 before the SEC, docketed as SEC EB Case No. 692 (*Certiorari* case), against Hearing Officer Bacalla. On April 19, 2000, Hearing Officer Bacalla issued another order dismissing the Receivership case.

Meanwhile, Republic Act (R.A.) No. 8799, otherwise known as "The Securities Regulation Code" was approved on July 19, 2000 and came into effect on August 8, 2000. Section 5.2 of R.A. No. 8799 transferred to the courts of general jurisdiction the SEC's jurisdiction over some cases, including jurisdiction over the Receivership and *Certiorari* cases. On the basis of this statutory development, the SEC *En Banc* in the *Certiorari* case, issued an Order dated November 23, 2000 expressly declaring that it should not be acting on the petition and supposedly denying due course to it on the ground that the SEC's oversight functions relative to the acts of its hearing officers had become *functus officio* with the jurisdictional transfer thereof to the regional trial courts. Nevertheless, the SEC *En Banc* ordered the transfer of the records to the RTC of Makati City, Branch 138 for inclusion in the main records. Consequently, the *Certiorari* case was transferred to the RTC of Makati City, Branch 142 and was docketed as Civil Case No. 01-974; while the Receivership case was transferred to the RTC of Makati City, Branch 138 and was docketed as Civil Case No. 01-855.

BANCOM, seeking the consolidation of the aforesaid cases, filed a Motion to Consolidate before Branch 142, but the same was denied. BANCOM brought the case to the CA *via* a petition for *certiorari* under Rule 65 of the Rules of Court, but the same was dismissed. In denying the petition, the CA ruled that there was nothing more to consolidate with the *Certiorari* case since the dismissal of the Receivership case had already attained finality. The CA noted that no appeal was taken from Hearing Officer Bacalla's Order dated April 19, 2000. It likewise ruled that the SEC's November 23, 2000 Order already

attained finality. As such, there is nothing more to consolidate. This prompted BANCOM to elevate an appeal to this Court.

On October 20, 2010, the Court granted BANCOM's Petition and ordered the consolidation of the *Certiorari* case with the Receivership case before Branch 138. It further ordered the transfer of the records of the *Certiorari* case to Branch 138. The Court disagreed with the CA that Hearing Officer Bacalla's Order dated April 19, 2000 had become final and executory noting BANCOM's Motion (to Recall the April 19, 2000 Order) dated May 4, 2000, which unfortunately has not been acted upon. The Court treated BANCOM's motion to recall as a motion for reconsideration which prevented the April 19, 2000 Order from attaining finality.

Likewise, the Court did not consider the SEC *En Banc's* November 23, 2000 Order as a final disposition of the *Certiorari* case. The Court explained that the SEC *En Banc* merely acknowledged that it lost its jurisdiction over the *Certiorari* case. As a consequence, the SEC *En Banc* chose not to act on BANCOM's Petition for *Certiorari*.

EXCAP moved for reconsideration, but the same was denied by the Court in its Resolution[6] dated December 15, 2010. On January 11, 2011, the *Bank of Commerce* case has been recorded in the Book of Entries of Judgments and has become final and executory.[7]

Meanwhile, on June 27, 2006, or before the promulgation of the *Bank of Commerce*, the Court issued a Resolution revoking the designation of Branch 138 as a special commercial court and in its stead, designating Branch 149 of the RTC of Makati City as the special commercial court. Pursuant to this resolution, on July 28, 2006, Judge Jenny Lind R. Aldecoa-Delorino of Branch 138 issued two Orders[8] separately directing the immediate transmittal of the records of the Receivership and

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[6] *Rollo* (Vol. II), pp. 679-680.

[7] *Supra* note 5.

[8] *Rollo* (Vol. I), pp. 655-656.

Certiorari cases to Branch 149. Judge Cesar O. Untalan (Judge Untalan), then the Presiding Judge of Branch 149, noted the transmittal in an Order dated August 29, 2006.

Later, or on November 26, 2010 and after notice of the Court's decision in *Bank of Commerce*, Judge Untalan issued an Order[9] setting the case for hearing on February 8, 2011. After the hearing on February 8, 2011, several dates were set for the continuation of the hearing of the case. During the March 7, 2011 hearing, Judge Untalan noted that Branch 149 have not yet received the records of the consolidated cases.[10] Subsequently, during the April 25, 2011 hearing of the case, Judge Untalan issued an Order[11] suspending the consolidated cases in view of the "pending" matters before this Court in connection with *Bank of Commerce*. Apparently, EXCAP filed another motion for reconsideration before this Court in *Bank of Commerce*. Judge Untalan further enjoined the parties to "make a follow-up with the Supreme Court on the return of the records" of the consolidated cases.

Meanwhile, on June 1, 2011, the Court denied EXCAP's second motion for reconsideration.[12] Subsequently, the Court's Judicial Records Office, Judgment Division (JRO-JD) sent a letter[13] dated July 5, 2011 informing BANCOM, EXCAP, BANCAP, as well as the CA and the RTC of Makati City Branches 138 and 142 of the Entry of Judgment in *Bank of Commerce*. Also attached to the said letter is a copy of the aforementioned Entry of Judgment.[14]

It would appear that the Court's Office of the Clerk of Court, through the then Deputy Clerk of Court, also sent a letter[15]

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[9] *Rollo* (Vol. II), p. 681.

[10] *Id*. at 714.

[11] *Id*. at 726.

[12] *Id*. at 727-728.

[13] *Id*. at 729-730.

[14] *Id*. at 731.

[15] *Rollo* (Vol. I), pp. 118-119.

dated July 5, 2011 to the RTC of Makati City, Branch 138, informing the latter that it is returning the records of the Receivership and *Certiorari* cases. The said letter was received by Branch 138 on July 20, 2011 as indicated by the receiving stamp. Branches 142 and 149 were also furnished copies of the said letter.

In his Order[16] dated July 28, 2011, Judge Untalan noted the JRO-JD's July 5, 2011 letter and the attached Entry of Judgment. In the same Order, Judge Untalan again enjoined the parties to follow-up for the return of the records of the consolidated cases.

BANCOM claimed that in compliance with the July 28, 2011 Order, its counsel sent a messenger to this Court to follow-up the return of the records of the consolidated cases.[17] The messenger, however, reported that the subject records have already been transmitted to the CA and to the RTC of Makati as shown by the JRO-JD's transmitted letter[18] dated July 5, 2011 which states that the JRO-RD is returning the records of the consolidated cases to Branch 138. It would appear from the said transmittal letter that Branches 142 and 149 were also furnished with copies of the transmittal letter.

The August 14, 2014 Order of Branch 149

On August 19, 2014, BANCOM received a copy of Branch 149's August 14, 2014 Order dismissing the consolidated cases for failure to prosecute. In dismissing the subject cases, Judge Mona Lisa V. Tiongson-Tabora (Judge Tiongson-Tabora), then Acting Presiding Judge of Branch 149, explained that the parties have failed to comply with Judge Untalan's July 28, 2011 Order to follow-up the return of the subject records. Judge Tiongson-Tabora considered this non-compliance as a clear indication that the parties are no longer interested in the final disposition of the consolidated cases.

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[16] *Rollo* (Vol. II), p. 732.

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

[18] *Id.* at 735-736.

Aggrieved, BANCOM filed a petition for review under Rule 43 of the Rules of Court before the CA questioning the dismissal of the consolidated cases.

Ruling of the CA

In its Decision dated January 4, 2016, the CA reversed and set aside the RTC's August 14, 2014 Order, and reinstated the Receivership and *Certiorari* cases. Citing the cases of *Soliman v. Fernandez*[19] and *Malayan Insurance Co., Inc. v. Ipil International, Inc.*,[20] among others, the appellate court opined that the trial court erred when it dismissed the consolidated cases. It explained that the power of the trial court to dismiss cases on the ground of failure to prosecute is not without limitations. It continued that the prerogative of the trial court to dismiss must be soundly exercised and not be abused, as there must be sufficient reason to justify its extinctive effect on the plaintiff's cause of action. The appellate court further stressed that courts should hear and dispense cases on their merits rather than wield their authority to dismiss in the absence of a pattern or scheme to delay the disposition of the case or wanton failure to observe the mandatory requirement of the rules.

The appellate court opined that it is hard to ascribe failure to prosecute on the part of BANCOM merely on the premise that it allegedly failed to comply with the July 28, 2011 Order. It noted that BANCOM had not been remiss in asserting its cause of action against EXCAP all these years, and that it actively participated in the proceedings before the SEC, the RTC, and the CA, and even before this Court. The appellate court also lamented that BANCOM was not even given the opportunity to explain its supposed failure to comply with Branch 149's directive. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the instant petition is GRANTED. Accordingly, the August 14, 2014 Order of the Regional

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[19] 735 Phil. 45 (2014).

[20] 532 Phil. 70 (2006).

Trial Court, Branch 149, Makati City dismissing Civil Case Nos. 01-974 & 01-855 is hereby REVERSED and SET ASIDE.

As such, the court *a quo* is directed to REINSTATE Civil Case Nos. 01-974 & 01-855 in its docket and to further proceed hearing the cases and resolve the same on the merits with dispatch.

No pronouncement as to costs.

SO ORDERED.[21]

EXCAP moved for reconsideration, but the same was denied by the CA in its Resolution dated April 28, 2016.

Hence, this Petition.

The Issue

WHETHER THE [CA] COMMITTED REVERSIBLE ERROR WHEN IT REINSTATED THE RECEIVERSHIP AND *CERTIORARI* CASES AND ORDER THE CONTINUATION OF THE PROCEEDINGS THEREON.

EXCAP asserts that the RTC properly dismissed the consolidated cases, and that the CA seriously erred when it reversed the Order of the RTC. EXCAP argues that the legal precedents cited by the CA find no application to the present case. It contends that the RTC did not err when it dismissed the consolidated cases due to BANCOM's failure to prosecute the cases for an unreasonable length of time of three years, and for its failure to take steps in ensuring the proper transmittal of the records to Branch 149. EXCAP insists that while the transmittal of the records is the responsibility of the court staff, BANCOM's failure to take any step to ensure the proper transmittal of the records for more than three years is inexcusable.

The Court's Ruling

EXCAP avers that the cases cited by the CA are inapplicable to the present consolidated cases. It insists that the factual antecedents obtaining in the *Malayan Insurance* and *Soliman*

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[21] *Rollo* (Vol. I), p. 75.

cases are very different from the factual circumstances involved in these cases. It points out that Branch 149 ordered the dismissal of the consolidated cases on August 19, 2014 due to BANCOM's failure to prosecute the cases for more than three years. Thus, EXCAP insists that the CA erred when it applied *Soliman* to the consolidated cases. As such, the CA erred in its invocation of the *Malayan Insurance* and *Soliman* cases.

The Court is not impressed. Contrary to EXCAP's arguments, the appellate court properly applied the pronouncements in the *Malayan Insurance* and *Soliman* cases.

In *Malayan Insurance*, the petitioner therein failed to have the case set for pre-trial despite the lapse of eight months from the date of the last order of the trial court. Thereafter, the trial court issued an order dismissing the case for the petitioner's "failure to take the necessary steps in prosecuting its case." The appellate court concurred with the trial court when the case was brought to it on appeal. Subsequently, the case reached this Court where it was declared that there was no failure to prosecute. In reversing both the trial and appellate courts, the Court noted that the Clerk of Court has the duty to have the case set for pre-trial. While it agreed with the appellate court that this duty does not excuse the plaintiff, the petitioner therein, from prosecuting its case diligently, it opined that there is reason to believe that the petitioner therein awaited further orders from the trial court which would explain its failure to have the case set for pre-trial. The Court also noted that the petitioner had been diligent in the prosecution of its case before the order of dismissal.

Ultimately, the Court ruled that the trial court erred in dismissing the case as there was no apparent pattern to delay the case and the supposed period of delay is insufficient for one to conclude the party's disinterest in pursuing its case.

In *Soliman*, the respondent therein failed to set the case for trial despite receipt of the copy of the petitioner's answer. After four months, the trial court ordered the dismissal of the case on the ground of respondent's failure to prosecute. On

appeal, the CA reversed the order of dismissal and remanded the case to the trial court. Thereafter, the petitioner therein elevated the case to this Court. The Court eventually affirmed the CA. The Court ruled that the trial court erred when it ordered the dismissal of the case considering that the duty to set the case for pre-trial is not the sole responsibility of the therein respondent, but also of the branch clerk of court. Moreover, the Court did not consider the delay to be unreasonable to warrant dismissal considering that it was only a little over four months.

The Court also emphasized that in the absence of a pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, the courts should decide to dispense with rather than wield their authority to dismiss, as in the case at bar.

The considerations which moved this Court to rule for the reinstatement of the cases in *Malayan Insurance* and *Soliman* are also present here.

Here, similar to the petitioner in *Malayan Insurance* and the respondent in *Soliman*, the duty to perform the task in question does not fall on BANCOM — the duty to transmit the records of final and executory cases from this Court to the court of origin belongs to the Clerk of Court. In fact, pursuant to this duty, the Clerk of Court transmitted the records pertaining to *Bank of Commerce* to the Makati RTC as shown by its letter[22] dated July 5, 2011. In the said letter which was addressed to the RTC of Makati, Branch 138, the Clerk of Court, through the then Deputy Clerk of Court, stated that it returned the records of Receivership and *Certiorari* cases together with a photocopy of the October 20, 2010 Decision in *Bank of Commerce*, and a photocopy of the Entry of Judgment therein.

Considering that the said letter was received by Branch 138 on July 20, 2011, it could be presumed that the records of the Receivership and *Certiorari* cases have also been received by Branch 138 on the said date. Thus, for all intents and purposes,

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[22] *Rollo* (Vol. I), pp. 118-119.

the Clerk of Court fulfilled its duty to transmit the records of the subject cases to the court of origin which is the RTC of Makati, albeit not to the proper branch. Nonetheless, from that point, it has become a simple matter of transmitting the records of the subject cases from Branch 138 to Branch 149. And as admitted by EXCAP, the duty to transmit the records of the case to Branch 149 belongs to the court staff,[23] not with BANCOM. Indeed, as explained by BANCOM in its Comment, after the return of the records from this Court to the RTC of Makati, it had no reason to believe that the same would not be transmitted to the custody of Branch 149 especially considering that Branch 138 had long indicated in its July 28, 2006 Orders that its designation as a special commercial court had been revoked, and directed that the records of the Receivership and *Certiorari* cases be immediately transmitted to Branch 149.[24]

EXCAP also insists that *Malayan Insurance* and *Soliman* find no application here because BANCOM's delay in taking any action for three years could not be equated with the four-month delay in *Soliman* or the eight-month delay in *Malayan Insurance*. It asserts that BANCOM's failure to prosecute its action for an unreasonable length of time of three years is utterly inexcusable.

Ordinarily, the Court would agree with EXCAP that inaction for three years may constitute a ground for the dismissal of a case for failure to prosecute. Nevertheless, a careful review of the case would reveal that, just like in *Malayan Insurance*, there is reason to believe that BANCOM awaited further orders from Branch 149 which would explain its inaction during the said period.

As explained by BANCOM in its Comment, it was of the belief that Judge Untalan was in the process of issuing a resolution on the pending incidents, which include, among others, its Motion (to Recall Order dated April 19, 2000) dated May 4, 2000.

It must be recalled that in *Bank of Commerce*, the Court merely resolved the issue of whether the Receivership and

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[23] *Id*. at 54.

[24] *Id*. at 568.

Certiorari cases could still be consolidated. It never touched on the propriety and correctness of Hearing Officer Bacalla's April 19, 2000 Order. As such, it is clear that there was no resolution yet as to BANCOM's Motion (to Recall Order dated April 19, 2000) dated May 4, 2000. Thus, the Court opines that BANCOM is justified into thinking that Judge Untalan was then in the process of resolving BANCOM's motion.

It must also be considered that on April 25, 2011, Judge Untalan issued an Order suspending the consolidated cases pending the final resolution of *Bank of Commerce*. However, even after being informed of the finality of *Bank of Commerce*, Judge Untalan never formally resumed the hearing on the consolidated cases. Instead, he only enjoined the counsels for the respective parties to follow-up the return of their records in his Order dated July 28, 2011. And as already stated, BANCOM was justified into believing that Judge Untalan's July 28, 2011 Order has already been complied with after the return of the records to the RTC of Makati.

Very clearly, similar to *Malayan Insurance*, there is reason to believe that BANCOM awaited further orders from Branch 149 which would explain its inaction.

To be sure, BANCOM is not entirely faultless for its inaction for more than three years. Indeed, it could have moved the case forward by filing a motion for the early resolution of the pending matters, even if it was of the belief that Judge Untalan was in the process of doing so. It could have also reminded Branch 149 that the records of the consolidated cases have already been returned to the RTC of Makati City, through Branch 138. Even a simple inquiry with Branch 149's staff regarding the status of the cases could have dispelled the notion that it was no longer interested in pursuing its causes of action. Nevertheless, the Court is not convinced that BANCOM's failure to do any of these acts or any similar act would constitute sufficient reason for dismissal on the ground of failure to prosecute.

As stressed by the Court in *Malayan Insurance* and *Soliman*, the power of trial courts to dismiss cases for failure to prosecute

is not unlimited. Courts should dispose cases on their merits, rather than exercise their discretion to dismiss on the ground of failure to prosecute if there is no pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirements of the rules on the part of the complainant.

Here, there is no pattern or scheme to delay the case or a wanton failure to observe the mandatory requirements of the rules. BANCOM is not even guilty of failing to perform an order of the court. As already stated, BANCOM's inaction has been sufficiently explained by it. While Judge Untalan enjoined its counsel to follow-up the transmittal of the records to Branch 149, it believed, in good faith, that the said directive has already been complied with upon the receipt of the records by the RTC of Makati City.

Further, as aptly observed by the CA, BANCOM has actively prosecuted the cases, particularly the Receivership case, from 1996. In fact, the cases have already weathered numerous proceedings, from the SEC, to the RTC of Makati City, to the CA, to this Court, until they were finally remanded to the RTC of Makati City. The Court concurs with the CA that these efforts by BANCOM are clear manifestations of its determination to pursue its causes of action. Certainly, dismissing these cases on mere technicality would not serve the interest of substantial justice.

WHEREFORE, the present Petition for Review on *Certiorari* is **DENIED**. The Decision dated January 4, 2016 and the Resolution dated April 28, 2016 of the Court of Appeals in CA-G.R. SP No. 136949 are **AFFIRMED**.

SO ORDERED.

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

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[*] Designated as Acting Chief Justice per Special Order No. 2703 dated September 10, 2019.

EN BANC

[G.R. No. 184389. September 24, 2019]

ALLAN MADRILEJOS, ALLAN HERNANDEZ, GLENDA GIL, and LISA GOKONGWEI-CHENG, *petitioners, vs.* **LOURDES GATDULA, AGNES LOPEZ, HILARION BUBAN, and THE OFFICE OF THE CITY PROSECUTOR OF MANILA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; THE JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; COURTS DECLINE JURISDICTION OVER A MOOT AND ACADEMIC CASE OR DISMISS IT ON GROUND OF MOOTNESS, AS JUDICIAL POWER MUST BE BASED ON AN ACTUAL JUSTICIABLE CONTROVERSY AT WHOSE CORE IS THE EXISTENCE OF A CASE INVOLVING RIGHTS WHICH ARE LEGALLY DEMANDABLE AND ENFORCEABLE; EXCEPTIONS; THE DISMISSAL OF ALL CRIMINAL CHARGES AGAINST PETITIONERS FOR VIOLATION OF ORDINANCE NO. 7780 HAS RENDERED THE PETITION CHALLENGING THE CONSTITUTIONALITY OF ORDINANCE NO. 7780 MOOT AND ACADEMIC. — In light of the dismissal with prejudice of all criminal charges against petitioners, this case has clearly been rendered moot and academic. A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness. This pronouncement traces its current roots from the express constitutional rule under paragraph 2 of Section 1, Article VIII of the 1987 Constitution that "[j]udicial power includes the duty of the courts of justice to settle *actual controversies* involving rights which are legally demandable and enforceable x x x." Judicial power, in other words, must be based on an *actual justiciable controversy* at whose core is the existence of a case involving rights which are legally demandable and enforceable. Without this feature, courts have no jurisdiction to act. True, exceptions to the general principle

on moot and academic have been developed and recognized through the years. At present, courts will decide cases, otherwise moot and academic, if it feels that: (a) there is a grave violation of the Constitution; (b) the situation is of exceptional character and paramount public interest is involved; (c) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (d) the case is capable of repetition yet evading review. x xx[N]one of these exceptions obtains here.

2. ID.; ID.; ID.; ID.; ID.; EXCEPTION TO THE DOCTRINE ON MOOTNESS; THE CAPABLE OF REPETITION YET EVADING REVIEW EXCEPTION APPLIES ONLY WHERE THE CHALLENGED ACTION IS IN ITS DURATION TOO SHORT TO BE FULLY LITIGATED PRIOR TO ITS CESSATION OR EXPIRATION, AND THERE IS A REASONABLE EXPECTATION THAT THE SAME COMPLAINING PARTY WOULD BE SUBJECTED TO THE SAME ACTION AGAIN; ABSENT IN CASE AT BAR. — x x x. [T]he Court *En Banc* would categorically adopt the two-requirement rule in *Pormento v. Estrada* x x x. **What may most probably come to mind is the "capable of repetition yet evading review" exception. However, the said exception applies only where the following two circumstances concur: (1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration and (2) there is a reasonable expectation that the same complaining party would be subjected to the same action again** . x x x. x x x. In this case, it must be noted that petitioners' purpose in filing the present action was to stop the conduct of the preliminary investigation into their alleged violation of an unconstitutional statute — a process that concludes with an Order whether or not to indict petitioners. Relatedly, and as it happened in this case, such an Order, if an when issued, is not of such inherently short duration that it will lapse before petitioners are able to see it challenged before a higher prosecutorial authority (*i.e.*, the Department of Justice) or the courts. In fact, and unless reversed by the Secretary of Justice or by the courts, an order to indict does not lapse. Thus, the time constraint that justified the application of the exception in *Southern Pacific Terminal Co.* (two-year validity of an ICC cease and desist order) and *Roe* (266-day human gestation period) does not exist here. Furthermore, when

the criminal charges against petitioners were dismissed with prejudice, they can no longer be refiled without offending the constitutional proscription against double jeopardy. Petitioners have also failed to demonstrate a reasonable likelihood that they will once again be hailed before the OCP Manila for the same or another violation of Ordinance No. 7780. It should be noted that the OCP Manila did not even question the dismissal of the case. There is likewise no showing that the pastors and preachers who initiated the complaint here filed, or have threatened to file, *new* charges against petitioners, over *new* material published in FHM Philippines alleged to be obscene, after the case below was dismissed as early as July 19, 2016.

3. ID.; ID.; BILL OF RIGHTS; FREEDOM OF SPEECH AND OF EXPRESSION; ORDINANCE NO. 7780, AN ANTI-OBSCENITY STATUTE, CANNOT BE FACIALLY ATTACKED ON THE GROUND OF OVERBREADTH, AS OVERBREADTH CHALLENGE APPLIES ONLY TO FREE SPEECH CASES AND OBSCENITY IS NOT PROTECTED SPEECH. — Petitioners challenge the constitutionality of Ordinance No. 7780, alleging that it defines the terms "obscene" and "pornography" in such as way that a very broad range of speech and expression are placed beyond the protection of the Constitution, thus violating the constitutional guarantee to free speech and expression. Specifically, petitioners take issue with the "expansive" language of Ordinance No. 7780 which, petitioners claim, paved the way for complainants, a group of pastors and preachers, to impose their view of what is "unfit to be seen or heard" and "violate[s] the proprieties of language and behavior." Petitioners' arguments are facial attacks against Ordinance No. 7780 on the ground of overbreadth. As will be shown, however, the overbreadth doctrine finds special and limited application only to free speech cases. **The present petition does not involve a free speech case; it stemmed, rather, from an obscenity prosecution.** As both this Court and the US Supreme Court have consistently held, obscenity is not protected speech. No court has recognized a fundamental right to create, sell, or distribute obscene material. Thus, a facial overbreadth challenge is improper as against an anti-obscenity statute.

4. ID.; ID.; ID.; ID.; OBSCENITY IS AN UNPROTECTED SPEECH; LAWS THAT REGULATE OR PROSCRIBE CLASSES OF SPEECH FALLING BEYOND THE AMBIT OF

CONSTITUTIONAL PROTECTION CANNOT BE SUBJECT TO FACIAL INVALIDATION BECAUSE THERE IS NO "TRANSCENDENT VALUE TO ALL SOCIETY" THAT WOULD JUSTIFY SUCH ATTACK. — Ordinance No. 7780 is a local legislation which criminalizes obscenity. Obscenity is unprotected speech. This rule is doctrinal both here and in the US. It was in 1942 when the US Supreme Court first held in the landmark case of *Chaplinsky v. New Hampshire* that the lewd and the obscene are not protected speech and therefore falls outside the protection of the First Amendment x x x. [T]his Court has long accepted *Chaplinsky's* analysis that obscenity is unprotected speech. In 1985, We held, in the case of *Gonzalez v. Katigbak*, that the law on freedom of expression frowns on obscenity and rightly so. x x x. In *Pita v. Court of Appeals*, the Court declared that "[u]ndoubtedly, 'immoral' lore or literature comes within the ambit of expression, although not its protection." In *Soriano v. Laguardia*, the Court reiterated that: x x x. It has been established in this jurisdiction that **unprotected speech or low-value expression refers to** libelous statements, **obscenity or pornography,** false or misleading advertisement, insulting or "fighting words," *i.e.*, those which by their very utterance inflict injury or tend to incite an immediate breach of peace and expression endangering national security. As this Court has recognized, laws that regulate or proscribe classes of speech falling beyond the ambit of constitutional protection cannot, therefore, be subject to facial invalidation because there is no "transcendent value to all society" that would justify such attack. This is not to suggest, however, that these laws are absolutely invulnerable to constitutional attack. A litigant who stands charged under a law that regulates unprotected speech can still mount a challenge that a statute is unconstitutional *as it is applied to him or her*. In such a case, courts are left to examine the provisions of the law allegedly violated in light of the conduct with which the litigant has been charged. 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.

PERLAS-BERNABE*, J., dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; THE JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; MOOT AND

ACADEMIC; THE ISSUE REGARDING THE CONSTITUTIONALITY OF ORDINANCE NO. 7780 IS NOT MOOTED BY THE TERMINATION OF THE CRIMINAL PROSECUTION AGAINST THE PETITIONERS FOR VIOLATION OF THE PROVISIONS OF ORDINANCE NO. 7780, FOR IT IS OF PRACTICAL LEGAL VALUE TO RESOLVE THE CONSTITUTIONALITY ISSUE BECAUSE NOTHING PREVENTS THE GOVERNMENT FROM ONCE MORE, PROSECUTING SIMILAR, FUTURE FORMS OF EXPRESSION BASED ON THE SAID ORDINANCE'S CHARACTERIZATION OF OBSCENITY. — [T]his case is not mooted by the dismissal of I.S. No. 08G-12234 because **the issue regarding the constitutionality of Ordinance No. 7780 is separate and distinct from the matter of petitioners' criminal prosecution**. From the records, it is clear that petitioners not only questioned the legality of the criminal prosecution against them but also the validity of Ordinance No. 7780 itself, invoking their constitutional right to free speech and expression. Verily, the criminal prosecution could have very well been terminated but the alleged curtailment of their free speech rights – and even so, other persons similarly situated as them – still looms in the horizon because Ordinance No. 7780 remains valid and subsisting. Case law states that: A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, **so that an adjudication of the case or a declaration on the issue would be of no practical value or use**. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve **any useful purpose or have any practical legal effect** because, in the nature of things, it cannot be enforced. x x x [T]here is clearly still practical legal value to resolve the constitutionality issue with respect to Ordinance No. 7780 because nothing prevents the government from once more, prosecuting similar, future forms of expression based on the said ordinance's characterization of obscenity. Even more, the subsistence of the subject ordinance has the effect of chilling otherwise protected forms of free speech because of the impending threat of them being tagged under Ordinance No. 7780 as obscene. Therefore, the constitutionality issue persists as a

live controversy that should not have evaded the Court's resolution on the merits on the ground of mootness.

2. ID.; ID.; BILL OF RIGHTS; FREEDOM OF SPEECH AND OF EXPRESSION; OVERBREADTH DOCTRINE; A STATUTE IS CONSIDERED VOID FOR OVERBREADTH WHEN IT OFFENDS THE CONSTITUTIONAL PRINCIPLE THAT A GOVERNMENTAL PURPOSE TO CONTROL OR PREVENT ACTIVITIES CONSTITUTIONALLY SUBJECT TO STATE REGULATIONS MAY NOT BE ACHIEVED BY MEANS WHICH SWEEP UNNECESSARILY BROADLY AND THEREBY INVADE THE AREA OF PROTECTED FREEDOMS; A STATUTE CANNOT BE PROPERLY ANALYZED FOR BEING SUBSTANTIALLY OVERBROAD IF THE COURT CONFINES ITSELF ONLY TO FACTS AS APPLIED TO THE LITIGANTS; THE FACIAL CHALLENGE AGAINST ORDINANCE NO. 7780 ON OVERBREADTH GROUNDS IS PROPER. — x x x [T]he facial challenge against Ordinance No. 7780 on overbreadth grounds is proper. To be sure, "[t]he overbreadth doctrine x x x decrees that 'a governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms[,]' and hence, a statute or ordinance may be declared as unconstitutional on this score. Jurisprudence illumines that "[b]y its nature, **the overbreadth doctrine has to necessarily apply a facial type of invalidation in order to plot areas of protected speech**, inevitably almost always under situations not before the court, that are impermissibly swept by the substantially overbroad regulation. Otherwise stated, a statute cannot be properly analyzed for being substantially overbroad if the court confines itself only to facts as applied to the litigants."

3. ID.; ID.; ID.; ID.; IF A STATUTE OR ORDINANCE FOISTS UNREASONABLE PARAMETERS FOR OBSCENITY, IT WILL HAVE THE EFFECT OF SWEEPING UNNECESSARILY AND BROADLY AREAS OF FREE SPEECH WHICH WOULD HAVE OTHERWISE BEEN DEEMED AS PROTECTED UNDER OUR CONSTITUTION; ORDINANCE NO. 7780 IS CONSTITUTIONALLY INFIRM AS IT VIOLATES SUBSTANTIVE DUE PROCESS UNDER AN "OVERBREADTH" ANALYSIS. — The *ponencia* holds that a facial challenge on overbreadth grounds is only proper to analyze protected forms of speech; hence, it is improper to examine Ordinance No. 7780's

constitutionality with the said lens because it punishes "obscenity" which is not protected speech. **The *ponencia*'s stance seems to gloss over the fact that what is being assailed is the ordinance's very characterization of obscenity**. *The Court is asked not to examine a material which is already determined to be obscene, but rather, to evaluate whether or not the very parameters used by the ordinance to determine obscenity itself is constitutionally valid*. There is a whale of a difference between the parameters of obscenity from the obscene material itself. The former is the very issue in this case and not the latter, to which the *ponencia*'s misdirected observation on overbreadth ought to apply. If a statute or ordinance foists unreasonable parameters for obscenity, then surely it will have the effect of sweeping unnecessarily and broadly areas of free speech which would have otherwise been deemed as protected under our Constitution. Accordingly, in this case, a facial challenge which assails Ordinance No. 7780's parameters of obscenity based on the overbreadth doctrine should apply. That being said, and under the overbreadth framework x x x Ordinance No. 7780 is unconstitutional . However, x x x [**o**]**rdinance No. 7780 is regarded as constitutionally infirm not because it transgresses the *Miller* test *per se*, but because it violates substantive due process under an "overbreadth" analysis, which is one of the known methods of reviewing the constitutionality of an ordinance or a law.**

4. ID.; ID.; ID.; ID.; MILLER TEST; THREE PARAMETERS TO DETERMINE WHAT IS OBSCENE OR NOT: (A) WHETHER TO THE AVERAGE PERSON, APPLYING CONTEMPORARY STANDARDS WOULD FIND THE WORK, TAKEN AS A WHOLE, APPEALS TO THE PRURIENT INTEREST; (B) WHETHER THE WORK DEPICTS OR DESCRIBES, IN A PATENTLY OFFENSIVE WAY, SEXUAL CONDUCT SPECIFICALLY DEFINED BY THE APPLICABLE STATE LAW; AND (C) WHETHER THE WORK, TAKEN AS A WHOLE, LACKS SERIOUS LITERARY, ARTISTIC, POLITICAL, OR SCIENTIFIC VALUE. — In *Fernando v. Court of Appeals*, the Court observed that: There is no perfect definition of "obscenity" but the latest word is that of *Miller v. California* which established basic guidelines, to wit: (a) whether to the average person, applying contemporary standards would find the work, taken as a whole, appeals to the prurient

interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. As indicated above, **the *Miller* test consists of three (3) parameters to determine whether or not a particular material is considered "obscene"**; in consequence, if a material is considered obscene, then it can be the subject of government regulation without infringing on the author's freedom of speech and expression. Through these three (3) parameters, the *Miller* test aims to define into demonstrable criteria what may be properly considered as "obscene" under judicial standards, and in so doing, seeks to delimit the conceptual malleability of "obscenity." Practically speaking, a person's appreciation of obscenity may be based on his or her disposition, *mores*, or values. As such, *Miller* is a jurisprudental attempt to set a uniform benchmark for such a highly-subjective term.

5. ID.; ID.; ID.; ID.; ID.; AN OBSCENITY REGULATION THAT FAILS TO TAKE INTO ACCOUNT *MILLER'S* THREE (3) PARAMETERS EFFECTIVELY FOISTS AN OVERBROAD DEFINITION OF OBSCENITY AND THEREFORE, DANGEROUSLY SUPPRESSES WHAT SHOULD HAVE BEEN PROTECTED SPEECH OR EXPRESSIONS. — Since *Miller* is a test to determine what is obscene or not, its proper application is to "zero-in" on the actual material. In this regard, ***Miller* is not – strictly speaking – the test to determine the constitutionality of a particular ordinance or statute**. However, this does not mean that the *Miller* parameters are completely taken out of the equation in constitutional entreaties related to free speech issues. **Since *Miller* provides the prevailing proper standard to determine what is obscene, an obscenity regulation that fails to take into account *Miller's* three (3) parameters effectively foists an overbroad definition of obscenity and therefore, dangerously suppresses what should have been protected speech or expressions**.

6. ID.; ID.; ID.; ID.; TERMS "SEX" AND "OBSCENITY" ARE NOT SYNONYMOUS, SUCH THAT THE PORTRAYAL OF SEX, BY ITSELF, IS NOT SUFFICIENT TO DENY A MATERIAL OF CONSTITUTIONAL PROTECTION; ORDINANCE NO. 7780 IS UNDULY EXPANSIVE, AS UNDER THE ORDINANCE'S DEFINITION OF WHAT IS OBSCENE, A

SHORT SECTION IN A PUBLICATION DESCRIBING A SEXUAL ACT WOULD BE SUFFICIENT TO PENALIZE THE PRODUCER EVEN THOUGH THE EFFECT OF THE WORK, TAKEN AS A WHOLE, IS NOT TO EXCITE THE PRURIENT INTEREST. — [T]he assailed Ordinance failed to take the *Miller's* guidelines into account in defining and penalizing obscenity under the parameters set therein. In particular, *Miller's* first guideline ("whether the average person, applying contemporary community standards would find that the work, *taken as a whole*, appeals to the prurient interest") was exceeded, considering that Ordinance No. 7780 defines as obscene the mere depiction of "sexual acts" without looking at whether the dominant theme of the work has a tendency to excite lustful thoughts. While the phrase "act calculated to excite impure imagination or arouse prurient interest" appears in the Ordinance's definition of what is obscene, it is not the sole and definitive factor on what is obscene. Notably, such phrase is qualified by the conjunction "or", which means that it is an alternative to the other four phrases contained in the passage (*i.e.*, any material or act that is **(1)** indecent, erotic, lewd, or offensive; **(2)** contrary to morals, good customs, or religious beliefs, principles or doctrines; **(3)** is unfit to be seen or heard; or **(4)** which violates the proprieties of language or behavior, regardless of the motive of the printer, publisher, seller, distributor, performer, or author of such act or material). As such, Ordinance No. 7780 is unduly expansive. Hypothetically therefore, under the Ordinance's definition, a short section in a publication describing a sexual act would be sufficient to penalize the producer even though the effect of the work, taken as a whole, is not to excite the prurient interest. This depiction is protected expression under *Miller*. It bears noting that "sex and obscenity are not synonymous," such that the portrayal of sex, by itself, is not sufficient to deny a material of constitutional protection. However, Ordinance No. 7780 attempts to criminalize such portrayal without any regard as to whether or not the dominant theme of the material "appeals to the prurient interest" as required by *Miller*.

7. ID.; ID.; ID.; ID.; THE SHOWING OF NUDITY ALONE DOES NOT RENDER A MATERIAL PATENTLY OFFENSIVE OR OBSCENE.— *Miller's* second guideline – that is, "whether the work depicts or describes, *in a patently offensive way*, sexual

conduct," was likewise ignored, since the Ordinance disallows even the mere showing of completely nude human bodies, as well as of sexual organs. As explained in *Jenkins v. Georgia*, the showing of nudity alone does not render a material patently offensive or obscene based on *Miller's* standards.

8. ID.; ID.; ID.; ID.; ORDINANCE 7780 EXEMPTS ART ONLY WHEN IT IS MEDICALLY RELATED. — [*M*]*iller's* third guideline (*i.e.*, whether the work, taken as a whole, lacks serious *literary, artistic, political*, or scientific value) was disregarded. While the Ordinance contains a *proviso* that it shall not apply to materials made or used for "science and scientific research and medical or medically related art, profession, and xxx educational purposes," this *proviso* does not include the full range of considerations in *Miller* such that those with serious literary, artistic, and political value are still considered obscene. It bears noting that the *proviso* exempts art only when it is medically related even though *Miller* does not contemplate such restrictive appreciation of a material's artistic value.

9. ID.; ID.; ID.; ID.; ID.; A STATUTE THAT IS BROADLY WRITTEN WHICH DETERS FREE EXPRESSION CAN BE STRUCK DOWN ON ITS FACE BECAUSE OF ITS CHILLING EFFECT EVEN IF IT ALSO PROHIBITS ACTS THAT MAY LEGITIMATELY BE FORBIDDEN; ORDINANCE NO. 7780 IS VOID FOR BEING OVERBROAD.— [B]y failing to take into account the *Miller* guidelines, whether implicitly or explicitly, in its characterization of what is "obscene," the assailed Ordinance unduly sweeps towards protected forms of speech and expression in violation of Section 4, Article III of the Constitution. In *Adiong v. Commission on Elections*, the Court has held that "[a] statute is considered void for overbreadth when it offends the constitutional principle that a governmental purpose to control or prevent activities constitutionally subject to state regulations may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." To be sure, the "[o]verbreadth doctrine is a principle of judicial review that a law is invalid if it punishes constitutionally protected speech or conduct along with speech or conduct that the government may limit to further a compelling government interest. **A statute that is broadly written which deters free expression can be struck down on its face because of its chilling effect even if it also prohibits acts that may**

legitimately be forbidden," as in this case. Hence, Ordinance No. 7780 is void for being overbroad. Accordingly, the petition should have been granted.

LEONEN, *J.*, *dissenting opinion*:

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PROHIBITION; A PETITION THAT SEEKS TO ENJOIN THE PROSECUTION OF CRIMINAL PROCEEDINGS WILL NOT PROSPER BECAUSE PUBLIC INTEREST REQUIRES THAT CRIMINAL ACTS BE IMMEDIATELY INVESTIGATED AND PROSECUTED FOR THE PROTECTION OF SOCIETY; EXCEPTIONS. — "The writ of prohibition is an extraordinary judicial writ issuing out of a court of superior jurisdiction and directed to an inferior court, for the purpose of preventing the inferior tribunal from usurping a jurisdiction with which it is not legally vested." A petition for prohibition seeks the issuance of a judgment ordering the respondent to stop conducting further proceedings in the specified action or matter. Here, petitioners filed a Petition for Prohibition seeking to prevent respondents from proceeding with the prosecution of I.S. No. 08G-12234 for violation of Articles 200 and 201 of the Revised Penal Code and Ordinance No. 7780. As a general rule, a petition that seeks to enjoin the prosecution of criminal proceedings will not prosper. This is because "public interest requires that criminal acts be immediately investigated and prosecuted for the protection of society." There are of course, recognized exceptions to the rule, as laid out in *Brocka v. Enrile*: a. To afford adequate protection to the constitutional rights of the accused; b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; c. When there is a pre-judicial question which is *sub judice*; d. When the acts of the officer are without or in excess of authority; e. Where the prosecution is under an invalid law, ordinance or regulation; f. When double jeopardy is clearly apparent; g. Where the court has no jurisdiction over the offense; h. Where it is a case of persecution rather than prosecution; i. Where the charges are manifestly false and motivated by the lust for vengeance; and j. When there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied. 7. Preliminary injunction has been issued by the

Supreme Court to prevent the threatened unlawful arrest of petitioners.

2. ID.; ID.; ID.; AN ACTION FOR PROHIBITION IS THE PROPER REMEDY TO ENJOIN A CRIMINAL PROSECUTION IF THE TRIBUNAL HEARING THE CASE DERIVES ITS JURISDICTION EXCLUSIVELY FROM AN UNCONSTITUTIONAL STATUTE. — An action for prohibition is the proper remedy to enjoin a criminal prosecution if the tribunal hearing the case derives its jurisdiction exclusively from an unconstitutional statute. In *People v. Vera*: The general rule, although there is a conflict in the cases, is that the writ of prohibition will not lie.... *But where the inferior court or tribunal derives its jurisdiction exclusively from an unconstitutional statute, it may be prevented by the writ of prohibition from enforcing that statute*. x x x Here, petitioners did not err in seeking a writ of prohibition to enjoin the criminal proceedings against them, since they claim that the penal statute used against them, Ordinance No. 7780, is unconstitutional.

3. POLITICAL LAW; CONSTITUTIONAL LAW; THE JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; *LOCUS STANDI*; DEFINED; BEFORE PARTIES CAN RAISE A CONSTITUTIONAL QUESTION, THEY MUST FIRST SHOW THAT DIRECT INJURY WAS SUSTAINED OR WILL BE SUSTAINED BECAUSE OF THE CHALLENGED GOVERNMENT ACT; EXCEPTIONS. — Legal standing or *locus standi* is the "right of appearance in a court of justice on a given question." It has likewise been defined as "the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case." In private suits, standing is afforded only to the real party-in-interest, one "who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit." In public suits, however, "the doctrine of standing is 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." Parties must show "a personal and substantial interest" in the case such that they "sustained or will sustain direct injury as a result of the governmental act that is being challenged." They must allege "such personal stake in the outcome of the controversy as to

assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions." The general rule, therefore, is that before parties can raise a constitutional question, they must first show that direct injury was sustained or will be sustained because of the challenged government act. Nonetheless, as discussed in *David v. Macapagal-Arroyo*, there are exceptions: Taxpayers, voters, concerned citizens, and legislators may be accorded standing to sue, provided that the following requirements are met: (1) the cases involve constitutional issues; (2) for taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional; (3) for voters, there must be a showing of obvious interest in the validity of the election law in question; (4) for concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early; and (5) for legislators, there must be a claim that the official action complained of infringes upon their prerogatives as legislators.

4. ID.; ID.; ID.; ID.; ID.; THIRD-PARTY STANDING; ACTIONS MAY BE BROUGHT ON BEHALF OF THIRD PARTIES WHERE 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; PETITIONERS HAVE THE LEGAL STANDING TO QUESTION THE CONSTITUTIONALITY OF ORDINANCE NO. 7780. — Another permissible exception is the concept of third-party standing. Actions may be brought on behalf of third parties if the following requisites 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. x x x. In this case, respondents allege that petitioners were not the proper parties to the suit since they were not the authors of articles, photographs, and graphics published in the magazine. Ordinance No. 7780, however,

penalizes the printing, publishing, distribution, or circulation of materials alleged to be obscene or pornographic. Petitioners are the editor-in-chief, managing editor, circulation manager of FHM Magazine and the president of Summit Media, the corporation that publishes the magazine alleged to contain obscene or pornographic material. They stood to be penalized under the law. The direct injury to them, therefore, is clear.

5. ID.; ID.; ID.; ID.; ID.; PARTIES MAY QUESTION THE VALIDITY OF AN ORDINANCE ON THE GROUND THAT IT VIOLATES PROVISIONS OF THE CONSTITUTION REGARDLESS OF THEIR RELIGIOUS DENOMINATION. — Respondents likewise assail petitioners' standing to argue that Ordinance No. 7780 violates the non-establishment clause, since petitioners did not allege that they were "believers or non-believers" of a particular religion or sect. But, as explained in *David*, concerned citizens may be granted standing if the case involves constitutional issues. Regardless of petitioners' religious denomination, they may question the validity of an ordinance on the ground that it violates provisions of the Constitution.

6. REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION; AN INJUNCTIVE WRIT MAY BE GRANTED AT ANY STAGE OF AN ACTION OR PROCEEDING PRIOR TO THE JUDGMENT OR FINAL ORDER, REQUIRING A PARTY OR A COURT, AGENCY OR A PERSON TO PERFORM A PARTICULAR ACT OR ACTS OR TO REFRAIN FROM PERFORMANCE THEREOF; REQUISITES FOR THE GRANT OF INJUNCTIVE WRIT. — An injunctive writ may be "granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts[.]" For it to be granted, the applicant must establish: (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring performance of an act or acts, either for a limited period or perpetually; (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is

procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

7. POLITICAL LAW; CONSTITUTIONAL LAW; THE JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; THE COURT CANNOT REVIEW CASES WHERE THE CONTROVERSY HAS BECOME MOOT; EXCEPTIONS.— Generally, this Court cannot review cases where the controversy has become moot. However, it will decide cases that have otherwise been moot "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 the 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."

8. ID.; ID.; ID.; ID.; ID.; EXCEPTION TO MOOTNESS PRINCIPLE; THE "CAPABLE OF REPETITION YET EVADING REVIEW" EXCEPTION APPLIES ONLY WHERE THE FOLLOWING TWO CIRCUMSTANCES CONCUR: (1) THE CHALLENGED ACTION IS IN ITS DURATION TOO SHORT TO BE FULLY LITIGATED PRIOR TO ITS CESSATION OR EXPIRATION AND (2) THERE IS A REASONABLE EXPECTATION THAT THE SAME COMPLAINING PARTY WOULD BE SUBJECTED TO THE SAME ACTION AGAIN. — Ordinance No. 7780 is still valid within the City of Manila. No other case has been filed to question its constitutionality. The dismissal of the criminal cases against petitioners does not mean that no other person will be penalized under the Ordinance. Its constitutionality, therefore, is an issue that is precisely "capable of repetition, yet evading review." x x x. The majority, however, points out that this dissenting opinion disregards the two-requirement rule in footnote 11 of *Pormento v. Estrada*, which reads: [T]he "capable of repetition yet evading review" exception ... applies only where the following two circumstances concur: (1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration and (2) there is a reasonable expectation that the same complaining party would be subjected to the same action again. x x x. As the facts show, at the time of the filing of the Petition, petitioners were criminally charged before the Office of the City Prosecutor of Manila for

violating the questioned Ordinance, but the charges were later dismissed after a preliminary investigation. The short duration of the criminal prosecution is the very reason for this Court to pass upon the issue of mootness. Had the criminal prosecution prospered, there would have been no issue on mootness since the threatened injury would still be existing. Likewise, as previously stated, Ordinance No. 7780 is still *valid and existing* in the City of Manila as of the writing of the Decision. Petitioners publish their magazines monthly, which means that they could be subjected to similar criminal charges for every monthly publication. There is, thus, a reasonable likelihood that petitioners could again be charged before the Ordinance's validity is addressed by *any* court. Here, the continuing existence of Ordinance No. 7780 and the continuing sale of petitioners' publications heighten the likelihood that they, or other similar publishers, will once again be charged by the Office of the City Prosecutor of Manila with the same offense. Since the issues raised here concern local legislation and its effect on constitutional freedoms, it would be far more prudent for this Court to exercise its power of judicial review to settle the controversy.

9. ID.; ID.; BILL OF RIGHTS; FREEDOM OF SPEECH AND OF EXPRESSION; VOID-FOR-VAGUENESS DOCTRINE; A STATUTE OR ACT SUFFERS FROM THE DEFECT OF VAGUENESS WHEN IT LACKS COMPREHENSIBLE STANDARDS THAT MEN OF COMMON INTELLIGENCE MUST NECESSARILY GUESS AT ITS MEANING AND DIFFER AS TO ITS APPLICATION; WHEN A PENAL STATUTE ENCROACHES UPON THE FREEDOM OF SPEECH, A FACIAL CHALLENGE GROUNDED ON THE VOID-FOR-VAGUENESS DOCTRINE IS ACCEPTABLE. — A statute may be declared invalid if it is vague—when its provisions fail to "inform those who are subject to it what conduct on their part will render them liable to its penalties." Specifically: A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its

provisions and becomes an arbitrary flexing of the Government muscle. In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council,* this Court clarified that a vagueness challenge may only be invoked in "as applied" cases. In *Disini, Jr. v. Secretary of Justice*, however, this Court expanded its application to facial challenges, on the ground that "[w]hen a penal statute encroaches upon the freedom of speech, a facial challenge grounded on the void-for-vagueness doctrine is acceptable."

10. ID.; ID.; ID.; ID.; OVERBREADTH DOCTRINE; INVALIDATES A STATUTE WHEN IT OFFENDS THE CONSTITUTIONAL PRINCIPLE THAT A GOVERNMENTAL PURPOSE TO CONTROL OR PREVENT ACTIVITIES CONSTITUTIONALLY SUBJECT TO STATE REGULATIONS MAY NOT BE ACHIEVED BY MEANS WHICH SWEEP UNNECESSARILY BROADLY AND THEREBY INVADE THE AREA OF PROTECTED FREEDOMS. — The overbreadth doctrine, on the other hand, invalidates a statute when it "offends the constitutional principle that a governmental purpose to control or prevent activities constitutionally subject to state regulations may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." *Southern Hemisphere* limits the application of the overbreadth doctrine only to freedom of expression cases: By its nature, the overbreadth doctrine has to necessarily apply a facial type of invalidation in order to plot areas of protected speech. Inevitably almost always under situations not before the court, that are impermissibly swept by the substantially overbroad regulation. Otherwise stated, a statute cannot properly analysed for being substantially overbroad if the court confines itself only to facts as applied to the litigants. The same case, however, clarifies that "the primary criterion in the application of the doctrine is not whether the case is a freedom of speech case, but rather, whether the case involves an as-applied or facial challenge."

11. ID.; ID.; ID.; ID.; ID.; ANTI-OBSCENITY STATUTES MAY STILL BE SUBJECTED TO A CONSTITUTIONAL CHALLENGE TO DETERMINE IF THEY VIOLATE CERTAIN CONSTITUTIONAL FREEDOMS; ONLY WHEN THE STATUTE OVERCOMES QUESTIONS OF OVERBREADTH CAN ANY SPEECH OR EXPRESSION PROSCRIBED BY IT

BE CONSIDERED OBSCENE OR UNPROTECTED SPEECH. — Petitioners in this case assail the constitutionality of Ordinance No. 7780 on the ground that its provisions were unduly expansive and encroaches upon protected expression. They appear to be arguing that the statute, on its face, was overbroad. Thus, an overbreadth analysis must be applied to determine the validity of Ordinance No. 7780. In Nicolas-Lewis, this Court subjected Section 36.8 of Republic Act No. 9189, as amended, to a facial challenge on the ground of overbreadth, as it was alleged that this provision, on its face, violated the right to free speech, expression, and assembly, as welll as the right of suffrage. x x x. The question before this Court is whether the enumeration in the Ordinance is so overbroad that it invades the areas of protected freedoms. We are asked to resolve whether it contains, on its face, provisions that result in a "chilling effect" on constitutionally-protected speech and expression. The majority submits that "a facial overbreadth challenge is improper as against an anti-obscenity statute" since obscenity has always been considered unprotected speech. However, before speech may be considered obscene—and therefore, unprotected speech—prior legislation must first declare it to be so. Jurisprudence has yet to accept the idea of any speech or expression that is obscene per se. Thus, anti-obscenity statutes may still be subjected to a constitutional challenge to determine if they violate certain constitutional freedoms. Only when the statute overcomes questions of overbreadth can any speech or expression proscribed by it be considered obscene or unprotected speech. The problem in this case is *how* to determine if the provisions of Ordinance No. 7780 are overbroad. This Court must, thus, resort to more specific tests, and in this particular instance, the *Miller* test suffices.

12. ID.; ID.; ID.; ID.; ORDINANCE NO. 7780 FAILS TO SPECIFY WHAT MATERIAL OR ACT MAY BE CONSIDERED "INDECENT, EROTIC, LEWD OR OFFENSIVE, OR CONTRARY TO MORALS, GOOD CUSTOMS OR RELIGIOUS BELIEFS, PRINCIPLES OR DOCTRINES, OR TO ANY MATERIAL OR ACT THAT TENDS TO CORRUPT OR DEPRAVE THE HUMAN MIND, OR IS CALCULATED TO EXCITE IMPURE IMAGINATION OR AROUSE PRURIENT INTEREST, OR IS UNFIT TO BE SEEN OR HEARD, OR WHICH VIOLATES THE PROPRIETIES OF LANGUAGE OR BEHAVIOUR"; FAILURE OF ORDINANCE NO. 7780 TO

INDICATE WHAT IT CONSIDERS OFFENSIVE WITHIN CONTEMPORARY COMMUNITY STANDARDS IS FATAL. — The Ordinance does not take into account contemporary community standards in determining what is considered obscene. The Ordinance fails to specify what material or act may be considered "indecent, erotic, lewd or offensive, or contrary to morals, good customs or religious beliefs, principles or doctrines, or to any material or act that tends to corrupt or depr[a]ve the human mind, or is calculated to excite impure imagination or arouse prurient interest, or is unfit to be seen or heard, or which violates the proprieties of language or behavior[.]" Instead, it casts a wide net that could encompass all kinds of behavior without acknowledging what the present standards of the community are. Petitioners submit that 40% of their readership is female. This is an indication that the "community" by which contemporary standards are to be held do not necessarily believe that petitioners' magazines appeal purely to male prurient interests. Even in *Pita*, this Court acknowledged that what may be offensive years ago could be inoffensive now. The Ordinance's failure to indicate what it considers offensive within contemporary community standards is fatal.

13. ID.; ID.; ID.; ID.; A LEGISLATION BASED ON THE PURITANICAL VIEWS OF A SPECIFIC RELIGION IS NOT MERELY INSENSITIVE, BUT IS UNCONSTITUTIONAL. — Ordinance No. 7780 does not mention which religion's beliefs it seeks to protect, but considering that its sponsor is Abante, a Baptist pastor, and that it was he who filed the criminal case against petitioners, it can be presumed that the Ordinance seeks to penalize those that offend the sensibilities of Baptists or similar religions. Article II, Section 6 of the Constitution provides that there shall be an inviolable separation of Church and State. Article III, Section 5 is even more explicit: SECTION 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free 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. A local legislation that bases its standards of morality on a particular religion only tends to establish a dominant religion, to the exclusion of all other faiths. A religion may not consider a certain material as offensive, and another may even view human sexuality as part of the religious experience. To

arbitrarily create legislation based on the puritanical views of a specific religion is not merely insensitive; it is unconstitutional.

14. ID.; ID.; ID.; ID.; THE LANGUAGE USED BY ORDINANCE NO. 7780 IS UNDULY EXPANSIVE AS IT TENDS TO PUNISH EVERY SINGLE PRINT, SHOW, DEPICTION, OR DESCRIPTION OF NUDITY AND SEX SEEMINGLY WITHOUT DISTINCTION. — The language used by the Ordinance is likewise unduly expansive. It tends to punish every single print, show, depiction, or description of nudity and sex seemingly without distinction. For example, it unnecessarily lumps together eroticism with lewdness, "regardless of the motive of the printer, publisher, seller, distributor, performer[,] or author[.]" It even singles out the female breast as lewder and more offensive than other sexual organs. Under the *Miller* test, a material is seen as obscene if it is "patently offensive." Yet, of the example listed, only that of child pornography is, on its face, offensive. Even without this Ordinance, child pornography would still be illegal under Republic Act No. 9775, or the Anti-Child Pornography Act of 2009.

15. ID.; ID.; ID.; ID.; ORDINANCE NO. 7780 IMPOSES AN ARBITRARY RESTRAINT ON THE ARTIST'S FREEDOM OF EXPRESSION WHEN IT PENALIZES THE ARTIST REGARDLESS OF HIS/HER MOTIVE. — [U]nder the Ordinance's expansive language, the motive of the author, performer, or publisher is disregarded. Any work is immediately categorized as obscene if it is deemed "indecent, erotic, lewd or offensive, or contrary to morals, good customs or religious beliefs, principles or doctrines, or to any material or act that tends to corrupt or depr[a]ve the human mind, or is calculated to excite impure imagination or arouse prurient interest, or is unfit to be seen or heard, or which violates the proprieties of language or behavior[.]" Such disregard of the author, performer, or publisher's motives contradicts the Ordinance's very own proviso, as indicated in Section 4. x x x. An artist may, for instance, intend for his or her painting to be erotic, and the painting will still be considered as art. Certainly, the artist does not mean for the painting to be patently offensive. But by penalizing the artist regardless of the motive, the Ordinance imposes an arbitrary restraint on that artist's freedom of expression.

16. ID.; ID.; ID.; ID.; ORDINANCE NO. 7780 FAILS TO TAKE INTO ACCOUNT WHETHER THE MATERIALS, WHEN TAKEN AS A WHOLE, LACK SERIOUS LITERARY, ARTISTIC, POLITICAL, OR SCIENTIFIC VALUE. — The Ordinance also fails to take into account whether the materials, when taken as a whole, lack serious literary, artistic, political, or scientific value. In disregarding the motives of the printer, publisher, distributor, or seller, the Ordinance broadly presumes that an entire publication can only contain obscene material and nothing more. Petitioners point out that the allegedly offensive magazines featured "literature from award-winning writers such as Marguerite de Leon, Anna Felicia Sanchez[,] and Norman Wilwayco." Parts of the magazine may appeal to prurient interests, but some parts are heralded for having serious literary value.

17. ID.; ID.; ID.; ID.; ORDINANCE NO. 7780 IMPOSES CRIMINAL LIABILITY ON THE PRESIDENT AND BOARD MEMBERS OF A PUBLICATION, REGARDLESS OF WHETHER THEY WERE PERSONALLY INVOLVED IN ACTUALLY PUBLISHING THE ALLEGEDLY OBSCENE MATERIAL, WHICH IS AN ARBITRARY RESTRAINT ON THEIR LEGITIMATE PURSUIT OF BUSINESS. — The Ordinance likewise imposes criminal liability on the president and board members of a publication, regardless of whether they were personally involved in actually publishing the allegedly obscene material. In this case, Summit Media also publishes several other magazines outside the realm of the Ordinance. However, because of its provisions, the president and the board members may be held criminally liable for offenses they may have no personal knowledge of, and may consequently be prevented from doing their jobs. This is an arbitrary restraint on their legitimate pursuit of business.

18. ID.; ID.; ID.; ID.; REQUIREMENTS OF SUBSTANTIVE DUE PROCESS NOT COMPLIED WITH IN THE ENACTMENT OF ORDINANCE NO. 7780. — "Procedural due process refers to the procedures that the government must follow before it deprives a person of life, liberty, or property. Procedural due process concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere." Here, since Ordinance No. 7780 underwent notice and hearing when it was enacted, it suffers no defect in its compliance

with the requirements of procedural due process. When measured against the requirements of substantive due process, however, the Ordinance is found wanting. Substantive due process "inquires whether the government has sufficient justification for depriving a person of life, liberty, or property." It requires an examination as to whether the State's exercise of its police power transgresses on certain protected freedoms.

19. ID.; ID.; ID.; ID.; IN DETERMINING WHETHER AN ORDINANCE WAS VALIDLY ENACTED, THE STATE MUST PROVE THAT: (1) THE GOVERNMENTAL INTEREST INVOLVED IS COMPELLING ENOUGH TO REQUIRE A RESTRAINT ON CONSTITUTIONAL FREEDOMS; AND (2) THERE WERE NO LESS RESTRICTIVE MEANS FOR ACHIEVING THAT INTEREST. — x x x [I]n determining whether an ordinance was validly enacted, the State must prove that: (1) the governmental interest involved is compelling enough to require a restraint on constitutional freedoms; and (2) there were no less restrictive means for achieving that interest. In *White Light Corporation*: It must appear that the interests of the public generally, as distinguished from those of a particular class, require an interference with private rights and the means must be reasonably necessary for the accomplishment of the purpose and not unduly oppressive of private rights. It must also be evident that no other alternative for the accomplishment of the purpose less intrusive of private rights can work. More importantly, a reasonable relation must exist between the purposes of the measure and the means employed for its accomplishment, for even under the guise of protecting the public interest, personal rights and those pertaining to private property will not be permitted to be arbitrarily invaded.

20. ID.; ID.; ID.; ID.; ORDINANCE NO. 7780 DOES NOT GIVE DUE REGARD TO MEASURES UNDERTAKEN BY THE PUBLISHING CORPORATION TO ENSURE THAT ONLY ADULTS, WHO HAVE FULL AUTONOMY OVER ALL THEIR MORAL CHOICES, ARE IN POSSESSION OF THE MATERIALS. — Respondents submit that the Ordinance's legislative intent is to eradicate greed, "which preys on and appeals on the baser instincts of unwary consumers, [and] is far superior to the 'property rights' of the petitioners in the hierarchy of values within the due process clause[.]" Whatever baser instincts an adult consumer may have is not for the local

government to legislate. x x x [c]onsumers may buy the publications not merely to satisfy their prurient curiosity, but because the publication itself contains serious literary, artistic, political, or scientific value. Ordinance No. 7780 does not give due regard to measures that may have been undertaken by the publishing corporation to ensure that only adults, who have full autonomy over all their moral choices, are in possession of the materials. As petitioners point out, "a clear 18+mark appears prominently on all covers of FHM magazines together with the words 'CONTENTS MAY NOT BE SUITABLE FOR MINORS.' Further, these magazines are released to distributors sealed in plastic covers, for sale only in legitimate magazine stands and only to adults." These measures taken to protect the "unwary consumers" are less restrictive than the penal provisions provided in the Ordinance.

21. ID.; ID.; ID.; ID.; ORDINANCE NO. 7780 PREVENTS ADULTS, WHO HAVE COMPLETE AUTONOMY OVER THEIR MORALS AND CHOICES, FROM PURSUING WHAT MAY BE THEIR OWN PERSONAL INTERESTS; ANY LEGISLATION THAT SEEKS TO RESTRAIN THE EXERCISE OF FREE SPEECH AND EXPRESSION MUST BE STRUCK DOWN; ORDINANCE NO. 7780 DECLARED UNCONSTITUTIONAL. — To conclude that something sexual was obscene, this Court reasoned that it could not be art, because it would not be viewed by "artists and persons interested in art and who generally go to art exhibitions and galleries to satisfy and improve their artistic tastes[.]" This Court has taken it upon itself to declare what cannot possibly be art or has no redeeming quality. It has lamely attempted to discern the "aggregate judgment of the Philippine community," enforcing the contemporary community's standards of what may offend it. Just as important, it may be time to ask why the contemporary community—as such, the government and this Court—polices the display of women's bodies with so much more zeal than it polices men's bodies. It may be time to consider why the contemporary community appears to judge the nipple as obscene, but only when it belongs to a woman. Nonetheless, as it stands, Ordinance No. 7780 is a feeble attempt to legislate morality. It prevents adults, who have complete autonomy over their morals and choices, from pursuing what may be their own personal interests. While it does not penalize mere possession

of obscene materials, it relies heavily on inserting perceived values into each individual's thoughts. The artist or author should not have to live under the threat o censorship without legitimate basis. While this Court is granted the discretion to decide what is and what is not obscene, the standards for determination must vary per case and must evolve over time. Any legislation that seeks to restrain the exercise of free speech and expression—be it local or national law—must be struck down. As Article III, Section 4 of the Constitution succinctly states: SECTION 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

APPEARANCES OF COUNSEL

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D E C I S I O N

JARDELEZA, *J.*:

This is a petition for prohibition with prayer for the issuance of a preliminary injunction and/or temporary restraining order,[1] seeking to prevent respondents from carrying out the preliminary investigation of the criminal complaint entitled *Abante, et al. v. Asumbrado, et al.*, docketed as I.S. No. 08G-12234, on the ground that Ordinance No. 7780 is unconstitutional.

On July 7, 2008, 12 pastors and preachers from various churches filed a joint complaint-affidavit[2] against the officers and publishers of seven men's magazines and tabloids. The complainants alleged that sometime during the period of September 2007 to July 2008, the identified magazines and tabloids, which were printed, published, distributed, circulated, and/or sold in

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[1] *Rollo*, p. 4.

[2] *Id*. at 44.

the City of Manila, contained material which were "clearly scandalous, obscene, and pornographic within the meaning and in violation of Articles 200 and 201 of the Revised Penal Code and Ordinance No. 7780 of the City of Manila."[3]

Articles 200 and 201 of the Revised Penal Code (RPC) provide:

Art. 200. *Grave scandal*. – The penalties of *arresto mayor* and public censure shall be imposed upon any person who shall offend against decency or good customs by any highly scandalous conduct not expressly falling within any other article of this Code.

Art. 201. *Immoral doctrines, obscene publications and exhibitions, and indecent shows*. – The penalty of *prision mayor* or a fine ranging from six thousand to twelve thousand pesos, or both such imprisonment and fine, shall be imposed upon:

1. Those who shall publicly expound or proclaim doctrines openly contrary to public morals;

2. (a) The authors of obscene literature, published with their knowledge in any form; the editors publishing such literature; and the owners/operators of the establishment selling the same;

(b) Those who, in theaters, fairs, cinematographs or any other place, exhibit indecent or immoral plays, scenes, acts or shows, it being understood that the obscene literature or indecent or immoral plays, scenes or shows, whether live or in film, which are prescribed by virtue hereof, shall include those which: (1) glorify criminals or condone crimes; (2) serve no other purpose but to satisfy the market for violence, lust or pornography; (3) offend any race or religion; (4) tend to abet traffic in and use of prohibited drugs; and (5) are contrary to law, public order, morals, and good customs, established policies, lawful orders, decrees and edicts;

3. Those who shall sell, give away or exhibit films, prints, engravings, sculptures, or literature which are offensive to morals.

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[3] *Id*.

The pertinent portions of Ordinance No. 7780,[4] on the other hand, read as follows:

> **Sec. 2. Definition of Terms:** As used in this ordinance, the terms:
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> A. **Obscene** shall refer to any material or act that is **indecent**, erotic, lewd or offensive, or **contrary to morals**, good customs or religious beliefs, principles or doctrines, or to any material or act that tends to corrupt or deprive the human mind, or is **calculated to excite impure imagination or arouse prurient interest**, or is unfit to be seen or heard, or which violates the proprieties of language or behavior, regardless of the motive of the printer, publisher, seller, distributor, performer or author of such act or material, such as but not limited to:
>
> 1. Printing, showing, depicting or describing sexual acts;
>
> 2. Printing, showing, depicting or describing children in sexual acts;
>
> 3. Printing, showing, depicting or describing completely nude human bodies; and
>
> 4. Printing, showing, depicting or describing the human sexual organs or the female breasts.
>
> B. **Pornographic or pornography** shall refer to such objects or subjects of photography, movies, music records, video and VHS tapes, laser discs, billboards, television, magazines, newspapers, tabloids, comics and live shows **calculated to excite or stimulate sexual drive or impure imagination**, regardless of motive of the author thereof, such as, but not limited to the following:
>
> 1. Performing live sexual acts in whatever form;
>
> 2. Those other than live performances showing, depicting or describing sexual acts;
>
> 3. Those showing, depicting or describing children in sex acts;
>
> 4. Those showing, depicting or describing completely nude human body, or showing, depicting or describing the human sexual organs or the female breasts.

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[4] *Rollo*, p. 39.

C. Materials shall refer to magazines, newspapers, tabloids, comics, writings, photographs, drawings, paintings, billboards, decals, movies, music records, video and VHS tapes, laser discs, and similar matters.

Sec. 3. Prohibited Acts The printing, publishing, distribution, circulation, sale and exhibition of **obscene** and **pornographic** acts and materials and the production, public showing and viewing of video and VHS tapes, laser discs, theatrical or stage and other live performances and private showing for public consumption, whether for free or for a fee, of pornographic pictures as herein defined are hereby prohibited within the City of Manila and accordingly penalized as provided herein.

Sec. 4. Penalty Clause: any person violating this ordinance shall be punished as follows:

1. For printing, publishing, distribution or circulation of obscene or pornographic materials; the production or showing of obscene movies, television shows, stage and other live performances; for producing or renting obscene vidoes and VHS tapes, laser discs, for viewing obscene movies, television shows, videos and VHS tapes, laser discs or stage and other live performances; and for performing obscene act on stage and other live performances – imprisonment of one (1) year or fine of five thousand pesos (₱5,000.00), or both, at the discretion of the court.

2. For the selling of obscene or pornographic materials – imprisonment of not less than six (6) months nor more than one (1) year or a fine of not less than one (1) thousand (₱1,000.00), nor more than three thousand (₱3,000.00) pesos.

Provided, that in case the offender is a juridical person, the President and the members of the board of directors, shall be held criminally liable; Provided, further, that in case of conviction, all pertinent permits and licenses issued by the City of Government to the offender shall be confiscated in favor of the City Government for destruction; Provided, furthermore, that in case the offender is a minor and unemancipated and unable to pay the fine, his parents or guardian shall be liable to pay such fine; provided, finally, that this ordinance shall not apply to materials printed, distributed, exhibited, sold, filmed, rented, viewed, or produced by reason of or in connection with or in furtherance of science and scientific research and medical or medically related art, profession, and for

educational purposes (Emphasis supplied; underscoring in the original.)

Among those charged were petitioners Allan Madrilejos (Madrilejos), Allan Hernandez (Hernandez), and Glenda Gil (Gil), Editor-in-Chief, Managing Editor, and Circulation Manager, respectively, of For Him Magazine Philippines (FHM Philippines), with Lance Y. Gokongwei and Lisa Gokongwei-Cheng, Chairman and President, respectively, of Summit Publishing, FHM Philippines' publisher.[5]

On July 24, 2008, the Office of the City Prosecutor of Manila (OCP Manila) issued a subpoena requiring petitioners to submit, within 10 days from notice, their counter-affidavit, among others, and appear before the proper authorities to testify under oath or answer clarificatory questions.[6] On August 14, 2008, petitioners appeared before respondent Lourdes Gatdula (Gatdula). They were informed of the creation of a panel of prosecutors, composed of respondent Gatdula with co-respondents Agnes Lopez (Lopez) and Hilarion Buban (Buban), to conduct the preliminary investigation in the case. When petitioners requested for additional time within which to study the complaint and prepare their respective counter-affidavits, preliminary investigation was again reset to August 28, 2008.

Instead of filing their respective counter-affidavits, however, petitioners, prior to the August 28, 2008 hearing, filed an urgent motion for bill of particulars. According to petitioners: the joint complaint-affidavit failed to apprise them of the specific acts they allegedly committed as to enable them to adequately and properly prepare their counter-affidavits; since all seven publishers were charged in the same case, it would appear that they were being charged as conspirators; yet, the specific acts supposedly committed by petitioners in all the other publications were not indicated in the joint complaint-affidavit

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

[6] *Id*. at 50.

with such particularity as to allow them to know and understand the accusations against them.[7] This was opposed by complainants.[8]

Meanwhile, on September 24, 2008, and pending the resolution of their urgent motion for bill of particulars, petitioners filed the present action "on the ground that Ordinance No. 7780 is invalid on its face for being patently offensive to their constitutional right to free speech and expression, repugnant to due process and privacy rights, and violative of the constitutionally established principle of separation of church and state."[9]

In their comment, respondents urged the Court to dismiss the petition on the grounds that: (1) the petition does not allege that the OCP Manila is conducting the preliminary investigation proceedings without or in excess of its jurisdiction; (2) criminal prosecutions cannot be enjoined; (3) petitioners are not the proper parties to challenge the validity of Ordinance No. 7780; and (4) Ordinance No. 7780 enjoys the presumption of constitutionality.[10]

On November 11, 2013, petitioners informed the Court that the OCP Manila had already issued a Resolution dated June 25, 2013, which dismissed the charges for violation of Article 200

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[7] *Id*. at 428.

[8] Petitioners' motion was set for hearing on the next scheduled date for preliminary investigation, and on that date, counsel for complainants asked for time to file their comment or opposition. The hearing for the submission of counter-affidavits was thus reset to September 18, 2008, without prejudice to any ruling the panel may make on the pending incident; *id*. at 7; at the hearing of September 18, 2008, the motion for bill of particulars not having been resolved, the filing of the counter-affidavits was again reset to October 9, 2008; *id*. at 7-8, counsel for complainants then filed an opposition to the urgent motion for bill of particulars with counter motion, stating that except for respondents Gloria Galuno and Edwin Alcala, all the other respondents should be deemed to have waived their right to file their counter-affidavits for their failure to file them despite two opportunities to submit. The opposition also argued that the motion was dilatory and prohibited under the rules on preliminary investigation; *id*. at 428.

[9] *Id*. at 8.

[10] *Id*. at 352-368.

of the RPC and Ordinance No. 7780 but nevertheless ordered the filing of criminal informations for violation of Article 201(3) of the RPC. The pertinent portion of the Resolution reads as follows:

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If the act or acts of the offender are punished under another article of the Revised Penal Code, Article 200 is not applicable. Considering that the subject matter of the complaint is the obscene publication under Article 201 of the Revised Penal Code, [petitioners] should not be liable for Grave Scandal; hence, the complaint for Grave Scandal should be dismissed.

On the other hand, considering that the subject matter covered by the city ordinance of Manila is likewise the printing, publication, sale, distribution and exhibition of obscene and pornographic acts and materials, it is already absorbed in Article 201 of the Revised Penal Code and the complaint for violation of the city ordinance should likewise be dismissed.

x x x x x x x x x

Any person who has something to do with the printing, publication, circulation and sale of the obscene publications should be made liable. Hence, except for respondents Eugenio Lopez III, who was charged being the Chairman of the Board of ABS-CBN Publishing, Inc., Ernesto M. Lopez, being the President of the said publishing company, Lance Y. Gokongwei and Lisa Y. Gokongwei-Cheng, being the Chairman of the Board and President, respectively of Summit Publishing, their actual knowledge, consent, and/or participation in the obscene publications not having been clearly established by the evidence, said respondents should not be made liable thereto. However, all the other respondents being persons responsible for the publication, circulation and sale of the subject obscene publications should be made liable thereto.

All the other respondents, either being the Editor-in-Chief, Managing Director, General Manager or Circulation Manager of their respective publishing companies should be made liable for Violation of Section 201 paragraph 2(a) of the Revised Penal Code.

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[11] *Id*. at 438-439.

The criminal case against petitioners for violation of Article 201(3) was docketed as Criminal Case No. 13-30084 and assigned to Branch 16 of the Regional Trial Court (RTC) of Manila.

Despite the dismissal of the charge for violation of Ordinance No. 7780, petitioners did not move to withdraw the present action, adamant that the Ordinance "violates the constitutional guarantees to free speech and expression, violates the right to due process, and offends privacy rights."[12] On April 26, 2016 and upon petitioners' motion, Criminal Case No. 13-30084 was ordered dismissed with prejudice.[13]

We dismiss the petition on the following grounds:

(1) The dismissal of the criminal charges against petitioners for violation of the provisions of Ordinance No. 7780[14] has rendered this case moot and academic; and

(2) Ordinance No. 7780, an anti-obscenity law, cannot be facially attacked on the ground of overbreadth because obscenity is unprotected speech.

I

In light of the dismissal with prejudice of all criminal charges against petitioners, this case has clearly been rendered moot and academic. A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness.[15] This pronouncement traces its current roots from the express constitutional rule under paragraph 2 of Section 1, Article VIII of the 1987

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

[13] *Id*. at 446.

[14] *Id*. at 39-41; charges for violation of Article 201(3) of the Revised Penal Code have also been dismissed with prejudice.

[15] *David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006, 489 SCRA 160, 213-214. Citations omitted.

Constitution that "[j]udicial power includes the duty of the courts of justice to settle *actual controversies* involving rights which are legally demandable and enforceable x x x."[16] Judicial power, in other words, must be based on an *actual justiciable controversy* at whose core is the existence of a case involving rights which are legally demandable and enforceable. Without this feature, courts have no jurisdiction to act.[17]

True, exceptions to the general principle on moot and academic have been developed and recognized through the years. At present, courts will decide cases, otherwise moot and academic, if it feels that: (a) there is a grave violation of the Constitution; (b) the situation is of exceptional character and paramount public interest is involved; (c) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (d) the case is capable of repetition yet evading review.[18] Further discussion will bear out that none of these exceptions obtains here.

It has been advanced that a ruling, however, on the merits of the petition must still be had under the fourth exception to the doctrine on mootness since the Ordinance remains valid within the City of Manila, and as such, the dismissal of the criminal charges against petitioners does not mean that no other person will be charged or penalized under it. This is not, however, how the exception applies.

The "capable of repetition, yet evading review" exception to the mootness doctrine was first laid down by the United States (US) Supreme Court in the 1911 case of *Southern Pacific Terminal Co. v. Interstate Commerce Commission*.[19] There,

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[16] Concurring and dissenting opinion of Justice Arturo Brion in *The Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, G.R. No. 183591, October 14, 2008, 568 SCRA 402, 702.

[17] *Id.*

[18] *David v. Macapagal-Arroyo*, *supra* note 15 at 164. Citations omitted.

[19] 219 U.S. 498 (1911).

a challenge was made against an Order of the Interstate Commerce Commission (ICC) prohibiting the terminal from granting a particular shipper preferential wharfage charges. By the time the US Supreme Court was ready to decide the case, the cease and desist order, which had a validity period of only two years, had already expired. In rejecting the motion to dismiss the case on the ground of mootness, the Court held that:

> In the case at bar the order of the Commission may to some extent (the exact extent it is unnecessary to define) be the basis of further proceedings. But there is a broader consideration. The question involved in the orders of the Interstate Commerce Commission are usually continuing (as are manifestly those in the case at bar), and these considerations 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.

Southern Pacific Terminal Co. was first cited in Our jurisdiction in the 1997 case of *Alunan III v. Mirasol*.[20] There, the Court held that the question of "whether the COMELEC can validly vest in the DILG the control and supervision of SK (Sangguniang Kabataan) elections is likely to arise in connection with every SK election and yet the question may not be decided before the date of such elections."[21] *Alunan* cited, among other cases,[22] *Roe v. Wade*,[23] where the petitioner, a pregnant woman, brought suit in 1970 to challenge the anti-abortion statutes of Texas and Georgia on the ground that she had a constitutional

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[20] G.R. No. 108399, July 31, 1997, 276 SCRA 501.

[21] *Id.* at 509.

[22] Also cited were *Moore v. Ogilvie*, 394 U.S. 814 (1969), which involved a challenge to signature requirement on nominating petitions which the US Supreme Court had yet to decide before the election was held, and *Dunn v. Blumstein*, 405 U.S. 330 (1972), where the US Supreme Court decided merits of a challenge to durational residency requirement for voting even though Blumstein had in the meantime satisfied that requirement.

[23] 410 U.S. 113 (1973).

right to terminate her pregnancy. Though the case was not decided until three years later, long after the termination of petitioner's 1970 pregnancy, the US Supreme Court refused to dismiss the case as moot:

> [W]hen, 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."[24]

Over the years, however, the US Supreme Court has increasingly limited the application of the "capable of repetition, yet evading review" exception. Beginning in the 1975 case of *Sosna v. Iowa*,[25] a class action challenging the Iowa durational residency requirement for divorce, the US Supreme Court held:

> In *Southern Pacific Terminal Co. v. ICC*, 219 U. S. 498 (1911), where a challenged ICC order had expired, and in *Moore v. Ogilvie*, 394 U. S. 814 (1969), where petitioners sought to be certified as candidates in an election that had already been held, the Court expressed its concern that the defendants in those cases could be expected again to act contrary to the rights asserted by the particular named plaintiffs involved, and in each case the controversy was held not to be moot because the questions presented were "capable of repetition, yet evading review." That situation is not presented in appellant's case, for the durational residency requirement enforced by Iowa does not at this time bar her from the Iowa courts. Unless we were to speculate that she may move from Iowa, only to return and later seek a divorce within one year from her return, the concerns that prompted this Court's holdings in *Southern Pacific* and *Moore* do not govern appellant's situation. But **even though appellees in this proceeding might not again enforce the Iowa durational residency**

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[24] *Id*. at 125.

[25] 419 U.S. 393 (1975).

requirement against appellant, it is clear that they will enforce it against those persons in the class that appellant sought to represent and that the District Court certified. In this sense the case before us is one in which state officials will undoubtedly continue to enforce the challenged statute and yet, because of the passage of time, no single challenger will remain subject to its restrictions for the period necessary to see such a lawsuit to its conclusion.[26] (Emphasis and underscoring supplied.)

In the subsequent case of *Weinstein, et al. v. Bradford*,[27] the US Supreme Court rejected a plea to resolve an issue alleged to be "capable of repetition, yet evading review."[28] The Court found that the suit did not involve a class action—as in fact the District Court refused Bradford's earlier motion to have it declared as such—and that there is no demonstrated probability that Bradford will again be subjected to the parole system. Thus, following *Sosna*, "the capable of repetition, yet evading review" exception was limited to the situation where two elements must concur:

(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. The instant case, not a class action, clearly does not satisfy the latter element. While petitioners will continue to administer the North Carolina parole system with respect to those who at any given moment are subject to their jurisdiction, there is no demonstrated probability that respondent will again be among that number.[29] (Emphasis supplied.)

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[26] *Id*. at 399-400.

[27] 423 U.S. 147 (1975).

[28] *Id*. at 148; Bradford sued the members of the Parole Board claiming that he was constitutionally entitled to certain procedural rights in connection with the latter's consideration of his eligibility for parole. Petitioners Weinstein, *et al*. brought the case before the Supreme Court after the Court of Appeals ruled in Bradford's favor. At the time, however, Bradford had already been granted parole.

[29] *Id*. at 149.

The requirement that these two elements must concur has continuously been reiterated in a number of later US cases.[30]

We would also adopt the two-requirement rule in this jurisdiction, beginning with Justice Brion's Concurring and Dissenting Opinion in the *En Banc* Decision in *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*[31] Dissenting, Justice Brion wrote:

> Finally, let me clarify that the likelihood that a matter will be repeated does not mean that there will be no meaningful opportunity for judicial review so that an exception to mootness should be recognized. For a case to dodge dismissal for mootness under the "capable of repetition yet evading review" exception, two requisites must be satisfied: (1) the duration of the challenged action must be too short to be fully litigated prior to its cessation or expiration; and (2) there must be reasonable expectation that the same complaining party will be subjected to the same action again.
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> The time constraint that justified *Roe v. Wade*, to be sure, does not inherently exist under the circumstances of the present petition so that judicial review will be evaded in a future litigation. As this Court has shown in this case, we can respond as fast as the circumstances require. I see nothing that would bar us from making a concrete ruling in the future should the exercise of our judicial

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[30] *Murphy v. Hunt*, 455 U.S. 478 (1982); *Lewis v. Continental Bank Corp.*, 494 U.S. 472 (1990); *Spencer v. Kemna*, 523 U.S. 1 (1998); *United States v. Seminole Nation*, 316 U.S. 286 (1942); *Hain v. Mullin*, 327 F.3d 1177, 1180 (10th Cir. 2003).

[31] G.R. No. 183591, October 14, 2008, 568 SCRA 402, 720. This case involved several suits filed to, among others, prohibit the scheduled signing of the Memorandum of Agreement on the Ancestral Domain (MOA-AD) between the Government and the Moro Islamic Liberation Front (MILF). The *ponencia* held that although certain developments (such as the non-signing of the MOA-AD and the eventual dissolution of the Government of the Republic of the Philippines [GRP] panel) have mooted the case, there was a "reasonable expectation that petitioners will again be subjected to the same problem in the future as respondents' actions are capable of repetition, in another or any form," hence, the exception to mootness applies.

power, particularly the exercise of the power of judicial review, be justified.[32] (Citations omitted.)

Two years later, the Court *En Banc* would categorically adopt the two-requirement rule in *Pormento v. Estrada*,[33] to wit:

> While there are exceptions to this rule, none of the exceptions applies in this case. **What may most probably come to mind is the "capable of repetition yet evading review" exception. However, the said exception applies only where the following two circumstances concur: (1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration and (2) there is a reasonable expectation that the same complaining party would be subjected to the same action again. The second of these requirements is absent in this case.** It is highly speculative and hypothetical that petitioner would be subjected to the same action again. It is highly doubtful if he can demonstrate a substantial likelihood that he will "suffer a harm" alleged in his petition.[34] (Emphasis supplied.)

This ruling in *Pormento* would be affirmed in the later cases of *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*[35]

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[32] *Id.*

[33] G.R. No. 191988, August 31, 2010, 629 SCRA 530.

[34] *Id.* at 533-534.

[35] G.R. No. 209271, July 26, 2016, 798 SCRA 250, 287-288. The Court said:

> At this point, the Court discerns that there are two (2) factors to be considered before a case is deemed one capable of repetition yet evading review: (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.
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> Here, respondents cannot claim that the duration of the subject field tests was too short to be fully litigated. It must be emphasized that the Biosafety Permits for the subject field tests were issued on March 16, 2010 and June 28, 2010, and were valid for two (2) years. However, as aptly pointed out by Justice Leonen, respondents filed their petition for

and *Philippine Association of Detective and Protective Agency Operators v. COMELEC*.[36]

What has developed and prevailed over time, therefore, is a consensus that the "capable of repetition, yet evading review" exception to mootness is not meant to be applied literally. In the cases where the exception was correctly applied, time constraint was a significant factor. As the US Supreme Court would later caution in *Murphy v. Hunt*,[37] a mere physical or

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Writ of *Kalikasan* only on April 26, 2012 just a few months before the Biosafety Permits expired and when the field testing activities were already over. Obviously, therefore, the cessation of the subject field tests before the case could be resolved was due to respondents' own inaction.

Moreover, the situation respondents complain of is not susceptible to repetition. As discussed above, DAO 08-2002 has already been superseded by JDC 01-2016. Hence, future applications for field testing will be governed by JDC 01-2016 which, as illustrated, adopts a regulatory framework that is substantially different from that of DAO 08-2002.

Therefore, it was improper for the Court to resolve the merits of the case which had become moot in view of the absence of any valid exceptions to the rule on mootness, and to thereupon rule on the objections against the validity and consequently nullify DAO 08-2002 under the premises of the precautionary principle.

[36] G.R. No. 223505, October 3, 2017, 841 SCRA 524, 542-543. The Court said:

The present case falls within the fourth exception. For this exception to apply, the following factors must be present: (1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration; and (2) there is a reasonable expectation that the same complaining party would be subjected to the same action.

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. Prudence accordingly dictates that the Court exercise its power of judicial review to finally settle this controversy.

[37] 455 U.S. 478 (1982).

theoretical possibility was never sufficient to satisfy the test stated in *Weinstein*.[38] If this were true, virtually any matter of short duration would be reviewable.[39] There must be a "reasonable expectation" or a "demonstrated probability" that the same controversy will recur involving the same complaining party.[40]

To employ the exception here would be to disregard the two-requirement rule laid down in *Weinstein*. The often cited cases of *David v. Macapagal-Arroyo*[41] and *Belgica v. Ochoa, Jr.*[42] also do not find application because the circumstances in these cases differ from the circumstances here.

First. David involved suits challenging Proclamation No. 1017 and General Order No. 5 issued by then President Gloria Macapagal-Arroyo declaring a state of national emergency and calling out the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP) to prevent and suppress acts of terrorism and lawless violence in the country. Despite the lifting of said state of emergency one week later, the Court refused to dismiss the case and justified its assumption of jurisdiction over the matter as follows:

> The "moot and academic" principle is not a magical formula that can automatically dissuade the courts in resolving a case. 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.
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> **All the foregoing exceptions are present here and justify this Court's assumption of jurisdiction over the instant petitions.**

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[38] *Id.*

[39] *Murphy v. Hunt, supra* note 37.

[40] *Id.*

[41] *Supra* note 15.

[42] G.R. No. 208566, November 19, 2013, 710 SCRA 1.

Petitioners alleged that the issuance of PP 1017 and G.O. No. 5 violates the Constitution. There is no question that the issues being raised affect the public's interest, involving as they do the people's basic rights to freedom of expression, of assembly and of the press. Moreover, the Court has the duty to formulate guiding and controlling constitutional precepts, doctrines or rules. It has the symbolic function of educating the bench and the bar, and in the present petitions, the military and the police, on the extent of the protection given by constitutional guarantees. And lastly, respondents' contested actions are capable of repetition. Certainly, the petitions are subject to judicial review.[43]

As observed by Justice Brion, *David* properly applied the principle owing to the history of "emergencies" which had attended the administration of President Macapagal-Arroyo since she assumed office. Given such history, it was not far-fetched for the then President to again make a similar declaration in the future, or to possibly "act contrary to the rights asserted by the particular named plaintiffs involved."[44]

In *Belgica*, on the other hand, the Court rejected the view that the constitutionality issues related to the assailed Priority Development Assistance Fund (PDAF) in the 2013 General Appropriations Act had been rendered moot and academic by the reforms undertaken by the Executive Department and former President Benigno Simeon S. Aquino III's declaration that he had already "abolished the PDAF."[45] The Court held that the application of the "capable of repetition, yet evading review" exception was called for because the preparation and passage of the national budget is, by constitutional imprimatur, an affair of annual occurence:

The relevance of the issues before the Court does not cease with the passage of a PDAF free budget for 2014. The evolution of the

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[43] *David v. Macapagal-Arroyo*, *supra* note 15 at 214-215.

[44] See *Sosna v. Iowa*, 419 U.S. 393 (1975).

[45] *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*, *supra* note 35 at 286.

"Pork Barrel System," by 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." In *Sanlakas v. Executive Secretary*, the government had already backtracked on a previous course of action yet the Court used the "capable of repetition but evading review" exception in order "to prevent similar questions from re-emerging." The situation similarly holds true to these cases. Indeed, the myriad of issues underlying the manner in which certain public funds are spent, if not resolved at this most opportune time, are capable of repetition and hence, must not evade judicial review.[46]

In this case, it must be noted that petitioners' purpose in filing the present action was to stop the conduct of the preliminary investigation into their alleged violation of an unconstitutional statute—a process that concludes with an Order whether or not to indict petitioners. Relatedly, and as it happened in this case, such an Order, if and when issued, is not of such inherently short duration that it will lapse before petitioners are able to see it challenged before a higher prosecutorial authority (*i.e.*, the Department of Justice) or the courts. In fact, and unless reversed by the Secretary of Justice or by the courts, an order to indict does not lapse. Thus, the time constraint that justified the application of the exception in *Southern Pacific Terminal Co.* (two-year validity of an ICC cease and desist order) and *Roe* (266-day human gestation period) does not exist here.[47]

Furthermore, when the criminal charges against petitioners were dismissed with prejudice, they can no longer be refiled without offending the constitutional proscription against double jeopardy. Petitioners have also failed to demonstrate a reasonable likelihood that they will once again be hailed before the OCP Manila for the same or another violation of Ordinance No. 7780.[48]

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[46] *Belgica v. Ochoa, Jr.*, *supra* note 42 at 96.

[47] See Concurring and Dissenting Opinion of Justice Brion in *Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, G.R. No. 183591, October 14, 2008, 568 SCRA 402, 720.

[48] See *Spencer v. Kemna*, 523 U.S. 1 (1998).

It should be noted that the OCP Manila did not even question the dismissal of the case. There is likewise no showing that the pastors and preachers who initiated the complaint here filed, or have threatened to file, *new* charges against petitioners, over *new* material published in FHM Philippines alleged to be obscene, after the case below was dismissed as early as July 19, 2016.[49]

II

Even granting, for the sake of argument, that petitioners' case has not been mooted by the dismissal of the charge for violation of Ordinance No. 7780 against them, they have still failed to establish a cause of action to warrant a ruling in their favor.

A

Petitioners challenge the constitutionality of Ordinance No. 7780, alleging that it defines the terms "obscene" and "pornography" in such a way that a very broad range of speech and expression are placed beyond the protection of the Constitution, thus violating the constitutional guarantee to free speech and expression.[50] Specifically, petitioners take issue with the "expansive" language of Ordinance No. 7780 which, petitioners claim, paved the way for complainants, a group of pastors and preachers, to impose their view of what is "unfit to be seen or heard" and "violate[s] the proprieties of language and behavior."[51]

Petitioners' arguments are facial attacks against Ordinance No. 7780 on the ground of overbreadth. As will be shown, however, the overbreadth doctrine finds special and limited application only to free speech cases. **The present petition**

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[49] In his *Manila Times* column published on November 27, 2018 entitled "*Porn tabloids are proliferating*," Roberto Tiglao lamented about the easy availability and widespread circulation of pornographic publications very thinly disguised as tabloids in Metro Manila. Despite this, Mr. Tiglao observed that he has not found any case of anybody being convicted of pornography.

[50] *Rollo*, pp. 15-17.

[51] *Id*. at 18.

does not involve a free speech case; it stemmed, rather, from an obscenity prosecution. As both this Court and the US Supreme Court have consistently held, obscenity is not protected speech. No court has recognized a fundamental right to create, sell, or distribute obscene material. Thus, a facial overbreadth challenge is improper as against an anti-obscenity statute.

Associate Justice Vicente V. Mendoza explained in his Separate Opinion in *Estrada v. Sandiganbayan*[52] why a facial overbreadth challenge is limited to cases involving protected speech:

> A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible "chilling effect" upon protected speech. The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity." The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.
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> **This rationale does not apply to penal statutes. Criminal statutes have general *in terrorem* effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech.**
>
> **The overbreadth and vagueness doctrines then have special application only to free speech cases. They are inapt for testing the validity of penal statutes.** As the US Supreme Court put it, in an opinion by Chief Justice Rehnquist, "we have not recognized an 'overbreadth' doctrine outside the limited context of the First

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[52] G.R. No. 148560, November 19, 2001, 369 SCRA 394.

Amendment." In *Broadrick v. Oklahoma*, the Court ruled that "claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words" and, again, that "overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct." For this reason, it has been held that "a facial challenge to a legislative Act is . . . the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid."
x x x

In sum, the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing "on their faces" statutes in free speech cases or, as they are called in American law, First Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that "one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional."[53]
x x x (Emphasis supplied.)

Justice Mendoza's Opinion has since become the controlling rule in cases where the validity of criminal statutes is challenged on the ground of vagueness or overbreadth. Quoting it at length, this Court in *Romualdez v. Sandiganbayan*[54] held that:

[A]n "on-its-face" invalidation of criminal statutes would result in a mass acquittal of parties whose cases may not have even reached the courts. Such invalidation would constitute a departure from the usual requirement of "actual case and controversy" and permit decisions to be made in a sterile abstract context having no factual concreteness.

x x x x x x x x x

For this reason, generally disfavored is an on-its-face invalidation of statutes, described as a "manifestly strong medicine" to be employed "sparingly and only as a last resort." In determining the

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[53] *Id.* at 441-442.

[54] G.R. No. 152259, July 29, 2004, 435 SCRA 371.

constitutionality of a statute, therefore, its provisions that have allegedly been violated must be examined in the light of the conduct with which the defendant has been charged.[55]

In *Romualdez v. Comelec*,[56] the Court again relied on the Opinion of Justice Mendoza in *Estrada*, reaffirming that it remains good law:

> The rule established in our jurisdiction is, only statutes on free speech, religious freedom, and other fundamental rights may be facially challenged. Under no case may ordinary penal statutes be subjected to a facial challenge. The rationale is obvious. If a facial challenge to a penal statute is permitted, the prosecution of crimes maybe hampered. No prosecution would be possible. A strong criticism against employing a facial challenge in the case of penal statutes, if the same is allowed, would effectively go against the grain of the doctrinal requirement of an existing and concrete controversy before judicial power may be appropriately exercised. A facial challenge against a penal statute is, at best, amorphous and speculative. It would, essentially, force the court to consider third parties who are not before it.[57]

B

Ordinance No. 7780 is a local legislation which criminalizes obscenity. Obscenity is unprotected speech. This rule is doctrinal both here and in the US.

It was in 1942 when the US Supreme Court first held in the landmark case of *Chaplinsky v. New Hampshire*[58] that the lewd and the obscene are not protected speech and therefore falls outside the protection of the First Amendment, thus:

> Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There

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[55] *Id.* at 383-384.

[56] G.R. No. 167011, December 11, 2008, 573 SCRA 639.

[57] *Id.* at 645-646.

[58] 315 U.S. 568 (1942).

are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the **lewd and obscene**, the profane, the libelous, and the insulting or "fighting" words — those which, by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.

Beginning from *Roth v. United States*[59] (implicit in the history of the First Amendment is the rejection of obscenity) to *Miller v. California*,[60] (this much has been categorically settled by the Court, that obscene material is unprotected by the First Amendment), the US Supreme Court has invariably held that obscene materials do not come under the protection of the First Amendment. This doctrine continues to be valid to this day, as exemplified in the later case of *New York v. Ferber*,[61] where the US Supreme Court noted that "[i]n *Chaplinsky*[,] x x x the Court laid the foundation for the excision of obscenity from the realm of constitutionally protected expression." In *Ferber*, the Court not only upheld the constitutionality of the child pornography statute of New York, it also allowed the States greater leeway in the regulation of pornographic depictions of children by essentially holding that the test for child pornography is lower than the obscenity standard enunciated in *Miller*.[62]

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[59] 354 U.S. 476 (1957).

[60] 413 U.S. 15 (1973).

[61] 458 U.S. 747 (1982).

[62] According to the Court, with respect to child pornography, "[t]he Miller formulation is adjusted in the following respects: a trier of fact need not find that the material appeals to the prurient interest of the average person; it is not required that sexual conduct portrayed be done so in a patently offensive manner; and the material at issue need not be considered as a whole." See also *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002), where the Court held that while pornography can generally be banned only if it is obscene under *Miller v. California*, 413 U.S. 15, "pornography depicting actual children can be proscribed whether or not the images are

As earlier stated, this Court has long accepted *Chaplinsky's* analysis that obscenity is unprotected speech. In 1985, We held, in the case of *Gonzalez v. Katigbak*,[63] that the law on freedom of expression frowns on obscenity and rightly so.[64] The Court quoted with approval *Roth v. United States*,[65] which, in turn, cited *Chaplinsky*:

> All ideas having even the slightest redeeming social importance—unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion—have the full protection of the guaranties, unless excludable because they encroach upon the limited area of more important interests. **But implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance.** This rejection for that reason is mirrored in the universal judgment that obscenity should be restrained, reflected in the international agreement of over 50 nations, in the obscenity laws of all of the 48 States, and in the 20 obscenity laws enacted by the Congress from 1842 to 1956.[66]

In *Pita v. Court of Appeals*,[67] the Court declared that "[u]ndoubtedly, 'immoral' lore or literature comes within the

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obscene because of the State's interest in protecting the children exploited by the production process."

[63] G.R. No. 69500, July 22, 1985, 137 SCRA 717.

[64] *Id.* at 725.

[65] *Supra* note 59.

[66] In the same vein, the US Supreme Court in *Beauharnais v. Illinois* [343 U.S. 250, 254-257 (1952)] noted that "libel of an individual was a common-law crime, and thus criminal in the colonies. Indeed, at common law, truth or good motives was no defense. In the first decades after the adoption of the Constitution, this was changed by judicial decision, statute or constitution in most States, but nowhere was there any suggestion that the crime of libel be abolished. Today, every American jurisdiction—the forty-eight States, the District of Columbia, Alaska, Hawaii and Puerto Rico—punish libels directed at individuals. Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument."

[67] G.R. No. 80806, October 5, 1989, 178 SCRA 362.

ambit of expression, although not its protection."[68] In *Soriano v. Laguardia*,[69] the Court reiterated that:

> Indeed, as noted in *Chaplinsky v. State of New Hampshire*, "there are certain well-defined and narrowly limited classes of speech that are harmful, the prevention and punishment of which has never been thought to raise any Constitutional problems." In net effect, some forms of speech are not protected by the Constitution, meaning that restrictions on unprotected speech may be decreed without running afoul of the freedom of speech clause. A speech would fall under the unprotected type if the utterances involved are "no essential part of any exposition of ideas, and are of such slight social value as a step of truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." Being of little or no value, there is, in dealing with or regulating them, no imperative call for the application of the clear and present danger rule or the balancing-of-interest test, they being essentially modes of weighing competing values, or, with like effect, determining which of the clashing interests should be advanced.
>
> Petitioner asserts that his utterance in question is a protected form of speech.
>
> The Court rules otherwise. It has been established in this jurisdiction that **unprotected speech or low-value expression refers to** libelous statements, **obscenity or pornography,** false or misleading advertisement, insulting or "fighting words," i.e., those which by their very utterance inflict injury or tend to incite an immediate breach of peace and expression endangering national security.[70] (Emphasis supplied.)

As this Court has recognized, laws that regulate or proscribe classes of speech falling beyond the ambit of constitutional protection cannot, therefore, be subject to facial invalidation because there is no "transcendent value to all society" that would justify such attack.[71]

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[68] *Id*. at 373.

[69] G.R. No. 164785, April 29, 2009, 587 SCRA 79.

[70] *Id*. at 99-100.

[71] *Samahan ng mga Progresibong Kabataan v. Quezon City*, G.R. No. 225442, August 8, 2017, 835 SCRA 350.

This is not to suggest, however, that these laws are absolutely invulnerable to constitutional attack.

A litigant who stands charged under a law that regulates unprotected speech can still mount a challenge that a statute is unconstitutional *as it is applied to him or her*. In such a case, courts are left to examine the provisions of the law allegedly violated in light of the conduct with which the litigant has been charged.[72] 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.[73]

C

Under the circumstances, the proper recourse for petitioners would have been to go to trial to allow the RTC, as the trier of fact, to judicially determine whether the materials complained of as obscene were indeed proscribed under the language of Ordinance No. 7780. As part of their defense, petitioners can probably argue for the adoption of the *Miller* standards, which requires the trier of fact to ascertain:

> (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.[74]

Thereafter, petitioners can argue that, applying said standards to the specific material over which they were being prosecuted, they should be acquitted.

On the other hand, the trial court, assuming it adopts *Miller*, will then have to receive evidence and render opinion on such issues as to: (a) who is the "average" Filipino; (b) what is the

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[72] See *Romualdez v. Comelec*, *supra* note 56.

[73] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, G.R. No. 178552, October 5, 2010, 632 SCRA 146, 188.

[74] *Miller v. California*, *supra* note 60 at 24.

"community" against which "contemporary standards" are to be measured; (c) whether the subject material appeals to the "prurient" interest; (d) whether the material depicts "patently offensive" sexual conduct; and (e) whether the material "taken as a whole" has serious value.

The decision of the RTC, whether or not in favor of petitioners, may then be brought up on appeal to the Court of Appeals (CA), whose decision may later on be brought to this Court for review. Such is the process observed by the US Supreme Court in all of the obscenity cases cited by the *ponencia* which led to the adoption of the *Miller* standards in the US. The cases, including *Miller*, all involved appellate review conducted with the benefit of a full record. To stress, none of those cases involved a facial attack of the challenged government regulation on the ground of overbreadth.

Hence, to grant the petition would be to declare Ordinance No. 7780 (and by implication Article 201[3] of the RPC)[75] unconstitutional in a complete vacuum. To recall, petitioners were charged for selling or printing alleged obscene materials appearing in 14 pages from four different issues of their magazines. While allegedly marked as annexes of the joint complaint-affidavit, it does not even appear, however, that said pages were attached by petitioners as annexes to their petition. There would thus be no basis even for this Court to rule on the constitutionality of the Ordinance *as applied to petitioners*.

Indeed, the process We suggest here may take longer to resolve than a direct recourse to this Court on an overbreadth challenge. Nevertheless, such is the process required of Us by the Constitution. We must be mindful that the power of judicial review is not boundless; it is limited by the actual case and controversy requirement and the hierarchy of courts.

Equally important, under the separation of powers ordained by the Constitution, this Court is vested only with judicial power,

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[75] The constitutionality of which was, notably, not questioned by petitioners.

legislative power being entrusted exclusively with the Congress. Were We to declare Ordinance No. 7780 unconstitutional in this case, and impose the *Miller* standards on Congress and the City of Manila, We may be faulted (and not without reason) for engaging in judicial legislation.

We stress at this point that the Court in *Miller* did not impose that the standards it laid down be *legislated*. On the contrary, the Court there was very careful not to overstep its judicial boundaries:

> **We emphasize that it is not our function to propose regulatory schemes for the States. That must await their concrete legislative efforts. It is possible, however, to give a few plain examples of what a state statute could define for regulation under part (b) of the standard announced in this opinion**, *supra:*
>
> (a) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated.
>
> (b) Patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals.[76] (Emphasis supplied.)

In fact, *Miller* explicitly held that the obscene conduct depicted or described in materials which is sought to be regulated "must be specifically defined by the applicable state law, as written or *authoritatively* construed." The Court in *Miller*, through Chief Justice Burger, added that it was not holding, "as Mr. Justice Brennan intimates, that all States other than Oregon must now enact new obscenity statutes. Other existing state statutes, as construed heretofore or hereafter, may well be adequate." Indeed, it does not appear that US Federal laws on obscenity have been amended subsequent to the promulgation of *Miller* to suit or reflect said Decision's exact language.[77]

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[76] *Miller v. California*, *supra* note 60 at 25.

[77] *i.e.* **18 USC. §1460** and **18 USC. §1466** still read, respectively:

Possession with intent to sell, and sale, of obscene matter on Federal property

Accordingly, whether a material is obscene or not is still for the Court to decide as it applies or construes a specific statute in a particular case.

Finally, the path followed by the Court in adopting the "actual malice" rule in libel law is instructive. In 1964, the US Supreme Court laid down its precedential ruling in the case of *New York*

(a) Whoever, either —

(1) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States; or

(2) in the Indian country as defined in Section 1151 of this title, knowingly sells or possesses with intent to sell an obscene visual depiction shall be punished by a fine in accordance with the provisions of this title or imprisoned for not more than 2 years, or both.

(b) For the purposes of this section, the term "visual depiction" includes undeveloped film and videotape but does not include mere words.

Engaging in the business of selling or transferring obscene matter

(a) Whoever is engaged in the business of producing with intent to distribute or sell, or selling or transferring obscene matter, who knowingly receives or possesses with intent to distribute any obscene book, magazine, picture, paper, film, videotape, or phonograph or other audio recording, which has been shipped or transported in interstate or foreign commerce, shall be punished by imprisonment for not more than 5 years or by a fine under this title, or both.

(b) As used in this section, the term "engaged in the business" means that the person who produces sells or transfers or offers to sell or transfer obscene matter devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the production, selling or transferring or offering to sell or transfer such material be the person's sole or principal business or source of income. The offering for sale of or to transfer, at one time, two or more copies of any obscene publication, or two or more of any obscene article, or a combined total of five or more such publications and articles, shall create a rebuttable presumption that the person so offering them is "engaged in the business" as defined in this subsection. *18 U.S. Code Title 18 — Crimes and Criminal Procedure<https://www.govinfo.gov/content/pkg/USCODE-2011-title18/html/USCODE-2011-title18-partI-chap71-sec1466.htm>* (visited September 6, 2019).

Times v. Sullivan.[78] There, the US Court held that a public official may not successfully sue for libel unless the official can prove actual malice, which was defined as with knowledge that the statement was false or with reckless disregard as to whether or not it was true.

The Philippines eventually adopted the *New York Times* rule, but only after an actual case involving a criminal prosecution for libel is presented to the Court *under the regular appeals process*. Such an opportunity presented itself in 1999 when the Court, thru Associate Justice Vicente V. Mendoza,[79] categorically adopted the *New York Times* rule *as applied* to the actual facts of the case and as part of the Decision's *ratio decidendi*. This is the proper precedent to follow if the Court were to consider adopting the *Miller* standard in our jurisdiction. Thus, and until the proper case presents itself, prudence dictates that the Court should exercise judicial restraint.

WHEREFORE, the petition is **DISMISSED**.

SO ORDERED.

Peralta, Caguioa, Reyes, A. Jr., Reyes, J. Jr., Hernando, Lazaro-Javier, Inting, and *Zalameda, JJ.,* concur.

Perlas-Bernabe and Leonen, JJ., dissent, see dissenting opinions.

Carpio,[*] Acting *C.J.* and *Carandang, J.,* join the dissent of *J. Leonen.*

Bersamin, C.J. and *Gesmundo, J.,* on official business.

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[78] 376 U.S. 254 (1964).

[79] *Vasquez v. Court of Appeals*, G.R. No. 118971, September 15, 1999, 314 SCRA 460.

[*] Acting Chief Justice Per Special Order No. 2703.

DISSENTING OPINION

PERLAS-BERNABE, *J.*:

I dissent. As will be discussed below, the present petition assailing the constitutionality of Manila Ordinance No. 7780 or the "Anti-Obscenity and Pornography [O]rdinance of the City of Manila"[1] (Ordinance No. 7780) should not have been dismissed on the ground of mootness. Instead, the case should have been resolved by the Court on the merits and thereupon, decree the Ordinance's unconstitutionality based on the doctrine of overbreadth.

As background, the essential facts of this case are as follows: petitioners Allan Madrilejos, Allan Hernandez, Glenda Gil, and Lisa Gokongwei-Cheng (petitioners) were the respective editor-in-chief, managing editor, circulation manager, and president of Summit Publications, which publishes the FHM Magazine.[2] In 2008, they were charged before the City Prosecutor's Office of Manila for violating[3] Ordinance No. 7780, which proscribes the "printing, publishing, distribution, circulation, sale, and exhibition" as well as the "production, public showing[,] and viewing" of **obscene and pornographic acts or materials**.[4] The case was docketed as I.S. No. 08G-12234.

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[1] Entitled "AN ORDINANCE PROHIBITING AND PENALIZING THE PRINTING, PUBLICATION, SALE, DISTRIBUTION AND EXHIBITION OF OBSCENE AND PORNOGRAPHIC ACTS AND MATERIALS AND THE PRODUCTION, RENTAL, PUBLIC SHOWING AND VIEWING OF INDECENT AND IMMORAL MOVIES, TELEVISION SHOWS, MUSIC RECORDS, VIDEO AND VHS TAPES, LASER DISCS, THEATRICAL OR STAGE AND OTHER LIVE PERFORMANCES, EXCEPT THOSE REVIEWED BY THE MOVIE, TELEVISION REVIEW AND CLASSIFICATION BOARD (MTRCB)," enacted by the City Council of Manila on January 28, 1993 and approved by the City Mayor on February 19, 1993.

[2] See *rollo*, pp. 4-5.

[3] They were likewise charged with violations of Articles 200 (Grave scandal) and 201, Paragraph 2 (a) (Immoral doctrines, obscene publications, and exhibitions and indecent shows) of the Revised Penal Code (see *id*. at 6).

[4] See Section 3 of Ordinance No. 7780.

Soon after, petitioners filed the instant petition for prohibition[5] against the prosecutors, herein respondents Lourdes Gatdula, Agnes Lopez, and Hilarion Buban of the City Prosecutor's Office of Manila (respondents), assailing the constitutionality of Ordinance No. 7780 for being "**patently offensive to [the] constitutional right to free speech and expression**" and for violating "privacy rights," among others.[6] They argue that

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The Ordinance defines obscene and pornography as follows:

Section 2. Definition of Terms – As used in this ordinance, the terms:

A. Obscene shall refer to any material or act that is indecent, erotic, lewd or offensive or contrary to morals, good customs, or religious beliefs, principles or doctrines, or to any materials or act that tends to corrupt or deprive the human mind, or is calculated to excite impure imagination or arouse prurient interest, or is unfit to be seen or heard, or which violates the proprieties of language or behavior, regardless of the motive of the printer, publisher, seller, distributor, performer or author of such act or material, such as but not limited to:

1. Printing, showing, depicting or describing sexual acts;

2. Printing, showing, depicting or describing children in sexual acts;

3. Printing, showing, depicting or describing completely nude human bodies; and

4. Printing, showing, depicting or describing the human sexual organs or the female breasts.

B. Pornographic or pornography shall refer to such objects or subjects of photography, movies, music records, video and VHS tapes, laser discs, billboards, television, magazines, newspapers, tabloids, comics and live shows calculated to excite or stimulate sexual drive or impure imagination, regardless of motive of the author thereof, such as, but not limited to the following:

1. Performing live sexual acts in whatever form;

2.Those other than live performances showing, depicting or describing sexual acts;

3. Those showing, depicting or describing children in [sexual] acts;

4. Those showing, depicting or describing completely nude human body, or showing, depicting or describing the human sexual organs or the female breasts.

[5] With Prayer for the Issuance of a Preliminary Injunction &/or Temporary Restraining Order; *rollo*, pp. 3-35.

[6] See *rollo*, p. 8; emphasis supplied.

the Ordinance's definitions of obscenity and pornography are unduly expansive as to disregard the guidelines prescribed in *Miller v. California*[7] (*Miller*),[8] to wit:

> (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest, x x x (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

For their part, respondents reason that the adoption of the *Miller* test, which is a common law test, "takes away the civil law aspect of criminal law." They likewise submit that since our statutes do not define what is obscene, the Ordinance's definition of obscenity could very well be the contemporary community standard under the *Miller* test.[9]

The *ponencia*, however, did not delve into the substantive arguments of the parties but instead, took cognizance of the supervening dismissal of I.S. No. 08G-12234 by virtue of the prosecutor's Resolution dated June 25, 2013,[10] which allegedly rendered moot and academic the present petition. According to the *ponencia*, "[p]etitioners' purpose in filing the present action was to stop the conduct of the preliminary investigation into their alleged violation of an unconstitutional statute – a process that concludes with an Order whether or not to indict petitioners."[11] In any case, the *ponencia* observes that "[petitioners] have still failed to establish a cause of action to warrant a ruling in their favor[,]"[12] holding that they cannot mount a facial challenge against the Ordinance on the ground of overbreadth

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[7] 413 U.S. 15 (1973).

[8] *Rollo*, pp. 15 and 18.

[9] See *id*. at 364.

[10] See *id*. at 438-439. See also *ponencia*, pp. 5-6.

[11] See *ponencia*, p. 14.

[12] See *id*. at 15.

because "[t]he present petition does not involve a free speech case [as] it stemmed, rather, from an obscenity prosecution."[13]

Respectfully, I disagree.

First and foremost, it is my humble opinion that this case is not mooted by the dismissal of I.S. No. 08G-12234 because **the issue regarding the constitutionality of Ordinance No. 7780 is separate and distinct from the matter of petitioners' criminal prosecution**. From the records, it is clear that petitioners not only questioned the legality of the criminal prosecution against them but also the validity of Ordinance No. 7780 itself, invoking their constitutional right to free speech and expression. Verily, the criminal prosecution could have very well been terminated but the alleged curtailment of their free speech rights — and even so, other persons similarly situated as them — still looms in the horizon because Ordinance No. 7780 remains valid and subsisting. Case law states that:

> A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, **so that an adjudication of the case or a declaration on the issue would be of no practical value or use**. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve **any useful purpose or have any practical legal effect** because, in the nature of things, it cannot be enforced.[14] (Emphases supplied)

To my mind, there is clearly still practical legal value to resolve the constitutionality issue with respect to Ordinance No. 7780 because nothing prevents the government from once more, prosecuting similar, future forms of expression based on the said ordinance's characterization of obscenity. Even more, the subsistence of the subject ordinance has the effect of chilling

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[13] *Id.*

[14] *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*, 728 Phil. 535 (2014).

otherwise protected forms of free speech because of the impending threat of them being tagged under Ordinance No. 7780 as obscene. Therefore, the constitutionality issue persists as a live controversy that should not have evaded the Court's resolution on the merits on the ground of mootness.

Furthermore, contrary to the *ponencia*'s view, I respectfully submit that the facial challenge against Ordinance No. 7780 on overbreadth grounds is proper. To be sure, "[t]he overbreadth doctrine x x x decrees that 'a governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms[,]'[15] and hence, a statute or ordinance may be declared as unconstitutional on this score. Jurisprudence illumines that "[b]y its nature, **the overbreadth doctrine has to necessarily apply a facial type of invalidation in order to plot areas of protected speech**, inevitably almost always under situations not before the court, that are impermissibly swept by the substantially overbroad regulation. Otherwise stated, a statute cannot be properly analyzed for being substantially overbroad if the court confines itself only to facts as applied to the litigants."[16]

The *ponencia* holds that a facial challenge on overbreadth grounds is only proper to analyze protected forms of speech; hence, it is improper to examine Ordinance No. 7780's constitutionality with the said lens because it punishes "obscenity" which is not protected speech.[17]

The *ponencia*'s stance seems to gloss over the fact that what is being assailed is the ordinance's very characterization of obscenity. *The Court is asked not to examine a material which is already determined to be obscene,*

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[15] See Concurring in the Judgment Opinion of Mr. Justice Vicente V. Mendoza in *Estrada v. Sandiganbayan*, 421 Phil. 290, 430 (2001); citing *NAACP v. Alabama*, 377 U.S. 288, 307, 12 L. Ed. 2d 325, 338 [1958]; and *Shelton v. Tucker*, 364 U.S. 479, 5 L. Ed. 2d 231 (1960).

[16] *Samahan ng mga Progresibong Kabataan v. Quezon City*, G.R. No. 225442, August 8, 2017, 835 SCRA 350, 400; emphasis and underscoring supplied.

[17] See *ponencia*, p. 15.

but rather, to evaluate whether or not the very parameters used by the ordinance to determine obscenity itself is constitutionally valid. There is a whale of a difference between the parameters of obscenity from the obscene material itself. The former is the very issue in this case and not the latter, to which the *ponencia*'s misdirected observation on overbreadth ought to apply. If a statute or ordinance foists unreasonable parameters for obscenity, then surely it will have the effect of sweeping unnecessarily and broadly areas of free speech which would have otherwise been deemed as protected under our Constitution. Accordingly, in this case, a facial challenge which assails Ordinance No. 7780's parameters of obscenity based on the overbreadth doctrine should apply.

That being said, and under the overbreadth framework, I express my agreement with the opinion of Associate Justice Marvic M.V.F. Leonen that Ordinance No. 7780 is unconstitutional. However, I find it opportune to clarify that **Ordinance No. 7780 is regarded as constitutionally infirm not because it transgresses the *Miller* test *per se*, but because it violates substantive due process under an "overbreadth" analysis, which is one of the known methods of reviewing the constitutionality of an ordinance or a law**.

To recount, petitioners argue that the Ordinance's definitions of obscenity and pornography are unduly expansive as to disregard the guidelines prescribed in *Miller*. In *Fernando v. Court of Appeals*,[18] the Court observed that:

> There is no perfect definition of "obscenity" but the latest word is that of *Miller v. California* which established basic guidelines, to wit: (a) whether to the average person, applying contemporary standards would find the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.[19]

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[18] 539 Phil. 407 (2006).

[19] *Id*. at 417.

As indicated above, **the *Miller* test consists of three (3) parameters to determine whether or not a particular material is considered "obscene"**; in consequence, if a material is considered obscene, then it can be the subject of government regulation without infringing on the author's freedom of speech and expression. Through these three (3) parameters, the *Miller* test aims to define into demonstrable criteria what may be properly considered as "obscene" under judicial standards, and in so doing, seeks to delimit the conceptual malleability of "obscenity." Practically speaking, a person's appreciation of obscenity may be based on his or her disposition, *mores*, or values. As such, *Miller* is a jurisprudential attempt to set a uniform benchmark for such a highly-subjective term.

Since *Miller* is a test to determine what is obscene or not, its proper application is to "zero-in" on the actual material. In this regard, ***Miller* is not – strictly speaking – the test to determine the constitutionality of a particular ordinance or statute**. However, this does not mean that the *Miller* parameters are completely taken out of the equation in constitutional entreaties related to free speech issues. **Since *Miller* provides the prevailing proper standard to determine what is obscene, an obscenity regulation that fails to take into account *Miller's* three (3) parameters effectively foists an overbroad definition of obscenity and therefore, dangerously suppresses what should have been protected speech or expressions**.

Ordinance No. 7780 provides:

Section 2. Definition of Terms. – As used in this ordinance, the terms:

A. Obscene shall refer to any material or act that is indecent, erotic, lewd, or offensive, or contrary to morals, good customs, or religious beliefs, principles or doctrines, or to any material or act that tends to corrupt or deprive the human mind, or is calculated to excite impure imagination or arouse prurient interest, **or** is unfit to be seen or heard, or which violates the proprieties of language or behavior, regardless of the motive of the printer, publisher, seller, distributor, performer,

or author of such act or material, such as but not limited to:

1. Printing, showing, depicting or describing **sexual acts;**
2. Printing, showing, depicting or describing children in sexual acts;
3. Printing, showing, depicting or describing **completely nude human bodies**; and
4. Printing, showing, depicting or describing the **human sexual organs or the female breasts.**

B. Pornographic or pornography shall refer to such objects or subjects of photography, movies, music records, video and VHS tapes, laser discs, billboards, television, magazines, newspapers, tabloids, comics and live shows calculated to excite or stimulate sexual drive or impure imagination, regardless of motive of the author thereof, such as, but not limited to the following:

1. Performing live sexual acts in whatever form;
2. Those other than live performances showing, depicting or describing **sexual acts**;
3. Those showing, depicting or describing children in [sexual] acts;
4. Those showing, depicting or describing **completely nude human body**, or showing, depicting or describing the **human sexual organs or the female breasts.**

C. Materials shall refer to magazines, newspapers, tabloids, comics, writings, photographs, drawings, paintings, billboards, decals, movies, music records, video and VHS tapes, laser discs, and similar matters.

Section 3. Prohibited Acts. The printing, publishing, distribution, circulation, sale, and exhibition of obscene and pornographic acts and materials and the production, public showing and viewing of video and VHS tapes, laser discs, theatrical or stage and other live performances and private showing for public consumption whether for free or for a fee, of pornographic pictures as herein defined are hereby prohibited within the City of Manila and accordingly penalized as provided herein.

Section 4. Penalty Clause: any person violating this ordinance shall be punished as follows:

x x x x x x x x x

Provided, that in case the offender is a juridical person, the President and the members of the board of directors, shall be held criminally liable; Provided, further, that in case of conviction, all pertinent permits and licenses issued by the City Government to the offender shall be confiscated in favor of the City Government for destruction; Provided, furthermore, that in case the offender is a minor and unemancipated and unable to pay the fine, his parents or guardian shall be liable to pay such fine, Provided, finally, that **this ordinance shall not apply to materials printed, distributed, exhibited, sold, filmed, rented, viewed, or produced by reason of or in connection with or in furtherance of science and scientific research and medical or medically related art, profession, and for scientific and for educational purposes**. (Emphases supplied)

Clearly, the assailed Ordinance failed to take the *Miller's* guidelines into account in defining and penalizing obscenity under the parameters set therein.

In particular, *Miller's* first guideline ("whether the average person, applying contemporary community standards would find that the work, *taken as a whole*, appeals to the prurient interest") was exceeded, considering that Ordinance No. 7780 defines as obscene the mere depiction of "sexual acts" without looking at whether the dominant theme of the work has a tendency to excite lustful thoughts. While the phrase "act calculated to excite impure imagination or arouse prurient interest" appears in the Ordinance's definition of what is obscene, it is not the sole and definitive factor on what is obscene. Notably, such phrase is qualified by the conjunction "or", which means that it is an alternative to the other four phrases contained in the passage (*i.e.*, any material or act that is **(1)** indecent, erotic, lewd, or offensive; **(2)** contrary to morals, good customs, or religious beliefs, principles or doctrines; **(3)** is unfit to be seen or heard; or **(4)** which violates the proprieties of language or behavior, regardless of the motive of the printer, publisher, seller, distributor,

performer, or author of such act or material). As such, Ordinance No. 7780 is unduly expansive.

Hypothetically therefore, under the Ordinance's definition, a short section in a publication describing a sexual act would be sufficient to penalize the producer even though the effect of the work, taken as a whole, is not to excite the prurient interest. This depiction is protected expression under *Miller*. It bears noting that "sex and obscenity are not synonymous," such that the portrayal of sex, by itself, is not sufficient to deny a material of constitutional protection.[20] However, Ordinance No. 7780 attempts to criminalize such portrayal without any regard as to whether or not the dominant theme of the material "appeals to the prurient interest" as required by *Miller*.

Miller's second guideline — that is, "whether the work depicts or describes, *in a patently offensive way*, sexual conduct," was likewise ignored, since the Ordinance disallows even the mere showing of completely nude human bodies, as well as of sexual organs. As explained in *Jenkins v. Georgia*,[21] the showing of nudity alone does not render a material patently offensive or obscene based on *Miller's* standards.

Finally, *Miller's* third guideline (*i.e.*, whether the work, taken as a whole, lacks serious *literary, artistic, political,* or scientific value) was disregarded. While the Ordinance contains a *proviso* that it shall not apply to materials made or used for "science and scientific research and medical or medically related art, profession, and x x x educational purposes," this *proviso* does not include the full range of considerations in *Miller* such that those with serious literary, artistic, and political value are still considered obscene. It bears noting that the *proviso* exempts art only when it is medically related even though *Miller* does

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[20] *Roth v. United States*, 354 US 476 (1957). See also *Sable Communications v. FCC,* 492 US 115 (1989): "Sexual expression, which is indecent but not obscene is protected by the First Amendment."

[21] 418 US 153 (1974).

not contemplate such restrictive appreciation of a material's artistic value.

Accordingly, by failing to take into account the *Miller* guidelines, whether implicitly or explicitly, in its characterization of what is "obscene," the assailed Ordinance unduly sweeps towards protected forms of speech and expression in violation of Section 4,[22] Article III of the Constitution. In *Adiong v. Commission on Elections*,[23] the Court has held that "[a] statute is considered void for overbreadth when it offends the constitutional principle that a governmental purpose to control or prevent activities constitutionally subject to state regulations may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."[24] To be sure, the "[o]verbreadth doctrine is a principle of judicial review that a law is invalid if it punishes constitutionally protected speech or conduct along with speech or conduct that the government may limit to further a compelling government interest. **A statute that is broadly written which deters free expression can be struck down on its face because of its chilling effect even if it also prohibits acts that may legitimately be forbidden**,"[25] as in this case. Hence, Ordinance No. 7780 is void for being overbroad. Accordingly, the petition should have been granted.

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[22] Section 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

[23] G.R. No. 103956, March 31, 1992, 207 SCRA 712.

[24] *Id.* at 719-720.

[25] <https://definitions.uslegal.com/o/overbreadth-doctrine/> (last visited October 16, 2019); emphasis supplied.

DISSENTING OPINION

LEONEN, *J.*:

> *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.*[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.*[2]

An ordinance with terms so broad and vague that it easily allows repeated prosecution, chilling both creative and political expression, is unconstitutional. It violates the fundamental tenets of both free expression and due process of law. Good intentions are never sufficient. Laws pertaining to restrictions of expression must be clearly articulated so that they could not provide any possibility for abuse.

"I know it when I see it[.]"[3]

This seemingly innocuous statement by Justice Potter Stewart, which is not even part of the majority opinion, has, for one reason or another, become the defining moment in determining whether an obscene or pornographic material can be considered a constitutionally-protected expression. This simple sentence, however harmless, has also placed a heavy burden on courts to determine with certainty what can be deemed immoral and offensive. Our jurisprudence, for one, has been inconsistent at best and hazy at worst.

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[1] CONST., Art. III, Sec. 4.

[2] CONST., Art. III, Sec. 1.

[3] Concurring Opinion of *J.* Stewart in *Jacobellis v. Ohio*, 378 U.S. 184 (1964).

In this jurisdiction, this Court has consistently struck down—from *Gonzalez v. Katigbak*[4] (1985), to *Pita v. Court of Appeals*[5] (1989), to *Fernando v. Court of Appeals*[6] (2006), then to *Soriano v. Laguardia*[7] (2009)—any attempt based on broad formulations in law to stifle creative speech in the form of text or image. Only a few weeks ago, in *Nicolas-Lewis v. Commission on Elections*,[8] despite the case being clearly moot, this Court struck down, on the basis of a facial challenge of overbreadth, Section 36.8[9] of Republic Act No. 9189, as amended.[10]

The adoption of the guidelines in these cases provides demarcations of what is obscene and what is constitutionally-protected expression. Unlike in previous cases, however, this Court is not tasked with reviewing whether a certain material is considered obscene, but rather, whether a local ordinance goes beyond the guidelines mandated in previous jurisprudence. Any ordinance that goes beyond these guidelines will be considered censorship and will be struck down as unconstitutional.

In this case, an ordinance, not even a statute, clearly fails to follow the current canonical framework for determining

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[4] 222 Phil. 225 (1985) [Per *J.* Fernando, *En Banc*].

[5] 258-A Phil. 134 (1989) [Per *J.* Sarmiento, *En Banc*].

[6] 539 Phil. 407 (2006) [Per *J.* Quisumbing, Third Division].

[7] 605 Phil. 43 (2009) [Per *J.* Velasco, Jr., *En Banc*].

[8] G.R. No. 223705, August 13, 2019, <http.//sc.judiciary.gov.ph/8730/> [Per *J.* Reyes, Jr., *En Banc*].

[9] Republic Act No. 9189 (2003), Sec. 24, as amended by Republic Act No. 10590 (2013), Sec. 37 provides:

SECTION 37. Section 24 of the same Act is hereby renumbered as Section 36 and is amended to read as follows:

SEC. 36. Prohibited Acts. — In addition to the prohibited acts provided by law, it shall be unlawful:

. . . . . .

36.8. For any person to engage in partisan political activity abroad during the thirty (30)-day overseas voting period[.]

[10] The Overseas Voting Act of 2013.

whether there is obscenity beyond the pale of protected speech. As adopted in *Soriano*:

> [T]he latest word is that of *Miller v. California* which established "basic guidelines," to wit: (a) whether to the average person, applying contemporary standards would find the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.[11]

An overbroad provision goes beyond punishing obscenity. It provides an uncontrolled, unbridled, and unregulated warrant to attack and prohibit protected creative speech. It chills the fundamental right of expression under Article III, Section 4 of the Constitution. This Court, being the sentinel of the Bill of Rights, should strike down such an ordinance without hesitation.

This case involves a Petition for Prohibition[12] questioning the constitutionality of Manila Ordinance No. 7780, or the "Anti-Obscenity and Pornography Ordinance of the City of Manila."

On February 19, 1993, the City of Manila enacted Ordinance No. 7780,[13] which prescribes criminal penalties for the printing, publishing, distribution, circulation, sale production, exhibition, showing, or viewing of obscene and pornographic materials. Its pertinent portions provide:

> SEC. 2. Definition of Terms: As used in this ordinance, the terms:
>
> A. Obscene shall refer to any material or act that is indecent, erotic, lewd or offensive, or contrary to morals, good customs or religious beliefs, principles or doctrines, or to any material or act that tends to corrupt or depr[a]ve the human mind, or is calculated to excite impure imagination or arouse prurient

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[11] *Soriano v. Laguardia*, 605 Phil. 43, 97 (2009) [Per *J*. Velasco, Jr., *En Banc*] citing *Fernando v. Court of Appeals*, 539 Phil. 407 (2006) [Per *J*. Quisumbing, Third Division] and *Miller v. California*, 413 U.S. 15 (1973).

[12] *Rollo*, pp. 3-38.

[13] *Id*. at 39-41.

interest, or is unfit to be seen or heard, or which violates the proprieties of language or behavior, regardless of the motive of the printer, publisher, seller, distributor, performer or author of such act or material, such as but not limited to:

1. Printing, showing, depicting or describing sexual acts;
2. Printing, showing, depicting or describing children in sexual acts;
3. Printing, showing, depicting or describing completely nude human bodies; and
4. Printing, showing, depicting or describing the human sexual organs or the female breasts.

B. Pornographic or pornography shall refer to such objects or subjects of photography, movies, music records, video and VHS tapes, laser discs, billboards, television, magazines, newspapers, tabloids, comics and live shows calculated to excite or stimulate sexual drive or impure imagination, regardless of the motive of the author thereof, such as, but not limited to the following:

1. Performing live sexual acts in whatever form;
2. Those other than live performances showing, depicting or describing sexual acts;
3. Those showing, depicting or describing children in sex acts;
4. Those showing, depicting, or describing completely nude human body, or showing, depicting or describing the human sexual organs or the female breasts.

Materials shall refer to magazines, newspapers, tabloids, comics, writings, photographs, drawings, paintings, billboards, decals, movies, music records, video and VHS tapes, laser discs, and similar matters.

SEC. 3. Prohibited Acts[:] The printing, publishing, distribution, circulation, sale and exhibition of obscene and pornographic acts and materials and the production, public showing and viewing of video and VHS tapes, laser discs, theatrical or stage and other live performances and private showing for public consumption, whether for free or for a fee, of pornographic pictures as herein defined are hereby prohibited within the City of Manila and accordingly penalized as provided herein.

SEC 4. Penalty Clause: Any person violating this ordinance shall be punished as follows:

1. For the printing, publishing, distribution or circulation of obscene or pornographic materials; the production or showing of obscene movies, television shows, stage and other live performances; for producing or renting obscene video and VHS tapes, laser discs, for viewing obscene movies, television shows, video and VHS tapes, laser discs or stage and other live performances; and for performing obscene act on stage and other live performances – imprisonment of one (1) year or fine of five thousand (₱5,000.00) pesos, or both, at the discretion of the court.

2. For the selling of obscene or pornographic materials – imprisonment of not less than six (6) months nor more than one (1) year or a fine of not less than one thousand (₱1,000.00) pesos, nor more than three thousand (₱3,000.00) pesos.

Provided, that in case the offender is a juridical person, the President and the members of the board of directors, shall be held criminally liable; Provided, further, that in case of conviction, all pertinent permits and licenses issued by the City Government to the offender shall automatically be revoked and the obscene or pornographic materials shall be confiscated in favor of the City Government for destruction; Provided, furthermore, that in case the offender is a minor and unemancipated and unable to pay the fine, his parents or guardian shall be liable to pay such fine; Provided finally, that this ordinance shall not apply to materials printed, distributed, exhibited, sold, filmed, rented, viewed or produced by reason of or in connection with or in furtherance of science and scientific research and medical or medically related art, profession, and for educational purposes.[14]

On July 7, 2008, 12 pastors and preachers led by Pastor Bienvenido M. Abante, Jr. (Abante), then Manila's Sixth District Representative and the principal author of Ordinance No. 7780,[15] filed a Joint Complaint-Affidavit[16] before the Office of the City Prosecutor of Manila against officers and publishers of various

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[14] *Id*. at 39-40.

[15] *Id*. at 6.

[16] *Id*. at 44-49.

magazines and tabloids. They claimed that these materials were in violation of Articles 200[17] and 201(2)(a)[18] of the Revised Penal Code, and Ordinance No. 7780.[19]

Among the periodicals questioned was FHM Magazine, published by Summit Publishing Company, Inc. (Summit Media). Allan Madrilejos (Madrilejos), Allen Hernandez (Hernandez), and Glenda Gil (Gil) were the magazine's editor-in-chief, managing editor, and circulation manager, respectively, while Lisa Gokongwei-Cheng (Gokongwei-Cheng) is Summit Media's president.[20]

The criminal case was docketed as I.S. No. 08G-12234 and was set for preliminary investigation.[21] The Office of the City Prosecutor of Manila created a special panel of prosecutors composed of Lourdes Gatdula, Agnes Lopez, and Hilario Buban (Prosecutor Gatdula, *et al*.).[22]

On July 24, 2008, Prosecutor Gatdula, *et al*. subpoenaed[23] Madrilejos, Hernandez, Gil, and Gokongwei-Cheng (Madrilejos,

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[17] REV. PEN. CODE, Art. 200 provides:

ARTICLE 200. *Grave scandal*. — The penalties of *arresto mayor* and public censure shall be imposed upon any person who shall offend against decency or good customs by any highly scandalous conduct not expressly falling within any other article of this Code.

[18] REV. PEN. CODE, Art. 201 provides:

ARTICLE 201. *Immoral doctrines, obscene publications and exhibitions and indecent shows*. — The penalty of *prision mayor* or a fine ranging from six thousand to twelve thousand pesos, or both such imprisonment and fine, shall be imposed upon:

. . . . . .

(2) (a) the authors of obscene literature, published with their knowledge in any form; the editors publishing such literature; and the owners/operators of the establishment selling the same[.]

[19] *Rollo*, p. 44.

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

[21] *Id*. at 352.

[22] *Id*. at 7

[23] *Id*. at 50.

et al.) to appear and submit their counter-affidavits. Madrilejos, *et al*. moved that the preliminary investigation be reset to August 28, 2008 to give time to study the complaint. Later, they filed an Urgent Motion for Bill of Particulars, requesting for clarification on the extent of their alleged culpability for all the publications complained against since all the publications being complained of were charged in conspiracy with each other.[24]

On September 24, 2008, Madrilejos, *et al*. filed this Petition for Prohibition[25] against Prosecutor Gatdula, *et al*. They seek to prevent the implementation of Ordinance No. 7780, claiming that it is invalid on its face for being patently offensive to the constitutional right to free speech and expression, repugnant to due process and privacy rights, and violative of the principle of separation of Church and State.

The Petition comes with a prayer for a temporary restraining order and/or writ of preliminary injunction. In applying for injunctive relief, petitioners submit that they "now face the spectacle of having to undergo the continuing ignominy of criminal prosecution for the legitimate exercise of their freedom of expression."[26] They point out that "[e]ven presuming that certain protected speech may be regulated, there is already adequate legislation for the purpose in the form of Article 201 of the Revised Penal Code."[27]

Petitioners concede that writs of prohibition do not restrain the conduct of criminal prosecution. They submit, however, that this case falls under the exceptions enumerated in *Venus*

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[24] *Id*. at 7.

[25] *Id*. at 3-38. The Comment was filed on November 18, 2008 (*rollo*, pp. 352-368) while the Reply was filed on December 19, 2008 (*rollo*, pp. 337-351).

[26] *Id*. at 34.

[27] *Id*.

v. Desierto,[28] namely, "[w]here the prosecution is under an invalid law, ordinance[,] or regulation[.]"[29]

Petitioners argue that, as with *Yu Cong Eng v. Trinidad*,[30] Ordinance No. 7780, which was enacted in 1993, has not yet been interpreted by the courts. In the interest of public welfare and the advancement of public policy, they contend that it is proper to have the validity of a given law determined at the start of a prosecution.[31]

Petitioners likewise claim that Ordinance No. 7780 provides a definition of "obscene" and "pornography" that disregards the doctrine in *Miller v. California*.[32] They assert that the standards in the Ordinance are vague as it uses expansive language, which made it possible for the complaining pastors and preachers "to impose upon the public what, in their religious estimation, is 'unfit to be seen or heard' by the residents of Manila or what is violative of the 'proprieties of language or behavior.'"[33] They argue that these pastors or preachers cannot be the "average person" referred to in *Miller*, who may be called upon to apply contemporary community standards to determine what is obscene.[34]

Petitioners also allege that FHM Magazine has a readership of about 1 million, 40% of whom are female. They argue that these readers, along with cultural groups or anti-religious sects, will protest that religious pastors and preachers will determine what are considered contemporary community standards. They claim that "it is not for ultra-conservatives or extreme liberalists

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[28] 358 Phil. 675 (1998) [Per *J.* Davide, Jr., First Division].

[29] *Rollo*, p. 9 citing *Venus v. Desierto*, 358 Phil. 675, 694 (1998) [Per *J.* Davide, Jr., First Division].

[30] 47 Phil. 385 (1925) [Per *J.* Malcolm, Second Division].

[31] *Rollo*, pp. 10-12.

[32] *Id.* at 15 citing 413 U.S. 15 (1973).

[33] *Id.* at 18.

[34] *Id.*

to dictate upon society what they can or should not see or hear. Neither is it the place for militants, fanatics, radicals[,] or traditionalists to determine the same."[35]

Petitioners assert that according to the *Miller* test, "only sexual conduct, described in a 'patently offensive' manner is considered as obscene."[36] They point out that Ordinance No. 7780 is unduly expansive in that it considers the mere printing, showing, depicting, or describing of sexual acts as obscene and pornographic.[37] They allege that by this standard, the following works would be obscene and pornographic: (1) this Court's Decision in *People v. Baligod*;[38] (2) the exhibit, "100 Nudes, 100 Years," featuring national artists' works; (3) Chapter 7, Verses 3 and 7 of the Song of Songs in the Bible, which describes female breasts; (4) and certain scenes in the movie, "Schindler's List."[39]

Petitioners argue that the allegedly obscene excerpts of FHM Magazine "cannot seriously be accused of lacking serious artistic value by any but the most prudish eyes."[40] As an example, they point out that the cover page of FHM Erotica "carries the picture of a nude woman whose private parts are artistically covered by shadows."[41] They allege that the pastors and preachers "did not bother to peruse the contents of the said publication, which featured literature from award-winning writers such as Marguerite de Leon, Anna Felicia Sanchez[,] and Norman Wilwayco."[42] They point out that there must be evidence of pandering to prurient interests to determine if a material is obscene, instead of the Ordinance's "wholesale branding of materials

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[35] *Id*. at 19.

[36] *Id*. at 20.

[37] *Id*. at 21.

[38] 583 Phil. 299 (2008) [Per *J*. Quisumbing, Second Division].

[39] *Rollo*, pp. 22-23.

[40] *Id*. at 23.

[41] *Id*. at 24.

[42] *Id*.

... as being obscene, without regard to the manner of their commercial exploitation[.]"[43]

Moreover, petitioners contend that their manner of distribution shows that their magazine is not being commercially exploited "for the sake of its prurient appeal."[44] They point out that "a clear 18+ mark appears prominently on all the covers of FHM magazines together with the words 'CONTENTS MAY NOT BE SUITABLE FOR MINORS.'"[45] The magazines are also sealed in plastic covers, sold in legitimate stands, "and only to adults."[46]

Petitioners submit that allowing obscenity to be defined based on religious morals and customs violates the principle of the separation of Church and State.[47] They argue that allowing so would open "the floodgates for religious organizations to impose their beliefs on non-members."[48]

Moreover, petitioners submit that the Ordinance violates their right to due process, as the means employed were "not reasonably necessary to accomplish its purpose."[49] They allege that the Ordinance imposes criminal liability based on one's membership in a publication's board, regardless of whether that member was involved in the actual publication of the questioned material. Considering that Summit Media publishes several magazines other than FHM Magazine, they argue that the Ordinance effectively discourages persons from pursuing other legitimate businesses.[50]

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[43] *Id*.

[44] *Id*. at 25.

[45] *Id*. at 24.

[46] *Id*.

[47] *Id*. at 26.

[48] *Id*. at 27.

[49] *Id*. at 29.

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

Petitioners further assert that the Ordinance violates their readers' privacy rights as it "intrude[s] into the privacy of one's home with no other purpose than to control individual thought."[51] They point out that the words, "private showing for public consumption, whether free or for a fee, of pornographic pictures as herein defined," in the acts prohibited by the Ordinance "unlawfully oversteps the traditionally recognized state interest to control commercial exhibition of prohibited material."[52] They argue that the Ordinance is "tantamount to a blanket prohibition of the private possession of objectionable materials" and thus, is "in the nature of a constitutionally impermissible state control over private thoughts."[53]

Respondents, on the other hand, counter that an action for prohibition is not proper, since petitioners failed to allege any act by the Office of the City Prosecutor of Manila that shows grave abuse of discretion in the conduct of its preliminary investigation.[54]

Respondents, citing *Guingona v. City Fiscal of Manila*,[55] maintain that criminal prosecutions cannot be enjoined and that this case does not fall under the exceptions to the general rule. They point out that petitioners incorrectly cited *Venus* since nowhere in that case was it contended that a law, ordinance, or regulation was invalid. They also aver that this Court in *Yu Cong Eng* did not enjoin the criminal prosecution since the law being assailed was found to be constitutional.[56]

Moreover, respondents argue that the adoption of the *Miller* test "takes away the civil law aspect of our criminal law."[57]

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

[52] *Id*.

[53] *Id*. at 32.

[54] *Id*. at 353-355.

[55] 213 Phil. 516 (1984) [Per *J*. Makasiar, Second Division].

[56] *Rollo*, pp. 359-361.

[57] *Id*. at 364.

They submit that with obscenity not defined in statute, Ordinance No. 7780's definition of it "could very well be the contemporary community standard."[58] They allege that the Petition "seeks a mere exercise of academic discussion"[59] since petitioners failed to prove that the Ordinance will actually violate their civil rights.[60]

Respondents further submit that the Ordinance's "legislative intent to eradicate greed, which preys on and appeals on the baser instincts of unwary consumers, is far superior to the 'property rights' of the petitioners in the hierarchy of values within the due process clause[.]"[61] Moreover, they point out that the Ordinance did not violate the due process clause since it had undergone the basic requirements of notice and hearing.[62]

As to legal standing, respondents assert that petitioners were not the proper party to question Ordinance No. 7780. Since petitioners did not allege that they were the authors of articles, photographs, and graphics published in the magazine, they supposedly failed to prove that their constitutional rights of freedom of speech and expression was or will be violated because of the Ordinance.[63]

Even assuming that they were the authors, respondents submit that petitioner's freedoms were not absolute since "petitioners cannot pretend to be 'Little Lord Fauntleroys', when they published articles depicting incestuous sex or a woman having sex with father and son ... or the suggestive pictures of lesbians fondling each other[.]"[64]

Moreover, respondents claim that since petitioners have neither alleged that they are believers or non-believers, they would

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[58] *Id*.

[59] *Id*.

[60] *Id*.

[61] *Id*. at 364-365.

[62] *Id*. at 365.

[63] *Id*. at 362.

[64] *Id*.

have no standing to question the Ordinance on the basis that it violates the non-establishment clause. They likewise argue that since petitioners have not alleged to be Manila residents, they would have no standing to question the alleged violations to privacy.[65] They insist that Ordinance No. 7780 enjoys the presumption of constitutionality absent any factual evidence showing that it will impair their personal civil rights.[66]

In rebuttal, petitioners claim that they have sufficiently established a personal and substantial interest, since they are precisely the respondents in the criminal case who will personally suffer from some actual or threatened injury as a result of its enforcement.[67]

Later, on November 11, 2013, petitioners manifested[68] receiving a copy of the Office of the City Prosecutor of Manila's June 25, 2013 Resolution.[69] In it, the filing of Information against them for violation of Section 201(2)(a) of the Revised Penal Code was recommended. However, the charge against petitioner Gokongwei-Cheng for violation of Article 201 of the Revised Penal Code was dismissed. The charge against petitioners for violation of Article 200 of the Revised Penal Code and Ordinance No. 7780 was likewise dismissed.[70]

In their Manifestation, however, petitioners point out that what they question in their Petitions is the constitutionality of the Ordinance itself; hence, the issue has not become moot.[71]

From the arguments of the parties, this Court is now asked to resolve the following procedural issues:

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[65] *Id*. at 362-363.

[66] *Id*. at 365-367.

[67] *Id*. at 340.

[68] *Id*. at 422-424.

[69] *Id*. at 425-439.

[70] *Id*. at 438-439.

[71] *Id*. at 423.

First, whether or not a petition for prohibition is the proper remedy;

Second, whether or not petitioners Allan Madrilejos, Allan Hernandez, Glenda Gil, and Lisa Gokongwei-Cheng have legal standing to question the constitutionality of Ordinance No. 7780; and

Third, whether or not petitioners are entitled to the issuance of an injunctive writ.

The parties likewise raise the main substantive issue of whether or not Manila Ordinance No. 7780 is unconstitutional. To resolve this, however, this Court must first pass upon the following questions:

First, whether or not Ordinance No. 7780 contravenes the definition set by *Miller v. California*;[72]

Second, whether or not Ordinance No. 7780 violates the non-establishment clause;

Third, whether or not Ordinance No. 7780 violates the right to due process; and

Finally, whether or not Ordinance No. 7780 offends privacy rights.

I

"The writ of prohibition is an extraordinary judicial writ issuing out of a court of superior jurisdiction and directed to an inferior court, for the purpose of preventing the inferior tribunal from usurping a jurisdiction with which it is not legally vested."[73] A petition for prohibition seeks the issuance of a judgment ordering the respondent to stop conducting further proceedings in the specified action or matter.[74]

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[72] 413 U.S. 15 (1973).

[73] *People v. Vera*, 65 Phil. 56, 84 (1937) [Per J. Laurel, *En Banc*] citing High, *Extraordinary Legal Remedies*, p. 705.

[74] RULES OF COURT, Rule 65, Sec. 2.

Here, petitioners filed a Petition for Prohibition seeking to prevent respondents from proceeding with the prosecution of I.S. No. 08G-12234 for violation of Articles 200 and 201 of the Revised Penal Code and Ordinance No. 7780.

As a general rule, a petition that seeks to enjoin the prosecution of criminal proceedings will not prosper. This is because "public interest requires that criminal acts be immediately investigated and prosecuted for the protection of society."[75] There are of course, recognized exceptions to the rule, as laid out in *Brocka v. Enrile*:[76]

a. To afford adequate protection to the constitutional rights of the accused;

b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;

c. When there is a pre-judicial question which is *sub judice*;

d. When the acts of the officer are without or in excess of authority;

e. Where the prosecution is under an invalid law, ordinance or regulation;

f. When double jeopardy is clearly apparent;

g. Where the court has no jurisdiction over the offense;

h. Where it is a case of persecution rather than prosecution;

i. Where the charges are manifestly false and motivated by the lust for vengeance; and

j. When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied.

7. Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners.[77]

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[75] *Asutilla v. Philippine National Bank*, 225 Phil. 40, 43 (1986) [Per *J.* Melencio-Herrera, First Division].

[76] 270 Phil. 271 (1990) [Per *J.* Medialdea, *En Banc*].

[77] *Id*. at 276-277 citing *Hernandez v. Albano*, 125 Phil. 513 (1967) [Per *J.* Sanchez, *En Banc*]; *Dimayuga v. Fernandez*, 43 Phil. 304 (1922)

An action for prohibition is the proper remedy to enjoin a criminal prosecution if the tribunal hearing the case derives its jurisdiction exclusively from an unconstitutional statute. In *People v. Vera*:[78]

> The general rule, although there is a conflict in the cases, is that the writ of prohibition will not lie.... *But where the inferior court or tribunal derives its jurisdiction exclusively from an unconstitutional statute, it may be prevented by the writ of prohibition from enforcing that statute*.[79] (Emphasis supplied)

Respondents reason that *Yu Cong Eng*,[80] which petitioners cite as basis, upheld the constitutionality of the questioned statute, and thus, would not be adequate to support their position.

Yu Cong Eng, however, was eventually appealed to the United States Supreme Court, which overturned this Court's finding of constitutionality on the basis that the questioned statute violated the right to equal protection.[81] In any case, *Yu Cong Eng* remains

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[Per J. Johns, First Division]; *Fortun v. Labang*, 192 Phil. 125 (1981) [Per J. Fernando, Second Division]; *De Leon v. Mabanag*, 70 Phil. 202 (1940) [Per J. Imperial, First Division]; *Planas v. Gil*, 67 Phil. 62 (1939) [Per J. Laurel, *En Banc*]; *Young v. Rafferty*, 33 Phil. 556 (1916) [Per J. Trent, First Division]; *Yu Cong Eng v. Trinidad*, 47 Phil. 385, 389 (1925) [Per J. Malcolm, Second Division]; *Sangalang v. People and Avendia*, 109 Phil. 1140 (1960) [Per J. Gutierrez-David, First Division]; *Lopez v. City Judge*, 124 Phil. 1211 (1966) [Per J. Dizon, *En Banc*]; *Rustia v. Ocampo*, CA-G.R. No. 4760, March 25, 1960; *Recto v. Castelo*, 18 L.J. (1953); *Rañoa v. Alvendia*, CA-G.R. No. 30720-R, October 8, 1962; *Guingona v. City Fiscal*, 213 Phil. 516 (1984) [Per J. Makasiar, Second Division]; *Salonga v. Paño*, 219 Phil. 402 (1985) [Per J. Gutierrez, Jr., *En Banc*]; *Rodriguez v. Castelo*, L-6374, August 1, 1958.

[78] 65 Phil. 56 (1937) [Per J. Laurel, *En Banc*].

[79] *Id*. at 84-85 citing 50 C. J., 670; *Ex parte* Round tree [1874, 51 Ala., 42; *In re Macfarland*, 30 App. [D.C.], 365; *Curtis v. Cornish* (1912), 109 Me., 384; 84 A., 799; *Pennington v. Woolfolk* (1880), 79 Ky., 13; *State v. Godfrey* (1903), 54 W. Va., 54; 46 S. E., 185; *Arnold v. Shields* (1837), 5 Dana, 19; 30 Am. Dec., 669.

[80] 47 Phil. 385 (1925) [Per J. Malcolm, Second Division].

[81] See *Yu Cong Eng v. Trinidad*, 271 U.S. 500 (46 S.Ct. 619, 70 L.Ed. 1059).

good law on the exception that a criminal prosecution may be enjoined if a prosecution is alleged to be under an invalid law, ordinance, or regulation.

Respondents likewise cite *Guingona*[82] as basis to prove that this case does not fall under any of the exceptions. However, contrary to their claim, *Guingona* provides that criminal offenses may be the subject of prohibition and injunction "to afford adequate protection to constitutional rights" and "in proper cases, because the statute relied upon is unconstitutional or was held invalid."[83]

Here, petitioners did not err in seeking a writ of prohibition to enjoin the criminal proceedings against them, since they claim that the penal statute used against them, Ordinance No. 7780, is unconstitutional.

II

Legal standing or *locus standi* is the "right of appearance in a court of justice on a given question."[84] It has likewise been defined as "the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case."[85]

In private suits, standing is afforded only to the real party-in-interest,[86] one "who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit."[87]

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[82] 213 Phil. 516 (1984) [Per Acting *C.J.* Makasiar, Second Division].

[83] *Id*. at 528 citing *Primicias v. Municipality of Urdaneta, Pangasinan*, 182 Phil. 42 (1979) [Per *J.* De Castro, First Division]; *Ramos v. Torres*, 134 Phil. 544 (1968) [Per *J.* Concepcion, *En Banc*]; and *Hernandez v. Albano*, 125 Phil. 153 (1967) [Per *J.* Sanchez, *En Banc*].

[84] *David v. Macapagal-Arroyo*, 522 Phil. 705, 755 (2006) [Per *J.* Sandoval-Gutierrez, *En Banc*] citing *Black's Law Dictionary*, 6th Ed. 1991, p. 941.

[85] *White Light Corporation v. City of Manila*, 596 Phil. 444, 455 (2009) [Per *J.* Tinga, *En Banc*].

[86] RULES OF COURT, Rule 3, Sec. 2.

[87] RULES OF COURT, Rule 3, Sec. 2.

In public suits, however, "the doctrine of standing is 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."[88] Parties must show "a personal and substantial interest" in the case such that they "sustained or will sustain direct injury as a result of the governmental act that is being challenged."[89] They must allege "such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."[90]

The general rule, therefore, is that before parties can raise a constitutional question, they must first show that direct injury was sustained or will be sustained because of the challenged government act. Nonetheless, as discussed in *David v. Macapagal-Arroyo*,[91] there are exceptions:

> Taxpayers, voters, concerned citizens, and legislators may be accorded standing to sue, provided that the following requirements are met:
>
> (1) the cases involve constitutional issues;
>
> (2) for taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
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> (3) for voters, there must be a showing of obvious interest in the validity of the election law in question;
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> (4) for concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early; and

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[88] *White Light Corporation v. City of Manila*, 596 Phil. 444, 455 (2009) [Per *J.* Tinga, *En Banc*] citing *Allen v. Wright*, 468 U.S. 737 (1984).

[89] *Galicto v. Aquino III*, 683 Phil. 141, 170 (2012) [Per *J.* Brion, *En Banc*].

[90] *Id.* citing *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452 (2010) [Per *J.* Carpio Morales, *En Banc*].

[91] 522 Phil. 705 (2006) [Per *J.* Sandoval-Gutierrez, *En Banc*].

(5) for legislators, there must be a claim that the official action complained of infringes upon their prerogatives as legislators.[92]

Another permissible exception is the concept of third-party standing. Actions may be brought on behalf of third parties if the following requisites 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.[93]

In *White Light Corporation v. City of Manila*,[94] hotel and motel operators filed a complaint to prevent the implementation of Manila Ordinance No. 7774, which prohibited "short time admission in hotels, motels, lodging houses, pension houses and similar establishments"[95] in Manila. These operators alleged that the questioned ordinance unlawfully interfered with the conduct of their business. Interestingly, they likewise filed the complaint on behalf of their clients, alleging that the questioned ordinance violated their clients' right to privacy and the freedom of movement, as well as their right to equal protection of the laws.

This Court granted standing to these hotel and motel operators since there would be a clear injury to their business interests. It reasoned that these kinds of businesses rely on the continued patronage of their clientele, and Ordinance No. 7774 deters their clients from patronizing their businesses. This Court likewise noted that "[t]he relative silence in constitutional litigation of such special interest groups in our nation such as the American

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[92] *Id.* at 760.

[93] *White Light Corporation v. City of Manila*, 596 Phil. 444, 456 (2009) [Per *J.* Tinga, *En Banc*] citing *Powers v. Ohio*, 499 U.S. 400 (1991).

[94] 596 Phil. 444 (2009) [Per *J.* Tinga, *En Banc*].

[95] *Id.* at 450.

Civil Liberties Union in the United States may also be construed as a hindrance for customers to bring suit."[96]

In this case, respondents allege that petitioners were not the proper parties to the suit since they were not the authors of articles, photographs, and graphics published in the magazine. Ordinance No. 7780, however, penalizes the printing, publishing, distribution, or circulation of materials alleged to be obscene or pornographic. Petitioners are the editor-in-chief, managing editor, circulation manager of FHM Magazine and the president of Summit Media, the corporation that publishes the magazine alleged to contain obscene or pornographic material. They stood to be penalized under the law. The direct injury to them, therefore, is clear.

Respondents likewise assail petitioners' standing to argue that Ordinance No. 7780 violates the non-establishment clause, since petitioners did not allege that they were "believers or non-believers" of a particular religion or sect. But, as explained in *David*, concerned citizens may be granted standing if the case involves constitutional issues. Regardless of petitioners' religious denomination, they may question the validity of an ordinance on the ground that it violates provisions of the Constitution.

Petitioners also bring this suit on behalf of their readers in Manila, whose privacy rights are supposedly violated by Ordinance No. 7780. They assert that it is "tantamount to a blanket prohibition of the private possession of objectionable materials[,]"[97] and thus, "is in the nature of a constitutionally impermissible state control over private thoughts."[98] Respondents counter that petitioners have no standing to raise this issue since they are not residents of Manila.

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[96] *Id*. at 456-457 citing Kelsey McCowan Heilman, *The Rights of Others: Protection and Advocacy Organizations Associational Standing to Sue*, 157 U. Pa. L. Rev. 237.

[97] *Rollo*, p. 32.

[98] *Id*.

Petitioners have shown sufficient third-party standing to question Ordinance No. 7780 on the basis that it violates their readers' privacy rights. As with *White Light Corporation*, readers would be deterred from buying petitioners' magazines, believing that they possess prohibited materials. This, in turn, would endanger petitioners' business interests, since their publications rely on the strength of their readership.

It is likewise unlikely that a Manila resident who regularly reads these kinds of publications would bring an action to question the Ordinance. This kind of action would be costly and protracted, bringing no substantial benefit to that Manila resident other than giving him or her continued freedom to read these magazines. As noted in *White Light Corporation*, corporations will more likely question such ordinances to protect their business interests, since there are not enough special interest groups that can regularly engage in constitutional litigation.

III

The issuance of an injunctive writ has already become unnecessary in light of the dismissal of I.S. No. 08G-12234. The Petition, however, has not yet become moot since petitioners questioned not only the validity of the criminal prosecution against them, but the validity of Ordinance No. 7780 itself.

An injunctive writ may be "granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts[.]"[99] For it to be granted, the applicant must establish:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring performance of an act or acts, either for a limited period or perpetually;

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[99] RULES OF COURT, Rule 58, Sec. 1.

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.[100]

Since I.S. No. 08G-12234 has already been dismissed,[101] there is no need or urgency requiring the issuance of an injunctive writ. However, the majority opined that the dismissal of the criminal prosecution has rendered this Petition moot. I disagree.

In *David*:

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness.[102]

Generally, this Court cannot review cases where the controversy has become moot. However, it will decide cases that have otherwise been moot "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 the constitutional issue raised requires formulation of

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[100] RULES OF COURT, Rule 58, Sec. 3.

[101] *Rollo*, pp. 438-439.

[102] *David v. Macapagal-Arroyo*, 522 Phil. 705, 753-754 (2006) [Per J. Sandoval-Gutierrez, *En Banc*] citing *Province of Batangas v. Romulo*, 473 Phil. 806 (2004) [Per J. Callejo, Sr., *En Banc*]; *Banco Filipino Savings and Mortgage Bank v. Tuazon, Jr.*, 469 Phil. 79 (2004) [Per J. Austria-Martinez, Second Division]; *Vda. De Dabao v. Court of Appeals*, 469 Phil. 938 (2004) [Per J. Austria-Martinez, Second Division]; and *Paloma v. Court of Appeals*, 461 Phil. 270 (2003) [Per J. Quisumbing, Second]; *Royal Cargo Corporation v. Civil Aeronautics Board*, 465 Phil. 719 (2004) [Per J. Callejo, Sr., Second Division]; and *Lacson v. Perez*, 410 Phil. 78 (2001) [Per J. Melo, *En Banc*].

controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review."[103]

Ordinance No. 7780 is still valid within the City of Manila. No other case has been filed to question its constitutionality. The dismissal of the criminal cases against petitioners does not mean that no other person will be penalized under the Ordinance. Its constitutionality, therefore, is an issue that is precisely "capable of repetition, yet evading review."

As this Court stated in *Fernando v. Court of Appeals*,[104] "obscenity is an issue proper for judicial determination and should be treated on a case to case basis and on the judge's sound discretion."[105]

The majority, however, points out that this dissenting opinion disregards the two-requirement rule in footnote 11 of *Pormento v. Estrada*,[106] which reads:

> [T]he "capable of repetition yet evading review" exception ... applies only where the following two circumstances concur: (1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration and (2) there is a reasonable expectation that the same complaining party would be subjected to the same action again.[107]

The majority submits that, *first*, petitioners' indictment "is not of such inherently short duration that it will lapse before petitioners are able to see it challenged before a higher

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[103] *Belgica v. Ochoa*, 721 Phil. 416, 522 (2013) [Per *J.* Perlas-Bernabe, *En Banc*] citing *Mattel, Inc. v. Francisco*, 582 Phil. 492 (2008) [Per *J.* Austria-Martinez, Third Division]; and *Constantino v. Sandiganbayan*, 559 Phil. 622 (2007) [Per *J.* Tinga, Second Division].

[104] 539 Phil. 407 (2006) [Per *J.* Quisumbing, Third Division].

[105] *Id.* at 417.

[106] 643 Phil. 735 (2010) [Per *C.J.* Corona, *En Banc*].

[107] *Id.* at 738-739, see Footnote 11 citing *Lewis v. Continental Bank Corporation*, 494 U.S. 472 (1990).

prosecutorial authority (*i.e.*, the Department of Justice) or the courts";[108] and *second*, that petitioners "also failed to demonstrate a reasonable likelihood that they will once again be hailed before the [Office of the City Prosecutor of] Manila for the same or another violation of Ordinance No. 7780."[109]

As the facts show, at the time of the filing of the Petition, petitioners were criminally charged before the Office of the City Prosecutor of Manila for violating the questioned Ordinance, but the charges were later dismissed after a preliminary investigation. The short duration of the criminal prosecution is the very reason for this Court to pass upon the issue of mootness. Had the criminal prosecution prospered, there would have been no issue on mootness since the threatened injury would still be existing.

Likewise, as previously stated, Ordinance No. 7780 is still *valid and existing* in the City of Manila as of the writing of the Decision. Petitioners publish their magazines monthly, which means that they could be subjected to similar criminal charges for every monthly publication. There is, thus, a reasonable likelihood that petitioners could again be charged before the Ordinance's validity is addressed by *any* court.

In the recent case of *Nicolas-Lewis*, this Court entertained a Petition questioning the prohibition against partisan political activities abroad during the 2019 national and local elections. Though the Petition had already become moot, this Court exercised its power of judicial review on the ground that the questioned provision might have a chilling effect on a citizen's fundamental right to speech, expression, and suffrage.[110]

Even more recent, *Marquez v. Commission on Elections*[111] involved the petitioner questioning the Commission on Elections'

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[108] *Ponencia*, p. 14.

[109] *Id*.

[110] G.R. No. 223705, August 13, 2019, <http://sc.judiciary.gov.ph/8730/ [Per *J.* Reyes, Jr., *En Banc*].

[111] G.R. No. 244274, September 10, 2019, <http://sc.judiciary.gov.ph/8253/ [Per *J.* Jardeleza, *En Banc*].

cancellation of his Certificate of Candidacy for the 2019 national and local elections for being a nuisance candidate. This Court, through Justice Francis H. Jardeleza, conceded that the case should have been dismissed for mootness since elections had already been conducted, with the winning candidates proclaimed. Nonetheless, it proceeded to rule on the case:

> 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 a judgment 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, the Court would normally decline jurisdiction over it.
>
> 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 ..." 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.
>
> 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 formulation of controlling principles to guide the Bench, the Bar and the public; and (4) the case was capable of repetition yet evading review.
>
> 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*. 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:

> . . . 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.

The exception would find application in the 1969 election case of *Moore v. Ogilvie*. 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 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 . . . 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.""

Similarly, the U.S. Supreme Court in 1973 applied the exception in *Roe v. Wade*. 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." ...

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*, the Court, explaining its ruling in *Sosna v. Iowa*, 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.

In Our jurisdiction, the Court would first apply the exception in *Alunan III v. Mirasol*, an election case. There, petitioners assailed a Department of the 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."

The Court would then apply the exception in the subsequent cases of *Sanlakas v. Executive Secretary, David v. Macapagal-Arroyo, Belgica v. Ochoa* and in the more recent case of *Philippine Association of Detective and Protective Agency Operators (PADPAO) v. COMELEC*.

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.[112] (Citations omitted)

In *Marquez*, the parties did not need to prove that other aspiring candidates would file the same cases in subsequent national elections. The Commission on Elections' continuing application of its rules on nuisance candidates was enough for this Court to consider the case as capable of repetition, yet evading review.

Here, the continuing existence of Ordinance No. 7780 and the continuing sale of petitioners' publications heighten the likelihood that they, or other similar publishers, will once again be charged by the Office of the City Prosecutor of Manila with the same offense. Since the issues raised here concern local legislation and its effect on constitutional freedoms, it would be far more prudent for this Court to exercise its power of judicial review to settle the controversy. As this Court aptly stated in *David*, and as quoted[113] by the majority:

There is no question that the issues being raised affect the public's interest, involving as they do the people's basic rights to freedom of expression, of assembly and of the press. Moreover, the Court has the duty to formulate guiding and controlling constitutional

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

[113] *Ponencia*, p. 13.

precepts, doctrines or rules. It has the symbolic function of educating the bench and the bar, and in the present petitions, the military and the police, on the extent of the protection given by constitutional guarantees. And lastly, respondents' contested actions are capable of repetition. Certainly, the petitions are subject to judicial review.[114] (Citation omitted)

IV

Before the enactment of the Revised Penal Code, questions as to what speech or publication may be considered "obscene" were analyzed within the context of Act No. 277,[115] otherwise referred to as the Philippine Libel Law.[116] Its Section 12 provided:

> SECTION 12. Any person who writes, composes, stereotypes, prints, publishes, sells, or keeps for sale, distributes, or exhibits any obscene or indecent writing, paper, book, or other matter, or who designs, copies, draws, engraves, paints or otherwise prepares any obscene picture or print, or who moulds, cuts, casts, or otherwise makes any obscene or indecent figure, or who writes, composes, or prints any notice or advertisement of any such writing, paper, book, print, or figure shall be guilty of a misdemeanor and punished by a fine of not exceeding one thousand dollars or by imprisonment not exceeding one year, or both.

This Court was first confronted with the question of obscene publications in the 1923 case of *People v. Kottinger*.[117] In that case, an Information was filed against J.J. Kottinger, the owner of Camera Supply Company, for selling photos alleged to be obscene and indecent:

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[114] *David v. Macapagal-Arroyo*, 522 Phil. 705, 755 (2006) [Per *J.* Sandoval-Gutierrez, *En Banc*].

[115] An Act Defining the Law of Libel and Threats to Publish a Libel, Making Libel and Threats to Publish a Libel Misdemeanors, Giving a Right of Civil Action Therefor, and Making Obscene or Indecent Publications Misdemeanors (1901).

[116] See *People v. Kottinger*, 45 Phil. 352 (1923) [Per *J.* Malcolm, Second Division].

[117] *Id*.

The pictures which it is argued offend against the law on account of being obscene and indecent, disclose six different postures of non-Christian inhabitants of the Philippines. Exhibit A carries the legend "Philippines, Bontoc Woman." Exhibit A-1 is a picture of five young boys and carries the legend "Greetings from the Philippines." Exhibit A-2 has the legend "Ifugao Belle, Philippines. Greetings from the Philippines." Exhibit A-3 has the legend "Igorrot (*sic*) Girl, Rice Field Costume." Exhibit A-4 has the legend "Kalinga Girls, Philippines." Exhibit A-5 has the legend "Moros, Philippines."[118]

To determine if the pictures violated Act No. 227, this Court in *Kottinger* first had to determine what was meant by "obscene." It held:

The word "obscene" and the term "obscenity" may be defined as meaning something offensive to chastity, decency, or delicacy. "Indecency" is an act against good behavior and a just delicacy. The test ordinarily followed by the courts in determining whether a particular publication or other thing is obscene within the meaning of the statutes, is whether the tendency of the matter charged as obscene, is to deprave or corrupt those who minds are open to such immoral influences and into whose hands a publication or other article charged as being obscene may fall. Another test of obscenity is that which shocks the ordinary and common sense of men as an indecency.

The Philippine statute does not attempt to define obscenity or indecent pictures, writings, papers, or books. But the words "obscene or indecent" are themselves descriptive. They are words in common use and every person of average intelligence understands their meaning. Indeed, beyond the evidence furnished by the pictures themselves, there is but little scope for bearing on the issue of obscenity or indecency. Whether a picture is obscene or indecent must depend upon the circumstances of the case.[119]

This Court likewise noted that there were "copies of reputable magazines which circulate freely thru-out the United States and other countries, and which are admitted into the Philippines

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[118] *Id*. at 356.

[119] *Id*. at 356-357 citing 29 Cyc., 1315; 8 R. C. L., 312; *People v. Muller*, 96 N. Y., 408 (1884); and 48 Am. Rep., 635.

without question, containing illustrations into the Philippines without question, containing illustrations identical in nature to those forming the basis of the prosecution at bar."[120] Tested against these standards, this Court concluded that the pictures could not be considered "obscene" within the context of the law since they do not tend to offend the viewer's sensibilities:

> The pictures in question merely depict persons as they actually live, without attempted presentation of persons in unusual postures or dress. The aggregate judgment of the Philippine community, the moral sense of all the people in the Philippines, would not be shocked by photographs of this type. We are convinced that the post-card pictures in this case cannot be characterized as offensive to chastity, or foul, or filthy.
>
> We readily understand the laudable motives which moved the Government to initiate this prosecution. We fully appreciate the sentiments of colleagues who take a different view of the case. We would be the last to offend the sensibilities of the Filipino people and to sanction anything which would hold them up to ridicule in the eyes of mankind. But we emphasize that we are not deciding a question in political theory or in social ethics. We are dealing with a legal question predicated on a legal fact, and on this question and fact, we reach the conclusion that there has not been proved a violation of section 12 of the Libel Law. When other cases predicated on other states of facts are brought to our attention, we will decide them as they arise.[121]

Interestingly, Justice George A. Malcolm, an American justice, wrote this Court's opinion. To do so, he used the same standards that would be used in an American federal court and concluded that based on these standards, an American federal court would find that the pictures were not offensive. In contrast, a Filipino justice, Justice Norberto Romualdez, dissented and opined that the same standards would not hold in Manila:

> I do not agree with the view taken by the majority as to the nature of the photographic pictures in question. While said pictures cannot,

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[120] *Id*. at 360.

[121] *Id*. at 360-361.

strictly, be termed obscene, they must, however, be regarded as indecent, for they are so.

Such pictures offend modesty and refinement, and for this reason, they are indecent. This is shown by common sense. No woman claiming to be decent would dare to stand before the public in Manila, where said pictures were exhibited, in the same fashion as these pictures are.

It is alleged that these pictures were taken from nature in non-Christian regions. We agree that in said regions they are not, perhaps, regarded as offensive to modesty, and, therefore, are accidentally not indecent there. But in the City of Manila where they were exhibited, no doubt they are.[122]

This Court would not be confronted with the same issue until the 1955 case of *People v. Go Pin*.[123] By then, however, any question before this Court as to what may be considered "obscene" was seen through the lens of Article 201 of the Revised Penal Code, which provides:

ARTICLE 201. *Immoral doctrines, obscene publications and exhibitions, and indecent shows.* — The penalty of *prision mayor* or a fine ranging from six thousand to twelve thousand pesos, or both such imprisonment and fine, shall be imposed upon:

1. Those who shall publicly expound or proclaim doctrines openly contrary to public morals;

2. The authors of obscene literature, published with their knowledge in any form, the editors publishing such literature, and the owners/operators of the book store or other establishments selling the same;

3. Those who in theaters, fairs cinematographs or any other place, shall exhibit indecent or immoral plays, scenes, acts or shows, including the following:

(a) Films which tend to incite subversion, insurrection or rebellion against the State;

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[122] *J.* Romualdez, Dissenting Opinion in *People v. Kottinger*, 45 Phil. 352, 361-362 (1923) [Per *J.* Malcolm, Second Division].

[123] 97 Phil. 418 (1955) [Per *J.* Montemayor, First Division].

(b) Films which tend to undermine the faith and confidence of the people in their Government and/or duly constituted authorities;

(c) Films which glorify criminals or condone crimes;

(d) Films which serve no other purpose but to satisfy the market for violence, lust or pornography;

(e) Films which offend any race or religion;

(f) Films which tend to abet traffic in the use of prohibited drugs;

(g) Films contrary to law, public order, morals, good customs, established policies, lawful orders, decrees, edicts, and any or all films which in the judgment of the Board of Censors for Motion Pictures or other agency established by the Government to oversee such motion pictures are objectionable on some other legal or moral grounds.

4. Those who shall sell, give away of exhibit prints, engravings, sculptures or literature which are offensive to morals.[124]

In *Go Pin*, a Chinese citizen was charged with violation of Article 201 for exhibiting within the City of Manila "a large number of one-real 16-millimeter films about 100 feet in length each, which are allegedly indecent and/or immoral."[125] The case, however, did not specify what the films actually contained.

This Court in *Go Pin* neither defined "obscenity" nor even cited *Kottinger*. Instead, it created a standard where publications done for the sake of art would not be treated with the same protection as those distributed for commercial purposes:

If such pictures, sculptures and paintings are shown in art exhibits and art galleries for the cause of art, to be viewed and appreciated by people interested in art, there would be no offense committed.

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[124] REV. PEN. CODE, Art. 201, as amended by Presidential Decree No. 960 (1976).

[125] *People v. Go Pin*, 97 Phil. 418 (1955) [Per *J.* Montemayor, First Division].

However, the pictures here in question were used not exactly for art's sake but rather for commercial purposes. In other words, the supposed artistic qualities of said pictures were being commercialized so that the cause of art was of secondary or minor importance. Gain and profit would appear to have been the main, if not the exclusive consideration in their exhibition; and it would not be surprising if the persons who went to see those pictures and paid entrance fees for the privilege of doing so, were not exactly artists and persons interested in art and who generally go to art exhibitions and galleries to satisfy and improve their artistic tastes, but rather people desirous of satisfying their morbid curiosity and taste, and lust, and for love for excitement, including the youth who because of their immaturity are not in a position to resist and shield themselves from the ill and perverting effects of these pictures.[126]

Not more than two (2) years later, this Court would again apply the same standard in *People v. Padan*.[127] In *Padan*, a manager, a ticket collector and two (2) performers were convicted of violating Article 201 for allegedly performing sexual intercourse in front of paying spectators.

This Court's shock at the offense was palpable. It was quick to denounce the crime:

We believe that the penalty imposed fits the crime, considering its seriousness. As far as we know, this is the first time that the courts in this jurisdiction, at least this Tribunal, have been called upon to take cognizance of an offense against morals and decency of this kind. We have had occasion to consider offenses like the exhibition of still or moving pictures of women in the nude, which we have condemned for obscenity and as offensive to morals. In those cases, one might yet claim that there was involved the element of art; that connoisseurs of the same, and painters and sculptors might find inspiration in the showing of pictures in the nude, or the human body exhibited in sheer nakedness, as models in *tableaux vivants*. But an actual exhibition of the sexual act, preceded by acts of lasciviousness, can have no redeeming feature. In it, there is no room for art. One can see nothing in it but clear and unmitigated

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[126] *Id*. at 419.

[127] 101 Phil. 749 (1957) [Per J. Montemayor, *En Banc*].

obscenity, indecency, and an offense to public morals, inspiring and causing as it does, nothing but lust and lewdness, and exerting a corrupting influence specially on the youth of the land.[128]

Art, thus, was not considered obscene if it contained a "redeeming feature." The irony, however, was that despite the apparently shocking nature of the offense, this Court proceeded to describe in detail the "exhibition of human 'fighting fish' [in the] actual act of coitus or copulation":[129]

> [The manager Fajardo] ordered that an army steel bed be placed at the center of the floor, covered with an army blanket and provided with a pillow. Once the spectators, about 106 in number, were crowded inside that small building, the show started. Fajardo evidently to arouse more interest among the customers, asked them to select among two girls present who was to be one of the principal actors. By pointing to or holding his hand over the head of each of the two women one after the other, and judging by the shouts of approval emitted by the spectators, he decided that defendant Marina Padan was the subject of popular approval, and he selected her. After her selection, the other woman named Concha, left. Without much ado, Fajardo selected Cosme Espinosa to be Marina's partner. Thereafter, Cosme and Marina proceeded to disrobe while standing around the bed. When completely naked, they turned around to exhibit their bodies to the spectators. Then they indulged in lascivious acts, consisting of petting, kissing, and touching the private parts of each other. When sufficiently aroused, they lay on the bed and proceeded to consummate the act of coitus in three different positions which we deem unnecessary to describe. The four or five witnesses who testified for the Government when asked about their reaction to what they saw, frankly admitted that they were excited beyond description. Then the police who were among the spectators and who were previously provided with a search warrant made the raid, arrested the four defendants herein, and took pictures of Marina and Cosme still naked and of the army bed, which pictures were presented as exhibits during the trial.[130]

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[128] *Id*. at 752.

[129] *Id*. at 753.

[130] *Id*. at 754-755.

None of these prior cases, however, involved constitutional questions. They merely required the interpretation of "obscenity" under the law. It was only in 1985 when, for the first time, an obscenity case invoking the constitutional right to freedom of expression was brought to this Court.

In *Gonzalez v. Katigbak*,[131] the Board of Review for Motion Pictures and Television (Board), created by Executive Order No. 876, classified the film, "Kapit sa Patalim," as "For Adults Only," and permitted its showing subject to certain changes and deletions enumerated by the Board. This prompted Jose U. Gonzalez, the president of Malaya Films, and the filmmakers, Lino Brocka, Jose F. Lacaba, and Dulce Q. Saguisag, to file a Petition for *Certiorari* against the Board on the basis that the classification was "without legal and factual basis and [was] exercised as impermissible restraint of artistic expression."[132]

In balancing the prohibition against obscenity and the protection of constitutionally-protected rights, this Court applied the *Hicklin* test in *Regina v. Hicklin*:[133]

> . . . whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.[134]

Thus, this Court mandated in *Gonzalez* that a work must be evaluated as a whole, rather than in its isolated passages, "applying contemporary Filipino cultural values as standard," to determine if the work is obscene and beyond the protection of freedom of expression:

> In the applicable law, Executive Order No. 876, reference was made to respondent Board "applying contemporary Filipino cultural values as standard," words which can be construed in an analogous manner.

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[131] 222 Phil. 225 (1985) [Per *J.* Fernando, *En Banc*].

[132] *Id*. at 228.

[133] L.R. 2 Q.B. 360 (1868).

[134] *Gonzalez v. Katigbak*, 222 Phil. 225, 232 (1985) [Per *J.* Fernando, *En Banc*] citing *Regina v. Hicklin*, L.R. 3 Q.B. 360 (1868).

Moreover, as far as the question of sex and obscenity are concerned, it cannot be stressed strongly that the arts and letters "shall be under the patronage of the State." That is a constitutional mandate. It will be less than true to its function if any government office or agency would invade the sphere of autonomy that an artist enjoys. There is no orthodoxy in what passes for beauty or for reality. It is for the artist to determine what for him is a true representation. It is not to be forgotten that art and belles-lettres deal primarily with imagination, not so much with ideas in a strict sense. What is seen or perceived by an artist is entitled to respect, unless there is a showing that the product of his talent rightfully may be considered obscene. As so well put by Justice Frankfurter in a concurring opinion, "the widest scope of freedom is to be given to the adventurous and imaginative exercise of the human spirit" in this sensitive area of a man's personality. On the question of obscenity, therefore, and in the light of the facts of this case, such standard set forth in Executive Order No. 878 is to be construed in such a fashion to avoid any taint of unconstitutionality. To repeat, what was stated in a recent decision citing the language of Justice Malcolm in *Yu Cong Eng v. Trinidad*, it is "an elementary, a fundamental, and a universal role of construction, applied when considering constitutional questions, that when a law is susceptible of two constructions one of which will maintain and the other destroy it, the courts will always adopt the former[.]" As thus construed, there can be no valid objection to the sufficiency of the controlling standard and its conformity to what the Constitution ordains.[135]

Guided by the following standards, this Court ruled that the Board abused its discretion, finding "its perception of what constitutes obscenity appears to be unduly restrictive."[136] The abuse, however, could not be categorized as grave since:

The adult classification given the film serves as a warning to theater operators and viewers that some contents of *Kapit* are not fit for

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[135] *Id*. at 233-234 citing Executive Order No. 876 (1963), Sec. 3(c); CONST. (1973), Art. XV, Sec. 9(2); *Kingsley v. Regents*, 360 U.S. 684, 695 (1959); *Lopez, Jr. v. Commission on Elections*, 221 Phil. 321 (1985) [Per *J*. Fernando, *En Banc*]; and *Yu Cong Eng v. Trinidad*, 47 Phil. 385 (1925) [Per *J*. Malcolm, Second Division].

[136] *Id*. at 234.

the young. Some of the scenes in the picture were taken in a theater-club and a good portion of the film shots concentrated on some women erotically dancing naked, or at least nearly naked, on the theater stage. Another scene on that stage depicted the women kissing and caressing as lesbians. And toward the end of the picture, there exists scenes of excessive violence attending the battle between a group of robbers and the police. The vulnerable and imitative in the young audience will misunderstand these scenes.[137]

This Court likewise suggested a "less liberal approach" when reviewing television shows:

> [U]nlike motion pictures where the patrons have to pay their way, television reaches every home where there is a set. Children then will likely will be among the avid viewers of the programs therein shown. As was observed by Circuit Court of Appeals Judge Jerome Frank, it is hardly the concern of the law to deal with the sexual fantasies of the adult population. It cannot be denied though that the State as *parens patriae* is called upon to manifest an attitude of caring for the welfare of the young.[138]

The absence of a set standard in prior cases would continue to confound this Court in the 1989 case of *Pita v. Court of Appeals*,[139] remarking that "the issue is a complicated one, in which the fine lines have neither been drawn nor divided."[140] In that case, the publisher of Pinoy Playboy, a "men's magazine,"[141] questioned the police's seizure of his magazines from peddlers along Manila sidewalks for supposedly being obscene, pornographic, and indecent.

In *Pita*, this Court first addressed the prior cases but subsequently concluded that jurisprudence tended to obfuscate, rather than illuminate, the issues:

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[137] *Id*. at 234-235 citing respondents' Answer to the Amended Petition.

[138] *Id*. at 235 citing *United States v. Roth*, 237 F 2d 796 (1956).

[139] 258-A Phil. 134 (1989) [Per *J*. Sarmiento, *En Banc*].

[140] *Id*. at 143.

[141] *Id*. at 138.

Kottinger, in its effort to arrive at a "conclusive" definition, succeeded merely in generalizing a problem that has grown increasingly complex over the years. Precisely, the question is: When does a publication have a corrupting tendency, or when can it be said to be offensive to human sensibilities? And obviously, it is to beg the question to say that a piece of literature has a corrupting influence because it is obscene, and vice-versa.

Apparently, *Kottinger* was aware of its own uncertainty because in the same breath, it would leave the final say to a hypothetical "community standard" — whatever that is — and that the question must supposedly be judged from case to case.

About three decades later, this Court promulgated *People v. Go Pin*, a prosecution under Article 201 of the Revised Penal Code. *Go Pin* was also even hazier[.]

. . . . . .

It was *People v. Padan y Alova*, however, that introduced to Philippine jurisprudence the "redeeming" element that should accompany the work, to save it from a valid prosecution. . . .

. . . . . .

Padan y Alova, like *Go Pin*, however, raised more questions than answers. For one thing, if the exhibition was attended by "artists and persons interested in art and who generally go to art exhibitions and galleries to satisfy and improve their artistic tastes," could the same legitimately lay claim to "art"? For another, suppose that the exhibition was so presented that "connoisseurs of [art], and painters and sculptors might find inspiration," in it, would it cease to be a case of obscenity?

Padan y Alova, like *Go Pin* also leaves too much latitude for judicial arbitrament, which has permitted an ad lib of ideas and "two-cents worths" among judges as to what is obscene and what is art.

In a much later decision, *Gonzalez v. Kalaw Katigbak*, the Court, following trends in the United States, adopted the test: "Whether to the average person, applying contemporary standards, the dominant theme of the material taken as a whole appeals to prurient interest." *Kalaw-Katigbak* represented a marked departure from *Kottinger* in the sense that it measured obscenity in terms of the "dominant theme" of the work rather than isolated passages, which were central to

Kottinger (although both cases are agreed that "contemporary community standards" are the final arbiters of what is "obscene"). *Kalaw-Katigbak* undertook moreover to make the determination of obscenity essentially a judicial question and as a consequence, to temper the wide discretion *Kottinger* had given unto law enforcers.[142]

This Court showed in *Pita* a rather progressive view of the constitutional questions involved, concluding that a society's tastes and sensibilities develop and evolve over time. What may be regarded as obscene before may not be as shocking decades later:

> In the case at bar, there is no challenge on the right of the State, in the legitimate exercise of police power, to suppress smut — provided it is smut. For obvious reasons, smut is not smut simply because one insists it is smut. So is it equally evident that individual tastes develop, adapt to wide-ranging influences, and keep in step with the rapid advance of civilization. What shocked our forebears, say, five decades ago, is not necessarily repulsive to the present generation. James Joyce and D.H. Lawrence were censored in the Thirties yet their works are considered important literature today. Goya's *La Maja Desnuda* was once banned from public exhibition but now adorns the world's most prestigious museums.
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> But neither should we say that "obscenity" is a bare (no pun intended) matter of opinion. As we said earlier, it is the divergent perceptions of men and women that have probably compounded the problem rather than resolved it.
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> What the Court is impressing, plainly and simply, is that the question is not, and has not been, an easy one to answer, as it is far from being a settled matter. We share Tribe's disappointment over the discouraging trend in American decisional law on obscenity as well as his pessimism on whether or not an "acceptable" solution is in sight.[143] (Citation omitted)

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[142] *Id*. at 142-144 citing *People v. Kottinger*, 45 Phil. 352 (1923) [Per *J*. Malcolm, *En Banc*]; *People v. Go Pin*, 97 Phil. 418 (1955) [Per *J*. Montemayor, First Division]; *People v. Padan*, 101 Phil. 749 (1957) [Per *J*. Montemayor, *En Banc*]; and *Gonzalez v. Katigbak*, 222 Phil. 225 (1985) [Per *J*. Fernando, *En Banc*].

[143] *Id*. at 146.

It was also in *Pita* where the standards imposed in *Miller v. California*[144] were introduced into this jurisdiction. *Miller* refined and clarified the *Hicklin* test by expanding its guidelines:

> The latest word, however, is *Miller v. California*, which . . . established "basic guidelines," to wit: "(a) whether 'the average person, applying contemporary standards' would find the work, taken as a whole, appeals to the prurient interest . . .; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value."[145]

However, despite introducing the *Miller* test, this Court declined to apply it in *Pita*. Instead, this Court focused the issue on whether the distribution and sale of Pinoy Playboy presented a clear and present danger that would warrant State interference:

> In the final analysis perhaps, the task that confronts us is less heroic than rushing to a "perfect" definition of "obscenity," if that is possible, as evolving standards for proper police conduct faced with the problem, which, after all, is the plaint specifically raised in the petition.
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> . . . . . .
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> Undoubtedly, "immoral" lore or literature comes within the ambit of free expression, although not its protection. In free expression cases, this Court has consistently been on the side of the exercise of the right, barring a "clear and present danger" that would warrant State interference and action. But, so we asserted in *Reyes v. Bagatsing*, "the burden to show the existence of grave and imminent danger that would justify adverse action . . . lies on the . . . authorit[ies]."
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> "There must be objective and convincing, not subjective or conjectural, proof of the existence of such clear and present danger."

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[144] 413 U.S. 15 (1973).

[145] *Pita v. Court of Appeals*, 258-A Phil. 134, 145 (1989) [Per *J.* Sarmiento, *En Banc*] citing *Miller v. California*, 413 U.S. 15 (1973).

"It is essential for the validity of . . . previous restraint or censorship that the . . . authority does not rely solely on his own appraisal of what the public welfare, peace or safety may require."

"To justify such a limitation, there must be proof of such weight and sufficiency to satisfy the clear and present danger test."

The above disposition must not, however, be taken as a neat effort to arrive at a solution — so only we may arrive at one — but rather as a serious attempt to put the question in its proper perspective, that is, as a genuine constitutional issue.[146] (Citations omitted)

This Court's reluctance to apply the *Miller* test in *Pita* was not a hindrance in *Fernando v. Court of Appeals*.[147] In *Fernando*, the petitioners were charged with violation of Article 201 for the sale and exhibition of allegedly obscene magazines and VHS tapes. This Court, after a review of the relevant jurisprudence, conceded that "[i]t seems futile at this point to formulate a perfect definition of obscenity that shall apply in all cases."[148]

This Court encouraged the application of the *Miller* test in determining obscenity, but was quick to point out that "it would be a serious misreading of *Miller* to conclude that the trier of facts has the unbridled discretion in determining what is 'patently offensive.'"[149] Instead, it mandated:

No one will be subject to prosecution for the sale or exposure of obscene materials unless these materials depict or describe patently offensive "hard core" sexual conduct. Examples included (a) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated; and (b) patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals.[150]

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[146] *Id*. at 147.

[147] 539 Phil. 407 (2006) [Per *J*. Quisumbing, Third Division].

[148] *Id*. at 417.

[149] *Id*. citing *Jenkins v. Georgia*, 418 U.S. 153 (1974).

[150] *Id*. citing *Jenkins v. Georgia*, 418 U.S. 153 (1974) and *Miller v. California*, 413 U.S. 15 (1973).

Using these examples as basis, this Court concluded that the confiscated materials, being obscene, violated Article 201 of the Revised Penal Code. It affirmed the lower courts' finding that the pictures and the VHS tapes, which showed nude men and women having sex, "exhibited indecent and immoral scenes and acts."[151]

The latest pronouncement upholding the *Miller* test was in the 2009 case of *Soriano v. Laguardia*,[152] where this Court stated that "a patently offensive utterance would come within the pale of the term obscenity should it appeal to the prurient interest of an average listener applying contemporary standards."[153]

The *Miller* test provides the current guidelines to distinguish between protected speech and obscenity. Any legislation, whether local or national, that goes beyond these guidelines run the risk of violating constitutionally-protected freedoms. Thus, they must be struck down as unconstitutional.

V

Before proceeding, this Court must recognize certain views to be considered when faced with the issue of offensive and obscene language and imagery as protected speech and expression.

Legal scholar Catharine MacKinnon (MacKinnon) submits that whenever courts discuss obscenity or pornography, there is an inherent conflict between the doctrines on free speech and gender equality.[154] The standard to measure whether obscene speech is unprotected speech is if it is "puerile," or when it

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[151] *Id*. at 418.

[152] 605 Phil. 43 (2009) [Per *J*. Velasco, Jr., *En Banc*].

[153] *Id*. at 98.

[154] See CATHARINE MACKINNON, *ONLY WORDS* (1993). See also CATHARINE MACKINNON, *FROM PORNOGRAPHY, CIVIL RIGHTS, AND SPEECH, IN DOING ETHICS* (2009) and *J*. Leonen, Dissenting Opinion in *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 301-430 (2014) [Per *J*. Abad, *En Banc*].

can give a penis an erection.[155] To Mackinnon, framing issues based on men's reactions to obscene expression perpetuates the social reality that women are subordinate to men, since it is *men's* speech that is protected when an obscene expression is held as constitutional.[156]

MacKinnon elaborates that in treating pornography as protected expression, the State only protects men's freedom of speech. A woman's freedom of speech is trampled.[157] When an obscene material is held constitutional, it is concluded that the material did not offend *men's* sensibilities. No actual discussion is held on whether the material tends to exploit *women*.[158] This is the continuing flaw of anti-obscenity regulations. Each time pornography is held as protected expression, this inequality is perpetuated. It becomes more integrated into the social consciousness, effectively silencing women, and rendering any argument on inequality as inconsequential.[159]

This perceived inequality has never been addressed in this jurisdiction. This Court's application of the *Miller* test, as with

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[155] See CATHARINE MACKINNON, *FROM PORNOGRAPHY, CIVIL RIGHTS, AND SPEECH, IN DOING ETHICS* (2009). See also 2 CATHARINE MACKINNON, *Not a Moral Issue*, YALE LAW & POL'Y REV. (Spring, 1984).

[156] See CATHARINE MACKINNON, *ONLY WORDS* (1993). See also CATHARINE MACKINNON, *FROM PORNOGRAPHY, CIVIL RIGHTS, AND SPEECH, IN DOING ETHICS* (2009) and *J.* Leonen, Dissenting Opinion in *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 301-430 (2014) [Per *J.* Abad, *En Banc*].

[157] *Id*.

[158] See CATHARINE MACKINNON, *FROM PORNOGRAPHY, CIVIL RIGHTS, AND SPEECH, IN DOING ETHICS* (2009) and 2 CATHARINE MACKINNON, *NOT A MORAL ISSUE*, YALE LAW & POL'Y REV. (Spring, 1984).

[159] See CATHARINE MACKINNON, *ONLY WORDS* (1993); See also CATHARINE MACKINNON, *FROM PORNOGRAPHY, CIVIL RIGHTS, AND SPEECH, IN DOING ETHICS* (2009); and *J.* Leonen, Dissenting Opinion in *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 301-430 (2014) [Per *J.* Abad, *En Banc*].

the earlier guidelines, is premised on the idea of equality: that men and women are equal and are to be viewed equally. All prior cases, however, were written by *male* Justices, and necessarily pertained to the male's point of view of equality that women are inferior to men.

MacKinnon's views, however, are not without criticisms. Scholar Edwin Baker (Baker) submits that her theory fails to recognize the primary justification for protecting expression in relation to individual liberty.[160] It fails to recognize that people can induce change and transform their social and political environments through expressive behavior.[161] Their participation in this process is within their protected freedoms:

> Even expression that is received less as argument than "masturbation material", becomes part of a cultural or behavioral "debate" about sexuality, about the nature of human relations, and about pleasure and morality, as well as about the roles of men and women. Historically, puritanical attempts to suppress sexually explicit materials appear largely designed to shut down this cultural contestation in favor of a traditional practice of keeping women in the private sphere. Opening up this cultural debate has in the past, and can in the future, contribute to progressive change.[162] (Citations omitted)

Baker likewise suggests that MacKinnon disregards the view that the audience of the obscene expression is presumed to be composed of autonomous agents who are responsible for their actions and are capable of making their own moral choices.[163]

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[160] See EDWIN BAKER, *Of Course, More Than Words*, 61 U. CHI. L. REV. 1181, 1197 (1994) and *J.* Leonen, Dissenting Opinion in *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 301-430 (2014) [Per *J.* Abad, *En Banc*].

[161] *Id.* and *J.* Leonen, Dissenting Opinion in *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 301-430 (2014) [Per *J.* Abad, *En Banc*].

[162] *Id.* at 1198.

[163] See EDWIN BAKER, *Of Course, More Than Words*, 61 U. CHI. L. REV. 1181 (1994) and *J.* Leonen, Dissenting Opinion in *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 301-430 (2014) [Per *J.* Abad, *En Banc*].

For Baker, the expression should be treated as independent of the offense. The speaker's obscene expression does not by itself give rise to the offense. Any possible harm that could be caused by the expression is through how the receiver, who has the autonomy to think and act for himself or herself, responds to the expression:

> Part of the reason to protect speech, or, more broadly, to protect liberty, is a commitment to the view that people should be able to participate in constructing their world, or to the belief that this popular participation provides the best way to move toward a better world. The guarantee of liberty represents a deep faith in people and in democracy.[164] (Citation omitted)

Regardless of these seemingly conflicting views, discussions on obscene expression as protected speech still largely remain a debate on the *male* reaction to the expression. Perhaps, in future cases, this inequality would be raised by the parties and addressed by this Court. For now, the *Miller* test would have to suffice in determining whether an obscenity regulation transgresses on protected freedoms.

VI

This Court's task here is not to determine whether a certain work or publication is obscene, but rather, whether a certain local legislation follows the set guidelines to protect speech and expression.

When confronted with the constitutionality of a statute, this Court determines whether a statute is valid "on its face" or "as applied."[165] In his opinion in *Estrada v. Sandiganbayan*,[166] Justice Vicente Mendoza explains:

> A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible "chilling effect" upon

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[164] *Id*. at 1204.

[165] See *J*. Mendoza, Separate Opinion in *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904, 1092 (2000) [*Per Curiam*, *En Banc*].

[166] 421 Phil. 290, 430-432 (2001) [Per *J*. Bellosillo, *En Banc*].

protected speech. The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity." The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.

This rationale does not apply to penal statutes. Criminal statutes have general *in terrorem* effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech.

The overbreadth and vagueness doctrines then have special application only to free speech cases. They are inapt for testing the validity of penal statutes. As the U.S. Supreme Court put it, in an opinion by Chief Justice Rehnquist, "we have not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment." In *Broadrick v. Oklahoma*, the Court ruled that "claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words" and, again, that "overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct." For this reason, it has been held that "a facial challenge to a legislative Act is . . . the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." As for the vagueness doctrine, it is said that a litigant may challenge a statute on its face only if it is vague in all its possible applications. "A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others."

In sum, the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing "on their faces" statutes in free speech cases or, as they are called in American law,

First Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that "one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional." As has been pointed out, "vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, while statutes found vague as a matter of due process typically are invalidated [only] 'as applied' to a particular defendant." Consequently, there is no basis for petitioner's claim that this Court review the Anti-Plunder Law on its face and in its entirety.[167]

A statute may be declared invalid if it is vague—when its provisions fail to "inform those who are subject to it what conduct on their part will render them liable to its penalties."[168] Specifically:

> A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.[169] (Citation omitted)

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[167] *J.* Mendoza, Concurring Opinion in *Estrada v. Sandiganbayan*, 421 Phil. 290, 430-432 [Per *J.* Bellosillo, *En Banc*] citing *Gooding v. Wilson*, 405 U.S. 518, 521, 31 L.Ed.2d 408, 413 (1972); *United States v. Salerno*, 481 U.S. 739, 745, 95 L.Ed.2d 697, 707 (1987); *People v. Dela Piedra*, 403 Phil. 31 (2001) [*J.* Kapunan, First Division]; *Broadrick v. Oklahoma*, 413 U.S. 601, 612-613, 37 L.Ed. 2d 830, 840-841 (1973); *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494-95, 71 L.Ed.2d 362, 369 (1982); *United States v. Raines*, 362 U.S. 17, 21, 4 L.Ed.2d 524, 529 (1960); and *Yazoo & Mississippi Valley RR. v. Jackson Vinegar Co.*, 226 U.S. 217, 57 L.Ed. 193 (1912).

[168] See *J.* Leonen, Dissenting Opinion in *Lagman v. Medialdea*, 812 Phil. 179, 749-750 (2017 [Per *J.* Del Castillo, *En Banc*] citing *People v. Dela Piedra*, 403 Phil. 31 (2001) [Per *J.* Kapunan, First Division].

[169] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 488 (2010) [Per *J.* Carpio Morales, *En Banc*].

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,[170] this Court clarified that a vagueness challenge may only be invoked in "as applied" cases. In *Disini, Jr. v. Secretary of Justice*,[171] however, this Court expanded its application to facial challenges, on the ground that "[w]hen a penal statute encroaches upon the freedom of speech, a facial challenge grounded on the void-for-vagueness doctrine is acceptable."[172]

The overbreadth doctrine, on the other hand, invalidates a statute when it "offends the constitutional principle that a governmental purpose to control or prevent activities constitutionally subject to state regulations may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."[173]

Southern Hemisphere limits the application of the overbreadth doctrine only to freedom of expression cases:

> By its nature, the overbreadth doctrine has to necessarily apply a facial type of invalidation in order to plot areas of protected speech, inevitably almost always under situations not before the court, that are impermissibly swept by the substantially overbroad regulation. Otherwise stated, a statute cannot be properly analyzed for being substantially overbroad if the court confines itself only to facts as applied to the litigants.[174]

The same case, however, clarifies that "the primary criterion in the application of the doctrine is not whether the case is a

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[170] 646 Phil. 452 (2010) [Per *J.* Carpio Morales, *En Banc*].

[171] 727 Phil. 28 (2014) [Per *J.* Abad, *En Banc*].

[172] *Id*. at 121.

[173] *Adiong v. Commission on Elections*, G.R. No. 103956, March 31, 1992, 207 SCRA 712, 719 [Per *J.* Gutierrez, Jr., *En Banc*].

[174] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 490 (2010) [Per *J.* Carpio Morales, *En Banc*].

freedom of speech case, but rather, whether the case involves an as-applied or a facial challenge."[175] In particular:

> In restricting the overbreadth doctrine to free speech claims, the Court, in at least two cases, observed that the US Supreme Court has not recognized an overbreadth doctrine outside the limited context of the First Amendment, and that claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words. In *Virginia v. Hicks*, it was held that rarely, if ever, will an overbreadth challenge succeed against a law or regulation that is not specifically addressed to speech or speech-related conduct. Attacks on overly broad statutes are justified by the "transcendent value to all society of constitutionally protected expression."[176] (Citations omitted)

Thus, in determining whether the void-for-vagueness doctrine and the overbreadth doctrine should apply, the primary consideration is not whether the case is a freedom of expression case. Instead, for the void-for-vagueness doctrine, the primary consideration is whether there is a violation of the fundamental right to due process. As for the overbreadth doctrine, the question must be whether the case involves a facial challenge or an "as applied" challenge.[177]

The only exception to this analysis is when the assailed ordinance prohibits child pornography. This type of medium is explicitly prohibited by Republic Act No. 9775.[178] It is, thus, beyond the pale of constitutionally-protected speech.

Petitioners in this case assail the constitutionality of Ordinance No. 7780 on the ground that its provisions were unduly expansive and encroaches upon protected expression. They appear to be

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[175] See *J.* Leonen, Dissenting Opinion in *Lagman v. Medialdea*, 812 Phil. 179, 754-755 (2017) [Per *J.* Del Castillo, *En Banc*].

[176] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 490-491 (2010) [Per *J.* Carpio Morales, *En Banc*].

[177] See *J.* Leonen, Dissenting Opinion in *Lagman v. Medialdea*, 812 Phil. 179 (2017) [Per *J.* Del Castillo, *En Banc*].

[178] Anti-Child Pornography Act of 2009.

arguing that the statute, on its face, was overbroad. Thus, an overbreadth analysis must be applied to determine the validity of Ordinance No. 7780.

In *Nicolas-Lewis*, this Court subjected Section 36.8[179] of Republic Act No. 9189, as amended,[180] to a facial challenge on the ground of overbreadth, as it was alleged that this provision, on its face, violated the right to free speech, expression, and assembly, as well as the right of suffrage.[181] This Court stated:

> Foremost, a facial review of a law or statute encroaching upon the freedom of speech on the ground of overbreadth or vagueness is acceptable in our jurisdiction. Under the overbreadth doctrine, a proper governmental purpose, constitutionally subject to state regulation, may not be achieved by means that unnecessarily sweep its subject broadly, thereby invading the area of protected freedoms. Put differently, an overbroad law or statute needlessly restricts even constitutionally-protected rights. On the other hand, a law or statute suffers from vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application.
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> It is noteworthy, however, that facial invalidation of laws is generally disfavored as its results to entirely striking down the challenged law or statute on the ground that they may be applied to parties not before the Court whose activities are constitutionally protected. It disregards the case and controversy requirement of the

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[179] Republic Act No 9189 (2003), Sec. 24, as amended by Republic Act No. 10590 (2013), Sec 37 provides:

SECTION 37. Section 24 of the same Act is hereby renumbered as Section 36 and is amended to read as follows:

SEC. 36. Prohibited Acts. — In addition to the prohibited acts provided by law, it shall be unlawful:

. . . . . .

36.8. For any person to engage in partisan political activity abroad during the thirty (30)-day overseas voting period[.]

[180] The Overseas Voting Act of 2013.

[181] *Nicolas-Lewis v. Commission on Elections*, G.R. No. 223705, August 13, 2019, <http://sc.judiciary.gov.ph/8730 [Per *J.* Reyes, Jr., *En Banc*].

Constitution in judicial review, and permits decisions to be made without concrete factual settings and in sterile abstract contexts, deviating thus from the traditional rules governing constitutional adjudication. Hence, an on-its-face invalidation of the law has consistently been considered as a "manifestly strong medicine to be used "sparingly and only as a last resort."

The allowance of a review of a law or statute on its face in free speech cases is justified, however, by the aim to avert the "chilling effect" on protected speech, the exercise of which should not at all times be abridged. The Court elucidated:

> The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity.[182] (Citations omitted)

The questioned legislation here, Ordinance No. 7780, considers the following acts or materials as "obscene," and therefore, illegal:

A. Obscene shall refer to any material ***or*** act that is indecent, erotic, lewd or offensive, ***or*** contrary to morals, good customs ***or*** religious beliefs, principles or doctrines, ***or*** to any material or act that tends to corrupt or depr[a]ve the human mind, ***or*** is calculated to excite impure imagination or arouse prurient interest, ***or*** is unfit to be seen or heard, ***or*** which violates the proprieties of language or behavior, regardless of the motive of the printer, publisher, seller, distributor, performer or author of such act or material, such as but not limited to:

1. Printing, showing, depicting or describing sexual acts;

2. Printing, showing, depicting or describing children in sexual acts;

3. Printing, showing, depicting or describing completely nude human bodies; and

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

4. Printing, showing, depicting or describing the human sexual organs or the female breasts.

The question before this Court is whether the enumeration in the Ordinance is so overbroad that it invades the areas of protected freedoms. We are asked to resolve whether it contains, on its face, provisions that result in a "chilling effect" on constitutionally-protected speech and expression.

The majority submits that "a facial overbreadth challenge is improper as against an anti-obscenity statute"[183] since obscenity has always been considered unprotected speech.

However, before speech may be considered obscene—and therefore, unprotected speech—prior legislation must first declare it to be so. Jurisprudence has yet to accept the idea of any speech or expression that is obscene *per se*. Thus, anti-obscenity statutes may still be subjected to a constitutional challenge to determine if they violate certain constitutional freedoms. Only when the statute overcomes questions of overbreadth can any speech or expression proscribed by it be considered obscene or unprotected speech.

The problem in this case is *how* to determine if the provisions of Ordinance No. 7780 are overbroad. This Court must, thus, resort to more specific tests, and in this particular instance, the *Miller* test suffices.

As Justice Estela Perlas-Bernabe (Justice Perlas-Bernabe) notes "*Miller* is not – strictly speaking – the test to determine the constitutionality of a particular ordinance or statute."[184] It "provides the prevailing proper standard to determine what is obscene[.]"[185] Thus, a questioned anti-obscenity ordinance may be rendered unconstitutional, not because it violates the *Miller*

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[183] *Ponencia*, p. 15.

[184] *J.* Perlas-Bernabe, Dissent, p. 5.

[185] *Id*.

test, but because it violates substantive due process under the overbreadth analysis.[186]

To be sure, the *Miller* test is not the only test that has provided guidelines on obscenity. The MacKinnon-Dworkin test, after MacKinnon and Andrea Dworkin (Dworkin), provides a different definition of pornography:

> Pornography is the graphic sexually explicit subordination of women through pictures and/or words that also includes one or more of the following: (i) women are presented dehumanized as sexual objects, things, or commodities; or (ii) women are presented as sexual objects who enjoy pain or humiliation; or (iii) women are presented as sexual objects who experience sexual pleasure in being raped; or (iv) women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt; or (v) women are presented in postures or positions of sexual submission, servility, or display; or (vi) women's body parts—including but not limited to vaginas, breasts, or buttocks—are exhibited such that women are reduced to those parts; or (vii) women are presented as whores by nature; or (viii) women are presented being penetrated by objects or animals; or (ix) women are presented in scenarios of degradation, injury, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual.
>
> The use of men, children, or transsexuals in the place of women in [the paragraph] above is also pornography.[187]

Unlike the *Miller* test, the MacKinnon-Dworkin test examines particular depictions of obscenity, and not the work when viewed as a whole. It concerns itself with the prohibition of obscene works, not merely because they appeal to prurient interest, but because they tend to subordinate women. For MacKinnon and Dworkin, pornography is "a practice of civil inequality on the basis of gender,"[188] and law is the specific vehicle for which

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[186] *Id.* at 4.

[187] ANDREA DWORKIN AND CATHARINE MACKINNON, *CIVIL RIGHTS: A NEW DAY FOR WOMEN'S EQUALITY*, 36 (2nd ed., 1988).

[188] *Id.* at 31.

this inequality may be corrected. The MacKinnon-Dworkin test espouses an absolute prohibition on pornography, as it conditions the viewers' minds to believe that the actors, usually the female actors, are subordinate and cannot be treated as equal.[189]

However, the MacKinnon-Dworkin test has since been struck down in *American Booksellers Association v. Hudnut*,[190] a case heard in the United States Court of Appeals Seventh Circuit and summarily affirmed by the United States Supreme Court.[191]

In that case,[192] an Indianapolis anti-obscenity ordinance, which was primarily drafted by MacKinnon and Dworkin, was questioned before the courts. The district court declared it unconstitutional as it tended to regulate speech rather than the conduct involved. The circuit court agreed, since the premise of MacKinnon and Dworkin's theory proposes that depictions of subordinate women perpetuates men's continued subordination of women. According to the circuit court:

> Sexual responses often are unthinking responses, and the association of sexual arousal with the subordination of women therefore may have a substantial effect. But almost all cultural stimuli provoke unconscious responses. Religious ceremonies condition their participants. Teachers convey messages by selecting what not to cover; the implicit message about what is off limits or unthinkable may be more powerful than the messages for which they present rational argument. Television scripts contain unarticulated assumptions. People may be conditioned in subtle ways. If the fact that speech plays a role in a process of conditioning were enough to permit governmental regulation, that would be the end of freedom of speech.
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> It is possible to interpret the claim that the pornography is the harm in a different way. Indianapolis emphasizes the injury that models in pornographic films and pictures may suffer. The record contains

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[189] *Id.* at 38-39.

[190] 771 F.2d 323 (7th Cir. 1985).

[191] 475 U.S. 1001 (1986).

[192] 771 F.2d 323 (7th Cir. 1985).

materials depicting sexual torture, penetration of women by red-hot irons and the like. These concerns have nothing to do with written materials subject to the statute, and physical injury can occur with or without the "subordination" of women.[193]

The questioned ordinance in *American Booksellers Association* was seen as overbroad since it tended to encroach on protected speech. Thus, the entire ordinance was struck down as unconstitutional based on the very definition of what may be considered pornography:

> The definition of "pornography" is unconstitutional. No construction or excision of particular terms could save it. The offense of trafficking in pornography necessarily falls with the definition. We express no view on the district court's conclusions that the ordinance is vague and that it establishes a prior restraint. Neither is necessary to our judgment. We also express no view on the argument presented by several amici that the ordinance is itself a form of discrimination on account of sex.
>
> Section 8 of the ordinance is a strong severability clause, and Indianapolis asks that we parse the ordinance to save what we can. If a court could do this by surgical excision, this might be possible. But a federal court may not completely reconstruct a local ordinance, and we conclude that nothing short of rewriting could save anything.[194] (Citation omitted)

Since the MacKinnon-Dworkin test is in itself overbroad, this Court is constrained to apply the *Miller* test.

This Court acknowledges that Ordinance No. 7780 was enacted before the promulgation of *Miller*.[195] But as discussed earlier, *Miller* merely refined *Hicklin*,[196] which provided:

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[193] *Id*.

[194] *Id*.

[195] 413 U.S. 15 [1973].

[196] LR 3 QB 360 (1868).

. . . whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.[197]

Gonzalez,[198] where the *Hicklin* test was applied, had already been in existence when Ordinance No. 7780 was enacted. *Miller* merely consolidates and refines the standards in *Hicklin* and the other cases that came before it.

Justice Antonio Carpio, in his opinion in *Soriano*, succinctly provides an illuminating history of these cases and its subsequent application in this jurisdiction:

One of the established exceptions in freedom of expression is speech characterized as obscene. I will briefly discuss obscenity as the majority opinion characterized the subject speech in this case as obscene, thereby taking the speech out of the scope of constitutional protection.

The leading test for determining what material could be considered obscene was the famous *Regina v. Hicklin* case wherein Lord Cockburn enunciated thus:

> I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.

Judge Learned Hand, in *United States v. Kennerly*, opposed the strictness of the Hicklin test even as he was obliged to follow the rule. He wrote:

> I hope it is not improper for me to say that the rule as laid down, however consonant it may be with mid-Victorian morals, does not seem to me to answer to the understanding and morality of the present time.

Roth v. United States laid down the more reasonable and thus, more acceptable test for obscenity: "whether to the average person,

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[197] *Gonzalez v. Katigbak*, 222 Phil. 225, 232 (1985) [Per *J.* Fernando, *En Banc*] citing *Regina v. Hicklin*, LR 3 QB 360 (1868).

[198] 222 Phil. 225 (1985) [Per *J.* Fernando, *En Banc*].

applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest." Such material is defined as that which has "a tendency to excite lustful thoughts," and "prurient interest" as "a shameful or morbid interest in nudity, sex, or excretion."

Miller v. California merely expanded the *Roth* test to include two additional criteria: "the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and the work, taken as whole, lacks serious literary, artistic, political, or scientific value." The basic test, as applied in our jurisprudence, extracts the essence of both *Roth* and *Miller* – that is, whether the material appeals to prurient interest.[199]

The majority in this case, however, takes exception to this Court's application of the *Miller* test and suggests that the proper recourse should have been to proceed with trial so that the trial court could rule on the factual issues, adopt the *Miller* test, and receive evidence. It suggests that the case should have first undergone the appellate process before review by this Court, as that "is the process observed by the US Supreme Court in all of the obscenity cases cited . . . which led to the adoption of the *Miller* standards in the US."[200]

In this case, petitioners were criminally charged by the Office of the City Prosecutor of Manila before filing this Petition. While this case was pending, however, that criminal case was dismissed. Had it continued, there would be no doubt that it would have undergone the appellate process suggested by the majority and would have eventually been reviewed by this Court. The same discussion would, undoubtedly, be undertaken by this Court.

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[199] *J.* Carpio, Dissenting Opinion in *Soriano v. Laguardia*, 629 Phil. 262, 286-287 (2010) [Per *J.* Velasco, Jr., *En Banc*] citing *Regina v. Hicklin*, L.R. 3 Q.B. 360, 371 (1868); *United States v. Kennerly*, 209 F. 119, 120 (S.D.N.Y. 1913); *Roth v. United States*, 354 U.S. 476 (1957); *Miller v. California*, 413 U.S. 15 (1973); and *Gonzalez v. Katigbak*, 222 Phil. 225 (1985) [Per *J.* Fernando, *En Banc*].

[200] *Ponencia*, p. 21.

In any case, there is no need to make a factual determination of the issues when the mode of analysis to be applied is a facial overbreadth challenge. The constitutionality of the statute is determined "on its face," rather than "as applied," which requires factual antecedence. As recent cases present, resolving questions of fact when subsequent events have already rendered the facts moot is unnecessary.

In *Marquez*, this Court did not delve into the factual issue of whether the petitioner had the financial capacity to launch a nationwide senatorial campaign, since the conduct of the elections already rendered this issue moot.[201]

In *Nicolas-Lewis*, no questions of fact were to be resolved since the petitioner, a private citizen with dual citizenship, was not alleged to have been campaigning for certain candidates abroad. She merely argued that the questioned provision prevented her from doing so.[202]

Even certain obscenity cases did not require the conduct of an appellate process before this Court exercised its power of judicial review.

In *Gonzalez*,[203] the Petition was filed directly before this Court questioning the Board's resolution classifying "Kapit sa Patalim" as "For Adults Only." There was no question raised as to whether the issue should first be resolved by the trial court or whether the trial court should first receive evidence that moviegoers and critics found the movie too obscene for commercial distribution. On the contrary, this Court assumed jurisdiction over the *certiorari* petition.

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[201] *Marquez v. Commission on Elections*, G.R. No. 244274, September 10, 2019, <http://sc.judiciary.gov.ph/8153/ [Per *J.* Jardeleza, *En Banc*].

[202] *Nicolas-Lewis v. Commission on Elections*, G.R. No. 223705, August 13, 2019, <http://sc.judiciary.gov.ph/8730/ [Per *J.* Reyes, Jr., *En Banc*].

[203] 222 Phil. 225 (1985) [Per *J.* Fernando, *En Banc*].

In *Soriano*,[204] this Court did not hesitate to entertain a Petition directly filed before it assailing decision of the Movie and Television Review and Classification Board to suspend the petitioner from his television program for allegedly uttering obscene words. It was unnecessary that the case be first reviewed by the Court of Appeals before this Court could fully resolve the issues raised by the parties.

While the majority is correct in stating that cases in the United States that led to the development of the *Miller* test underwent an appellate process, that is not the case in this jurisdiction. Thus, while this Court may consider the *Miller* test as a guideline, prior cases in our jurisdiction should still take precedence to that resolved by foreign courts.

The *Miller* test may have vague application to this case, since what is questioned is the validity of an ordinance, not the prurience of a certain published work. This case, however, is not the proper occasion for this Court to carve out a test that specifically applies to anti-obscenity regulation. We are called to determine the validity of an ordinance as it applies to an *entire* publication and not merely to a specific utterance or expression. For now, this Court should have applied the *Miller* test, which, as discussed, is currently the dominant test to determine whether the statute is overbroad, and thus, violative of substantive due process.

VII

Petitioners argue that Ordinance No. 7780 violates the guidelines in the *Miller* test for the following reasons: (1) its expansive language fails to consider contemporary community standards in its application; (2) it considers certain acts as obscene without determining whether it was made in a patently offensive manner; and (3) it fails to take into account whether a certain expression, when taken as a whole, lacks serious literary, artistic, political, or scientific value.

Under Ordinance No. 7780, "obscene" is defined as:

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[204] 605 Phil. 43 (2009) [Per *J.* Velasco, Jr., *En Banc*].

[A]ny material or act that is indecent, erotic, lewd or offensive, or contrary to morals, good customs or religious beliefs, principles or doctrines, or to any material or act that tends to corrupt or depr[a]ve the human mind, or is calculated to excite impure imagination or arouse prurient interest, or is unfit to be seen or heard, or which violates the proprieties of language or behavior, regardless of the motive of the printer, publisher, seller, distributor, performer or author of such act or material, such as but not limited to:

1. Printing, showing, depicting or describing sexual acts;

2. Printing, showing, depicting or describing children in sexual acts;

3. Printing, showing, depicting or describing completely nude human bodies; and

4. Printing, showing, depicting or describing the human sexual organs or the female breasts[.][205]

Pornography, on the other hand, is defined as:

[S]uch objects or subjects of photography, movies, music records, video and VHS tapes, laser discs, billboards, television, magazines, newspapers, tabloids, comics and live shows calculated to excite or stimulate sexual drive or impure imagination, regardless of the motive of the author thereof, such as, but not limited to the following:

1. Performing live sexual acts in whatever form;

2. Those other than live performances showing, depicting or describing sexual acts;

3. Those showing, depicting or describing children in sex acts;

4. Those showing, depicting, or describing completely nude human body, or showing, depicting or describing the human sexual organs or the female breasts.[206]

The Ordinance does not take into account contemporary community standards in determining what is considered obscene.

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[205] *Rollo*, p. 39.

[206] *Id*.

The Ordinance fails to specify what material or act may be considered "indecent, erotic, lewd or offensive, or contrary to morals, good customs or religious beliefs, principles or doctrines, or to any material or act that tends to corrupt or depr[a]ve the human mind, or is calculated to excite impure imagination or arouse prurient interest, or is unfit to be seen or heard, or which violates the proprieties of language or behavior[.]" Instead, it casts a wide net that could encompass all kinds of behavior without acknowledging what the present standards of the community are.

Petitioners submit that 40% of their readership is female.[207] This is an indication that the "community" by which contemporary standards are to be held do not necessarily believe that petitioners' magazines appeal purely to male prurient interests. Even in *Pita*, this Court acknowledged that what may be offensive years ago could be inoffensive now.[208] The Ordinance's failure to indicate what it considers offensive within contemporary community standards is fatal.

Worse, the prohibitions used in the Ordinance include material that is contrary to religious beliefs.

Ordinance No. 7780 does not mention which religion's beliefs it seeks to protect, but considering that its sponsor is Abante, a Baptist pastor,[209] and that it was he who filed the criminal case against petitioners, it can be presumed that the Ordinance seeks to penalize those that offend the sensibilities of Baptists or similar religions.

Article II, Section 6 of the Constitution provides that there shall be an inviolable separation of Church and State. Article III, Section 5 is even more explicit:

SECTION 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise

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[207] *Id*. at 19.

[208] *Pita v. Court of Appeals*, 258-A Phil. 134 (1989) [Per *J*. Sarmiento, *En Banc*].

[209] *Rollo*, p. 45.

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.

A local legislation that bases its standards of morality on a particular religion only tends to establish a dominant religion, to the exclusion of all other faiths. A religion may not consider a certain material as offensive, and another may even view human sexuality as part of the religious experience. To arbitrarily create legislation based on the puritanical views of a specific religion is not merely insensitive; it is unconstitutional.

The language used by the Ordinance is likewise unduly expansive. It tends to punish every single print, show, depiction, or description of nudity and sex seemingly without distinction. For example, it unnecessarily lumps together eroticism with lewdness, "regardless of the motive of the printer, publisher, seller, distributor, performer[,] or author[.]"[210] It even singles out the female breast as lewder and more offensive than other sexual organs.

Under the *Miller* test, a material is seen as obscene if it is "patently offensive." Yet, of the examples listed, only that of child pornography is, on its face, offensive. Even without this Ordinance, child pornography would still be illegal under Republic Act No. 9775, or the Anti-Child Pornography Act of 2009.

Moreover, under the Ordinance's expansive language, the motive of the author, performer, or publisher is disregarded. Any work is immediately categorized as obscene if it is deemed "indecent, erotic, lewd or offensive, or contrary to morals, good customs or religious beliefs, principles or doctrines, or to any material or act that tends to corrupt or depr[a]ve the human mind, or is calculated to excite impure imagination or arouse prurient interest, or is unfit to be seen or heard, or which violates the proprieties of language or behavior[.]"[211]

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[210] *Id.* at 39.

[211] *Id.*

Such disregard of the author, performer, or publisher's motives contradicts the Ordinance's very own proviso, as indicated in Section 4:

> [T]his ordinance shall not apply to materials printed, distributed, exhibited, sold, filmed, rented, viewed or produced by reason of or in connection with or in furtherance of science and scientific research and medical or medically related art, profession, and for educational purposes.[212]

An artist may, for instance, intend for his or her painting to be erotic, and the painting will still be considered as art. Certainly, the artist does not mean for the painting to be patently offensive. But by penalizing the artist regardless of the motive, the Ordinance imposes an arbitrary restraint on that artist's freedom of expression.

The Ordinance also fails to take into account whether the materials, when taken as a whole, lack serious literary, artistic, political, or scientific value.

In disregarding the motives of the printer, publisher, distributor, or seller, the Ordinance broadly presumes that an entire publication can only contain obscene material and nothing more. Petitioners point out that the allegedly offensive magazines featured "literature from award-winning writers such as Marguerite de Leon, Anna Felicia Sanchez[,] and Norman Wilwayco."[213] Parts of the magazine may appeal to prurient interests, but some parts are heralded for having serious literary value.

During the martial law period, journalists looked to small publications to skirt censorship. Called the "mosquito press," these journalists published searing articles on the dictatorship that continued to reach the people.[214] The mosquito press would

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[212] *Id*. at 40.

[213] *Id*. at 24.

[214] See Ria de Fiesta, *How women journalists pushed limits during Martials Law*, ABS-CBN NEWS ONLINE, February 24, 2014, <https://news.abs-cbn.com/focus/02/24/14/how-women-journalists-published-limits-during-martial-law> (last accessed on September 23, 2019).

not have survived this Ordinance since it prohibits the entire publication, regardless of whatever important articles may have been published in it.

The Ordinance likewise imposes criminal liability on the president and board members of a publication, regardless of whether they were personally involved in actually publishing the allegedly obscene material. In this case, Summit Media also publishes several other magazines outside the realm of the Ordinance. However, because of its provisions, the president and the board members may be held criminally liable for offenses they may have no personal knowledge of, and may consequently be prevented from doing their jobs. This is an arbitrary restraint on their legitimate pursuit of business.

VIII

Article III, Section 1 of the Constitution 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.

Due process under this provision encompasses two (2) concepts: (1) procedural due process; and (2) substantive due process. In *Ermita-Malate Hotel and Motel Operators Association, Inc. v. The Honorable City Mayor of Manila*:[215]

> 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

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[215] 127 Phil. 306 (1967) [Per *J.* Fernando, *En Banc*].

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.[216]

"Procedural due process refers to the procedures that the government must follow before it deprives a person of life, liberty, or property. Procedural due process concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere."[217] Here, since Ordinance No. 7780 underwent notice and hearing when it was enacted, it suffers no defect in its compliance with the requirements of procedural due process.[218]

When measured against the requirements of substantive due process, however, the Ordinance is found wanting.

Substantive due process "inquires whether the government has sufficient justification for depriving a person of life, liberty, or property."[219] It requires an examination as to whether the

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[216] *Id*. at 318-319 citing Frankfurter, Mr. Justice Holmes and the Supreme Court, 32-33 (1938); Frankfurter, *Hannah v. Larche*, 363 U.S. 420, 487 (1960); *Cafeteria Workers v. McElroy*, 367 U.S. 1230 (1961); and *Bartkus v. Illinois* (1959) 359 U.S. 121.

[217] *White Light Corporation v. City of Manila*, 596 Phil. 444, 461 (2009) [Per *J*. Tinga, *En Banc*] citing *Lopez v. Director of Lands*, 47 Phil. 23, 32 (1924) [Per *J*. Johnson, Second Division].

[218] *Rollo*, p. 365.

[219] *White Light Corporation v. City of Manila*, 596 Phil. 444, 461 (2009) [Per *J*. Tinga, *En Banc*] citing *City of Manila v. Hon. Laguio, Jr.*, 495 Phil. 289, 330 (2005) [Per *J*. Tinga, *En Banc*].

State's exercise of its police power transgresses on certain protected freedoms. In *White Light Corporation*:

> In terms of judicial review of statutes or ordinances, strict scrutiny refers to the standard for determining the quality and the amount of governmental interest brought to justify the regulation of fundamental freedoms. Strict scrutiny is used today to test the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection. The United States Supreme Court has expanded the scope of strict scrutiny to protect fundamental rights such as suffrage, judicial access and interstate travel.[220]

Similarly, in *Kabataan Party-List v. Commission on Elections*:[221]

> Applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest, and the burden befalls upon the State to prove the same.[222]

Thus, in determining whether an ordinance was validly enacted, the State must prove that: (1) the governmental interest involved is compelling enough to require a restraint on constitutional freedoms; and (2) there were no less restrictive means for achieving that interest. In *White Light Corporation*:

> It must appear that the interests of the public generally, as distinguished from those of a particular class, require an interference with private rights and the means must be reasonably necessary for

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[220] *Id*. at 463 citing *J*. Mendoza, Concurring Opinion in *Estrada v. Sandiganbayan*, 421 Phil. 290 (2001) [Per *J*. Bellosillo, *En Banc*]; *Bush v. Gore*, 531 U.S. 98 (2000); *Boddie v. Connecticut*, 401 U.S. 371 (1971); *Shapiro v. Thompson*, 394 U.S. 618 (1969); and ERWIN CHEMERINSKY, *CONSTITUTIONAL LAW, PRINCIPLES AND POLICIES* (2nd ed., 2002).

[221] 775 Phil. 523 (2015) [Per *J*. Perlas-Bernabe, *En Banc*].

[222] *Id*. at 552 citing *White Light Corporation v. City of Manila*, 596 Phil. 444 (2009) [Per *J*. Tinga, *En Banc*]; *J*. Leonardo-De Castro, Concurring Opinion in *Garcia v. Drilon*, 712 Phil. 44 (2013) [Per *J*. Perlas-Bernabe, *En Banc*]; and *J*. Puno, Separate Concurring Opinion in *Ang Ladlad LGBT Party v. COMELEC*, 632 Phil. 32, 106 (2010) [Per *J*. Del Castillo, *En Banc*].

the accomplishment of the purpose and not unduly oppressive of private rights. It must also be evident that no other alternative for the accomplishment of the purpose less intrusive of private rights can work. More importantly, a reasonable relation must exist between the purposes of the measure and the means employed for its accomplishment, for even under the guise of protecting the public interest, personal rights and those pertaining to private property will not be permitted to be arbitrarily invaded.[223]

Respondents submit that the Ordinance's legislative intent is to eradicate greed, "which preys on and appeals on the baser instincts of unwary consumers, [and] is far superior to the 'property rights' of the petitioners in the hierarchy of values within the due process clause[.]"[224]

Whatever baser instincts an adult consumer may have is not for the local government to legislate. As previously discussed, consumers may buy the publications not merely to satisfy their prurient curiosity, but because the publication itself contains serious literary, artistic, political, or scientific value.

Ordinance No. 7780 does not give due regard to measures that may have been undertaken by the publishing corporation to ensure that only adults, who have full autonomy over all their moral choices, are in possession of the materials. As petitioners point out, "a clear 18+ mark appears prominently on all the covers of FHM magazines together with the words 'CONTENTS MAY NOT BE SUITABLE FOR MINORS.' Further, these magazines are released to distributors sealed in plastic covers, for sale only in legitimate magazine stands and only to adults."[225]

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[223] *White Light Corporation v. City of Manila*, 596 Phil. 444, 467 (2009) [Per *J.* Tinga, *En Banc*] citing *Metro Manila Development Authority v. Viron Transportation Company*, 557 Phil. 121 (2007) [Per *J.* Carpio Morales, *En Banc*] and *U.S. v. Toribio*, 15 Phil. 85 (1910) [Per *J.* Carson, First Division].

[224] *Rollo*, pp. 364-365.

[225] *Id*. at 24.

These measures taken to protect the "unwary consumers" are less restrictive than the penal provisions provided in the Ordinance.

As this Court aptly observed in *White Light Corporation*:

> The promotion of public welfare and a sense of morality among citizens deserves the full endorsement of the judiciary provided that such measures do not trample rights this Court is sworn to protect. The notion that the promotion of public morality is a function of the State is as old as Aristotle. The advancement of moral relativism as a school of philosophy does not de-legitimize the role of morality in law, even if it may foster wider debate on which particular behavior to penalize. It is conceivable that a society with relatively little shared morality among its citizens could be functional so long as the pursuit of sharply variant moral perspectives yields an adequate accommodation of different interests.
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> To be candid about it, the oft-quoted American maxim that "you cannot legislate morality" is ultimately illegitimate as a matter of law, since as explained by Calabresi, that phrase is more accurately interpreted as meaning that efforts to legislate morality will fail if they are widely at variance with public attitudes about right and wrong. Our penal laws, for one, are founded on age-old moral traditions, and as long as there are widely accepted distinctions between right and wrong, they will remain so oriented.
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> Yet the continuing progression of the human story has seen not only the acceptance of the right-wrong distinction, but also the advent of fundamental liberties as the key to the enjoyment of life to the fullest. Our democracy is distinguished from non-free societies not with any more extensive elaboration on our part of what is moral and immoral, but from our recognition that the individual liberty to make the choices in our lives is innate, and protected by the State. Independent and fair-minded judges themselves are under a moral duty to uphold the Constitution as the embodiment of the rule of law, by reason of their expression of consent to do so when they take the oath of office, and because they are entrusted by the people to uphold the law.
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> Even as the implementation of moral norms remains an indispensable complement to governance, that prerogative is hardly absolute, especially in the face of the norms of due process of liberty. And while the tension may often be left to the courts to relieve, it is possible

for the government to avoid the constitutional conflict by employing more judicious, less drastic means to promote morality.[226]

IX

The value of art in a person's life and in society at large is immeasurable. However, no authoritative standard exists by which all members of Philippine society will agree on what constitutes art, much less "good" art. Indeed, different sectors have on occasion been vocal in their disagreements on art, even beyond matters of personal preference. Despite the absence of any standard, and perhaps naturally so, art maintains a special status in the Constitution and in law.

Artistic creations are, of course, protected under the Bill of Rights as a mode of an artist's expression. Beyond this preferred status as a form of expression, the role of art in society is further recognized in our Constitution, which devotes a subsection to its promotion and protection.[227]

Art is so seamlessly integrated into our lives that we tend to forget its power, where it derives this power, and why it deserves this special status. Forgetting these reasons may lead the State to intrude into matters of the art. This intrusion may be in the form of regulation that unduly stifles art, and consequently, society. Thus, the important role of art in society

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[226] *White Light Corporation v. City of Manila*, 596 Phil. 444, 469-471 (2009) [Per J. Tinga, *En Banc*] citing *City of Manila v. Hon. Laguio, Jr.*, 495 Phil. 289 (2005) [Per J. Tinga, *En Banc*]; *De La Cruz v. Hon. Paras*, 208 Phil. 490 (1983) [Per J. Fernando, *En Banc*]; *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, 127 Phil. 306 (1967) [Per J. Fernando, *En Banc*]; MAX HAMBURGER, *MORALS AND LAW: THE GROWTH OF ARISTOTLE'S LEGAL THEORY*, 178 (1951 ed.); KENT GREENWALT, *CONFLICTS OF LAW AND MORALITY*, 38 (1989 ed.); STEVEN CALABRESI, *Render Unto Caesar that which is Caesar's, and unto God that which is God's*, 31 Harv. J.L. & Pub. Pol'y 495; RICHARD POSNER, *The Problematics of Moral And Legal Theory*, THE BELKNAP PRESS OF HARVARD UNIVERSITY PRESS (2002); and STEVEN BURTON, *JUDGING IN GOOD FAITH*, 218 (1992 ed.).

[227] CONST., Art. XIV, Secs. 13, 14, 15, 16, and 18.

demands reiteration—a reminder of why the State should not unduly police what can be interpreted as artistic endeavors.

During the constitutional deliberations, Commissioner Ponciano Bennagen (Commissioner Bennagen) provided some context within which to appreciate the special status of art:

> Arts is one of the things that have always been with us but are usually taken for granted until they impinge on or shock our jaded consciousness. We hang a painting to impress people, to add color to a wall or to fill up a space. We sing or listen to music while we do our morning ablutions and laundry and while we are in the midst of some conversation. We dance, recite poems, go to the theater and do other things that may be artistic, all in the process of growing up and, sadly, also of growing old. But most of the time, we go through these things rather thoughtlessly, unaware of the subtle ways of how arts affects our very life, both as individuals and as a society.
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> . . . . . .
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> Arts is a way of surviving beyond the historical circumstances which have generated them. It survives *in situ*, in private and public museums, in scholars' books and shelves and, more vibrant still, in people's lives. And as it survives, its functions often change. For example, we continue to be awed and fascinated by the cave paintings of Altamira in Spain and those of Lascaux in France. We are entertained by the ancient dances, songs, and epics of our ancestors through the Bayanihan, Filipinescas and other dance troupes. We decorate our rooms with ethnic and folk arts and we are cheek by jowl with imports from other lands and other times.
>
> Art, therefore, acquires a certain autonomy and it affects our lives in very subtle ways. Art, beyond its magico-religious and economic functions, also functions to distort, criticize and shape our feeling, thinking and behavior. Today, conventional wisdom has it that art entertains, decorates or educates. But in its own way, it also mystifies and in the process dehumanizes.
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> Let me illustrate, Madam President. An average citizen, looking at an abstract painting by Joya with a five-figure price, could be dehumanized in at least two ways: The painting, understandable only to the specialist, tells him: "You do not understand me; you are a Philistine, therefore, you are an idiot." Or it could say: "You cannot afford me, therefore, you are poor." The same could also apply to

other arts that have been accessible only to the rich and the powerful. It is this kind of cultural terrorism that has agitated some artists to wage protest actions against the Cultural Center of the Philippines during the Marcos years when it became the watering hole of culture vultures oblivious to the widespread poverty and misery even as they speak sanctimoniously of "the true, the good and the beautiful."

In a class-divided society, it is the dominant elite who dictate what is true, what is good and what is beautiful. Consequently, art contributes to the preservation of social and cultural stratification. Fortunately, however, because of the relative autonomy of art, it provides an arena for criticism of society and of the struggle to restructure this society. Those who are excluded from the privileged circle, whether by choice or by force, continue to explore other forms of artistic expression, particularly those that are rooted in the realities of Filipino life. In their inchoate form, these efforts complement those directed at liberating us from an alienating Western culture, as well as the corollary search for a Filipino aesthetics nourished by the rich diversity of Philippine society and culture as it expresses our own vision of humanity.

It is in this search for Filipino aesthetics that the provisions in the section on arts and culture are situated. The provisions, we believe, are supportive of already approved provisions which altogether aim to help build a vigorously democratic Filipino nation.[228]

In *Almario v. Executive Secretary*,[229] this Court stressed that the law recognizes the significance of art in society:

Art has traditionally been viewed as the expression of everything that is true, good and beautiful. As such, it is perceived to evoke and produce a spirit of harmony. Art is also considered as a civilizing force, a catalyst of nation-building. The notion of art and artists as privileged expressions of national culture helped shape the grand narratives of the nation and shared symbols of the people. The artist does not simply express his/her own individual inspiration but articulates the deeper aspirations of history and the soul of the people. The law recognizes this role and views art as something that "reflects

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[228] R.C.C. No. 080, September 11, 1986.

[229] 714 Phil. 127 (2013) [Per *J.* Leonardo-De Castro, *En Banc*].

and shapes values, beliefs, aspirations, thereby defining a people's national identity."[230] (Citations omitted)

As explained by Commissioner Bennagen and noted in *Almario*, art does not merely repeat what has been said; it has a formative power and can shape and define a people's national identity. Still, art does more than shape our consciousness—it also reacts to this consciousness, and becomes part of our consciousness.

However, it can also be a tool to stifle a people and rigidly preserve the aesthetics and values of a dominant class.

When Article III, Section 4 of the Constitution speaks of freedom of speech and expression, this freedom pertains not only to matters of political discourse for the sake of policy development, but also to life, liberty, and the authenticity of life of an enlightened citizenry.

Ideally, art opens minds, lifting individuals from their immediate present, deepening their experience of the world. It facilitates contemplation on matters such as the meaning of life, of good and evil, existence, truth, or even the meaning of meaning itself.

However, the art to which society is regularly exposed consists of that found in advertising and social media. These works are designed to convince their audiences to spend, and their messages overwhelmingly pertain to conformity, appeal to consumerism, and act as distractions from questions more significant to the development of society.

Art and cultural forms are unique in their capacity to open the mind to experiences and possibilities beyond the self. While verbal communications may be written or uttered with the similar goal of presenting the author's point of view to the audience, their presentation does not have the same effect. Such verbal communications may be expressed to shock or provoke their audiences, or to persuade them of the author's perspective. However, when presented as an argument to a reader whose beliefs are not already aligned with the author's position, the

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[230] *Id*. at 133.

typical response is not one of openness. Rather, the reader tends to be defensive, to critically search for flaws in the author's logic or holes in the author's presentation.

Works of art and culture, on the other hand, are less direct in their messaging, and more subject to interpretation. An artist's choices, as manifested in a piece, pertain to all the human senses, and are not clearly defined the way that words are. Viewers may not even be equipped to fully understand even a fraction of the artist's intention. Despite this, they may find something compelling in the work to cause them to dwell on it further, and linger a moment longer. Works of art and culture appeal to any or all human senses and sensibilities; what may initially captivate a viewer may vary from person to person. They rely less on logic and argumentation, and are less susceptible to the knee-jerk defensive response that straightforward verbal communication tends to produce. They can, therefore, be more effective than persuasion and argumentation as a means of questioning the norms.

I am not suggesting that FHM Magazine is opening people's minds or moving society toward some lofty ideal, nor am I attempting to reify the male gaze perpetuated by it as a form of elevated art. I am not convinced that the magazine is attempting to achieve anything beyond selling magazines and advertising space.

However, the demarcations as to what constitutes art are not always clear. Art is subjective: a particular portrayal may have one meaning to a viewer and an entirely different meaning to the other. Moreover, there is always the possibility that FHM Magazine may be more creative or lofty in its endeavors, the way that Playboy, for instance, decided to stop publishing nude photos of women for a time.[231]

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[231] See Ravi Somaiya, *Nudes Are Old News at Playboy*, THE NEW YORK TIMES, October 12, 2015, <https://www.nytimes.com/2015/10/13/business/media/nudes-are-old-news-at-playboy.html> (last accessed on September 23, 2019).

Moreover, intentions aside, the unclothed body—and whether it is obscene, and whether it is art—is in itself subject to interpretation.

To conclude that something sexual was obscene, this Court reasoned that it could not be art, because it would not be viewed by "artists and persons interested in art and who generally go to art exhibitions and galleries to satisfy and improve their artistic tastes[.]"[232] This Court has taken it upon itself to declare what cannot possibly be art or has no redeeming quality.[233] It has lamely attempted to discern the "aggregate judgment of the Philippine community,"[234] enforcing the contemporary community's standards of what may offend it.

Just as important, it may be time to ask why the contemporary community—as such, the government and this Court—polices the display of women's bodies with so much more zeal than it polices men's bodies. It may be time to consider why the contemporary community appears to judge the nipple as obscene, but only when it belongs to a woman.

Nonetheless, as it stands, Ordinance No. 7780 is a feeble attempt to legislate morality. It prevents adults, who have complete autonomy over their morals and choices, from pursuing what may be their own personal interests. While it does not penalize mere possession of obscene materials, it relies heavily on inserting perceived values into each individual's thoughts.

The artist or author should not have to live under the threat censorship without legitimate basis. While this Court is granted the discretion to decide what is and what is not obscene, the standards for determination must vary per case and must evolve

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[232] *People v. Go Pin*, 97 Phil. 418, 419 (1955) [Per *J.* Montemayor, First Division].

[233] See *People v. Padan*, 101 Phil. 749 (1957) [Per *J.* Montemayor, *En Banc*].

[234] *People v. Kottinger*, 45 Phil. 352, 360 (1923) [Per *J.* Malcolm, Second Division].

over time. Any legislation that seeks to restrain the exercise of free speech and expression—be it local or national law—must be struck down. As Article III, Section 4 of the Constitution succinctly states:

> SECTION 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

ACCORDINGLY, I vote to **GRANT** the Petition. City of Manila Ordinance No. 7780 should be declared **VOID** for being **UNCONSTITUTIONAL**.

SECOND DIVISION

[G.R. No. 205805. September 25, 2019]

SIMEONA, GLORIA and RODOLFO (all surnamed PRESCILLA), ARMENTINA PRESCILLA-PERDES, HERMINIA PRESCILLA-CARANDANG, ZENAIDA PRESCILLA-MANUEL and YOLANDA PRESCILLA-MARCIANO, *petitioners*, *vs.* **CONRADO O. LASQUITE and JUANITO L. ANDRADE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; THE PENDENCY OF A MOTION FOR RECONSIDERATION FILED ON TIME AND BY THE PROPER PARTY SHALL STAY THE EXECUTION OF THE JUDGMENT OR FINAL RESOLUTION SOUGHT TO BE RECONSIDERED. — It is not disputed that petitioners Prescilla, *et al.*'s Motion for Reconsideration is *still pending* before the CA, Eighth Division and has not been resolved as of date. In the assailed Decision, the CA, Seventh Division itself recognized that the resolution of petitioners

Prescilla, *et al.*'s Motion for Reconsideration is still suspended and has not yet been resolved. In fact, the Court issued a Resolution dated March 4, 2019 directing the parties to move in the premises by informing the Court as to whether the CA, Eighth Division had already resolved petitioners Prescilla, *et al.*'s Motion for Reconsideration. In their Compliance and Manifestation dated May 14, 2019, petitioners Prescilla, *et al.* informed the Court that their Motion for Reconsideration before the CA, Eighth Division "remains unacted upon and unresolved." On the other hand, respondents Lasquite and Andrade ignored the directive of the Court. Section 4, Rule 52 of the Rules of Court is clear and unequivocal: the pendency of a motion for reconsideration filed on time and by the proper party shall stay the execution of the judgment or final resolution sought to be reconsidered. *Therefore, as to petitioners Prescilla, et al., whose Motion for Reconsideration is still pending before the CA, Eighth Division, it must be stressed that the controversy has not been resolved with finality*. Consequently, as far as petitioners Prescilla, *et. al.* are concerned, there is no judgment that is already ripe for execution.

2. ID.; ID.; ID.; A DECISION RENDERED ON A COMPLAINT IN A CIVIL ACTION OR PROCEEDING DOES NOT BIND OR PREJUDICE A PERSON NOT IMPLEADED THEREIN, FOR NO PERSON SHALL BE ADVERSELY AFFECTED BY THE OUTCOME OF A CIVIL ACTION OR PROCEEDING IN WHICH HE IS NOT A PARTY. — It is elementary that a judgment of a court is conclusive and binding only upon the parties and their successors-in-interest after the commencement of the action in court. **A decision rendered on a complaint in a civil action or proceeding does not bind or prejudice a person not impleaded therein, for no person shall be adversely affected by the outcome of a civil action or proceeding in which he is not a party**. The principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he has not been made a party conforms to the constitutional guarantee of due process of law. To reiterate, in G.R. No. 175375, only respondents Lasquite and Andrade as well as Victory Hills were the parties involved. **Petitioners Prescilla, *et al.* were not impleaded parties in the said case.**

3. ID.; ID.; MOTION FOR RECONSIDERATION; PARTIES MAYBE FOUND GUILTY OF FORUM SHOPPING WHERE THEY FILED

A COMPLAINT IN INTERVENTION DURING THE PENDENCY OF THEIR MOTION FOR RECONSIDERATION. — As correctly argued by petitioners Prescilla, *et al.*, *Suson v. Court of Appeals* is completely inapplicable in the instant case. In *Suson v. Court of Appeals*, the writ of execution was deemed to have been effective even as to the person not impleaded because such party ignored the trial court's order to file a complaint in intervention. Simply stated, such party had every chance to intervene, yet negligently failed to do so. In the instant case, the situation is vastly different. Because petitioners Prescilla, *et al.*'s Motion for Reconsideration was and remains to be, pending as the resolution of which was suspended by the CA, Eighth Division, petitioners Prescilla, *et al.* had no proper opportunity to file any intervention in G.R. No. 175375. Any intervention on the part of petitioners Prescilla, *et al.* in G.R. No. 175375 would have been improper as petitioners Prescilla, *et al*. would have been guilty of *forum-shopping* due to the pendency of their Motion for Reconsideration before the CA, Eighth Division.

4. ID.; ID.; ID.; WHEN THE TRIAL COURT OR APPELLATE COURT ISSUES A JUDGMENT OR FINAL RESOLUTION IN A CASE INVOLVING SEVERAL PARTIES, THE RIGHT OF ONE PARTY TO FILE A MOTION FOR RECONSIDERATION OR APPEAL IS NOT HINGED ON THE MOTION FOR RECONSIDERATION OR APPEAL OF THE OTHER PARTY. — [T]he Court notes that this complication originated from the CA, Eighth Division's act of suspending the resolution of petitioners Prescilla, *et al.*'s Motion for Reconsideration. There is nothing in the Rules of Court that mandates, or even allows, the appellate courts to suspend the resolution of a party's motion for reconsideration on account of a co-party's appeal before the Court. Otherwise stated, when the trial court or appellate court issues a judgment or final resolution in a case involving several parties, the right of one party to file a motion for reconsideration or appeal is not hinged on the motion for reconsideration or appeal of the other party. Effectively, by failing to resolve their Motion for Reconsideration, petitioners Prescilla, *et al*. were prevented from exercising their right to appeal. Subjecting petitioners Prescilla, *et al.* to a judgment that they had no opportunity to appeal from due to no fault of their own smacks of violation of due process.

APPEARANCES OF COUNSEL

Jimeno Cope and David Law Offices for petitioners.

Fetizanan Fetizanan and Jaud-Fetizanan Law Firm for heirs of respondent Juanito L. Andrade.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an appeal *via* a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioners Simeona Prescilla, Gloria Prescilla, *et al.* (petitioners Prescilla, *et al.*) assailing the Decision[2] dated August 31, 2012 (assailed Decision) and Resolution[3] dated February 11, 2013 (assailed Resolution) of the Court of Appeals (CA), Seventh Division in CA-G.R. SP No. 122109.

The Facts and Antecedent Proceedings

The instant case stems from a Complaint for Reconveyance and Damages[4] filed on March 8, 1989 by petitioners Prescilla, *et al*. against respondents Conrado Lasquite (respondent Lasquite) and Juanito Andrade (respondent Andrade) before the Regional Trial Court of San Mateo, Rizal, Branch 77 (RTC). The case was docketed as Civil Case No. 548.

In the aforesaid Complaint, petitioners Prescilla, *et al*. claimed to be the tillers of parcels of land designated as Lot No. 3050 (subject property) and Lot No. 3052 located at Barrio Ampid, San Mateo.

According to petitioners Prescilla, *et al*., they have been in possession in *concepto de dueno* of the subject property since

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[1] *Rollo,* pp. 8-23.

[2] *Id.* at 24-33. Penned by Associate Justice Romeo F. Barza with Associate Justices Noel G. Tijam and Ramon A. Cruz, concurring.

[3] *Id.* at 35-36.

[4] Records, Vol. 1, pp. 1-7.

1940, planting and cultivating crops thereon. However, it was alleged that the respondents Lasquite and Andrade were able to fraudulently obtain original certificate of titles covering the subject properties. Respondent Lasquite was able to obtain Original Certificate of Title (OCT) No. NP-198, while respondent Andrade was able to obtain OCT No. NP-197, both covering the subject property.

A second Complaint in Intervention for Annulment and Cancellation of Title, Reconveyance and Damages was filed by Roberto and Raquel Manahan, Maria Gracia M. Natividad, the heirs of Leocadio Manahan and the heirs of Joaquin Manahan (the Manahans) against respondents Lasquite and Andrade on June 23, 1993. On their part, the Manahans asserted title over the subject property as successors of one Jose S. Manahan. The case was consolidated with Civil Case No. 548.

In the course of the trial, **Victory Hills, Inc**. (Victory Hills) intervened, claiming to be the owner of the subject property.

The Decision of the RTC in Civil Case No. 548

On July 2, 2002, the RTC rendered its Decision[5] **which, while upholding petitioners Prescilla, *et al.*'s right of ownership over Lot No. 3052, upheld the respondents Lasquite and Andrade's rights of ownership over the subject property.**

The dispositive portion of the RTC's Decision reads:

> Accordingly, the title of defendants Conrado Lasquite and Jose Andrade, involving the subject parcel of land under OCT No. NP-198 and OCT No. NP-197 registered on June 18, 1981, are sustained. Likewise the title issued to plaintiffs Prescilla, under OCT No. ON-333 involving Lot 3052 is sustained.
>
> **WHEREFORE**, premises considered, judgment is hereby rendered dismissing these cases.
>
> No Costs.

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[5] Records, Vol. 3, pp. 129-150. Penned by Judge Francisco C. Rodriguez, Jr.

SO ORDERED.[6]

Petitioners Prescilla, *et al.*, the Manahans and Victory Hills interposed their respective appeals before the CA, Eighth Division. The appeals were docketed as CA G.R. CV No. 77599.

The Decision of the CA, Eighth Division in CA G.R. CV No. 77599

In its Decision[7] dated November 8, 2006, **the CA, Eighth Division annulled and set aside the RTC's Decision and declared Victory Hills the owner of the subject property**.

The dispositive portion of the aforesaid Decision reads:

WHEREFORE, the Decision dated July 2, 2002 rendered by the Regional Trial Court of San Mateo, Rizal, Branch 77 is **ANNULED** and **SET ASIDE** and a new one entered **DECLARING** VICTORY HILLS, INC. the absolute owner of the parcel of land designated as Lot 3050 subject of the instant case and **ORDERING** the Register of Deeds of Rizal to cancel OCT No. NP-198 and OCT No. NP-197 in the names of defendants-appellees Conrado Lasquite and Juanito Andrade.

SO ORDERED.[8]

Feeling aggrieved, **petitioners Prescilla, *et al*. filed a Motion for Reconsideration**[9] **dated November 27, 2006.**

On the other hand, instead of filing a motion for reconsideration, **respondents Lasquite and Andrade resorted to a different remedy and decided to directly file a Petition for Review on *Certiorari* before the Court**.[10] The appeal, entitled *Conrado*

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[6] *Id*. at 150.

[7] CA *rollo*, pp. 50-64. Penned by Associate Justice Rosmari D. Carandang (now a member of this Court) with Associate Justices Renato C. Dacudao and Estela M. Perlas-Bernabe (now a member of this Court).

[8] *Id*. at 63-64.

[9] *Id*. at 65-75.

[10] Second Division.

O. Lasquite and Teodora I. Andrade v. Victory Hills, Inc.,[11] was docketed as G.R. No. 175375.

Upon knowledge of the respondents Lasquite and Andrade's appeal before the Court, **the CA, Eighth Division issued a Resolution dated December 22, 2006, which *suspended* the proceedings and the resolution of petitioners Prescilla, *et al.*'s Motion for Reconsideration until respondents Lasquite and Andrade's appeal has been resolved by the Court.**

The said Resolution reads:

"In view of defendants-appellees' (Conrado Lasquite and Juanito Andrade) Petition for Review on Certiorari filed with the Supreme Court, proceedings in this court are deemed suspended until such time the said Petition for Review on Certiorari has been resolved by the Supreme Court."[12]

The Court's Decision in G.R. No. 175375

In its Decision[13] dated June 23, 2009, the Court, through Justice Leonardo A. Quisumbing, reversed the CA, Eighth Division's Decision dated November 8, 2006.

The Court held that Victory Hills failed to show its entitlement to a reconveyance of the land subject of the action and that the CA, Eighth Division erroneously declared Victory Hills as the absolute owner of the subject property.

The dispositive portion of the Court's Decision reads:

WHEREFORE, the petition is **GRANTED**. The Decision dated November 8, 2006 of the Court of Appeals in CA G.R. CV No. 77599

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[11] 608 Phil. 418 (2009).

[12] *Rollo*, p. 295.

[13] CA *rollo*, pp. 78-90. Penned by Leonardo A. Quisumbing with Associate Justices Consuelo Ynares-Santiago, Minita V. Chico-Nazario, Teresita J. Leonardo-De Castro and Arturo D. Brion; *Lasquite v. Victory Hills, Inc.*, *supra* note 11.

is hereby **REVERSED** and **SET ASIDE**. The Decision dated July 2, 2002 of the Regional Trial Court of San Mateo, Rizal, Branch 77, is **REINSTATED**. No pronouncement as to costs.

SO ORDERED.[14]

The Court's Decision became final and executory and was entered in the Book of Entries of Judgment on February 24, 2010, as evidenced by the Entry of Judgment[15] issued even date.

Respondents Lasquite and Andrade's Motion for Execution

On November 22, 2010, respondents Lasquite and Andrade filed a Motion for Execution[16] before the RTC, invoking the Court's final and executory Decision dated June 23, 2009.

In an Order[17] dated April 8, 2011, the RTC granted respondents Lasquite and Andrade's Motion and issued a Writ of Execution in the latter's favor.

Petitioners Prescilla, *et al*. filed a Motion for Reconsideration,[18] which was denied by the RTC in its Order[19] dated September 9, 2011.

Hence, petitioners Prescilla, *et al*. filed a Petition for *Certiorari*[20] under Rule 65 of the Rules of Court before the CA, Seventh Division alleging that the RTC committed grave abuse of discretion in issuing a Writ of Execution against petitioners Prescilla, *et al*. The case was docketed as CA-G.R. SP No. 122109.

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[14] *Id*. at 89; *id*. at 435.

[15] *Rollo*, p. 84.

[16] CA *rollo*, pp. 96-101.

[17] *Id*. at 19-21. Penned by Lily Villareal Biton.

[18] *Id*. at 128-132.

[19] Records, Vol. 5, pp. 35-36.

[20] Records, Vol. 4, pp. 1-15.

The CA, Seventh Division's assailed Decision and Resolution in CA-G.R. SP No. 122109

In the assailed Decision, the CA, Seventh Division found that the RTC did not commit grave abuse of discretion when it granted the respondents Lasquite and Andrade's Motion for Execution in view of the finality of the Court's Decision in G.R. No. 175375. Hence, in the CA's view, its execution could not be postponed or deferred by the RTC:

> In fine, this Court finds no abuse in the trial court's discretion, much less a grave one, when it granted the private respondents' motion for execution in view of the finality of the Supreme Court's decision in G.R. No. 175375, which is not disputed. Hence, its execution could not be postponed or deferred by the trial court.
>
> **WHEREFORE**, the petition is hereby **DISMISSED**.
>
> **SO ORDERED**.[21]

Petitioners Prescilla, *et al.* filed a Motion for Reconsideration,[22] which was denied by the CA, Seventh Division in its assailed Resolution.

Hence, the instant appeal.

Issue

The only essential and determinative issue to be resolved by the Court is whether the RTC committed grave abuse of discretion in issuing a Writ of Execution against petitioners Prescilla, *et al.*

The Court's Ruling

The instant Petition is impressed with merit. The CA, Seventh Division committed an error in not finding that the RTC gravely abused its discretion in issuing a Writ of Execution against petitioners Prescilla, *et al*.

It is not difficult to understand that the RTC gravely abused its discretion in the instant case. To recall, in CA G.R. CV No. 77599,

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[21] *Rollo*, p. 32.

[22] CA *rollo*, pp. 303-310.

when the CA, Eighth Division issued its Decision in favor of Victory Hills and against petitioners Prescilla, *et al*. and respondents Lasquite and Andrade, it is not disputed whatsoever that **petitioners Prescilla, *et al*. timely filed a Motion for Reconsideration.**

As stated earlier, upon knowledge of respondents Lasquite and Andrade's appeal before the Court, the CA issued a Resolution dated December 22, 2006 *suspending the resolution of petitioners Prescilla, et al.'s Motion for Reconsideration* until the respondents Lasquite and Andrade's appeal had been resolved with finality by the Court.

It is not disputed that petitioners Prescilla, *et al*.'s Motion for Reconsideration is *still pending* before the CA, Eighth Division and has not been resolved as of date. In the assailed Decision, the CA, Seventh Division itself recognized that the resolution of petitioners Prescilla, *et al*.'s Motion for Reconsideration is still suspended and has not yet been resolved.[23]

In fact, the Court issued a Resolution[24] dated March 4, 2019 directing the parties to move in the premises by informing the Court as to whether the CA, Eighth Division had already resolved petitioners Prescilla, *et al*.'s Motion for Reconsideration. In their Compliance and Manifestation[25] dated May 14, 2019, petitioners Prescilla, *et al*. informed the Court that their Motion for Reconsideration before the CA, Eighth Division "remains unacted upon and unresolved."[26] On the other hand, respondents Lasquite and Andrade ignored the directive of the Court.

Section 4, Rule 52 of the Rules of Court is clear and unequivocal: the pendency of a motion for reconsideration filed on time and by the proper party shall stay the execution of the judgment or final resolution sought to be reconsidered.

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[23] *Rollo*, p. 31.

[24] *Id*. at 292-293.

[25] *Id*. at 294-297.

[26] *Id*. at 295.

Therefore, as to petitioners Prescilla, et al., whose Motion for Reconsideration is still pending before the CA, Eighth Division, it must be stressed that the controversy has not been resolved with finality. Consequently, as far as petitioners Prescilla, *et al.* are concerned, there is no judgment that is already ripe for execution.

In believing that the RTC did not gravely abuse its discretion in issuing a Writ of Execution against petitioners Prescilla, *et al.*, in the assailed Decision, the CA, Seventh Division hinged its theory on the bare fact that in G.R. No. 175375, *i.e., Lasquite v. Victory Hills, Inc.*, the Court ruled with finality in favor of respondents Lasquite and Andrade.

The CA, Seventh Division seriously erred in its appreciation of *Lasquite v. Victory Hills, Inc.*

The assailed Decision itself acknowledged that "the petitioners were not parties to the petition for review filed by [respondents Lasquite and Andrade] to the Supreme Court, docketed as G.R. No. 175375, when the latter appealed [the CA, Eighth Division's] decision in CA-G.R. CV No. 77599."[27]

It is elementary that a judgment of a court is conclusive and binding only upon the parties and their successors-in-interest after the commencement of the action in court. **A decision rendered on a complaint in a civil action or proceeding does not bind or prejudice a person not impleaded therein, for no person shall be adversely affected by the outcome of a civil action or proceeding in which he is not a party**. The principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he has not been made a party conforms to the constitutional guarantee of due process of law.[28]

To reiterate, in G.R. No. 175375, only respondents Lasquite and Andrade as well as Victory Hills were the parties involved.

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[27] *Id.* at 30. Underscoring supplied.

[28] *Guy v. Atty. Gacott*, 778 Phil. 308, 320 (2016).

Petitioners Prescilla, *et al.* were not impleaded parties in the said case.

While the CA, Seventh Division recognized this fact, it persistently believed that the Court's Decision in G.R. No. 175375 is still binding as to petitioners Prescilla, *et al.* because the said final and executory ruling "involved the very same property (Lot 3050) that was the subject in CA- G.R. CV No. 77599 and the Supreme Court passed upon and determined all the issues involved therein when it reversed and set aside this Court's decision and reinstated the decision of the trial court."[29]

Again, the CA, Seventh Division seriously erred.

Even a cursory reading of the Court's Decision in G.R. No. 175375 would readily reveal that the said final and executory ruling did not rule whatsoever on the right of ownership of respondents Lasquite and Andrade over the subject property *vis*-à-*vis* the claim of ownership of petitioners Prescilla, *et al.* The CA, Seventh Division's belief that the Court's Decision settled *all* the issues involved concerning the ownership over the subject property is clearly belied by the Court's Decision itself.

In *Lasquite v. Victory Hills, Inc.*, being an appeal solely directed against Victory Hills and no other party, the Court merely concerned itself with two issues: "(1) whether respondent Victory Hills, Inc. is entitled to reconveyance of Lot No. 3050; and (2) whether respondent's [(referring to Victory Hills)] claim had prescribed."[30] In the aforesaid Decision, the Court assessed the evidence presented by Victory Hills and ruled that "respondent Victory Hills has failed to show its entitlement to a reconveyance of the land subject of the action."[31]

The Court merely held that Victory Hills failed to prove that it has the right of ownership over the subject property. The

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[29] *Rollo*, p. 30. Emphasis omitted.

[30] CA *rollo*, p. 82; *supra* note at 428.

[31] *Id*. at 89; *id*. at 435.

Court did not rule whatsoever that petitioners Prescilla, *et al*. were not able to prove their claim of ownership over the subject property. Nor did the Court resolve that respondents Lasquite and Andrade have better rights of ownership over the subject property as compared to petitioners Prescilla, *et al*. The Court did not dwell on the merits of petitioners Prescilla, *et al*.'s claim as such was simply not the issue of the case. **The sole issue resolved by the Court was the validity of Victory Hills' claim of ownership and not petitioners Prescilla, *et al*.'s and nothing more.**

In fact, the CA, Seventh Division, citing *Muñoz v. Atty. Yabut, Jr.*,[32] acknowledged that "a writ of execution can be issued only against a party and not against one who did not have his day in court as only real parties in interest in an action are bound by the judgment therein and by writs of execution issued pursuant thereto."[33]

However, in the same breath, the CA, Seventh Division believed that such principle does not find application as to petitioners Prescilla, *et al*. because the latter "undeniably were given their day in court."[34] Citing *Suson v. Court of Appeals*,[35] the CA, Seventh Division reasoned that "a writ of execution may be issued against a person not a party to a case where the latter's remedy, which he did not avail of, was to intervene in the case in question involving rights over the same parcel of land."[36]

Yet again, the CA, Seventh Division seriously erred.

As correctly argued by petitioners Prescilla, *et al., Suson v. Court of Appeals* is completely inapplicable in the instant case. In *Suson v. Court of Appeals*, the writ of execution was deemed

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[32] 665 Phil. 488, 510 (2011).

[33] *Rollo*, pp. 31-32.

[34] *Id*. at 32.

[35] 254 Phil. 66, 71 (1989).

[36] *Rollo*, p. 32.

to have been effective even as to the person not impleaded because such party ignored the trial court's order to file a complaint in intervention. Simply stated, such party had every chance to intervene, yet negligently failed to do so.

In the instant case, the situation is vastly different. Because petitioners Prescilla, *et al*.'s Motion for Reconsideration was and remains to be, pending as the resolution of which was suspended by the CA, Eighth Division, petitioners Prescilla, *et al.* had no proper opportunity to file any intervention in G.R. No. 175375. Any intervention on the part of petitioners Prescilla, *et al*. in G.R. No. 175375 would have been improper as petitioners Prescilla, *et al*. would have been guilty of *forum-shopping* due to the pendency of their Motion for Reconsideration before the CA, Eighth Division.

On a final note, the Court notes that this complication originated from the CA, Eighth Division's act of suspending the resolution of petitioners Prescilla, *et al*.'s Motion for Reconsideration. There is nothing in the Rules of Court that mandates, or even allows, the appellate courts to suspend the resolution of a party's motion for reconsideration on account of a co-party's appeal before the Court. Otherwise stated, when the trial court or appellate court issues a judgment or final resolution in a case involving several parties, the right of one party to file a motion for reconsideration or appeal is not hinged on the motion for reconsideration or appeal of the other party. Effectively, by failing to resolve their Motion for Reconsideration, petitioners Prescilla, *et al*. were prevented from exercising their right to appeal. Subjecting petitioners Prescilla, *et al.* to a judgment that they had no opportunity to appeal from due to no fault of their own smacks of violation of due process.

The present problem could have been avoided if only the CA, Eighth Division expediently resolved petitioners Prescilla, *et al*.'s Motion for Reconsideration, which has already been languishing for decades. This would have allowed petitioners Prescilla, *et al*. to appeal before the Court. Then, the Court could have consolidated the appeals of petitioners Prescilla, *et*

al. and respondents Lasquite and Andrade and the question of ownership could have been settled comprehensively and definitively. The Court stresses that the objective of the rules of procedure is to secure the just, speedy and inexpensive disposition of every action and proceeding.[37]

WHEREFORE, the instant petition is **GRANTED**. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 122109 are hereby **REVERSED AND SET ASIDE**. The Orders dated April 8, 2011 and September 9, 2011 of the Regional Trial Court are **VACATED**.

Let a copy of this Decision be furnished to the Court of Appeals, Eighth Division, which is **DIRECTED** to resolve petitioners Prescilla, *et al*.'s Motion for Reconsideration dated November 27, 2006 in CA G.R. CV No. 77599 with utmost dispatch.

SO ORDERED.

Carpio,[*] *Acting C.J.* (*Chairperson*), *Reyes, J. Jr., Lazaro-Javier,* and *Zalameda, JJ.,* concur.

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[37] RULES OF COURT, Rule 1, Sec. 6.

[*] Designated as Acting Chief Justice per Special Order No. 2703 dated September 10, 2019.

SECOND DIVISION

[G.R. No. 208480. September 25, 2019]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **NATIONAL COMMISSION ON INDIGENOUS PEOPLES, REGISTER OF DEEDS OF BAGUIO CITY, LAND REGISTRATION AUTHORITY, HEIRS OF COSEN PIRASO, represented by RICHARD A. ACOP, HEIRS OF JOSEPHINE MOLINTAS ABANAG, represented by ISAIAS M. ABANAG, MARION T. POOL, JOAN L. GORIO, and VIRGINIA C. GAO-AN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; INDIGENOUS PEOPLES' RIGHTS ACT OF 1997 (IPRA) (REPUBLIC ACT NO. 8371); THE NATIONAL COMMISSION ON INDIGENOUS PEOPLES (NCIP) IS DEVOID OF ANY POWER TO RE-CLASSIFY LANDS PREVIOUSLY INCLUDED AS PART OF THE TOWNSITE RESERVATION OF BAGUIO CITY BEFORE RA 8371 WAS ENACTED, AS THE POWER TO RE-CLASSIFY THESE PROPERTIES IS SOLELY VESTED IN CONGRESS AND CAN ONLY BE EXERCISED BY CONGRESS THROUGH THE ENACTMENT OF A NEW LAW. — Republic Act No. 8371 (RA 8371) or the "Indigenous Peoples' Rights Act of 1997" (IPRA) expressly excludes the City of Baguio from the application of the general provision of the IPRA. Section 78 of RA 8371 provides that "[t]he City of Baguio shall remain to be governed by its Charter and all lands proclaimed as part of its townsite reservation shall remain as such until otherwise reclassified by appropriate legislation. x x x Section 78 is a special provision in the IPRA which clearly mandates that (1) the City of Baguio shall **not be subject to provisions of the IPRA but shall still be governed by its own charter;** (2) all lands previously proclaimed **as part of the City of Baguio's Townsite Reservation shall remain as such;** (3) the re-classification of properties within the Townsite Reservation of the City of Baguio **can only be made through a law passed by Congress;** (4) prior land rights and titles recognized and acquired

through any judicial, administrative or other process **before the effectivity of the IPRA shall remain valid;** and (5) territories which became part of the City of Baguio after effectivity of the IPRA are exempted. Thus, RA 8371 is clear that, for properties part of the townsite reservation of Baguio City before the passage of the IPRA, no new CALT or CADT can be issued by the NCIP. **Under RA 8371, the NCIP is devoid of any power to re-classify lands previously included as part of the Townsite Reservation of Baguio City before RA 8371 was enacted.** The said power to re-classify these properties is **solely vested in Congress** and can **only be exercised by Congress through the enactment of a new law.** Such prohibition to reclassify is reiterated in the Implementing Rules of the IPRA.

2. ID.; ID.; ID.; DESPITE THE ENACTMENT OF THE IPRA, BAGUIO CITY SHALL REMAIN TO BE GOVERNED BY ITS CHARTER AND THAT ALL LANDS PROCLAIMED AS PART OF BAGUIO CITY'S TOWNSITE RESERVATION SHALL REMAIN TO BE PART OF BAGUIO CITY'S TOWNSITE RESERVATION, WHICH SHALL BELONG TO THE PUBLIC AND EXCLUSIVELY FOR PUBLIC PURPOSE, UNLESS RECLASSIFIED BY CONGRESS. — Section 78 of the IPRA is clear that the Charter of Baguio City shall govern the determination of land rights within Baguio City and not the IPRA. The said declaration by Congress is conclusive. In fact, a review of the Congressional Deliberations on both the House and Senate bills which gave birth to the IPRA reveal that the clear intent of the framers is to **exempt Baguio City's land areas particularly the Baguio City's Townsite Reservation** from the coverage of the IPRA. x x x. **The clear legislative intent is that, despite the enactment of the IPRA, Baguio City shall remain to be governed by its charter and that all lands proclaimed as part of Baguio City's Townsite Reservation shall remain to be a part of the Townsite Reservation unless reclassified by Congress. The NCIP cannot transgress this clear legislative intent.** The IPRA expressly excludes land proclaimed to be part of the Baguio Townsite Reservation. Absent legislation passed by Congress, the Baguio Townsite Reservation shall belong to the public and exclusively for public purpose. The Wright Park, the Secretary's Cottage, the Senate President's Cottage, the Mansion House, and the public roads therein which are all covered by the assailed CALTs shall remain to exist for the

benefit and enjoyment of the public. These subject lands comprise of historical heritage and belong to the State.

3. ID.; ID.; ID.; THE NCIP IS NOT AUTHORIZED TO ISSUE ANCESTRAL LAND TITLES WITHIN BAGUIO CITY; EXCEPTIONS. — While the IPRA does not generally authorize the NCIP to issue ancestral land titles within Baguio City, there are also recognized exceptions under Section 78. These refer to (1) prior land rights and titles recognized and acquired through any judicial, administrative or other process before the effectivity of the IPRA; and (2) territories which became part of Baguio after the effectivity of the IPRA. For prior land rights, the remedy afforded to indigenous cultural communities is Act No. 926.

4. ID.; ID.; ID.; THE NCIP HAS NO LEGAL AUTHORITY TO ISSUE CERTIFICATES OF ANCESTRAL LAND TITLES (CALTs) AND CERTIFICATES OF ANCESTRAL DOMAIN TITLES (CADTs) IN FAVOR OF PROPERTIES WITHIN THE BAGUIO TOWNSITE RESERVATION WHERE THE CLAIMANTS' RIGHTS OVER THE SAID PROPERTIES WERE NEVER RECOGNIZED IN ANY ADMINISTRATIVE OR JUDICIAL PROCEEDINGS PRIOR TO THE EFFECTIVITY OF THE IPRA LAW. — [I]n *Republic v. Fangonil*, this Court laid to rest claims within the Baguio Townsite Reservation x x x. In *Fañgonil*, the alleged claims were not previously claimed by the predecessors-in-interest and, therefore, the Court declared that the said properties were not susceptible of registration. Since the claimants did not base their applications under Act No, 496 or any purchase from the State, the Court held that the said claims were not considered valid native claims. Under *Fañgonil*, 134 persons living upon or in visible possession were personally served with the notice of reservation. Section 3 of Act No. 627 provides that the certification by the clerk of court is "conclusive proof of service" of the said notice. Since respondents in the present case claim possession since time immemorial, their predecessors were necessarily given notice of the reservation and, hence, should have filed their claims within the stated period. **However, no such claim was filed. In fact, the said lots in the present case were not shown to be part of any ancestral land prior to the effectivity of the IPRA. To stress, private respondents' rights over the subject properties located in the Townsite Reservation in Baguio City were never recognized in any administrative or judicial**

proceedings prior to the effectivity of the IPRA law. The CALTs and CADTs issued by the NCIP to respondents are thus void.

APPEARANCES OF COUNSEL

Aroco & Aroco Law Office for respondent Virginia Gao-an.

Madel P. Villamoran-Fiel for respondents heirs of Piraso and heirs of Abanag.

Jaime A. Paredes, Jr. for Joan L. Gorio.

Office of the Solicitor General for petitioner.

D E C I S I O N

CARPIO, *ACTING C.J.*:

The Case

Before this Court is a Petition for Review[1] under Rule 45 of the Rules of Court assailing the Decision[2] and Resolution[3] of the Court of Appeals in CA-G.R. SP No. 126498 dated 15 January 2013 and 22 July 2013, respectively. The Decision dismissed the Petition for *Certiorari*, Prohibition and *Mandamus* with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction filed by petitioner Republic of the Philippines (Republic) against public respondent National Commission on Indigenous Peoples (NCIP). The NCIP issued Certificates of Ancestral Land Title (CALTs) in favor of private respondents, the heirs of Cosen Piraso (Pirasos) and private respondents, the heirs of Josephine Molintas Abanag (Abanags) through Resolution Nos. 107-2010-AL[4] and 108-2010-AL,[5] both

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[1] *Rollo*, pp. 10-56.

[2] *Id*. at 212-225. Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Hakim S. Abdulwahid and Edwin D. Sorongon concurring.

[3] *Id*. at 209-211.

[4] *Id*. at 58-67.

[5] *Id*. at 68-79.

dated 10 November 2010. Subsequently, public respondent Land Registration Auhority (LRA) issued the corresponding Transfer Certificates of Title (TCTs) covering the said properties.[6]

The Antecedent Facts

Below are the facts of the case according to the Decision[7] of the Court of Appeals:

> In Resolution No. 107-2010-AL, the petitioners are the heirs of Co[s]en "Sarah" Piraso, the daughter of Piraso, otherwise known as Kapitan Piraso, an Ibaloi, who occupied an ancestral land located at what is known as Session Road, Baguio City. Aside from having five (5) children, Kapitan Piraso also adopted, in accordance with the Ibaloi tradition, a son in the name of Nimer. Nimer and his family, in turn, [have] been planting and harvesting vegetables and fruit-bearing trees on several portions of the ancestral land.
>
> Thereafter, the petitioners as represented by Richard A. Acop filed an application for the identification, delineation and recognition of the ancestral land initially before Baguio NCIP City Office pursuant to the provisions of R.A. 8371, otherwise known as the Indigenous Peoples' Rights Act of 1997 (IPRA). The petitioners alleged that the subject ancestral land has been occupied, possessed, and utilized by them and their [predecessors]-in-interest for so many years. Subsequently, the NCIP recognized the petitioners' rights over the subject parcels of ancestral land after finding that the genealogy of the petitioners shows an unbroken line of generations starting from Piraso who have never left the subject ancestral land for the last 120 years.
>
> In view of said findings, the NCIP ordered the issuance of eight (8) Certificates of Ancestral Land Titles (CALTs) under the petitioners' names as well as that of Nimer.
>
> With respect to Resolution No. 108-2010-AL, the petitioners are the heirs of Josephine Molintas Abanag, who in turn was a descendant of an Ibaloi native named Menchi. Menchi originally owned several parcels of ancestral land located in various parts of what is now known as Baguio City and these parcels were subsequently inherited by his descendants.

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[6] *Id*. at 135-174.

[7] *Id*. at 212-225.

Consequently, the petitioners as represented by Isaias M. Abanag and Marion T. Pool filed a petition for the identification, delineation and recognition of their ancestral lands in Baguio City pursuant to R.A. 8371. Thereafter, an ocular inspection was conducted which revealed the coverage of the ancestral lands of the Molintas. In addition, the petitioners therein also submitted numerous pieces of documentary evidence such as the narrative of customs and traditions of the Ibaloi community in Baguio City, Assessment of Real Property, Tax receipts, photographs of improvements, rituals, and members of the Molintas family led by Josephine Molintas Abanag. In the end, the NCIP granted the petition and ordered the issuance of twenty-eight (28) CALTs covering the same number of parcels of ancestral land in the name of the petitioners and Joan L. Gorio, a transferee of ten (10) parcels of land from the heirs of Josephine Molintas Abanag.

Almost two (2) years after, here now comes the Republic of the Philippines as represented by the Office of the Solicitor General (OSG) seeking to annul, reverse and set aside the assailed Resolutions of the NCIP through this instant petition x x x.[8]

The Resolutions of the NCIP

In its Resolution No. 107-2010-AL[9] and Resolution No. 108-2010-AL[10] dated 10 November 2010, the NCIP held that private respondents Pirasos and Abanags have vested rights over their ancestral lands on the basis of a native title and as mandated by Article XII, Section 5 of the 1987 Constitution and Republic Act No. 8371 (RA 8371), otherwise known as "The Indigenous Peoples' Rights Act of 1997."

The NCIP described native title as "the interests and rights of indigenous inhabitants in land, whether communal, group or individual, possessed under the traditional laws acknowledged by, and the traditional customs observed by, the indigenous

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[8] *Id*. at 216-217.

[9] *Id*. at 58-67. Signed by Commissioners Rizalino G. Segundo, Noel K. Felongco, Miguel Imbing Sia Apostol, and Roque N. Agton, Jr.

[10] *Id*. at 68-79. Signed by Commissioners Rizalino G. Segundo, Noel K. Felongco, Miguel Imbing Sia Apostol, and Roque N. Agton, Jr.

inhabitants."[11] It "has its origin in and is given its content by the traditional laws acknowledged by and the traditional customs observed by the indigenous inhabitants of a territory. The nature and incidents of native title must be ascertained as a matter of fact by reference to those laws and customs."[12] The NCIP held that the Pirasos and Abanags' entitlement to the land is mandated by Article XII, Section 5 of the 1987 Constitution which provides that "[t]he State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being."

The said Resolutions granted both Petitions and directed the Ancestral Domains Office, through the Director, to prepare the necessary CALTs for each respective parcel of land described. The NCIP ruled in both Resolutions that the Pirasos and the Abanags are guaranteed the right to their ancestral lands provided for under Section 8,[13] RA 8371, and such other rights granted by law.

The dispositive portion of Resolution No. 107-2010-AL provides:

WHEREFORE, premises considered, Petition is hereby GRANTED and the Ancestral Domains Office, through the Director is directed to prepare eight (8) Certificate of Ancestral Land Titles (CALTs) for

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[11] *Id*. at 63.

[12] *Id*.

[13] Section 8, RA 8371 states:

SECTION 8. *Right to Ancestral Lands*.— The right of ownership and possession of the ICCs/IPs [Indigenous Cultural Communities/Indigenous Peoples] to their ancestral lands shall be recognized and protected.

a) *Right to transfer land/property*.— Such right shall include the right to transfer land or property rights to/among members of the same ICCs/IPs, subject to customary laws and traditions of the community concerned.

x x x x x x x x x

each of the respective parcel of land described in the technical descriptions hereto attached, bearing CALT number as follows:

1. CALT NO. CAR-BAG-1110-000268 for Parcel Lot 1
2. CALT NO. CAR-BAG-1110-000269 for Parcel Lot 2
3. CALT NO. CAR-BAG-1110-000270 for Parcel Lot 3
4. CALT NO. CAR-BAG-1110-000271 for Parcel Lot 4
5. CALT NO. CAR-BAG-1110-000272 for Parcel Lot 5
6. CALT NO. CAR-BAG-1110-000273 for Parcel Lot 6
7. CALT NO. CAR-BAG-1110-000274 for Parcel Lot 7 and
8. CALT NO. CAR-BAG-1110-000275 for Parcel Lot 8

Lot No. 1 shall be in the name of Manuel Nimer, of legal age, married, Filipino citizen, and with residence and postal address at Upper Session Road, Baguio City while Lot Nos. 2, 3 and 4 shall be in the name of the Heirs of Cosen Piraso represented by Richard A. Acop, of legal age, married, Filipino citizen, and with residence and postal address at Acop, Tublay, Benguet Province and Lot Nos. 3, 5, 6, 7 and 8 shall be in the name of Joan L. Gorio of legal age, single, Filipino citizen, and with residence and postal address at Romulo Drive, Pacdal, Baguio City.

Petitioners are guaranteed the right to ancestral lands provided for under Section 8, R.A. 8371 and such other rights granted by law.

SO ORDERED.[14]

The dispositive portion of Resolution No. 108-2010-AL provides:

WHEREFORE, premises considered, Petition is hereby GRANTED and the Ancestral Domains Office, through the Director, is directed to prepare Certificate of Ancestral Land Titles (CALTs) for each of the respective parcel of ancestral land described in the technical descriptions, bearing CALT number as follows:

1. CALT NO. CAR-BAG-1110-000276 for Parcel Lot 1
2. CALT NO. CAR-BAG-1110-000277 for Parcel Lot 2
3. CALT NO. CAR-BAG-1110-000278 for Parcel Lot 3
4. CALT NO. CAR-BAG-1110-000279 for Parcel Lot 4
5. CALT NO. CAR-BAG-1110-000280 for Parcel Lot 5

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[14] *Id*. at 65-66.

6. CALT NO. CAR-BAG-1110-000281 for Parcel Lot 6
7. CALT NO. CAR-BAG-1110-000282 for Parcel Lot 7
8. CALT NO. CAR-BAG-1110-000283 for Parcel Lot 8
9. CALT NO. CAR-BAG-1110-000284 for Parcel Lot 9
10. CALT NO. CAR-BAG-1110-000285 for Parcel Lot 10
11. CALT NO. CAR-BAG-1110-000286 for Parcel Lot 11
12. CALT NO. CAR-BAG-1110-000287 for Parcel Lot 12
13. CALT NO. CAR-BAG-1110-000288 for Parcel Lot 13
14. CALT NO. CAR-BAG-1110-000289 for Parcel Lot 14
15. CALT NO. CAR-BAG-1110-000290 for Parcel Lot 15
16. CALT NO. CAR-BAG-1110-000291 for Parcel Lot 16
17. CALT NO. CAR-BAG-1110-000292 for Parcel Lot 17
18. CALT NO. CAR-BAG-1110-000293 for Parcel Lot 18
19. CALT NO. CAR-BAG-1110-000294 for Parcel Lot 19
20. CALT NO. CAR-BAG-1110-000295 for Parcel Lot 20
21. CALT NO. CAR-BAG-1110-000296 for Parcel Lot 21
22. CALT NO. CAR-BAG-1110-000297 for Parcel Lot 22
23. CALT NO. CAR-BAG-1110-000298 for Parcel Lot 23
24. CALT NO. CAR-BAG-1110-000299 for Parcel Lot 24
25. CALT NO. CAR-BAG-1110-000300 for Parcel Lot 25
26. CALT NO. CAR-BAG-1110-000301 for Parcel Lot 26
27. CALT NO. CAR-BAG-1110-000302 for Parcel Lot 27
28. CALT NO. CAR-BAG-1110-000303 for Parcel Lot 28

Lots 1, 2, 4, 5, 6, 8, 10, 14, 15, 16, 18, and 21 will each be issued Certificates of Ancestral Land Title in the name of the Heirs of Josephine Abanag and Heirs of Mercedes A. Tabon, represented by Isaias Abanag, of legal age, single, Filipino, and with residence and postal address at No. 1 Gibraltar Road, Pacdal, Baguio City and Marion T. Pool, of legal age, widow, Filipino, and with residence and postal address at No. 1 Gibraltar Road, Pacdal, Baguio City[.]

Lots 11, 12, 13, 19, 22, 23, 25, 26, 27, and 30 will each be issued Certificates of Ancestral Land Title in the name of Joan L. Gorio, of legal age, single, Filipino citizen and with residence and postal address at Romulo Drive, Pacdal, Baguio City[.]

Lots 3, 7, 9, 20, 24, 29, 31 ad 32 will each be issued Certificates of Ancestral Land Title in the name of Virginia C. Gao-an, of legal age, single, Filipino citizen, and with residence and postal address at Justice Village, Baguio City.

Lot 17 will be issued a Certificate of Ancestral Land Title in the name of Virginia C. Gao-an, of legal age, single, Filipino citizen, and with residence and postal address at Justice Village, Baguio City and the 600 sq.m. portion thereof will be in the name of Isaias Abanag, of legal age, single, Filipino citizen, and with residence and postal address at No. 1 Gibraltar Road, Baguio City.

Lot 28 will be in the name of Virginia C. Gao-an, of legal age, single, Filipino citizen, and with residence and postal address at Justice Village, Baguio City and the 1,000 sq.m. in the name of Isaias Abanag, of legal age, single, Filipino citizen, and with residence and postal address at No. 1 Gibraltar Road, Baguio City.

There was a Deed of Undertaking by the Petitioners supporting their claim. Petitioners are guaranteed the right to ancestral lands provided for under Section 8, R.A. 8371 and such other rights granted by law.

SO ORDERED.[15]

The Ruling of the Court of Appeals

In its Decision[16] promulgated on 15 January 2013, the Court of Appeals "agrees with the finding of the NCIP that Baguio City is no different from any part of the Philippines and that there is no sensible difference that merits the city's exclusion from the coverage of the IPRA x x x."[17] The dispositive portion of the ruling provides:

WHEREFORE, premises considered, the instant Petition for Certiorari, Prohibition and Mandamus is DENIED for lack of merit, the Prayer for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction are DENIED for being moot and academic and the assailed Resolution Nos. 107-2010-AL and 108-2010-AL both dated 10 November 2010 and both rendered by the National Commission on Indigenous Peoples are hereby AFFIRMED.

SO ORDERED.[18]

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[15] *Id*. at 76-78.

[16] *Id*. at 212-225.

[17] *Id*. at 221.

[18] *Id*. at 224.

The Issues

In this Petition, the Republic of the Philippines seeks a reversal of the decision of the Court of Appeals and raises the following arguments:

A. THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT DECLARED THAT LANDS WITHIN BAGUIO CITY AND THE BAGUIO TOWNSITE RESERVATION ARE COVERED BY IPRA, CONTRARY TO LAW AND JURISPRUDENCE COROLLARY FOR THE FOLLOWING REASONS:

1. THE BAGUIO TOWNSITE RESERVATION, WITH THE EXCEPTION OF EXISTING PROPERTY RIGHTS RECOGNIZED OR VESTED BEFORE THE EFFECTIVITY OF THE IPRA, IS EXEMPT FROM THE COVERAGE OF SAID LAW AS PROVIDED IN SECTION 78 THEREOF.

2. THE NCIP HAS NO JURISDICTION TO ISSUE CALTS OVER LANDS WITHIN BAGUIO CITY AND THE BAGUIO TOWNSITE RESERVATION, OUTSIDE OF THOSE OVER WHICH PRIOR LAND RIGHTS AND TITLES HAVE BEEN EARLIER RECOGNIZED BY JUDICIAL, ADMINISTRATIVE, OR OTHER PROCESSES BEFORE THE EFFECTIVITY OF THE IPRA.

B. THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT RULED THAT THE ASSAILED NCIP RESOLUTIONS ARE VALID, CONTRARY TO THE CONSTITUTION AND APPLICABLE LAWS AND JURISPRUDENCE.

C. ASSUMING ARGUENDO THAT THE SUBJECT CERTIFICATES OF ANCESTRAL LAND TITLES ARE VALID, THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT UPHELD THE ISSUANCE OF TCT BASED ON THE CALTS. THERE IS NO LAW WHICH ALLOWS THEIR CONVERSION INTO TORRENS CERTIFICATES OF TITLE.[19]

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

The Republic seeks the issuance of a writ of preliminary prohibitory injunction, and a permanent injunction to restrain and enjoin the NCIP from further issuing Certificates of Ancestral Domain Title (CADT) and CALTs in Baguio City. The subject CALTs cover almost one-fifth (1/5) of the 57.49 square kilometers that comprise Baguio City.

The Ruling of this Court

We grant the petition.

Under the facts, the NCIP has no legal authority to issue CALTs or CADTs in favor of the subject properties included as Townsite Reservation areas in Baguio City.

Republic Act No. 8371 (RA 8371) or the "Indigenous Peoples' Rights Act of 1997" (IPRA) expressly excludes the City of Baguio from the application of the general provisions of the IPRA. Section 78 of RA 8371 provides that "[t]he City of Baguio shall remain to be governed by its Charter and all lands proclaimed as part of its townsite reservation shall remain as such until otherwise reclassified by appropriate legislation." Section 78 of RA 8371 states:

SECTION 78. *Special Provision*. — **The City of Baguio shall remain to be governed by its Charter and all lands proclaimed as part of its townsite reservation shall remain as such until otherwise reclassified by appropriate legislation**: Provided, That prior land rights and titles recognized and/or acquired through any judicial, administrative or other processes before the effectivity of this Act shall remain valid: Provided, further, That this provision shall not apply to any territory which becomes part of the City of Baguio after the effectivity of this Act. (Emphasis supplied)

Section 78 is a special provision in the IPRA which clearly mandates that (1) the City of Baguio shall **not be subject to provisions of the IPRA but shall still be governed by its own charter;** (2) all lands previously proclaimed **as part of**

the City of Baguio's Townsite Reservation shall remain as such; (3) the re-classification of properties within the Townsite Reservation of the City of Baguio **can only be made through a law passed by Congress;** (4) prior land rights and titles recognized and acquired through any judicial, administrative or other process **before the effectivity of the IPRA shall remain valid**; and (5) territories which became part of the City of Baguio after effectivity of the IPRA are exempted. Thus, RA 8371 is clear that, for properties part of the townsite reservation of Baguio City before the passage of the IPRA, no new CALT or CADT can be issued by the NCIP. **Under RA 8371, the NCIP is devoid of any power to re-classify lands previously included as part of the Townsite Reservation of Baguio City before RA 8371 was enacted.** The said power to re-classify these properties is **solely vested in Congress and can only be exercised by Congress through the enactment of a new law**. Such prohibition to reclassify is reiterated in the Implementing Rules of the IPRA. Rule XIII, Section 1 of the IPRA law provides:

> Section 1. Special Provision. The provisions of the Act relating to the civil, political, social and human rights and those pertaining to the identification, delineation, recognition, and titling of ancestral lands and domains are applicable throughout the country; Provided; **That lands within the Baguio Townsite Reservation shall not be reclassified except through appropriate legislatio**n x x x. (Emphasis supplied)

Section 78 of the IPRA is clear that the Charter of Baguio City shall govern the determination of land rights within Baguio City and not the IPRA. The said declaration by Congress is conclusive. In fact, a review of the Congressional Deliberations on both the House and Senate bills which gave birth to the IPRA reveal that the clear intent of the framers is to **exempt Baguio City's land areas particularly the Baguio City's Townsite Reservation** from the coverage of the IPRA. House Bill No. 9125 was sponsored by Abra Rep. Jeremias Zapata, then Chairman of the Committee on Cultural Communities. The said House bill was originally authored and subsequently presented

and defended on the floor by Rep. Gregorio Andolana of North Cotabato. During the Congressional Debates, House Bill No. 9125 contained a special provision on Baguio City. The particular provision, Section 86 was amended during the House Deliberations thereon, as follows:

MR: AVILA: One last amendment, Mr. Speaker. On page 35, line 25 (27), after the phrase, "**This Act shall not apply to lands of the City of Baguio which shall remain to be covered by its charter and its townsite reservation status**," the phrase "NOTHING IN THIS ACT SHALL BE READ TO MEAN A DIMINUTION OF PREVIOUS OR EXISTING RIGHTS," subject to style, Mr. Speaker.

MR. ZAPATA: The Committee accepts subject to style, Mr. Speaker.

THE DEPUTY SPEAKER (Mr. Perez, H.) Is there any objection? (Silence) The Chair hears none; amendment is approved.[20] (Emphasis supplied)

Consequently, Section 86 was amended to read:

The City of Baguio shall remain to be governend by its Charter and all lands proclaimed as part of its townsite reservation shall remain as such until otherwise reclassified by appropriate legislation: Provided, That prior land rights and titles recognized and/or acquired through any judical, administrative or other processes before the effectivity of this Act shall remain valid: Provided, further, That this provision shall not apply to any territory which becomes part of the City of Baguio after the effectivity of this Act.[21]

The amended version of Section 86, House Bill No. 9125 was eventually adopted in whole as Section 78 of Senate Bill No. 1728. Senate Bill No. 1728, sponsored by Senator Juan Flavier, passed into law as Republic Act No. 8371 or the IPRA in 1997. **The clear legislative intent is that, despite the enactment of the IPRA, Baguio City shall remain to be governed by**

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[20] *Id*. at 25-26. Citing Section 86, House Bill No. 9125. See deliberations on individual amendments, p. 83, House of Representatives Legislative Archives, 4 September 1997.

[21] *Id*. at 26. Citing Bicameral Deliberations on the Indigenous Peoples' Rights Act, 9 October 1997, pp. 3-6.

its charter and that all lands proclaimed as part of Baguio City's Townsite Reservation shall remain to be a part of the Townsite Reservation unless reclassified by Congress. The NCIP cannot transgress this clear legislative intent. The IPRA expressly excludes land proclaimed to be part of the Baguio Townsite Reservation. Absent legislation passed by Congress, the Baguio Townsite Reservation shall belong to the public and exclusively for public purpose. The Wright Park, the Secretary's Cottage, the Senate President's Cottage, the Mansion House, and the public roads therein which are all covered by the assailed CALTs shall remain to exist for the benefit and enjoyment of the public. These subject lands comprise of historical heritage and belong to the State. Article 420 of the Civil Code provides:

Art. 420. The following things are property of public dominion:

(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

(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**. (Emphasis supplied)

While the IPRA does not generally authorize the NCIP to issue ancestral land titles within Baguio City, there are also recognized exceptions under Section 78. These refer to (1) prior land rights and titles recognized and acquired through any judicial, administrative or other process before the effectivity of the IPRA; and (2) territories which became part of Baguio after the effectivity of the IPRA. For prior land rights, the remedy afforded to indigenous cultural communities is Act No. 926.[22] Section 32 of Act No. 926 provides:

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[22] ACT NO. 926 — AN ACT PRESCRIBING RULES AND REGULATIONS GOVERNING THE HOMESTEADING, SELLING, AND LEASING OF PORTIONS OF THE PUBLIC DOMAIN OF THE PHILIPPINE ISLANDS, PRESCRIBING TERMS AND CONDITIONS TO ENABLE PERSONS TO PERFECT FOR THE ISSUANCE OF PATENTS WITHOUT COMPENSATION TO CERTAIN NATIVE

CHAPTER IV
FREE PATENTS TO NATIVE SETTLERS

Sec. 32. Any native of the Philippine Islands now as occupant and cultivator of unreserved, unappropriated agricultural public land, as defined by the Act of Congress of July first, nineteen hundred and two, who has continuously occupied and cultivated such land, either by himself or through his ancestors, since August first, eighteen hundred and ninety; or who prior to August first, eighteen hundred and ninety eight continuously occupied and cultivated such land for three years immediately prior to said date, and who has been continuously since July fourth, nineteen hundred and two, until the date of the taking effect of this Act, an occupier and cultivator of such land, shall be entitled to have a patent issued to him without compensation for such tract of land, not exceeding sixteen hectares, as hereinafter in this chapter provided.

On 1 September 1909, Baguio City was incorporated by the Philippine Assembly. On 12 April 1912, the Baguio Townsite Reservation was established. Upon the establishment of the Baguio Townsite Reservation, there remained a question as to what portions of the reservation were public and private. If declared private, such lands were registrable under Act No. 496 or the Land Registration Act, as provided for by Act No. 926 or the Public Land Act. In 1912, Civil Reservation Case No. 1, General Land Registration Office (GLRO) Reservation Record No. 211 was filed with the Court of Land Registration to resolve which lands were declared public and private. Section 62 of Act No. 926 provides:

SETTLERS UPON THE PUBLIC LANDS, PROVIDING FOR THE ESTABLISHMENT OF TOWN SITES AND SALES OF LOTS THEREIN, AND PROVIDING FOR A HEARING AND DECISION BY THE COURT OF LAND REGISTRATION OF ALL APPLICATIONS FOR THE COMPLETION AND CONFIRMATION OF ALL IMPERFECT AND INCOMPLETE SPANISH CONCESSIONS AND GRANTS IN SAID ISLANDS, AS AUTHORIZED BY SECTIONS THIRTEEN, FOURTEEN AND FIFTEEN OF THE ACT OF CONGRESS OF JULY FIRST NINETEEN HUNDRED AND TWO, ENTITLED "AN ACT TEMPORARILY TO PROVIDE FOR THE ADMINISTRATION OF THE AFFAIRS OF CIVIL GOVERNMENT IN THE PHILIPPINE ISLANDS, AND FOR OTHER PURPOSES."

Sec. 62. Whenever any lands in the Philippine Islands are set apart as town sites, under the provisions of chapter five of this Act, it shall be lawful for the Chief of the Bureau of Public Lands, with the approval of the Secretary of the Interior, to notify the judge of the Court of Land Registration that such lands have been reserved as a town site and that all private lands or interests therein within the limits described forthwith to be brought within the operation of the Land Registration Act, and to become registered land within the meaning of said Registration Act. It shall be the duty of the judge of said court to issue a notice thereof, stating that claims for **all private lands of interests therein within the limits described must be presented for registration under the Land Registration Act in the manner provided in Act Numbered six hundred and twenty seven** entitled "An Act to bring immediately under the operation of the land Registration Act all lands lying within the boundaries lawfully set apart for military reservations, and all land[s] desired to be purchased by the Government of the United [S]tates for military purposes." The procedure for the purpose of this section and the legal effects thereof shall thereupon be in all respect as provided in sections three, four, five, and six of said Act numbered six hundred and twenty seven. (Emphasis supplied

Under Act No. 627, any landowner affected by the declaration of military reservations must register their titles within the period stated in the Land Registration Act. Otherwise, such land rights would be considered barred.[23] Pursuant to Section 62, the Court of First Instance (CFI) of Benguet issued a notice on 22 July 1915 requiring all persons claiming lots inside the Baguio Townsite Reservation to file within six months from the date of the notice petitions for the registration of their titles under Act No. 496. On 14 June 1922, the General Land Registration Office submitted to the CFI a report on the applications for registration and the case was duly heard. On 13 November 1922, the CFI of Benguet, in resolving Civil Reservation Case No. 1, held that all claims for private lands by all persons not presented for registration within the period in Act No. 627 are barred forever. Notwithstanding the CFI decision, several native residents of Baguio City sought the exclusion of lands occupied by them

[23] *Archbishop of Manila v. Barrio of Santo Cristo*, 39 Phil. 1 (1918).

from the Baguio Townsite Reservation. Thus, on 16 August 1954, President Ramon Magsaysay issued Administrative Order No. 55,[24] series of 1954. The said Order authorized the formation of a committee to study the claims of the inhabitants, with a view of determining whether it was in public interest that the said landholdings be **segregated** from the Baguio Townsite Reservation and opened to *disposition* under the Public Land Act. Forty-eight (48) Igorot claimants originally filed claims under the said administrative order. Two hundred eighty-five (285) others later filed additional claims.[25] **Respondents were not among the original and additional claimants.** Finally, in *Republic v. Fañgonil*,[26] this Court laid to rest claims within the Baguio Townsite Reservation, to wit:

> **This case is about the *registration of lots* located within the Baguio Townsite Reservation. As background, it should be noted that in 1912 a petition was filed in the Court of Land Registration regarding the Baguio Townsite Reservation, Expediente de Reserva No. 1, GLRO Reservation Record No. 211. In 1914, when the Land Registration Court was abolished, the record was transferred to the Court of First Instance of Benguet.**
>
> The purpose of Case No. 211 was to determine once and for all what portions of the Baguio Townsite Reservation were private and registerable under Act No. 496 as provided in Section 62 of Act No. 926. Once so determined, no further registration proceeding would be allowed (Secs. 3 and 4, Act No. 627).
>
> The court on *July 22, 1915* issued a notice requiring all persons claiming lots inside the reservation to file within six months from the date of the notice petitions for the registration of their titles under Act No. 496. On June 13, 1922, the General Land Registration Office submitted to the court a report regarding the applications for registration. The case was duly heard.
>
> Judge C. M. Villareal in a decision dated *November 13, 1922* held that all lands within the Reservation are public lands with the

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[24] *Rollo*, pp. 96-97.

[25] *Id.* at 98-108.

[26] 218 Phil. 484 (1984).

exception of (1) lands reserved for specified public uses and (2) lands claimed and adjudicated as *private property*. He ruled that claims for private lands by all persons not presented for registration within the period fixed in Act No. 627, in relation to the first Public Land Law, Act No. 926, *were barred forever*. (Secs. 3 and 4, Act No. 627.)

That 1922 decision established the rule that lots of the Baguio Townsite Reservation, being public domain, are not registerable under Act No. 496. As held by Judge Belmonte in a 1973 case, the Baguio Court of First Instance "has no Jurisdiction to entertain any land registration proceedings" under Act No. 496 and the Public Land Law, covering any lot within the Baguio Townsite Reservation which was terminated in 1922 (Camdas vs. Director of Lands, L-37782, Resolution of this Court of March 8, 1974, dismissing petition for review of Judge Belmonte's ruling).

In the instant case, *after more than half a century* from the 1922 decision declaring the townsite public domain, or during the years *1972 to 1976*, Modesta Paris, Lagya Paris, Samuel Baliwan, Pablo Ramos, Jr., Josephine Abanag, Menita T. Victor, Emiliano Bautista and Odi Dianson filed with the Court of First Instance of Baguio applications for the registration of lots (with considerable areas) inside the Baguio Townsite Reservation.

Alternatively, they allege that in case the lots are not registerable under Act No. 496, then Section 48 (b) and (c) of the Public Land Law should be applied because they and their predecessors have been in possession of the lots for more than thirty years.

The Director of Lands opposed the applications. He filed motions to dismiss on the grounds of lack of jurisdiction, prescription and *res judicata*. He relied on the decision in the first registration case, a proceeding *in rem*, which barred all subsequent registrations of the Baguio Townsite lots. He contended that the disposition of said lots should be made by the Director of Lands under Chapter 11 of the Public Land Law regarding Townsite Reservations. (See Cojuangco vs. Marcos, 82 SCRA 156).

The trial judge admits that Section 48 cannot be invoked by the applicants because it applies only to disposable agricultural lands situated *outside the reservation. He concedes that lands within the Baguio Townsite Reservation may not be acquired by long possession for over thirty years subsequent to Case No. 211* (p. 195, *Rollo*).

But he refused to dismiss the application[s] because in his opinion "there is a necessity [for] the presentation of satisfactory evidence in a regular hearing as to the presence or absence of complete service of notice" so that the court can determine whether the applications are barred by *res judicata*. He relies on the isolated case of *Zarate vs. Director of Lands*, 58 Phil. 156.

The Solicitor General assailed by certiorari that order denying the motions to dismiss.

Sections 3 and 4 of Act No. 627, the law governing military reservations, contemplate notification to two classes of persons, namely, (1) those who are living upon or in visible possession of any part of the military reservation and (2) persons who are not living upon or in visible possession but are absentees.

A distinction is made between these two classes of persons as to the manner in which service of the notice shall be made. Service is complete as to absentees when publication of the notice in the newspaper is completed and duly fixed upon the four corners of the premises. The six-month period commences to run from that time.

On the other hand, as to those who are living upon or in visible possession of the lands, service is not complete, and the six-month period does not begin to run until the *notice is served upon them personally*. Their rights relative to the period within which they must respond are determined by the date of the personal service.

Their notice was a personal notice given by personal service. Only such notice could set the running of the six-month period against them. (Lagariza, Saba and Garcia vs. Commanding General, 22 Phil. 297, 302; Zarate vs. Director of Lands, 58 Phil. 156,159-160.)

As already noted, the fact is that the notice in Case No. 211 was issued on July 22,1915. The clerk of court certified that 134 persons living upon or in visible possession of any part of the reservation were personally served with notice of the reservation. Section 3 of Act No. 627 provides that the certificate of the clerk of court is "conclusive proof of service". (Zarate case, pp. 158,162.)

In the *Zarate* case, the applications for registration of lots within the Baguio Townsite Reservation were filed in 1930 and 1931 or more than eight years after the decision was rendered in 1922.

The *Zarate* case is truly an exceptional case because the applicants were able to prove that in 1915 they were in visible occupation of their lots and the clerk of court did not serve personal notice upon them. The *expediente* of Case No. 211 *was then still existing*. The *Zarate* case cannot be a precedent at this late hour.

The situation in the *Zarate* case has not been duplicated since 1933. Judge Fangonil seeks to apply the ruling therein to the instant eight cases. We find that his order is unwarranted or unreasonable. It would reopen Case No. 211. It would give way to baseless litigations intended to be foreclosed by that 1912 case.

Private claimants to lands within the Baguio Townsite Reservation were given a chance to register their lands in Case No. 211. The provisions of Act No. 627, allowing them to do so, are in harmony with the 1909 epochal decision of Justice Holmes in Cariño vs. Insular Government, 212 U.S. 449, 41 Phil. 935. The two Igorots named Zarate and those who were allowed to register their lots in Case No. 211, like Mateo Cariño, the Igorot involved in the Cariño case, inherited their lands from their ancestors. They had possession of the lands since time immemorial. The Igorots were allowed to avail themselves of registration under Act No. 496.

Here, the eight applicants do not base their applications under Act No. 496 on any purchase or grant from the State nor on possession since time immemorial. That is why Act No. 496 cannot apply to them. (See Manila Electric Company vs. Castro-Bartolome, L- 49623, June 29, 1982, 114 SCRA 799.) They are not "Igorot claimants" (See p. 35, Memo of Solicitor General).

Moreover, Annex I of the petition for *certiorari* shows that the previous attempts of some applicants and their predecessors to reopen Case No. 211 were dismissed as shown below:

	Name	*Date Filed*	*Date Dismissed*
1)	Samuel Baliwan	Dec. 27, 1968	Aug. 15, 1970
2)	Tommy Banguillas, predecessor of Pablo Ramos, Jr.	May 6, 1965	June 19, 1967
3)	Josephine Abanag	Jan. 9, 1961	July 9, 1963
4)	Sergio Molintas, predecessor of		

	Josephine Abanag	Dec. 26, 1968	Oct. 31, 1974
5)	Josephine Abanag	April 26, 1966	Nov. 12, 1974
6)	Lagya Paris	Oct. 15, 1965	Nov. 13, 1974

In the case of Abanag, she succeeded to two lots claimed by Sumay and Molintas for which Torrens titles were issued in *Case No. 211 on October 21, 1919* (Annexes J and K of Petition). The lots, which Abanag now seeks to register, were not previously claimed by her predecessors in Case No. 211 (p. 33, Sol. Gen.'s Memo).

We hold that the trial court erred in requiring the presentation of evidence as to the notice required under Act No. 627. Such evidence cannot be produced at this time because the *court record of Case No. 211 was completely destroyed during the last war.*

Anyway, the applicants have the burden of proving that their predecessors were living upon or in visible possession of the lands in 1915 and were not served any notice. If they have such evidence, *apart from unreliable oral testimony*, they should have produced it during the hearing on the motions to dismiss.

To support his motions to dismiss, the Solicitor General introduced evidence proving that after Case No. 211 it has always been necessary to issue Presidential proclamations for the disposition of portions of the Baguio Townsite Reservation (Annex E of Petition).

The period of more than fifty years completely bars the applicants from securing relief due to the alleged lack of personal notice to their predecessors. The law helps the vigilant but not those who sleep on their rights. "For time is a means of destroying obligations and *actions*, because time runs against the slothful and contemners of their own rights."

WHEREFORE, the order denying the motions to dismiss is reversed and set aside. The applications for registration are hereby dismissed. No costs.

SO ORDERED. [27] (Boldfacing supplied, italicization in the original)

In *Fañgonil*, the alleged claims were not previously claimed by the predecessors-in-interest and, therefore, the Court declared

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[27] *Id.* at 486-491.

that the said properties were not susceptible of registration. Since the claimants did not base their applications under Act No. 496 or any purchase from the State, the Court held that the said claims were not considered valid native claims. Under *Fañgonil*, 134 persons living upon or in visible possession were personally served with the notice of reservation. Section 3 of Act No. 627 provides that the certification by the clerk of court is "conclusive proof of service" of the said notice. Since respondents in the present case claim possession since time immemorial, their predecessors were necessarily given notice of the reservation and, hence, should have filed their claims within the stated period. **However, no such claim was filed. In fact, the said lots in the present case were not shown to be part of any ancestral land prior to the effectivity of the IPRA. To stress, private respondents' rights over the subject properties located in the Townsite Reservation in Baguio City were never recognized in any administrative or judicial proceedings prior to the effectivity of the IPRA law. The CALTs and CADTs issued by the NCIP to respondents are thus void.**

WHEREFORE, the Court **GRANTS** the petition. The Court **REVERSES** the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 126498. The National Commission on Indigenous Peoples Resolution Nos. 107-2010-AL and 108-2010-AL; O-CALT Nos. 129 and 130 including corresponding TCT Nos. with CALT Nos.:

CALT NO. CAR-BAG-1110-000268 for Parcel Lot 1
CALT NO. CAR-BAG-1110-000269 for Parcel Lot 2
CALT NO. CAR-BAG-1110-000270 for Parcel Lot 3
CALT NO. CAR-BAG-1110-000271 for Parcel Lot 4
CALT NO. CAR-BAG-1110-000272 for Parcel Lot 5
CALT NO. CAR-BAG-1110-000273 for Parcel Lot 6
CALT NO. CAR-BAG-1110-000274 for Parcel Lot 7
CALT NO. CAR-BAG-1110-000275 for Parcel Lot 8
CALT NO. CAR-BAG-1110-000276 for Parcel Lot 1
CALT NO. CAR-BAG-1110-000277 for Parcel Lot 2

CALT NO. CAR-BAG-1110-000278 for Parcel Lot 3
CALT NO. CAR-BAG-1110-000279 for Parcel Lot 4
CALT NO. CAR-BAG-1110-000280 for Parcel Lot 5
CALT NO. CAR-BAG-1110-000281 for Parcel Lot 6
CALT NO. CAR-BAG-1110-000282 for Parcel Lot 7
CALT NO. CAR-BAG-1110-000283 for Parcel Lot 8
CALT NO. CAR-BAG-1110-000284 for Parcel Lot 9
CALT NO. CAR-BAG-1110-000285 for Parcel Lot 10
CALT NO. CAR-BAG-1110-000286 for Parcel Lot 11
CALT NO. CAR-BAG-1110-000287 for Parcel Lot 12
CALT NO. CAR-BAG-1110-000288 for Parcel Lot 13
CALT NO. CAR-BAG-1110-000289 for Parcel Lot 14
CALT NO. CAR-BAG-1110-000290 for Parcel Lot 15
CALT NO. CAR-BAG-1110-000291 for Parcel Lot 16
CALT NO. CAR-BAG-1110-000292 for Parcel Lot 17
CALT NO. CAR-BAG-1110-000293 for Parcel Lot 18
CALT NO. CAR-BAG-1110-000294 for Parcel Lot 19
CALT NO. CAR-BAG-1110-000295 for Parcel Lot 20
CALT NO. CAR-BAG-1110-000296 for Parcel Lot 21
CALT NO. CAR-BAG-1110-000297 for Parcel Lot 22
CALT NO. CAR-BAG-1110-000298 for Parcel Lot 23
CALT NO. CAR-BAG-1110-000299 for Parcel Lot 24
CALT NO. CAR-BAG-1110-000300 for Parcel Lot 25
CALT NO. CAR-BAG-1110-000301 for Parcel Lot 26
CALT NO. CAR-BAG-1110-000302 for Parcel Lot 27
CALT NO. CAR-BAG-1110-000303 for Parcel Lot 28

and all derivative titles thereto issued subsequent to the filing of the petition are declared **NULL** and **VOID.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 213831. September 25, 2019]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ADONIS CABALES,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ABSENT ANY OTHER ADEQUATE PROOF THAT THE VICTIM CLEARLY ASSENTED TO THE SEXUAL ACT PERPETRATED BY THE ACCUSED, A VICTIM SHALL NOT BE CONDEMNED SOLELY ON THE BASIS OF HER REACTIONS AGAINST THE SAME. —** There is no standard behavior expected by law from a rape victim. She may attempt to resist her attacker, scream for help, make a run for it, or even freeze up, and allow herself to be violated. By whatever manner she reacts, the same is immaterial because it is not an element of rape. Neither should a rape victim's reflex be interpreted on its lonesome. Absent any other adequate proof that the victim clearly assented to the sexual act perpetrated by the accused, a victim shall not be condemned solely on the basis of her reactions against the same. This principle applies here. Without clear evidence of consent, AAA's apparently passive conduct will not negate the rape committed by Cabales against her person. Her statements that she had been threatened into silence by Cabales were unwavering.

2. **ID.; ID.; ID.; NO WOMAN, LEAST OF ALL A CHILD, WOULD CONCOCT A STORY OF DEFLORATION, ALLOW EXAMINATION OF HER PRIVATE PARTS AND SUBJECT HERSELF TO PUBLIC TRIAL OR RIDICULE IF SHE HAS NOT, IN TRUTH, BEEN A VICTIM OF RAPE AND IMPELLED TO SEEK JUSTICE FOR THE WRONG DONE TO HER BEING. —** We also note that AAA readily yielded to police assistance and medical examination when her family found out about the incident. Jurisprudence has steadily held that "no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her being."

Moreover, while a medical certificate attesting to the victim's physical trauma from the rape has corroborative purposes, it is wholly unnecessary for conviction, if not a mere superfluity. If anything, Cabales only confirmed in his appeal that he indeed obtained carnal knowledge of AAA. This is a complete turnaround from his initial denial of the incident before the trial court, where he claimed that he stayed in his house the entire day of January 16, 2005 attending to his wife who had just given birth. Given Cabales' contradicting stance, this Court receives his defense with utmost caution.

3. ID.; ID.; ID.; GREAT PREMIUM IS ACCORDED TO A VICTIM OF RAPE, AS IT IS USUALLY THE VICTIM ALONE WHO CAN TESTIFY ON THE FORCED SEXUAL INTERCOURSE, AND IF THE VICTIM'S TESTIMONY MEETS THE TEST OF CREDIBILITY, THE ACCUSED CAN JUSTIFIABLY BE CONVICTED ON THE BASIS OF HER LONE TESTIMONY. — [C]abales' guilt has already been established beyond reasonable doubt. There is great premium accorded to a victim of rape, as it is usually the victim alone who can testify on the forced sexual intercourse. If the victim's testimony meets the test of credibility, the accused can justifiably be convicted on the basis of her lone testimony. Here, AAA categorically pointed to Cabales as the perpetrator of her rape and laid out her accusations with overt clarity. The inconsistencies alleged are deemed minor details that can be overlooked. We accord due respect to the factual findings and appreciation thereof by the trial court as it had the opportunity to observe the witnesses' demeanor and hear their testimonies at the first instance, much more as the CA affirmed the trial court's judgment of conviction in all its substantial respects.

4. CRIMINAL LAW; REVISED PENAL CODE; RAPE; PENALTY OF *RECLUSION PERPETUA*, IMPOSED. — [A]fter a careful review of the records of the case, the Court finds that the CA correctly affirmed the RTC Decision finding Cabales guilty beyond reasonable doubt of the crime of rape and accordingly sentenced him the penalty of *reclusion perpetua.*

5. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT. — In line with recent jurisprudence, however, the civil indemnity and moral damages awarded to AAA must be increased from PhP 50,000.00 to PhP 75,000.00 each. Exemplary damages of PhP 75,000.00 are likewise granted to AAA following *People*

v. Ramos. Furthermore, all amounts due shall earn legal interest of six percent (6%) per *annum* from the date of the finality of this Decision until full payment.

APPEARANCES OF COUNSEL

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

D E C I S I O N

HERNANDO, *J.*:

This is an appeal from the February 28, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR. HC. No. 01036-MIN affirming the March 27, 2012 Decision[2] of the Regional Trial Court, Branch 34 of Panabo City (RTC) in Criminal Case No. 97-2005. The said Decision of the RTC found accused-appellant Adonis Cabales (Cabales) guilty beyond reasonable doubt of the crime of rape and sentenced him to suffer the penalty of *reclusion perpetua*.

The Antecedents

On March 22, 2005, Cabales was charged with the crime of rape in an Information[3] which alleged:

That on or about January 16, 2005, in [Davao, Philippines],[4] and within the jurisdiction of this Honorable Court, the above-named

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[1] *Rollo*, pp. 3-15; Penned by Associate Justice Jhosep Y. Lopez and concurred in by Associate Justices Edgardo A. Camello and Henri Jean Paul B. Inting (now a Member of this Court).

[2] Records, pp. 81-87; Penned by Judge Dax Gonzaga Xenos.

[3] *Id.* at 1.

[4] Geographical location blotted out per Supreme Court Amended Administrative Circular No. 83-2015 or *Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders using Fictitious Names/Personal Circumstances* issued on September 5, 2017.

accused, armed with a knife, employing force, threats and intimidation, wil[l]fully, unlawfully and feloniously had sexual intercourse with [AAA],[5] a 13 year old minor, without her consent.

CONTRARY TO LAW.

When arraigned, Cabales pleaded not guilty. Trial ensued thereafter. The prosecution presented, aside from a number of documentary evidence,[6] two (2) witnesses: AAA and her mother, BBB. The defense also presented two (2) witnesses: accused Cabales and EEE.[7]

Version of the Prosecution

On January 16, 2005, at around 3 o'clock in the afternoon, 13-year-old AAA was sleeping in a bedroom inside their house when she was woken up by Cabales' kiss on her face. Cabales is AAA's uncle, being the husband of BBB's sister. AAA bolted upright and tried to push Cabales away. Cabales, however, held her hand and pointed a fan knife at her neck, and warned her not to shout or move. He proceeded to remove AAA's jogging pants and panty, undressed himself, and inserted his penis into her vagina. Cabales ignored AAA's pleas for him to stop and instead made push-and-pull movements inside her for ten (10) minutes. After he was done, Cabales threatened AAA not to tell anybody, and left. Immediately thereafter, CCC,[8] the husband of BBB's cousin who at that time was tending their eggplant garden, knocked at their door and asked for water. When AAA opened the door, CCC asked AAA what she and Cabales were doing. She initially denied but CCC told her that he saw the sexual act and advised her to tell her parents about it. With CCC's assistance, AAA's family learned about the incident. AAA stated that she would never have reported it to

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[5] *Id.*; Name of minor victim blotted out per Supreme Court Amended Administrative Circular No. 83-2015.

[6] Records, p. 68; Per RTC *Order* dated April 26, 2011.

[7] *Supra* note 4.

[8] *Id.*

her parents were it not for CCC witnessing her and Cabales having sexual intercourse. On January 17, 2005, AAA submitted herself to a medical examination by Dr. Elvie T. Prieto-Jabines (Dr. Prieto-Jabines) which yielded the following conclusion: "disclosure of sexual abuse[,] medical evaluation is suggestive of chronic penetrating injury with acute component."[9] AAA further disclosed that this was the second time that she had sexual intercourse with Cabales. The first time happened in November 2004, but AAA did not tell anyone because Cabales had threatened to kill her family.

AAA's mother, BBB, supported AAA's statements. BBB was at Cabales' house on January 16, 2005 from 12 noon to 4 o'clock in the afternoon helping Cabales' wife who had just given birth. BBB testified that she saw Cabales in his house but left at around 2 o'clock in the afternoon and came back at around 4 o'clock carrying a water container. They were looking for him since he was supposed to tend to their store but he was not around. BBB also stated that her house was about sixty (60) meters away from Cabales' house. When BBB got back to her house, AAA did not tell her anything until CCC came to their house at around 8 o'clock in the evening and told BBB that he saw Cabales raping AAA.

Version of the Defense

Cabales interposed the defenses of alibi and denial. He claimed that on January 16, 2005, he never left their house. He attended to his wife Melinda who had just given birth, prepared food, and tended to their store. BBB and DDD,[10] his sister-in-law, arrived and joined them for lunch. After the meal, Cabales slept with Melinda in their bedroom. BBB and DDD left at 2 o'clock in the afternoon. EEE, who was Melinda's midwife, corroborated his narrative. She allegedly stayed outside Cabales and Melinda's bedroom while they slept because she asked Melinda's sister to pluck out her gray hair. EEE said that she

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[9] Folder 2, Index of Exhibits, p. 1; Per *Medical Certificate* dated January 17, 2005.

[10] *Supra* note 4.

saw Cabales wake up at around 2:30 or 3 o'clock in the afternoon and go to their store but never saw Cabales leave the house until she herself left at around 5 o'clock in the afternoon.

Ruling of the RTC

The RTC accorded full faith and credence to AAA's testimony. It held Cabales' defense of denial and alibi to be inherently weak, and convicted Cabales after trial. The dispositive portion of the RTC Decision dated March 27, 2012 reads as follows:

> **IN VIEW OF THE FOREGOING**, judgment is hereby rendered finding accused *Adonis Cabales* guilty beyond reasonable doubt of rape defined under Art. 266-A and penalized under Art. 266-B of the Revised Penal Code as amended.
>
> Accordingly, he is sentenced to suffer the penalty of *reclusion perpetua* together with the accessory penalties attached thereto. In addition, he is ordered to pay complainant, [AAA], civil indemnity in the amount of Php 75,000.00 and moral damages in the amount of Php 75,000.00 without subsidiary imprisonment in case of insolvency.
>
> In the service of his sentence, accused is entitled to the full time he has undergone preventive imprisonment, if any, pursuant to Article 29 of the Revised Penal Code.
>
> Accused shall serve his sentence at the Davao Farm and Penal Colony, B.E. Dujali, Davao del Norte.
>
> SO ORDERED.[11] (Emphasis in the original)

Aggrieved, Cabales appealed to the CA.

Ruling of the CA

The CA found no reason to reverse the Decision of the RTC convicting Cabales for AAA's rape. It sustained the existence of the elements of rape, declaring that AAA's testimony was a vivid account of how Cabales, her uncle, obtained carnal knowledge of her through force and intimidation.[12] The CA

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[11] Records, p. 86.

[12] *Rollo*, pp. 8-11.

also noted that AAA's statements were corroborated by the findings of Dr. Prieto-Jabines, the *medico-legal* officer who examined AAA.[13] Affording great respect and finality to the assessments made by the trial court on the witnesses[14] and rejecting Cabales' defenses of alibi and denial,[15] the CA affirmed the credibility of the prosecution's testimonial evidence. The CA, however, reduced the civil indemnity and moral damages awarded to AAA to PhP 50,000.00 each, following the case of *People v. Segovia*.[16] In its February 28, 2014 Decision, the CA upheld the findings of the RTC with modifications as to the damages awarded and disposed Cabales' appeal in the following manner:

> WHEREFORE, the Decision dated x x x March 27, 2012 of the Regional Trial Court, Branch 34, Panabo City finding Adonis Cabales guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua*, is AFFIRMED WITH MODIFICATION that appellant is ordered to pay the victim, AAA, the following: (a) Php50,000.00 as civil indemnity; and (b) Php50,000.00 as moral damages.
>
> SO ORDERED.[17]

Now this appeal by Cabales before Us.

The Assignment of Error

Cabales elevates his case before this Court and seeks a reversal of the CA Decision affirming the RTC Decision on the ground that the prosecution failed to prove his guilt beyond reasonable doubt.[18]

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

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

[15] *Id.* at 13.

[16] 438 Phil. 156, 168 (2002); per assailed CA Decision, *rollo*, p. 14.

[17] *Rollo*, p. 14.

[18] Per Notice of Appeal, *id.* at 16-18.

The Court's Ruling

The appeal has no merit.

Finding AAA's testimony to be incredible, Cabales now questions the circumstances of the alleged rape. He notes that AAA utterly failed to thwart his advances despite her claim that it was not the first time he violated her. AAA also never tried to push him away or escape. CCC was not even presented as a witness despite the prosecution's allegation that CCC saw the incident. AAA even denied the incident when inquired upon by CCC. Cabales asserts that no rape can be concluded even from the medical findings of Dr. Prieto-Jabines, as her medical certificate did not state that AAA suffered any physical injury resulting from his alleged use of force. From these observations, Cabales theorizes that the sexual encounter between him and AAA was unforced and consensual; thus, rape therefrom is inconceivable.

Cabales fails to convince this Court.

There is no standard behavior expected by law from a rape victim. She may attempt to resist her attacker, scream for help, make a run for it, or even freeze up, and allow herself to be violated.[19] By whatever manner she reacts, the same is immaterial because it is not an element of rape.[20] Neither should a rape victim's reflex be interpreted on its lonesome. Absent any other adequate proof that the victim clearly assented to the sexual act perpetrated by the accused, a victim shall not be condemned solely on the basis of her reactions against the same.

This principle applies here. Without clear evidence of consent, AAA's apparently passive conduct will not negate the rape committed by Cabales against her person. Her statements that she had been threatened into silence by Cabales were unwavering. We also note that AAA readily yielded to police assistance

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[19] *People v. Palanay*, 805 Phil. 116, 126-127 (2017).

[20] *People v. Bugna*, G.R. No. 218255, April 11, 2018, citing *People v. Joson*, 751 Phil. 450 (2015).

and medical examination when her family found out about the incident. Jurisprudence has steadily held that "no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her being."[21] Moreover, while a medical certificate attesting to the victim's physical trauma from the rape has corroborative purposes, it is wholly unnecessary for conviction, if not a mere superfluity. If anything, Cabales only confirmed in his appeal that he indeed obtained carnal knowledge of AAA. This is a complete turnaround from his initial denial of the incident before the trial court, where he claimed that he stayed in his house the entire day of January 16, 2005 attending to his wife who had just given birth. Given Cabales' contradicting stance, this Court receives his defense with utmost caution.

These arguments notwithstanding, Cabales' guilt has already been established beyond reasonable doubt. There is great premium accorded to a victim of rape, as it is usually the victim alone who can testify on the forced sexual intercourse.[22] If the victim's testimony meets the test of credibility, the accused can justifiably be convicted on the basis of her lone testimony.[23] Here, AAA categorically pointed to Cabales as the perpetrator of her rape and laid out her accusations with overt clarity. The inconsistencies alleged are deemed minor details that can be overlooked. We accord due respect to the factual findings and appreciation thereof by the trial court as it had the opportunity to observe the witnesses' demeanor and hear their testimonies at the first instance, much more as the CA affirmed the trial court's judgment of conviction in all its substantial respects.

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[21] *People v. Tubillo*, 811 Phil. 525, 533 (2017); citing *People v. Pareja*, 724 Phil. 759 (2014). See also *People v. Primavera*, G.R. No. 223138, July 5, 2017.

[22] *People v. Gabriel*, 807 Phil. 516, 528 (2017).

[23] *Id.*

Thus, after a careful review of the records of the case, the Court finds that the CA correctly affirmed the RTC Decision finding Cabales guilty beyond reasonable doubt of the crime of rape and accordingly sentenced him the penalty of *reclusion perpetua*. In line with recent jurisprudence, however, the civil indemnity and moral damages awarded to AAA must be increased from PhP 50,000.00 to PhP 75,000.00 each.[24] Exemplary damages of PhP 75,000.00 are likewise granted to AAA following *People v. Ramos*.[25] Furthermore, all amounts due shall earn legal interest of six percent (6%) per *annum* from the date of the finality of this Decision until full payment.[26]

WHEREFORE, the appeal is **DISMISSED**. The February 28, 2014 Decision of the Court of Appeals in CA-G.R. CR. HC. No. 01036-MIN is **AFFIRMED with MODIFICATION**. Accused-appellant Adonis Cabales is held guilty of rape and is hereby sentenced to *reclusion perpetua* and is ordered to pay the victim AAA the following amounts: (i) PhP 75,000.00 as civil indemnity; (ii) PhP 75,000.00 as moral damages; and (iii) PhP 75,000.00 as exemplary damages. All amounts due shall earn legal interest of six percent (6%) per *annum* from the date of the finality of this Decision until full payment.

SO ORDERED.

Perlas-Bernabe[*] and *Leonen*,[**] *JJ.*, concur.

Peralta (Chairperson), J., on official business.

Reyes, A. Jr., J., on wellness leave.

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[24] *People v. Jugueta*, 783 Phil. 806, 848 (2016).

[25] G.R. No. 210435, August 15, 2018.

[26] *Id.*

[*] Per Raffle dated September 23, 2019 *vice* Associate Justice Henri Jean Paul B. Inting, who inhibited due to prior participation in the CA proceedings.

[**] Acting Chairperson per Special Order No. 2707 dated September 18, 2019.

SECOND DIVISION

[G.R. No. 213893. September 25, 2019]

NATIONAL POWER CORPORATION and NATIONAL POWER BOARD, *petitioners, vs.* **EMMA Y. BAYSIC and NARCISA G. SANTIAGO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DEFAULT JUDGMENTS; REMEDIES OF A PARTY DECLARED IN DEFAULT; A PETITION FOR *CERTIORARI* TO DECLARE THE NULLITY OF A JUDGMENT BY DEFAULT MAYBE FILED IF THE TRIAL COURT IMPROPERLY DECLARED A PARTY IN DEFAULT, OR EVEN IF THE TRIAL COURT PROPERLY DECLARED A PARTY IN DEFAULT, IF GRAVE ABUSE OF DISCRETION ATTENDED SUCH DECLARATION. — True, in cases of default judgments, the remedy of the party declared in default is appeal. But when that party charges the trial court with grave abuse of discretion amounting to excess of jurisdiction in declaring this party in default and eventually rendering judgment against it, the extraordinary remedy of *certiorari* under Rule 65 of the Rules of Court may be availed of. In ***David v. Judge Gutierrez-Fruelda, et al.,*** the Court enumerated the remedies of a party declared in default, *viz*: x x x One declared in default has the following remedies: a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion under oath to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable negligence, and that he has a meritorious defense (Sec. 3, Rule 18 [now Sec. 3(b), Rule 9]; b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37; c)If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 [now Section 1] of Rule 38; and d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default

has been presented by him (Sec. 2, Rule 41). **Moreover, a petition for *certiorari* to declare the nullity of a judgment by default is also available if the trial court improperly declared a party in default, or even if the trial court properly declared a party in default, if grave abuse of discretion attended such declaration.**

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHILE THE REMEDY OF APPEAL IS AVAILABLE TO THE PARTIES SEEKING TO NULLIFY AN ORDER OF DEFAULT, THE SAME IS NOT A PLAIN, SPEEDY, AND ADEQUATE REMEDY, BUT A PETITION FOR *CERTIORARI* WHERE THE PARTIES ASSERTED THAT THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION IN DECLARING THEM IN DEFAULT AND RENDERING AN ADVERSE JUDGMENT AGAINST THEM. —[T]he Court of Appeals erred when it ruled that petitioners availed of the wrong remedy. Under Rule 65, while the remedy of appeal is indeed available to petitioners, the same is clearly not a plain, speedy, and adequate remedy in light of petitioners' vigorous assertion that the trial court committed grave abuse of discretion when it declared petitioners in default and rendered an adverse judgment against them. Petitioners' availment of a Petition for *Certiorari* therefore, is proper and should have been taken cognizance by the Court of Appeals.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioners.
Chavez Miranda Aseoche Law Offices for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

Antecedents

Proceedings Before the Trial Court

On July 12, 2007, private respondents Emma Y. Baysic and Narcisa G. Santiago, for themselves and in representation of four hundred eighty-eight (488) retirees of petitioner National

Power Corporation (NPC) filed with the Regional Trial Court, Quezon City — Branch 83 a Petition for *Mandamus* with Prayer for Accounting and Motion for Evidentiary Hearing pertaining to their alleged gratuity pay and financial assistance as retired employees of the NPC which had accrued to them before the enactment of Republic Act No. 9136 (RA 9136) or the Electric Power Industry Reform Act (EPIRA).[1]

In their Answer dated October 17, 2008, petitioners averred, among others, that their obligation to provide financial assistance and other benefits only applied to NPC personnel who were employed with government service as of the enactment of the EPIRA law.[2]

On November 12, 2008, private respondents moved to strike out petitioners' Answer for having been improperly verified. There was allegedly no proof that Atty. Melchor P. Ridulme, NPC Vice-President and General Counsel, was authorized to cause the preparation and filing of the Answer and that the verification was not done in accordance with Section 4, Rule 7 of the Rules of Court.[3]

By Order dated January 30, 2009, the trial court directed petitioners' Answer to be expunged from the records for being a mere scrap of paper.[4]

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[1] *Rollo,* p. 23.

[2] *Id.* at p. 26.

[3] *Id.*

Section 4. *Verification.* — Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief.

A pleading required to be verified which contains a verification based on "information and belief", or upon "knowledge, information and belief", or lacks a proper verification, shall be treated as an unsigned pleading.

[4] *Id.* at p. 27.

Under Order dated November 5, 2009, the trial court declared petitioners in default.[5]

Petitioners subsequently moved to lift the Order of Default and to Admit Attached Answer which the trial court denied by its Order dated May 18, 2010.[6]

Proceedings Before the Court of Appeals

Aggrieved, petitioners went to the Court of Appeals via a Petition for *Certiorari* and Prohibition.[7]

Meantime, the trial court rendered a default judgment against petitioners.[8]

Thereupon, petitioners amended their petition, this time, including as one of the assailed trial court's dispositions the Default Judgment.[9]

On the other hand, private respondents filed an *Ex Abundanti Cautela Motion to Strike Out Petition* claiming that the Amended Petition for *Certiorari* was improper since the remedy of appeal from the decision of the trial court was actually available to petitioners, thus precluding them from availing of the remedy of *certiorari*.[10]

By Resolution dated March 4, 2014, the Court of Appeals granted the *Ex Abundanti Cautela Motion to Strike Out Petition* and accordingly dismissed the Amended Petition.[11]

The Court of Appeals ruled that petitioners improperly availed of the petition for *certiorari* as a remedy considering that a

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[5] *Id.*

[6] *Id.* at p. 28.

[7] *Id.* at p. 29.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

party declared in default retained the right to appeal from the trial court's default judgment. Since the remedy of appeal was in fact available, petitioners' Amended Petition for *Certiorari* should be dismissed.[12]

By Resolution dated August 11, 2014, petitioners' motion for reconsideration was denied.[13]

The Present Petition

Petitioners now seek affirmative relief from the Court and pray that the assailed dispositions of the Court of Appeals be reversed and a new one rendered declaring petitioners' Amended Petition for *Certiorari* and Prohibition to be a proper remedy against the trial court's Default Judgment.

Ruling

Petitioners argue that contrary to the Court of Appeals' ruling, a petition for *certiorari* is the proper remedy where a party imputes grave abuse of discretion on the trial judge who improvidently declared them in default and consequently rendered a default judgment against them.[14]

They further assert that the trial court erred in considering their Answer as an unsigned pleading in view of its alleged lack of proper verification.[15]

We grant the petition.

True, in cases of default judgments, the remedy of the party declared in default is appeal. But when that party charges the trial court with grave abuse of discretion amounting to excess of jurisdiction in declaring this party in default and eventually rendering judgment against it, the extraordinary remedy *of certiorari* under Rule 65 of the Rules of Court may be availed of.

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[12] *Id.* at pp. 57-63.

[13] *Id.* at pp. 65-66.

[14] *Id.* at pp. 21-50.

[15] *Id.*

In *David v. Judge Gutierrez-Fruelda, et al*.,[16] the Court enumerated the remedies of a party declared in default, *viz:*

x x x One declared in default has the following remedies:

a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion under oath to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable negligence, and that he has a meritorious defense (Sec. 3, Rule 18 [now Sec. 3(b), Rule 9]);

b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37;

c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 [now Section 1] of Rule 38; and

d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him (Sec. 2, Rule 41).

Moreover, a petition for certiorari to declare the nullity of a judgment by default is also available if the trial court improperly declared a party in default, or even if the trial court properly declared a party in default, if grave abuse of discretion attended such declaration.

Also, in ***Martinez v. Republic of the Philippines citing Matute v. Court of Appeals,***[17] the Court pronounced that a party who was improvidently declared in default has the option to either perfect an appeal or interpose a petition for *certiorari* seeking to nullify the order of default even before the promulgation of a default judgment, or in the event that the latter has been rendered, to have both court decrees — the order of default and the default judgment — declared void.

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[16] 597 Phil. 354, 361 (2009).

[17] 536 Phil. 868, 876-877 (2006).

In fine, the Court of Appeals erred when it ruled that petitioners availed of the wrong remedy. Under Rule 65, while the remedy of appeal is indeed available to petitioners, the same is clearly not a plain, speedy, and adequate remedy in light of petitioners' vigorous assertion that the trial court committed grave abuse of discretion when it declared petitioners in default and rendered an adverse judgment against them. Petitioners' availment of a Petition for *Certiorari* therefore, is proper and should have been taken cognizance by the Court of Appeals.

Notably, petitioners are interposing a *prima facie* meritorious defense involving the issue of disbursement of public funds. It is, thus, in the higher interest of substantial justice that petitioners should be given their day in court.

So must it be.

ACCORDINGLY, the petition for review is **GRANTED.** The Resolutions dated March 4, 2014 and August 11, 2014 of the Court of Appeals in CA-G.R. SP No. 115773 are **REVERSED** and **SET ASIDE.** The Court of Appeals is **DIRECTED** to resolve the Amended Petition for *Certiorari* and Prohibition on the merits, with utmost dispatch.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 220514. September 25, 2019]

RUBEN T. OCLARINO, ABBIE S. HILAY, CUSTODIO N. NONAILLADA, JR., HENEDIN F. TORRE CAMPO, ISIDRO A. MORILLO, ROBERTO R. PANGAN, ROGELIO O. DIÑO, BEBIANO S. GANDAMON, ASTERIO S. CATIBIG, DAVID G. GUJILDE, ROBERTO Y. NUGOY, EDUARDO H. SOTTO, ALLAN JEAN E. SANDAG, VICENTE P. DUYOG, ORLANDO C. PELARES, MARLON A. ALERTA and EXPEDITO A. SOLIVAR, *petitioners, vs.* **SILVERIO J. NAVARRO, EDUARDO CRISTOBAL, REYNALDO BERNARDO, DANILO SALAZAR, MAXIMO ESPINOSA, ROMEO DIÑO, ISAGANI SAMONTE, REYWELL RUAYA, VIRGILIO SECO, RUBEN ESTOCADA, WARSON GUY-AB, ANGELITO BAYAWA, JOSE PIRIGRIN, VALERIANO CANTUNGAN, ROGELIO PAGSISIHAN and NEMENCIO AGUILAR,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; THE EXISTENCE OF AN ACTUAL CASE OR CONTROVERSY IS A CONDITION PRECEDENT FOR THE COURT'S EXERCISE OF ITS POWER OF ADJUDICATION; THE COURTS DECLINE JURISDICTION OVER MOOT AND ACADEMIC CASES, OR DISMISS IT ON GROUND OF MOOTNESS; OTHERWISE, THE COURT WOULD ENGAGE IN RENDERING AN ADVISORY OPINION ON WHAT THE LAW WOULD BE UPON A HYPOTHETICAL STATE OF FACTS; EXCEPTIONS; NOT PRESENT. — The existence of an actual case or controversy is a condition precedent for the court's exercise of its power of adjudication. An actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution. On the other hand,

a moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value. As a rule, courts decline jurisdiction over such a case, or dismiss it on ground of mootness; otherwise, the court would engage in rendering an advisory opinion on what the law would be upon a hypothetical state of facts. A case becomes moot and academic when the conflicting issue that may be resolved by the court ceases to exist as a result of supervening events. While it is true that this Court may assume jurisdiction over a case that has been rendered moot and academic by supervening events, the following instances must be present: (1) Grave constitutional violations; (2) Exceptional character of the case; (3) Paramount public interest; (4) The case presents an opportunity to guide the bench, the bar, and the public; or (5) The case is capable of repetition yet evading review. None of these circumstances are present in this case.

2. ID.; ID.; ID.; MOOT AND ACADEMIC; EXCEPTION OF AN ACTION "CAPABLE OF REPETITION, YET EVADING REVIEW"; BEFORE A CASE IS DEEMED ONE CAPABLE OF REPETITION YET EVADING REVIEW, IT IS REQUIRED THAT THE CHALLENGED ACTION WAS IN ITS DURATION TOO SHORT TO BE FULLY LITIGATED PRIOR TO ITS CESSATION OR EXPIRATION, AND THERE WAS A REASONABLE EXPECTATION THAT THE SAME COMPLAINING PARTY WOULD BE SUBJECTED TO THE SAME ACTION. — The expiration of the respondents' term of office operates as a supervening event that mooted the present petition. The petitioners, however, insist that the case falls under the fifth exception, *i.e.*, the case is capable of repetition yet evading review. There are two factors to be considered before a case is deemed one capable of repetition yet evading review: (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. In this case, while the respondents were re-elected, their re-election was never assailed. Also, there is no sufficient showing that the respondents would seek further re-election, and even if they do, their victory is not guaranteed. Moreover, the qualifications which the petitioners alleged that the respondents

lack could be subsequently cured. To be sure, the respondents could easily become owners of tricycle units. Further, the petitioners did not present any proof to contradict the respondents' evidence that they are high school graduates and even if indeed the respondents did not graduate from high school, it is not beyond the realm of possibility that they would do so. At this point, it must be emphasized that the second requisite requires "reasonable expectation," not mere speculation that the complaining party would be subjected to the same action.

3. ID.; ID.; ID.; ID.; THE EXPIRATION OF THE TERMS OF OFFICE OF THE ELECTED OFFICERS RENDERED THE PETITION ANNULLING THE ELECTION THEREOF MOOT AND ACADEMIC; THE COURT WILL NOT DETERMINE A MOOT QUESTION IN A CASE IN WHICH NO PRACTICAL RELIEF CAN BE GRANTED. — [A]lthough what is involved in the present case is the election of officers in a non-stock and non-profit association, the Court's pronouncement in *Malaluan v. COMELEC*, reiterated in the cases of *Sales v. COMELEC* and *Baldo, Jr. v. COMELEC*, that the expiration of the challenged term of office renders the corresponding petition moot and academic, finds application. Likewise, in *Manalad v. Trajano* which concerns the election of union officers, the Court declared: After a careful consideration of the facts of this case, We are of the considered view that **the expiration of the terms of office of the union officers and the election of officers on November 28, 1988 have rendered the issues raised by petitioners in this case moot and academic. It is pointless and unrealistic to insist on annulling an election of officers whose terms had already expired.** x x x. Indeed, an academic discussion of a case presenting a moot question is not necessary, because a judgment on the case cannot have any practical legal effect or, in the nature of things, cannot be enforced. Stated otherwise, the Court will not determine a moot question in a case in which no practical relief can be granted.

APPEARANCES OF COUNSEL

Rico & Associates for petitioners.
HM Ramos and Associates Law Office for respondents.

R E S O L U T I O N

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

Assailed in this Petition for Review on *Certiorari* are the April 30, 2015 Decision[1] and the September 15, 2015 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 134482 which affirmed the February 10, 2014 Decision[3] of the Regional Trial Court, Parañaque City, Branch 258 (RTC) in Civil Case No. 10-0070, an intra-corporate election contest.

The Antecedents

The petitioners are members of Samahang Barangay Don Bosco Tricycle Operators and Drivers, Inc. (SBDBTODI), a non-stock and non-profit association, duly registered with the Securities and Exchange Commission (SEC).[4] They were also candidates of an election held on January 30, 2010. On the other hand, the respondents are the opposing candidates and the winners in the said election.

The petitioners filed a complaint seeking nullification of the election held on January 30, 2010. They alleged that the respondents did not possess the qualifications required for their positions. First, Silverio Navarro, the elected President, as well as Romeo Diño, Reywell Ruaya, Angelito Bayawa, Valeriano Cantungan, Rogelio Pagsisihan, and Nemencio Aguilar, all elected as members of the Board of Directors, did not possess Motorized Tricycle Operation Permit (MTOP) as required by the Association's By-Laws. Second, the elected President, Vice-President, Secretary, Treasurer and Auditor had not proved that they were high school graduates. Third, the respondents

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[1] Penned by Associate Justice Danton Q. Bueser, with Associate Justices Apolinario D. Bruselas, Jr. and Edwin D. Sorongon, concurring; *rollo*, pp. 31-40.

[2] *Id*. at 41-42.

[3] Penned by Presiding Judge Noemi J. Balitaan; *id*. at 407-413.

[4] *Id*. at 111.

arbitrarily imposed that only those members who have barangay clearance, National Bureau of Investigation (NBI) clearance, police clearance and valid driver's license could vote. Thus, a number of members who would have voted in favor of the petitioners were disenfranchised and unable to vote. The petitioners further averred that the result of the January 30, 2010 election was void because there was no registration of voters conducted prior to the election as required by the Association's Constitution and By-Laws. They also contended that the Committee on Elections was illegally constituted because some of its members are relatives of the candidates.

On February 1, 2010, the petitioners filed their written protest before the Committee on Elections. The said Committee, however, failed to act on the protest prompting the petitioners to file a complaint before the RTC.

In their Answer, the respondents argued that the master list of purported members of the Association with MTOPs which was submitted by the petitioners should not be given credence as it was full of erasures and insertions and it was not certified by the Association's President. Moreover, the petitioners did not even identify the eligible members who were allegedly not allowed to vote.

While the case was pending, the Association held on December 15, 2012 an election to choose a new set of officers and Board of Directors.

The RTC Ruling

In a Decision dated February 10, 2014, the RTC dismissed the case for being moot and academic on the ground that the term of office of the respondents expired on January 31, 2013. The *fallo* reads:

WHEREFORE, in [the] light of the foregoing, the instant case is hereby **DISMISSED** for being moot and academic.

SO ORDERED.[5]

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[5] *Id*. at 413.

Aggrieved, the petitioners elevated an appeal before the CA.

The CA Ruling

In a Decision dated April 30, 2015, the CA affirmed the ruling of the RTC. It held that the case does not fall into the exception of an action "capable of repetition, yet evading review." The appellate court noted that the petitioners did not run in the 2012 election whereas the respondents actually ran for re-election and eventually won another term. Thus, it opined that it is unlikely that the petitioners would be subjected again to the same action by the respondents. The CA concluded that the resolution of the present action based on the merits will serve no useful or practical purpose on account of the expiration of the respondents' term of office. It disposed the case in this wise:

> **WHEREFORE**, premises considered, the Decision dated February 10, 2014 rendered by the Regional Trial Court of Para[ñ]aque is hereby **AFFIRMED**.
>
> **IT IS SO ORDERED**.[6]

The petitioners moved for reconsideration, but the same was denied by the CA in a Resolution dated September 15, 2015.

The Issue

WHETHER THIS PETITION PRESENTS A JUSTICIABLE CONTROVERSY AFTER THE TERM OF OFFICE OF THE RESPONDENTS HAVE ALREADY EXPIRED.

The Court's Ruling

The existence of an actual case or controversy is a condition precedent for the court's exercise of its power of adjudication. An actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution.[7]

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[6] *Id*. at 39.

[7] *Spouses Arevalo v. Planters Development Bank*, 686 Phil. 236, 248 (2012).

On the other hand, a moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value. As a rule, courts decline jurisdiction over such a case, or dismiss it on ground of mootness;[8] otherwise, the court would engage in rendering an advisory opinion on what the law would be upon a hypothetical state of facts.

A case becomes moot and academic when the conflicting issue that may be resolved by the court ceases to exist as a result of supervening events.[9] While it is true that this Court may assume jurisdiction over a case that has been rendered moot and academic by supervening events, the following instances must be present:

(1) Grave constitutional violations;

(2) Exceptional character of the case;

(3) Paramount public interest;

(4) The case presents an opportunity to guide the bench, the bar, and the public; or

(5) The case is capable of repetition yet evading review.[10]

None of these circumstances are present in this case. The expiration of the respondents' term of office operates as a supervening event that mooted the present petition. The petitioners, however, insist that the case falls under the fifth exception, *i.e.*, the case is capable of repetition yet evading review. There are two factors to be considered before a case is deemed one capable of repetition yet evading review: (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

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[8] *Gunsi, Sr. v. Commissioners, Commission on Elections*, 599 Phil. 223, 229 (2009).

[9] *David v. Macapagal-Arroyo*, 522 Phil. 705, 753 (2006).

[10] *Republic v. Moldex Realty, Inc.*, 780 Phil. 553, 561 (2016).

be subjected to the same action.[11] In this case, while the respondents were re-elected, their re-election was never assailed. Also, there is no sufficient showing that the respondents would seek further re-election, and even if they do, their victory is not guaranteed. Moreover, the qualifications which the petitioners alleged that the respondents lack could be subsequently cured. To be sure, the respondents could easily become owners of tricycle units. Further, the petitioners did not present any proof to contradict the respondents' evidence that they are high school graduates and even if indeed the respondents did not graduate from high school, it is not beyond the realm of possibility that they would do so. At this point, it must be emphasized that the second requisite requires "reasonable expectation," not mere speculation that the complaining party would be subjected to the same action.

Indeed, the Court has resolved cases which are capable of repetition yet evading review. Among these cases is *Belgica v. Ochoa, Jr.*[12] where 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) was assailed. Considering the fact that PDAF has always been incorporated in the national budget which is enacted annually, the Court ruled that it is one capable of repetition yet evading review, thus:

> Finally, the application of the fourth exception [to the rule on mootness] is called for by the **recognition that the preparation and passage of the national budget is, by constitutional imprimatur, an affair of annual occurrence**. The relevance of the issues before the Court does not cease with the passage of a "PDAF-free budget for 2014." The evolution of the "Pork Barrel System," by 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." In *Sanlakas v. Executive Secretary*, the

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[11] *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*, 791 Phil. 243, 273 (2016).

[12] 721 Phil. 416, 522 (2013).

government had already backtracked on a previous course of action yet the Court used the "capable of repetition but evading review" exception in order "[t]o prevent similar questions from re-emerging." The situation similarly holds true to these cases. Indeed, the myriad of issues underlying the manner in which certain public funds are spent, if not resolved at this most opportune time, are capable of repetition and hence, must not evade judicial review.[13] [Emphases supplied; citations omitted]

Evidently, unlike the PDAF which was incorporated in the annual budget, the election of the respondents is neither certain nor definite.

In addition, although what is involved in the present case is the election of officers in a non-stock and non-profit association, the Court's pronouncement in *Malaluan v. COMELEC*,[14] reiterated in the cases of *Sales v. COMELEC*[15] and *Baldo, Jr. v. COMELEC*,[16] that the expiration of the challenged term of office renders the corresponding petition moot and academic, finds application.

Likewise, in *Manalad v. Trajano*[17] which concerns the election of union officers, the Court declared:

After a careful consideration of the facts of this case, We are of the considered view that **the expiration of the terms of office of the union officers and the election of officers on November 28, 1988 have rendered the issues raised by petitioners in this case moot and academic. It is pointless and unrealistic to insist on annulling an election of officers whose terms had already expired**. We would have thereby a judgment on a matter which cannot have any practical legal effect upon a controversy, even if existing, and which, in the nature of things, cannot be enforced. We must consequently abide

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[13] *Id.* at 524-525.

[14] 324 Phil. 676, 683 (1996).

[15] 559 Phil. 593, 597 (2007).

[16] 607 Phil. 281, 286 (2009).

[17] 256 Phil. 64, 71 (1989).

by our consistent ruling that where certain events or circumstances have taken place during the pendency of the case which would render the case moot and academic, the petition should be dismissed.[18] [Emphases supplied; citations omitted]

Indeed, an academic discussion of a case presenting a moot question is not necessary, because a judgment on the case cannot have any practical legal effect or, in the nature of things, cannot be enforced. Stated otherwise, the Court will not determine a moot question in a case in which no practical relief can be granted.[19]

WHEREFORE, the petition is **DENIED** for being moot and academic.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 220904. September 25, 2019]

JEBSENS MARITIME, INC. and HAPAG-LLOYD AKTIENGESELLSCHAFT, *petitioners, vs.* **RUPERTO S. PASAMBA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; SEAFARERS; THE ENTITLEMENT OF AN OVERSEAS SEAFARER TO DISABILITY BENEFITS IS GOVERNED BY

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[18] *Id.*

[19] *Villarico v. Court of Appeals*, 424 Phil. 26, 34 (2002).

THE LABOR CODE, THE EMPLOYMENT CONTRACT AND THE APPLICABLE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC), AND THE MEDICAL FINDINGS. — The entitlement of an overseas seafarer to disability benefits is governed by the law, the employment contract, and the medical findings. *By law*, the seafarer's disability benefits claim is governed by Articles 191 to 193, Chapter VI of the Labor Code, in relation to Rule X, Section 2 of the Implementing Rules and Regulations (IRR) of the Labor Code. x x x. *By contract*, it is governed by the employment contract which the seafarer and his employer/local manning agency execute prior to employment, and the applicable POEA-SEC that is deemed incorporated in the employment contract. In this case, petitioners and respondent entered into a contract of employment on December 19, 2009, hence, the 2000 POEA-SEC is the applicable version. x x x. Lastly, *by the medical findings*, the assessment of the company-designated doctor generally prevails, unless the seafarer disputes such assessment by exercising his right to a second opinion by consulting a doctor of his choice, in which case, the medical report issued by the latter shall also be evaluated by the labor tribunal and the court, based on its inherent merit. In case of disagreement in the findings of the company-designated doctor and the seafarer's personal doctor, the parties may agree to jointly refer the matter to a third doctor whose decision shall be final and binding on them.

2. ID.; ID.; ID.; THE MERE INABILITY TO WORK FOR A PERIOD OF 120 DAYS DOES NOT ENTITLE A SEAFARER TO PERMANENT AND TOTAL DISABILITY BENEFITS; 120 AND 240-DAY PERIODS, GUIDELINES IN THE APPLICATION THEREOF. — In *Crystal Shipping*, it was ruled that the seafarer's inability to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body, entitles him to permanent and total disability benefits. In *Vergara*, the Court clarified that the doctrine expressed in *Crystal Shipping* cannot be applied in all situations. The apparent conflict between the two pronouncements — based on the provisions of 120-day period under the Labor Code and the POEA-SEC on one hand, and the 240-day period under the IRR on the other — has long been harmonized in subsequent cases. In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, the Court laid down the following guidelines, to wit: 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. Clearly, as it stands now, the mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits.

3. ID.; ID.; ID.; BELATED ASSESSMENT ISSUED BY THE INDEPENDENT DOCTOR CANNOT PREVAIL OVER THE FINAL ASSESSMENT MADE BY THE COMPANY-DESIGNATED DOCTOR WHO OBSERVED AND TREATED THE SEAFARER SINCE HIS REPATRIATION UP TO HIS RECOVERY. — It is noteworthy that respondent never raised any question as to the company-designated doctor's findings and declaration of his fitness to go back to work until after two years when he filed the complaint. In fact, respondent was able to obtain re-employment for the same position albeit, from a different principal/manning agency. The NLRC and the CA erred in disregarding such fact merely because said re-employment came only a year after he was declared fit to work by the company-designated doctors. To be sure, there was neither allegation nor proof to relate such delay in re-employment to the illness subject of his repatriation. On the contrary, such delay bolsters the fact that the company-designated doctors did not err when they declared respondent fit to work after 154 days of treatment and medication as it shows that even a year after said company-designated doctors' final assessment, respondent was able to pass the pre-employment medical examination to get another employment as an Able Seaman from another company. It only demonstrates that the company-

designated doctors successfully treated him of the illness subject of his repatriation, contrary to his claim. Further, it took respondent two years and another re-employment before he consulted an independent doctor to question the company-designated doctors' declaration of his fitness to work. Such belated assessment issued by the independent doctor cannot prevail over the final assessment made by the company-designated doctors who observed and treated respondent since his repatriation up to his recovery.

4. ID.; ID.; ID.; IF THE COMPANY-DESIGNATED DOCTOR DECLARES THE SEAFARER FIT TO WORK WITHIN THE 120 OR 240-DAY PERIODS, SUCH DECLARATION SHOULD BE RESPECTED UNLESS THE DOCTOR CHOSEN BY THE SEAFARER AND THE DOCTOR SELECTED BY BOTH THE SEAFARER AND THE EMPLOYER DECLARE OTHERWISE. —[R]espondent's failure to comply with the procedure under Section 20(B)(3) of the POEA-SEC in disputing the company-doctors' final assessment justifies the disregard of the independent doctor's assessment and reliance upon that of the company-designated doctors.' The referral to a third doctor is a mandatory procedure which necessitates from the provision that it is the company-designated doctor whose assessment should prevail. Simply stated, if the company-designated doctor declares the seafarer fit to work within the 120 or 240-day periods, such declaration should be respected unless the doctor chosen by the seafarer and the doctor selected by both the seafarer and the employer declare otherwise.

5. ID.; ID.; ID.; RESPONDENT IS ENTITLED TO TEMPORARY TOTAL DISABILITY INCOME BENEFITS FOR THE ENTIRE PERIOD OF TEMPORARY DISABILITY FROM REPATRIATION UNTIL THE DECLARATION OF FITNESS TO WORK. — Anent the award for sickness allowance, the Labor Arbiter, NLRC, and the CA correctly ruled that respondent is entitled thereto for the entire period of temporary disability (154 days) from repatriation until the declaration of fitness to work, *i.e.*, from February 5, 2010 to July 9, 2010. [T]he provision under Section 20(B)(3) of the POEA-SEC, which provides that upon sign off, 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 120 days, should be harmonized with the provisions of the Labor Code and its IRR which allows the 240-day extension period under certain circumstances. Thus, while we deny respondent's claim for permanent and total disability benefits, we are one with the labor tribunals and the court *a quo* that he is entitled to the income benefit of temporary total disability during the period of his treatment, although exceeding beyond the 120-day period but within the 240-day extension, as his condition required further treatment and observation.This is computed from the date of his repatriation on February 5, 2010 until he was declared fit to work on July 9, 2010. Neither can the provision in the CBA that respondent is entitled to sickness pay only for a period not exceeding 130 days prevail, the same being contrary to the law and established jurisprudence.

6. ID.; ID.; ID.; THE AWARD OF ATTORNEY'S FEES IS JUSTIFIED FOR INDEMNITY UNDER THE WORKMEN'S COMPENSATION AND EMPLOYER'S LIABILITY LAWS.— The Court finds no ground to disturb the uniform findings of the Labor Arbiter, NLRC, and the CA in awarding attorney's fees pursuant to Article 2208 (8) of the Civil Code, which states that the award of attorney's fees is justified for indemnity under the workmen's compensation and employer's liability laws.

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioners.
V.N.M. Taggueg & Associates Law Office for respondent.

D E C I S I O N

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

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated December 17,

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[1] *Rollo,* pp. 3-30.

[2] Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Vicente S.E. Veloso and Nina G. Antonio-Valenzuela, concurring; *id*. at 37-48.

2014 and Resolution[3] dated September 30, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 134720.

The Facts

On November 19, 2009, for and on behalf of its foreign principal, Hapag-Lloyd Aktiengesellschaft, local manning agency Jebsens Maritime, Inc.(collectively, petitioners) hired Ruperto S. Pasamba (respondent) as an Able Seaman for a period of six months. On December 21, 2009, respondent boarded CMS Dusseldorf Express.[4]

On January 24, 2010, respondent started experiencing clogged nose, dizziness, and headache.[5]

On February 4, 2010, as his illness persisted despite medications, respondent consulted an on-shore physician at the port of Japan, wherein he was diagnosed with "Sinusitis, Myringitis (both), Vascular Headache, and Unstable Angina (suspicion)." He was then recommended to be immediately repatriated for treatment.[6]

On February 5, 2010, respondent was repatriated.[7]

On February 6, 2010, respondent reported to petitioners' office and was referred to the company-designated doctors.[8]

On February 9, 2010, respondent was diagnosed with "Polysinusitis, Hypoplastic Frontal Sinuses, Congested Turbinates while Mastoid Series showed Bilateral Mastoiditis." On February 25, 2010 and May 14, 2010, respondent underwent Mastoidectomy with Tympanoplasty procedures as advised by the company-designated doctors.[9]

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[3] *Id*. at 49-50.

[4] *Id*. at 7.

[5] *Id*. at 38-39.

[6] *Id*. at 39.

[7] *Id*.

[8] *Id*.

[9] *Id*.

On July 9, 2010, the company-designated doctors issued a Certificate of Physical Condition, declaring respondent "fit for work" with the following relevant notations:

> [Respondent] subsequently underwent Canal-Up Mastoidectomy, Tympanoplasty type I, Left last February 25, 2010 and after almost 3 months of recovery period, his right ear underwent the same procedure on May 4, 2010.
>
> For both surgeries, pre-operative and post-operative events were unremarkable. He tolerated the said procedure and patient was discharged improved. During his recovery period, he experienced blunted hearing acuity and ear fullness and watery nasal discharge. These were all expected post-surgery and usually temporary. He was then prescribed by our ENT with Clarithromycin 500mg/tab, OD, Levocetirizine dHC1 10mg/tab, OD and Fluticasone furoate (Avamys) nasal spray 1 puff each nostril BID for 1 month.
>
> After 5-7 weeks after each surgery, patient has noted improvement with his hearing. Operative sites showed bilaterally, re-assessment of both ears showed no active ear infections. Turbinates were not congested. Tympanic membranes were also closed and free from any infections. Patient can carry on a normal conversation. He was cleared by our ENT specialist to go back to work.[10]

More than a year thereafter, or sometime in November 2011, respondent was able to obtain re-employment also as an Able Seaman with a contract duration of eight months albeit, from another manning agency and principal, Philippine Transmarine Carriers, Inc. and Marin Shipmanagement Limited, respectively.[11]

On July 31, 2012, respondent consulted an independent doctor who diagnosed him to be suffering from "Moderate Sensorineural Hearing Loss, AD, and Profound Mixed Hearing Loss, AS."[12]

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[10] *Id.* at 118.

[11] *Id.* at 121.

[12] *Id.* at 39.

This prompted respondent to claim permanent and total disability benefits against petitioners. Hence, a complaint before the Labor Arbiter was filed on August 13, 2012.[13]

For their part, petitioners countered that respondent is not entitled to permanent and total disability benefits because he was already declared fit to work on July 9, 2010. Petitioners pointed out that the fact that respondent was able to subsequently secure another deployment as an Able Seaman from another company belies his claims that he is permanently and totally disabled.[14]

The Ruling of the Labor Arbiter

Upholding the findings of the company-designated doctors that respondent is already fit to work and considering the fact that respondent was subsequently re-employed, the Labor Arbiter ruled that respondent is not entitled to permanent and total disability benefits. It was, however, ruled that respondent is entitled to attorney's fees and sickness allowance, which should be reckoned from the date of sign-off from the vessel on February 5, 2010 until he was declared fit to work on July 9, 2010. In his July 18, 2013 Decision,[15] the Labor Arbiter disposed, thus:

> ***WHEREFORE***, premises considered, judgment is hereby rendered ordering [petitioners] JEBSENS MARITIME, INCORPORATED and HAPAG-LLYOD AKTIENGESELLSCHAF, jointly and severally, to pay [respondent] RUPERTO S. PASAMBA sickness allowance for USD4,800, plus, 10% attorney's fees of the monetary award.
>
> All other claims are DISMISSED for lack of merit.
>
> ***SO ORDERED.***[16]

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[13] *Id*. at 10.

[14] *Id*. at 40.

[15] *Id*. at 161-167.

[16] *Id*. at 166-167.

The Ruling of the National Labor Relations Commission

On appeal, the National Labor Relations Commission (NLRC) reversed and set aside the Labor Arbiter's Decision. In its December 11, 2013 Decision,[17] the NLRC ruled that respondent is entitled to permanent and total disability benefits in accordance with the Collective Bargaining Agreement (CBA) considering that he was unable to work for more than 120 days. The NLRC pounded on the fact that respondent was declared fit to work only on July 9, 2010 or 154 days after sign off from the vessel.

According to the NLRC, respondent's subsequent re-employment is of no moment as it came only after a year from the company-designated doctors' declaration of his fitness to work. Despite such re-employment, the fact remains that respondent was still unable to work for more than 120 days. The NLRC cited the case of *Crystal Shipping, Inc. v. Natividad*,[18] wherein the Court ruled that the fact that the seafarer was cured after a couple of years is not relevant to his claim for disability benefits as "[t]he law does not require that the illness should be incurable. What is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability."

Further, the NLRC also found that the exceptional 240-day period is not applicable to this case as such extension for the company-designated doctors to issue their final assessment "requires, as a condition *sine qua non*, that further treatment is required beyond 120 days and the company-designated physician must declare such." The NLRC found that the company-designated doctors made no such declaration in this case, concluding, thus, that the 240-day extension period cannot be applied.[19]

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[17] *Id.* at 226-236.

[18] 510 Phil. 332, 341 (2005).

[19] *Rollo*, p. 234.

Anent the sickness allowance, the NLRC found that the documentary evidence proved that payment made by the petitioners therefor covered only the period from March 1, 2010 to June 15, 2010. Thus, additional sickness allowance was ordered to be paid to cover the period from the date of respondent's sign off on February 5, 2010 to February 28, 2010.[20]

The dispositive portion of the NLRC Decision reads, thus

> **IN VIEW WHEREOF**, [respondent's] appeal is **GRANTED**. The assailed Decision is hereby **MODIFIED**. The corporate [petitioners] are hereby **ORDERED** to pay the [respondent] permanent and total disability benefits in the amount of US$80,000.00 or its peso equivalent at the prevailing exchange rate on the date of actual payment. Said [petitioners] are, likewise, directed to pay the [respondent] sickness allowance for the period starting from the 5th to the 28th of February 2010 and attorney's fees equivalent to ten percent (10%) of the total monetary award.
>
> **SO ORDERED**.[21]

Petitioners' motion for reconsideration was denied in the NLRC Resolution[22] dated January 28, 2014:

> **WHEREFORE**, the Motion for Reconsideration is hereby **DENIED**. No second Motion for Reconsideration of the same nature shall be entertained and the filing thereof shall subject the movant to be cited in contempt in accordance to the power of this Commission as provided under Article 218 of the Labor Code of the Philippines *vis-à-vis* Section 15 of Rule VII and Rule IX of the 2011 Revised Rules of Procedure of this Commission.
>
> **SO ORDERED**.[23]

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[20] *Id*. at 234-235.

[21] *Id*. at 235.

[22] *Id*. at 255-256.

[23] *Id*.

The Ruling of the Court of Appeals

In its December 17, 2014 assailed Decision,[24] the CA affirmed the NLRC's conclusion that respondent is entitled to permanent and total disability benefits. The CA ruled that "the fact that [respondent] was unable to perform his customary work as an Able Seaman for more than 120 days establishes permanent total disability."[25] According to the CA, "[t]his holds true despite a declaration by the company-designated doctors that the seafarer is fit to work; the disability is still considered permanent and total if such declaration is made after the expiration of 120 days from repatriation."[26]

The award of sickness allowance was also upheld but modified to include the periods from February 5 to 28, 2010; June 16 to 30, 2010, through July 1 to 9, 2010 for the entitlement thereto.[27]

The attorney's fees awarded were also upheld.[28]

The CA disposed, thus:

WHEREFORE, premises considered, the Petition for *Certiorari* is hereby **DENIED. ACCORDINGLY**, the challenged Decision dated 11 December 2013 and Resolution dated 28 January 2014 rendered by the NLRC, Fourth Division in NLRC LAC NO. OFW-M-08-000762-13, NLRC NCR(M)-08-l 1911-12 are **AFFIRMED** with **MODIFICATION** in that [petitioners] are **ORDERED** to pay, jointly and severally, [respondent] sickness allowance for the period starting from the 5th to the 28th of February 2010, the 16th to the 30th of June 2010, and the 1st to the 9th of July 2010, plus 10% attorney's fees of the monetary award. The rest of the assailed Decision **STANDS**.

SO ORDERED.[29]

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[24] *Supra* note 2.

[25] *Rollo*, p. 45.

[26] *Id*.

[27] *Id*. at 47.

[28] *Id*.

[29] *Id*. at 48.

Petitioners' motion for reconsideration was denied in the CA's September 30, 2015 assailed Resolution,[30] which reads:

> We **DENY** the *Motion for Reconsideration* filed by Petitioners of this Court's Decision dated 17 December 2014 as no meritorious or strong reasons were raised therein which would warrant the modification, much less reversal, of the *Decision* sought to be reconsidered.
>
> **SO ORDERED**.[31]

Hence, this petition.

It is undisputed that respondent was not able to go back to work as an Able Seaman for more than 120 days from his repatriation. It is also undisputed that the company-designated doctors declared respondent fit to work only on the 154th day from repatriation.

Petitioners, however, argue that respondent's inability to work for more than 120 days does not, by itself, amount to permanent and total disability. Neither would the fact that the fit-to-work declaration was issued beyond the 120-day period lead to the conclusion that respondent was permanently and totally disabled. Petitioners cite the case of *Vergara v. Hammonia Maritime Services, Inc*.[32] and the subsequent ruling of the Court, where it was held that when no declaration is made as to the seafarer's disability grading or fitness to work within the 120-day period because further medical treatment is required, the seafarer cannot be deemed permanently and totally disabled unless such treatment exceeds the maximum period of 240 days.[33]

Petitioners also argue that respondent is entitled to sickness allowance equivalent to his basic wage only for the period of 130 days invoking the CBA, which is more than the maximum

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[30] *Id*. at 49-50.

[31] *Id*.

[32] 588 Phil. 895 (2008).

[33] *Rollo*, pp. 15-16.

120 days provided under the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC).[34]

Lastly, petitioners question the award of attorney's fees.[35]

The Issues

I.

Is respondent entitled to permanent and total disability benefits?

II.

Is respondent entitled to sickness allowance from repatriation until final assessment of the company-designated doctors?

III.

Is respondent entitled to attorney's fees?

This Court's Ruling

The petition is partly meritorious.

The entitlement of an overseas seafarer to disability benefits is governed by the law, the employment contract, and the medical findings.[36]

By law, the seafarer's disability benefits claim is governed by Articles 191 to 193, Chapter VI of the Labor Code, in relation to Rule X, Section 2 of the Implementing Rules and Regulations (IRR) of the Labor Code. Article 192(C)(1) of the Labor Code provides:

ART. 192. Permanent disability. x x x x

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules;

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

[35] *Id*. at 26.

[36] *Aldaba v. Career Philippines Shipmanagement, Inc.*, G.R. No. 218242, June 21, 2017, 828 SCRA 55, 64.

Similarly, Rule VII, Section 2(b) of the Amended Rules on Employees' Compensation provides:

(b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.

Relevantly, Section 2, Rule X of the Implementing Rules and Regulations (IRR) Book IV of the Labor Code states:

Section 2. Period of entitlement. — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

By contract, it is governed by the employment contract which the seafarer and his employer/local manning agency execute prior to employment, and the applicable POEA-SEC that is deemed incorporated in the employment contract.[37] In this case, petitioners and respondent entered into a contract of employment on December 19, 2009, hence, the 2000 POEA-SEC is the applicable version. Section 20(B)(3) thereof reads in part as follows:

SEC. 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

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[37] *Id.*

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 HIS 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.

Lastly, *by the medical findings*, the assessment of the company-designated doctor generally prevails, unless the seafarer disputes such assessment by exercising his right to a second opinion by consulting a doctor of his choice, in which case, the medical report issued by the latter shall also be evaluated by the labor tribunal and the court, based on its inherent merit. In case of disagreement in the findings of the company-designated doctor and the seafarer's personal doctor, the parties may agree to jointly refer the matter to a third doctor whose decision shall be final and binding on them.[38]

Guided by the foregoing, we now resolve whether or not the NLRC, as affirmed by the CA, correctly awarded the disability benefits that respondent claims.

I.

In this case, the NLRC and the CA heavily anchored their ruling in favor of respondent's entitlement to permanent and total disability benefits on the fact of respondent's inability to

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[38] *Tradephil Shipping Agencies, Inc. v. Dela Cruz,* 806 Phil. 338, 355-356 (2017).

work beyond 120 days from repatriation and the company-designated doctors' failure to issue a final assessment as to his fitness to work or disability grading within the said 120-day period, citing the case of *Crystal Shipping*,[39] Further, the NLRC and the CA denied the application of the 240-day extension period as originally pronounced by the Court in the case of *Vergara v. Hammonia Maritime Services, Inc.*,[40] reasoning that the company doctors failed to make a declaration that further treatment is necessary beyond the 120-day period to justify the application of the 240-day extension.

A judicious review of the records of this case, however, reveals otherwise.

In *Crystal Shipping*, it was ruled that the seafarer's inability to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body, entitles him to permanent and total disability benefits. In *Vergara*, the Court clarified that the doctrine expressed in *Crystal Shipping* cannot be applied in all situations.

The apparent conflict between the two pronouncements — based on the provisions of 120-day period under the Labor Code and the POEA-SEC on one hand, and the 240-day period under the IRR on the other — has long been harmonized in subsequent cases.[41]

In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*,[42] the Court laid down the following guidelines, to wit:

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;

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[39] *Supra* note 18, at 341.

[40] *Supra* note 32.

[41] *Kestrel Shipping Co., Inc. v. Munar*, 702 Phil. 717 (2013); *Montierro v. Rickmers Marine Agency Phils., Inc.*, 750 Phil. 937 (2015); *Carcedo v. Maine Marine Phils., Inc.*, 758 Phil. 166 (2015); *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, 765 Phil. 341 (2015).

[42] 765 Phil. 341, 362-363 (2015).

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.

Clearly, as it stands now, the mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits.

The company-designated doctors' declaration of respondent's fitness to work beyond the 120-day period, or specifically on the 154th day, will likewise not work in favor of respondent's case. Contrary to the NLRC's findings, the records clearly show that the company doctors had sufficient justification for extending the issuance of its final assessment beyond the 120-day period, *i.e.*, further medical treatment and observation were still necessary.

The NLRC and the CA failed to consider that respondent underwent a surgery for his left ear on February 25, 2010 and that almost three months recovery period was needed before respondent underwent the same procedure for his right ear on May 14, 2010. Respondent's treatment did not stop after said last surgery, which notably, was on the 99th day after his repatriation. Records also reveal that five to seven weeks after said surgery, respondent was still under observation and medication for his full recovery.[43] Clearly, thus, respondent's treatment necessarily went beyond the 120-day period. Hence,

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[43] *Rollo*, pp. 118-119.

contrary to the NLRC's findings, the 240-day extension period applies in this case. Notably, the company-designated doctors' assessment of respondent's fitness to work fell on the 154th day, which is well-within the 240-day extension.

It is noteworthy that respondent never raised any question as to the company-designated doctors' findings and declaration of his fitness to go back to work until after two years when he filed the complaint. In fact, respondent was able to obtain re-employment for the same position albeit, from a different principal/manning agency.

The NLRC and the CA erred in disregarding such fact merely because said re-employment came only a year after he was declared fit to work by the company-designated doctors. To be sure, there was neither allegation nor proof to relate such delay in re-employment to the illness subject of his repatriation. On the contrary, such delay bolsters the fact that the company-designated doctors did not err when they declared respondent fit to work after 154 days of treatment and medication as it shows that even a year after said company-designated doctors' final assessment, respondent was able to pass the pre-employment medical examination to get another employment as an Able Seaman from another company. It only demonstrates that the company-designated doctors successfully treated him of the illness subject of his repatriation, contrary to his claim.

Further, it took respondent two years and another re-employment before he consulted an independent doctor to question the company-designated doctors' declaration of his fitness to work. Such belated assessment issued by the independent doctor cannot prevail over the final assessment made by the company-designated doctors who observed and treated respondent since his repatriation up to his recovery.

What is more, respondent's failure to comply with the procedure under Section 20(B)(3) of the POEA-SEC in disputing the company-doctors' final assessment justifies the disregard of the independent doctor's assessment and reliance upon that of the company-designated doctors. The referral to a third doctor is a mandatory procedure which necessitates from the provision that it is the company-designated doctor whose assessment

should prevail.[44] Simply stated, if the company-designated doctor declares the seafarer fit to work within the 120 or 240-day periods, such declaration should be respected unless the doctor chosen by the seafarer and the doctor selected by both the seafarer and the employer declare otherwise.[45]

In sum, the Labor Arbiter correctly ruled that there is no factual or legal basis for respondent's entitlement to permanent and total disability benefits.

II.

Anent the award for sickness allowance, the Labor Arbiter, NLRC, and the CA correctly ruled that respondent is entitled thereto for the entire period of temporary disability (154 days) from repatriation until the declaration of fitness to work, *i.e.*, from February 5, 2010 to July 9, 2010.

As explained above, the provision under Section 20(B)(3) of the POEA-SEC, which provides that upon sign off, 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 120 days, should be harmonized with the provisions of the Labor Code and its IRR which allows the 240-day extension period under certain circumstances.

Thus, while we deny respondent's claim for permanent and total disability benefits, we are one with the labor tribunals and the court *a quo* that he is entitled to the income benefit of temporary total disability during the period of his treatment, although exceeding beyond the 120-day period but within the 240-day extension, as his condition required further treatment and observation.[46] This is computed from the date of his

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[44] *Supra* note 38, at 356.

[45] *Oriental Shipmanagement Co., Inc. v. Ocangas*, G.R. No. 226766, September 27, 2017, 841 SCRA 258, 272.

[46] *Solpia Marie and Ship Management, Inc. v. Postrano*, G.R. No. 232275, July 23, 2018.

repatriation on February 5, 2010 until he was declared fit to work on July 9, 2010.

Neither can the provision in the CBA that respondent is entitled to sickness pay only for a period not exceeding 130 days prevail, the same being contrary to the law and established jurisprudence above-discussed.

III.

The Court finds no ground to disturb the uniform findings of the Labor Arbiter, NLRC, and the CA in awarding attorney's fees pursuant to Article 2208 (8)[47] of the Civil Code, which states that the award of attorney's fees is justified for indemnity under the workmen's compensation and employer's liability laws.[48]

WHEREFORE, the petition is **PARTLY GRANTED**. Accordingly, the Decision of the Court of Appeals dated December 17, 2014 in CA-G.R. SP No. 134720 is hereby **AFFIRMED with MODIFICATION** in that the award of permanent and total disability benefits is **DELETED**, while the awards for sickness allowance and attorney's fees **STAND**.

SO ORDERED.

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

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[47] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x x x x x x

(8) In actions for indemnity under workmen's compensation and employer's liability laws[.];

[48] *Cutanda v. Marlow Navigation Phils., Inc.*, G.R. No. 219123, September 11, 2017, 839 SCRA 272, 302.

[*] Acting Chief Justice per Special Order No. 2703 dated September 10, 2019.

SECOND DIVISION

[G.R. No. 227993. September 25, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENSON TULOD *y* CUARTE,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); CHAIN OF CUSTODY RULE; LINK IN THE CHAIN OF CUSTODY; THE PROSECUTION MUST ESTABLISH THAT THE SUBSTANCE ILLEGALLY POSSESSED BY THE ACCUSED IS THE SAME SUBSTANCE PRESENTED IN COURT, AND IT MUST ACCOUNT FOR EACH LINK IN THE CHAIN OF CUSTODY TO ENSURE THE INTEGRITY OF THE SEIZED DRUG ITEM. — In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court. To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: ***first***, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; ***second***, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third***, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth***, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court. This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.

2. ID.; ID.; SECTION 21 OF RA 9165; CUSTODY AND DISPOSITION OF SEIZED DANGEROUS DRUGS; THE INCONSISTENT TESTIMONIES OF THE ARRESTING OFFICERS PERTAINING TO WHERE THEY TURNED OVER THE SEIZED ITEMS TO THE INVESTIGATING OFFICER

CAST DOUBT ON THE INTEGRITY OF THE *CORPUS DELICTI*. — [A]ppellant is charged with unauthorized sale and possession of dangerous drugs allegedly committed on March 12, 2010. The governing law, therefore, is RA 9165 before its amendment in 2014. Section 21 of RA 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases. x x x. [T]he Court acquits appellant on two (2) grounds: [T]he inconsistent testimonies of the arresting officers pertaining to where they turned over the seized items to SPO2 delos Reyes cast doubt on the integrity of the corpus delicti. x x x. In ***People v. Alcuizar***, the Court considered the vague recollection of the arresting officers regarding the transfer of the custody of seized item — whether the investigating officer received it at the place of operation or at the police station, as a ground to acquit the accused.

3. ID.; ID.; ID.; ID.; REQUIRED WITNESSES; THE ABSENCE OF EVIDENCE THAT THE INVENTORY AND THE PHOTOGRAPHING OF THE SEIZED AND CONFISCATED ITEMS WAS DONE IN THE PRESENCE OF AN ELECTED OFFICIAL, A MEDIA REPRESENTATIVE AND A REPRESENTATIVE FROM THE DEPARTMENT OF JUSTICE (DOJ) IS FATAL TO THE PROSECUTION'S CASE, AS THE POSSIBILITY OF SWITCHING, PLANTING, OR CONTAMINATION OF THE EVIDENCE NEGATES THE CREDIBILITY OF THE SEIZED DRUG AND OTHER CONFISCATED ITEMS. — It is a matter of record that only appellant, barangay official Allan Dean Haley and city prosecutor representative Jaime Navarro were present to witness the inventory and photograph of the seized items. No explanation was offered for the absence of a representative from the media. In ***People v. Abelarde***, the accused was acquitted of violation of Section 5, RA 9165 because there was no evidence that the inventory of the seized dangerous drugs was done in the presence of an elected official, a media representative and a representative from the DOJ. x x x. Indeed, the presence of the insulating witnesses during inventory is vital. In the absence of these persons, the possibility of switching, planting, or contamination of the evidence negates the credibility of the seized drug and other confiscated items. Non-compliance with the requirement is, therefore, fatal to the prosecution's case.

4. ID.; ID.; ID.; ID.; ABSENT ANY ACCEPTABLE EXPLANATION FOR THE DEVIATION FROM THE PROCEDURAL REQUIREMENTS OF THE CHAIN OF CUSTODY RULE, THE *CORPUS DELICTI* CANNOT BE DEEMED PRESERVED. — Although the Implementing Rules and Regulations of RA 9165 offers a saving clause allowing leniency whenever there are justifiable grounds to deviate from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved, the prosecution offered no such explanation here. In fine, the condition *sine qua non* for the saving clause to become operational was not complied with. For the same reason, the proviso "so long as the integrity and evidentiary value of the seized items are properly preserved", too, will not come into play. Absent any acceptable explanation for the deviation from the procedural requirements of the chain of custody rule, the *corpus delicti* cannot be deemed preserved.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal assails the Decision dated September 9, 2015[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 06622 affirming appellant's conviction for violation of Sections 5 and 11, Republic Act (RA) 9165.[2]

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[1] Penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Normandie B. Pizzaro and Samuel H. Gaerlan; *Rollo*, p. 2.

[2] Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Proceedings Before the Trial Court

The Charge

Under two (2) separate Informations dated April 16, 2009, appellant Benson Tulod *y* Cuarte was charged with violation of Sections 5 and 11, RA 9165, thus:

Criminal Case No. 84-2010

That on or about the [twelfth day] of March 2010, in the city of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and knowingly deliver to PO2 David Domingo Php 200.00 (SN-KX112694 & DZ437161) worth of Methamphetamine Hydrochloride otherwise known as "Shabu", which is dangerous drug in one (1) plastic sachet weighing 0.057 grams.

CONTRARY TO LAW.

Criminal Case No. 83-2010

That on or about the twelfth (12th) day of March 2010, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully and knowingly have in his effective possession and control [eight] (8) heat-sealed transparent plastic sachets containing white crystalline substance otherwise known as "Shabu" having a total weight of 0.884 grams, said accused not having the corresponding license or prescription to possess said dangerous drugs.

CONTRARY TO LAW.[3]

The case was raffled to the Regional Trial Court (RTC) - Branch 75, Olongapo City.

On arraignment, appellant pleaded *not guilty* to both offenses. Trial proper ensued.

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[3] *Rollo*, p. 3.

During the trial, PO2 David Domingo, PO2 Lawrence Reyes,[4] SPO2 Allan delos Reyes[5] and Forensic Chemist Arlyn Dacsil testified for the prosecution. Meanwhile, appellant, his mother Sonia Tulod and appellant's brother-in-law Mario Jimenez testified for the defense.

The Prosecution's Version

PO2 David Domingo, a member of the City Anti-Illegal Drugs Special Operations Team (CAIDSOT), testified that as early as February 2010, their office had been receiving reports regarding appellant's illegal drug trade in his residence at 29th Street, West Tapinac in Olongapo City. Surveillance confirmed that known drug personalities had been coming in and out of appellant's house. Thus, on March 12, 2010, around 2:30 in the afternoon, the CAIDSOT performed a buy-bust operation wherein he (PO2 Domingo) was assigned as poseur-buyer and PO2 Lawrence Reyes as back-up. That afternoon, he and the buy-bust team proceeded to the place of operation along with a confidential informant.[6]

He and the confidential informant walked towards appellant's house while the rest of the buy-bust team secured the perimeter. Appellant greeted them at the entrance. The confidential informant introduced him to appellant as an interested buyer and brief conversation ensued between them. Appellant asked where he used to buy drugs. He gave names of arrested drug dealers in response. Appellant then offered him the *shabu* he was selling, and he agreed to buy Php200.00 worth. Appellant took the payment and, in turn, handed him a plastic sachet containing the suspected drug which appellant retrieved from his pocket.[7]

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[4] Also appears in the records as PO1 Lawrence Reyes.

[5] Also appears in the records as SPO3 Alan delos Reyes.

[6] Record, p. 232.

[7] *Id*.

PO2 Domingo wiped his face with a towel to signal the buy-bust team that the sale had been consummated. Consequently, members of the CAIDSOT rushed to the crime scene to arrest appellant. PO2 Reyes frisked appellant and recovered from the latter the marked money and eight (8) more transparent plastic sachets containing the suspected drugs. While at the crime scene, he marked the control buy with his initials "DSD". He turned the seized item over to the designated investigator SPO2 Allan delos Reyes at the place of operation for inventory. Subsequently, SPO2 delos Reyes prepared the request for laboratory examination and delivered the seized items to the crime laboratory.[8]

PO2 Lawrence Reyes testified that a week before the operation, he took part in the surveillance of appellant and confirmed the latter's drug activities. On March 12, 2010, he was designated as back-up for PO2 Domingo for the buy-bust operation. He witnessed the transaction between appellant and PO2 Domingo. When PO2 Domingo finally gave the pre-arranged signal, he rushed to the crime scene. He frisked appellant and recovered the marked money and eight (8) transparent plastic sachets from the latter's pockets. While there, he marked the plastic sachets with his initials "LR". He turned them over to SPO2 Allan delos Reyes at the place of operation. In turn, SPO2 delos Reyes marked the items with his initials "ADR" before preparing the inventory. Appellant, barangay official Allan Dean Haley and city prosecutor representative Jaime Navarro witnessed the inventory and photograph of the seized items. The seized items were later examined at the crime laboratory and tested positive for methamphetamine hydrochloride or *shabu*.[9]

SPO2 Allan delos Reyes testified to receiving the seized items at Police Station 2. By that time, said items already bore the initials of the arresting officers. He marked the seized items

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[8] *Id*.

[9] *Id*. at 232-233.

with his own initials, "ADR". Thereafter, he conducted an inventory of the seized items in the presence of appellant, a barangay official and representative from the city prosecutor's office. He also prepared the request for laboratory examination of the specimens and delivered them to the crime laboratory.[10]

The prosecution and defense stipulated on the testimony of Arlyn Dacsil as the forensic chemist who received and examined the seized items at the crime laboratory. Based on her examination, the specimens tested positive for *methamphetamine hydrochloride* or *shabu*.[11]

The Defense's Version

Appellant denied the charge, claiming this was a clear case of "*palit-ulo*". He testified that on March 12, 2010, he was busy doing household work when four (4) police officers suddenly entered his home. They were looking for someone although he could not remember who it was. When they asked him if he owned a gun, he denied it. The police officers, nonetheless, brought him to Police Station 2. There, he saw his *kumpare* Abelino Redondo in handcuffs; Redondo was apparently arrested for drug charges. The police officers showed him the drugs recovered from Redondo but the latter identified him as the owner thereof.[12]

Mario Jimenez testified that he was appellant's brother-in-law who lived with him in the same compound. At the time of the incident, he was repairing his motorcycle while appellant was in his own house, taking care of his child. He witnessed several men arrive and arrest appellant. They brought appellant out of the house and boarded him on a van.[13]

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[10] *Id*. at 233.

[11] *Id*. at 232.

[12] *Id*. at 233-234.

[13] *Id*. at 234.

Appellant's mother Sonia Tulod also corroborated his testimony. She testified that at the time of the incident, she was in front of their house getting clothes while appellant was attending to his daughter. Suddenly, several men came to their house, went to her room, got her things and scattered them in the living room. Sonia asked why they were doing such things and they replied that her son was involved in illegal drugs. They left with the things scattered but brought appellant with them to Police Station 2. They told her to follow them there.[14]

The Trial Court's Ruling

By its Judgment dated December 2, 2013,[15] the trial court rendered a verdict of conviction, *viz*:

WHEREFORE, judgment is rendered as follows:

1. In Criminal Case No. 83-10, the Court finds BENSON TULOD y CUARTE GUILTY beyond reasonable doubt of Violation of Section 11, R.A. 9165 and sentences him to suffer the penalty of imprisonment from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and to pay a fine of ₱300,000.00 plus costs, without subsidiary imprisonment in case of insolvency.

2. In Criminal Case No. 84-12, the Court finds BENSON TULOD *y* CUARTE GUILTY beyond reasonable doubt of Violation of Sec. 5, R.A. 9165 and sentences him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 plus cost, without subsidiary imprisonment in case of insolvency.

The accused shall also suffer the accessory penalties under Section 35, R.A. 9165 and shall be credited in the service of his sentence with the full time during which he has undergone preventive imprisonment subject to the conditions imposed under Art. 29 of the Revised Penal Code as amended.

The shabu sachets marked as Exhs. "I" to "1-8" of the Prosecution are ordered confiscated in favor of the government and to be disposed of in accordance with the law.

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[14] *Id.*

[15] Penned by Presiding Judge Raymond C. Viray; Record, p. 232.

SO DECIDED.[16]

It ruled that the prosecution witnesses established the guilt of the accused through a clear and coherent narration of events. From the testimonies of these witnesses, the identities of the buyer and the seller of illegal drugs were sufficiently established, and the object and consideration of the sale were identified in court.

The testimonies of the prosecution witnesses deserved more weight and credit than those of the defense witnesses since the former conformed with documentary and object evidence. Absent any ill motive on the part of the arresting officers to falsely charge appellant, the trial court found no reason to disbelieve their testimonies.[17]

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for rendering a verdict of conviction despite the failure of the arresting officers to immediately mark the seized items at the place of arrest; although appellant was arrested at his residence at 29th Street, West Tapinac, Olongapo City, the seized items were marked only at Police Station 2, Barangay Kababae. Too, the testimonies of the arresting officers were highly incredible. Appellant would not have openly sold illegal drugs to strangers in his residence. Illicit transactions such as drug trades are carried out with utmost secrecy or whispers to avoid detection.[18]

The Office of the Solicitor General (OSG), through State Solicitor M. L. Carmela P. Aquino-Cagampang defended the verdict of conviction.[19] It argued that the elements of illegal sale and possession of dangerous drugs were duly established during trial. More, the prosecution had proven an unbroken

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[16] Record, p. 239.

[17] *Id*. at 235-238.

[18] CA *rollo*, pp. 48-50.

[19] *Id*. at 86.

chain of custody over the *corpus delicti*: PO2 Domingo and PO2 Reyes marked the seized items at the place of arrest; they turned over the seized items to SPO2 delos Reyes at Police Station 2 where the inventory and photograph were conducted; after which, SPO2 delos Reyes prepared the request for laboratory examination and delivered the seized items to the crime laboratory; and since both parties stipulated on the testimonies of the forensic chemist, the prosecution established the chain of custody required by law. Any purported procedural lapse is immaterial since the integrity and evidentiary value of the *corpus delicti* were duly preserved.[20]

The Court of Appeals' Ruling

By Decision dated September 9, 2015, the Court of Appeals affirmed.[21] It found that appellant was arrested *in flagrante delicto* selling dangerous drugs during a buy-bust operation. Upon appellant's arrest, PO2 Reyes conducted a body search on him which yielded eight (8) more sachets of *shabu*. Hence, the prosecution was able to establish the elements of the crimes charged.[22]

The alleged failure of the arresting officers to strictly comply with Section 21, RA 9165 was not fatal to the prosecution's case since they were able to establish that the integrity and evidentiary value of the seized items were duly preserved.[23]

Finally, appellant's denial cannot overcome the presumption of regularity accorded to police officers in their performance of official functions.[24]

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[20] *Id.* at 95-101.

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

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

[23] *Id.* at 12.

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

The Present Appeal

Appellant now seeks for a verdict of acquittal from the Court.

In compliance with Resolution dated January 25, 2017, the OSG manifested that in lieu of a supplemental brief, it was adopting its brief before the Court of Appeals.[25]

On the other hand, appellant filed his Supplemental Brief,[26] adopting his brief before the Court of Appeals and raising two new arguments for his acquittal. **First**, the inconsistent testimonies of the arresting officers on when the seized items were turned over to SPO2 delos Reyes cast doubt on the integrity of the *corpus delicti*.[27] **Second**, no one in the right mind would sell contraband to known police officers. Here, appellant testified to knowing PO2 Domingo and PO2 Reyes even before the alleged buy-bust operation.

The Threshold 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 seized items?

Ruling

We rule in the affirmative.

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court.[28]

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[25] *Id.* at 51.

[26] *Id.* at 33.

[27] *Id*. at 33-35.

[28] *People v. Jocson*, G.R. No. 199644, June 19, 2019; see also *People v. Barte*, 806 Phil. 533, 542 (2017).

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody:[29] ***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.[30]

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.[31]

Here, appellant is charged with unauthorized sale and possession of dangerous drugs allegedly committed on March 12, 2010. The governing law, therefore, is RA 9165 before its amendment in 2014.

Section 21 of RA 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases, *viz* :

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[29] As defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

x x x x x x x x x

b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition [.]

x x x x x x x x x

[30] *People v. Dahil*, 750 Phil. 212, 231 (2015).

[31] *People v. Jocson*, G.R. No. 199644, June 19, 2019; see also *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

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

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

x x x x x x x x x

The Implementing Rules and Regulations of RA 9165 further commands:

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

Here, the Court acquits appellant on two (2) grounds:

First. The inconsistent testimonies of the arresting officers pertaining to where they turned over the seized items to SPO2 delos Reyes cast doubt on the integrity of the *corpus delicti*.

PO2 Domingo testified, thus:

x x x x x x x x x

Q: After marking the sachet of shabu with your initials, what did you do to it?

A: We turned it over to our duty investigator, SPO2 Allan delos Reyes, ma'm.

Q: Where did you turn over the sachet of shabu to SPO2 Allan delos Reyes?

A: At the area of operation, (emphasis added)

x x x x x x x x x

And PO2 Reyes:

x x x x x x x x x

Q: How about the 8 sachets of shabu, what did you do with them?

A: I gave it also to SPO2 Allan delos Reyes, ma'm.

Q: Where did you give the marked money and 8 sachets to SPO2 Allan delos Reyes?

A: At the scene, ma'm. (emphasis added)

x x x x x x x x x

SPO2 delos Reyes himself, however, denied receiving them at the place of operation, *viz*:

Q: Who marked the confiscated items?

A: The sachet of shabu that was purchased by the poseur-buyer was marked by our poseur buyer, David Sergius Domingo while the confiscated sachets of shabu was marked by PO1 Lawrence Reyes as well as the recovered marked money.

Q: So you know what [the] Police Officers [did] to the confiscated items after marking them?

A: Yes, ma'm.

Q: What?

A: They turn[ed] it over to me at Police Station "2", ma'm. (emphasis and words in brackets added)

In ***People v. Alcuizar***,[32] the Court considered the vague recollection of the arresting officers regarding the transfer of the custody of seized item — whether the investigating officer received it at the place of operation or at the police station, as a ground to acquit the accused.

Second. It is a matter of record that only appellant, barangay official Allan Dean Haley and city prosecutor representative Jaime Navarro were present to witness the inventory and photograph of the seized items. No explanation was offered for the absence of a representative from the media.

In ***People v. Abelarde***,[33] the accused was acquitted of violation of Section 5, RA 9165 because there was no evidence that the inventory of the seized dangerous drugs was done in the presence of an elected official, a media representative and a representative from the DOJ.

Similarly, in ***People v. Macud***,[34] the buy-bust team similarly failed to secure the presence of the required witnesses to the conduct of inventory of the seized drug items. For this, the Court, too, rendered a verdict of acquittal.

Indeed, the presence of the insulating witnesses during inventory is vital. In the absence of these persons, the possibility of switching, planting, or contamination of the evidence negates the credibility of the seized drug and other confiscated

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[32] 662 Phil. 794, 808-809 (2011).

[33] G.R. No. 215713, January 22, 2018.

[34] G.R. No. 219175, December 14, 2017, 849 SCRA 294, 321.

items.[35] Non-compliance with the requirement is, therefore, fatal to the prosecution's case.

Although the Implementing Rules and Regulations of RA 9165 offers a saving clause allowing leniency whenever there are justifiable grounds to deviate from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved, the prosecution offered no such explanation here. In fine, the condition *sine qua non* for the saving clause to become operational was not complied with. For the same reason, the proviso "so long as the integrity and evidentiary value of the seized items are properly preserved", too, will not come into play.[36] Absent any acceptable explanation for the deviation from the procedural requirements of the chain of custody rule, the *corpus delicti* cannot be deemed preserved.

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated September 9, 2015 of the Court of Appeals in CA-G.R. CR-H.C. No. 06622 is **REVERSED** and **SET ASIDE**.

Appellant **BENSON TULOD *y* CUARTE** is **ACQUITTED**. The Director of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release appellant Benson Tulod *y* Cuarte 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.

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[35] *People v. Alsarif Bintaib y Florencio*, G.R. No. 217805, April 2, 2018.

[36] *People v. Jocson*, G.R. No. 199644, June 19, 2019.

SECOND DIVISION

[G.R. No. 235783. September 25, 2019]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ANTHONY CHAVEZ *y* VILLAREAL @ ESTONG and MICHELLE BAUTISTA *y* DELA CRUZ,** *accused,* **ANTHONY CHAVEZ *y* VILLAREAL @ ESTONG,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; RAPE THROUGH FORCE, THREAT OR INTIMIDATION; ELEMENTS. —** For the charge of rape under Article 266-A, paragraph 1(a) of the Revised Penal Code, as amended by Republic Act No. 8353, to prosper, the prosecution must prove that: (1) the male offender had carnal knowledge of a woman; and (2) he accomplished the said act through force, threat or intimidation. In rape cases, if the woman is under twelve (12) years of age, proof of force or intimidation is not required to establish statutory rape. **However, if the woman is twelve (12) years of age or over at the time she was violated, sexual intercourse through force, violence, intimidation or threat must be proven by the prosecution.**

2. **ID.; ID.; ID.; THE EXISTENCE OF WILLINGNESS ON THE PART OF THE VICTIM SHOWS REASONABLE DOUBT THAT THE ACCUSED EXERTED FORCE OR INTIMIDATION ON THE VICTIM WHEN HE HAD CARNAL KNOWLEDGE OF HER; ACCUSED'S ACT OF PLACING AN X-RATED FILM WHICH BOTH THE ACCUSED AND THE VICTIM WATCHED AMOUNTS TO INDUCEMENT OR ENTICEMENT UNDER SEXUAL ABUSE CASES UNDER R.A. 7610 BUT NOT TO FORCE OR INTIMIDATION AS AN ELEMENT OF RAPE. —** In her testimony, AAA admitted that she willingly went to Estong's house upon being invited by the latter. Moreover, during cross-examination, AAA admitted that the said incident on 15 May 2009 was not the first time Estong had carnal knowledge of her. According to AAA, there were five (5) prior incidents but, despite this, she still heeded the invitation of Estong to go watch television in Estong's house. In this

particular case, the element of force or intimidation is absent to justify a conviction for rape. Reasonable doubt exists that Estong exerted force or intimidation on AAA when Estong had carnal knowledge of AAA. The action of Estong in placing an x-rated film which both Estong and AAA watched, if any, amounts to inducement or enticement under sexual abuse cases under RA 7610 but not to force or intimidation as an element of rape under the Revised Penal Code. In this case, what is clear is that AAA was aware of previous sexual advances by Estong and yet AAA still heeded the invitation of Estong. Moreover, AAA admitted that she repeatedly went to Estong's house whenever he would call her. Such is not the usual conduct of a rape victim. In fact, if there were indeed previous sexual encounters against her will, under ordinary circumstances, AAA would have avoided Estong and would have stayed away from Estong's house. The existence of willingness on the part of the victim, AAA, shows reasonable doubt that the carnal knowledge between AAA and Estong was not un-consensual. Accordingly, Estong must be acquitted of the charge of rape.

3. ID.; SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (REPUBLIC ACT NO. 7610); SEXUAL ABUSE UNDER SECTION 5(b) THEREOF; ELEMENTS; LASCIVIOUS CONDUCT, DEFINED. — The elements of sexual abuse are the following, to wit: (l) 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 eighteen (18) years old. Under Section 32, Article XIII of the Implementing Rules and Regulations of RA 7610, lascivious conduct is defined as follows: ***[T]he 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 the 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. We agree with the CA that the prosecution established beyond reasonable doubt that Estong committed sexual abuse on BBB. According to BBB's testimony, Estong undressed her, mashed and sucked her breasts and caressed her vagina. Bautista cooperated in the commission of the sexual

abuse against BBB by inviting BBB, by assisting in the commission of the crime, and by assisting in Estong's escape.

4. REMEDIAL LAW; EVIDENCE; DEFENSES OF ALIBI AND DENIAL; INHERENTLY WEAK DEFENSES AND CONSTITUTE SELF-SERVING NEGATIVE EVIDENCE WHICH CANNOT BE ACCORDED GREATER EVIDENTIARY WEIGHT THAN THE POSITIVE DECLARATION OF A CREDIBLE WITNESS. — This Court agrees with the finding of both the RTC and CA that the testimonies of BBB and Galvez, including their positive identification of the two accused, outweigh the defenses of alibi and denial of Estong and Bautista. In *Garingarao v. People*, this Court held that in cases of acts of lasciviousness and sexual abuse, the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused. Furthermore, both denial and alibi are inherently weak defenses and constitute self-serving negative evidence which cannot be accorded greater evidentiary weight than the positive declaration of a credible witness. In the present case, Estong and Bautista's defenses of alibi and denial must fail over the positive and straightforward testimonies of BBB and Galvez on the said incident. Both, Estong and Bautista are guilty of sexual abuse under Section 5(b) of RA 7610.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO, *Acting C.J.*:

The Case

Before the Court is an appeal assailing the Decision[1] dated 11 August 2017 of the Court of Appeals (CA) in CA-G.R.

[1] *Rollo*, pp. 2-25. Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Socorro B. Inting and Rafael Antonio M. Santos concurring.

CR-HC No. 08563. The CA affirmed the Decision[2] dated 1 June 2016 of the Regional Trial Court (RTC) of Pasig City, Branch 261, in Criminal Case Nos. 140189 and 140190, convicting appellant Anthony Chavez *y* Villareal @ Estong (Estong) of rape under Article 266-A, paragraph 1(a) of the Revised Penal Code. In Criminal Case No. 140190, the RTC also convicted Estong and Michelle Bautista *y* Dela Cruz (Bautista) of violating Section 5(b) of Republic Act No. 7610 (RA 7610), otherwise known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act."

In Criminal Case No. 140189, Estong was charged with rape under Article 266-A, paragraph 1(a) of the Revised Penal Code, as amended by Republic Act No. 8353. The Information states:

> On or about May 15, 2009, in Pasig City and within the jurisdiction of this Honorable Court, the accused, with lewd design, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse upon the person of AAA, a minor, thirteen (13) years old, against her will and consent.
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> Contrary to law.[3]

In Criminal Case No. 140190, Estong and Bautista were both charged with violation of Section 5(b) of RA 7610. The Information states:

> On or about May 17, 2009, in Pasig City and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and both of them mutually helping and aiding each other, x x x accused Anthony Chavez y Villareal, alias Estong with lewd designs, by means of force and intimidation, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon the person of BBB, a minor, twelve (12) years old, by mashing her breast, licking her vagina and forc[ing] her to hold his penis, all against her will and consent; while accused Michelle Bautista y Dela Cruz, as accomplice, cooperated in the execution of the offense by supplying material aid in the execution of the offense in an efficacious

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[2] CA *rollo*, pp. 42-53. Penned by Judge Florian Gregory D. Abalajon.

[3] *Id*. at 42.

way — that is by inviting the minor victim to the place of the accused and while performing the lascivious act upon the person of [the] minor victim, Michelle Bautista was watching; which acts are prejudicial to [the] normal growth and development of the complainant as a minor or as a human being.

Contrary to law.[4]

Upon arraignment, Estong and Bautista entered a plea of not guilty. Trial ensued.

The Version of the Prosecution

The prosecution presented the first victim, AAA,[5] on the witness stand. AAA, then a fourteen (14) year old high school student testified that on 15 May 2009, while AAA was in her grandmother's house, Estong invited her to his house to watch television. BBB went inside but left after a while. After BBB left, Estong played an x-rated film. While Estong and AAA were watching the x-rated film, Estong started to remove AAA's panty. After undressing AAA, Estong then inserted his penis into AAA's vagina. AAA allegedly resisted but Estong held her two hands. According to AAA, the sexual abuse lasted for twenty-five minutes. Estong then gave AAA Twenty Pesos (20) after the incident. AAA then went out of the house while Estong remained inside.[6]

AAA was outside Estong's house when her father arrived. AAA's father asked AAA what she was doing there and AAA did not answer. According to AAA, she did not immediately tell her father of the alleged rape because AAA was afraid of Estong and her father. According to AAA, she only told her father about what Estong did to her when another victim, BBB, filed a complaint

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[4] *Id*. at 43.

[5] In accordance with Amended Administrative Circular No. 83-2015, the identities of the parties, records and court proceedings are kept confidential by replacing their names and other personal circumstances with fictitious initials, and by blotting out the specific geographical location that may disclose the identities of the victims.

[6] *Rollo*, p. 5.

in the barangay against Estong. Upon learning of the incident, AAA's father brought her to Rizal Medical Center to undergo a medical examination. On cross-examination, AAA claimed that the incident on 15 May 2009 was not the first time Estong sexually abused her. AAA claimed that there were five (5) prior incidents of sexual advances against her by Estong but despite of which, she still heeded the invitation of Estong inside his house.[7]

On 28 April 2010, BSF Edelito A. Aranda (BSF Aranda), a member of the Barangay Security Force of Pasig-City, took the witness stand. According to BSF Aranda, on 18 May 2009, he was on duty at the time BBB's mother called them to report that Estong raped BBB. Upon receiving the complaint, BSF Aranda proceeded to the house of BBB's mother. However, during that time, through the help of Bautista, Estong had already escaped. BSF Aranda then chased Estong to Maybunga where BSF Aranda arrested Estong.[8]

On 20 October 2010, BBB, the second victim, took the witness stand. BBB, who was then fourteen (14) years old during the alleged rape, testified that on 17 May 2009 at around 8:30 in the evening, while BBB was at her neighbor's house, AAA called her. After going down to her neighbor's house, Bautista called BBB to buy ice and softdrinks. BBB then bought the items and brought the same to the house of Estong and Bautista. Bautista then closed the door and told BBB that they would just play cards. Estong, who was in the same room, then undressed BBB and caressed BBB's vagina. Estong then mashed and licked BBB's breast. According to BBB, Bautista was just watching while she was being sexually abused by Estong. The daughter of BBB's neighbor saw them and kicked the door, forcing Estong to open it. The said neighbor then requested the barangay officials to arrest Estong. According to BBB, she and AAA were friends and neighbors; BBB alleged that the sexual abuse committed to her had affected her schooling.[9]

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

[8] *Id*. at 6.

[9] *Id*. at 7.

On 6 April 2011, Eva C. Galvez (Galvez) testified that she and, both, Estong and Bautista were living in the same house. Galvez, together with her family, was occupying the upper portion of the house, while Estong and Bautista were occupying the lower portion.[10] Galvez testified and confirmed that she saw Estong molesting BBB and said that Bautista was in the same room watching and not doing anything. Galvez claimed that while she was resting, her daughter rushed upstairs and told her that Estong and BBB were doing something downstairs. Galvez immediately went down to verify the information and Galvez saw Estong and BBB naked. Estong was sitting on the chair while holding his penis and one of his hands was mashing the breast of BBB. Bautista was in the same room washing and slicing meat. According to Galvez, there was no indication that Bautista tried to stop or prevent Estong from molesting BBB. Galvez claimed that she heard Bautista utter the words: "*patay nahuli tayo ni Ate Eva*." BBB then told Galvez that she was molested by Estong.[11]

Finally, the prosecution presented PCI Ian Virtucio. PCI Virtucio testified and confirmed the findings of the Medico-Legal Report prepared by PCI Mamerto Bernabe.[12]

The Version of the Defense

The defense presented Estong and Bautista. Estong denied the allegations of the prosecution. Estong claimed that AAA was just his neighbor and he did not know BBB. Estong also claimed that he was sleeping in his rented house in Pasig City during the time the alleged rape of AAA happened. Bautista also denied the allegations of the prosecution. Bautista alleged that she could not have been an accomplice because she was working as a Metro Aide, sweeping the streets, when the alleged sexual abuse against BBB was committed by Estong.[13]

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[10] *Id*. at 8.

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

[12] *Id*. at 9.

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

The Ruling of the RTC

In a Decision dated 1 June 2016, the RTC found Estong guilty of rape under Article 266-A, paragraph 1(a) of the Revised Penal Code. The RTC also found Estong and Bautista guilty of violating Section 5(b) of RA 7610. In convicting both Estong and Bautista, the trial court found that: (1) all the elements of the crime of rape under Article 266-A, paragraph 1(a) of the Revised Penal Code, as amended by Republic Act No. 8353, in relation to Section 5(b) of Republic Act No. 8369 and violation of Section 5(b) of RA 7610 are present; (2) the testimonies of AAA and BBB are credible because they were convincingly delivered in a straightforward manner; (3) the testimony of BBB was corroborated on material points by the testimony of prosecution witness Galvez; and (4) Estong and Bautista's defenses of denial and alibi cannot prevail because they are both weak and self-serving.[14]

The RTC held that the prosecution was able to prove beyond reasonable doubt all the elements of rape and child abuse. The RTC found that Estong, through force and intimidation, had carnal knowledge of AAA, a minor, against her will. The RTC held that Estong was also guilty of sexual abuse under Section 5(b) of RA 7610 against BBB. The RTC ruled that Bautista was guilty beyond reasonable doubt as an accomplice to the commission of the crime of sexual abuse.

The dispositive portion of the RTC Decision reads:

WHEREFORE, in light of all the foregoing considerations, judgment is hereby rendered as follows:

1) In Criminal Case No. 140189, accused *Anthony Chavez y Villareal @ Estong*, is hereby found GUILTY beyond reasonable doubt of the crime of Rape defined and penalized under Art. 266-A, par. 1 (a) of the Revised Penal Code as amended by R.A. 8353 and in further rel. to Sec. 5(a) of R.A. 8369 and is hereby sentenced to suffer the penalty of *reclusion perpetua*. In addition, he is hereby ordered to pay

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[14] *Id*. at 12.

AAA the amount of ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱25,000.00 as exemplary damages.

2) In Criminal Case No. 140190, accused *Anthony Chavez y Villareal @ Estong*, is hereby found GUILTY beyond reasonable doubt for Violation of Section 5(b) of R.A. 7610 and accused Michelle Bautista y Dela Cruz as an accomplice to its commission.

Applying, the indeterminate sentence law, accused *Anthony Chavez y Villareal @ Estong* is hereby sentenced to suffer the penalty of 8 years *prision mayor* as minimum to 14 years, 4 months and 1 day of *reclusion temporal*, as maximum, while accused Michelle Bautista y Dela Cruz, being an accomplice of the crime is hereby sentenced to suffer the penalty of 4 years and 2 months of *prision correccional*, as minimum to 8 years and 1 day of *prision mayor* as maximum.

SO ORDERED.[15]

The Ruling of the Court of Appeals

In a Decision dated 11 August 2017, the CA affirmed with modification the ruling of the RTC. The CA held that Estong was guilty of the crime of rape. The CA held that all the elements of the crime of rape under the Revised Penal Code were present. The CA also affirmed the ruling of the RTC that both Estong and Bautista were guilty of sexual abuse. In Criminal Case No. 140189, the CA modified the award of exemplary damages by increasing it to ₱30,000.00 in addition to civil indemnity and moral damages of ₱75,000.00 each. In Criminal Case No. 140190, the CA increased the award of moral damages to ₱50,000.00. The dispositive portion of the CA's decision reads:

WHEREFORE, premises considered, the instant appeal filed by oppositor-appellant is hereby DISMISSED. The assailed Decision is AFFIRMED with MODIFICATION with respect to the award of exemplary damage[s] and imposition of interest on all civil liabilities in Criminal Case No. 140189 and the imposition of moral damage[s] and interest thereon in Criminal Case No. 140190, respectively, thus:

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[15] CA *rollo*, p. 53.

In Criminal Case No. 140189[,] appellant is ordered to pay AAA the increased amount of ₱30,000 as exemplary damages in addition to civil indemnity and moral damages of ₱75,000.00 each. An interest of six percent (6%) *per annum* on all the aforesaid civil liabilities to be reckoned from the finality of this decision until full payment shall be imposed.

In Criminal Case No. 140190[,] appellant is ordered to pay BBB the amount of ₱50,000.00 as moral damages and an interest of 6% *per annum* shall be imposed thereon to be reckoned from the finality of this decision until full payment.

SO ORDERED.[16]

Hence, this appeal.

The Issues

Whether Estong is guilty of rape under under Article 266-A, paragraph 1(a) of the Revised Penal Code, as amended by Republic Act No. 8353.

Whether Estong and Bautista are guilty of sexual abuse under Section 5(b) of RA 7610.

The Ruling of this Court

In Criminal Case No. 140189, this Court reverses the ruling of the CA and acquits Estong of the crime of rape on the ground that the element of force or intimidation is absent. The prosecution did not prove beyond reasonable doubt the existence of force or intimidation as an element of rape under Article 266-A, paragraph 1(a) of the Revised Penal Code, as amended by Republic Act No. 8353.

In Criminal Case No. 140190, this Court sustains the ruling of the CA and convicts both Estong and Bautista of sexual abuse under Section 5(b) of RA 7610. This Court sustains the finding of the CA that all the elements of sexual abuse under Section 5(b) of RA 7610 were committed by Estong to BBB. Bautista participated in the crime of sexual abuse as an accomplice.

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[16] *Rollo*, p. 24.

Estong is not guilty of the rape of AAA. The prosecution failed to prove that the carnal knowledge between Estong and AAA was accompanied by force or intimidation on the part of Estong.

Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, defines the crime of rape, to wit:

ART. 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 is otherwise unconscious;

(c) By means of fraudulent machination or grave abuse of authority;

(d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person. (Emphasis supplied)

For the charge of rape under Article 266-A, paragraph 1(a) of the Revised Penal Code, as amended by Republic Act No. 8353, to prosper, the prosecution must prove that: (1) the male offender had carnal knowledge of a woman; and (2) he accomplished the said act through force, threat or intimidation.[17] In rape cases, if the woman is under twelve (12) years of age, proof of force or intimidation is not required to establish statutory rape. **However, if the woman is twelve (12) years of age or over at the time she was violated, sexual intercourse**

[17] *People v. Delen*, 733 Phil. 321, 333 (2014).

through force, violence, intimidation or threat must be proven by the prosecution. In Criminal Case No. 140189, Estong was charged with the rape of AAA. The Information charged Estong with having carnal knowledge of AAA, then thirteen (13) years old, without her consent by means of force or intimidation. Notably, the burden of proof rests with the prosecution to establish that Estong's carnal knowledge of AAA was accompanied by force or intimidation. In the present case, the CA affirmed the finding of the RTC that the prosecution established beyond reasonable doubt that Estong exerted force or intimidation when he had carnal knowledge of AAA.

We do not agree.

In convicting Estong of the crime of rape against AAA, both the RTC and CA heavily relied on AAA's testimony and the Medico-Legal Report. A perusal of the records of the case negates the conclusion of both the RTC and CA that the carnal knowledge between Estong and AAA was accompanied by force or intimidation on the part of Estong. In AAA's testimony, she claimed that she freely and voluntarily went to Estong's house to watch television. AAA also alleged that it was not the first time she had carnal knowledge with Estong. As a matter of fact, in AAA's testimony, despite the alleged previous incidents of carnal knowledge with Estong, AAA still voluntarily went to Estong's house when she was invited to watch television, to wit:

Q: So were you invited by Estong, how were you able to enter the house of Estong?
A: **Tinawag niya po ako, dahil nandoon po ako sa bahay ng lola ko para manood ng T.V.**
Q: So while watching T.V., what happened if any?
A: **Pumasok po si BBB pero lumabas din po kaagad, tapos isinalang po ni Kuya Estong iyong bala ng DVD na bold, nanood na po kami.**

x x x x x x x x x

Q: **So while you were watching the movie, what happened next if any?**
A: Isinara po ni Kuya Estong iyong pintuan at bigla pong hinubad ni Kuya Estong ang short at panty ko.

Q: All of your dress?
A: Opo.

Q: Then what happened?
A: Tapos po pinasok niya po yung pribadong ari niya.[18] (Emphasis supplied)

In her testimony, AAA admitted that she willingly went to Estong's house upon being invited by the latter. Moreover, during cross-examination, AAA admitted that the said incident on 15 May 2009 was not the first time Estong had carnal knowledge of her. According to AAA, there were five (5) prior incidents but, despite this, she still heeded the invitation of Estong to go watch television in Estong's house. In this particular case, the element of force or intimidation is absent to justify a conviction for rape. Reasonable doubt exists that Estong exerted force or intimidation on AAA when Estong had carnal knowledge of AAA.

The action of Estong in placing an x-rated film which both Estong and AAA watched, if any, amounts to inducement or enticement[19] under sexual abuse cases under RA 7610 but not to force or intimidation as an element of rape under the Revised Penal Code. In this case, what is clear is that AAA was aware of previous sexual advances by Estong and yet AAA still heeded the invitation of Estong. Moreover, AAA admitted that she repeatedly went to Estong's house whenever he would call her. Such is not the usual conduct of a rape victim. In fact, if there were indeed previous sexual encounters against her will, under ordinary circumstances, AAA would have avoided Estong and would have stayed away from Estong's house. The existence of willingness on the part of the victim, AAA, shows reasonable doubt that the carnal knowledge between AAA and Estong was not un-consensual. Accordingly, Estong must be acquitted of the charge of rape.

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[18] *Rollo*, pp. 15-16.

[19] Paragraph (a) of Section 5 of RA 7610 states: (a) Those who engage in or promote, facilitate **or induce** child prostitution which include, but are not limited to, the following:

x x x x x x x x x (Emphasis supplied)

Estong is guilty of the crime of sexual abuse under Section 5(b) of RA 7610 against BBB. Bautista participated in the sexual abuse as an accomplice.

Section 5, Article III of RA 7610 provides:

Section 5. *Child Prostitution and Other Sexual Abuse*.— Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

(1) Acting as a procurer of a child prostitute;

(2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;

(3) Taking advantage of influence or relationship to procure a child as prostitute;

(4) Threatening or using violence towards a child to engage him as a prostitute; or

(5) Giving monetary consideration, goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; and

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment. (Emphasis supplied)

The elements of sexual abuse are the following, to wit: (l) 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 eighteen (18) years old.[20]

Under Section 32, Article XIII of the Implementing Rules and Regulations of RA 7610, lascivious conduct is defined as follows:

***[T]he 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 the 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. (Boldfacing and italicization supplied)

We agree with the CA that the prosecution established beyond reasonable doubt that Estong committed sexual abuse on BBB. According to BBB's testimony, Estong undressed her, mashed and sucked her breasts and caressed her vagina. Bautista cooperated in the commission of the sexual abuse against BBB by inviting BBB, by assisting in the commission of the crime, and by assisting in Estong's escape. BBB's testimony provides:

Q: When Michelle called you, what happened next Ms. Witness?
A: She called me to buy ice and RC, sir.

Q: Now, prior to this incident, how long have you known Michelle?

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[20] *Garingarao v. People*, 669 Phil. 512, 523 (2011).

A: I have known her since they transferred in our neighborhood, sir. She is my neighbor also, sir.

Q: If you know, is Michelle living with someone?
A: Yes, sir.

Q: And who was that person if you would know, Ms. Witness?
A: I forgot already sir.

Q: Now, after she asked you to buy those things, what did you do next?
A: She closed the door and told me that we will play baraha but she immediately undressed me sir.

Q: Who undressed you, (Ms.) Witness?
A: Estong, sir.

Q: Is this Estong present inside the court room now?
A: Yes, sir (witness stood up and pointed to a man wearing Pasig City Jail Detainee uniform who stood up and stated that his name is Anthony Chavez)

Q: Now after he took off your clothes, what else did he do, if any?
A: Hinipuan niya po ako.

Q: Ms. Witness, in order to put in [the] records, where did he touch you?
A: (witness pointed to her private parts her vagina)

Q: And when he was touching you at your vagina, were you already undressed?
A: Yes, sir.

Q: Now, did he also take off your upper clothing?
A: Yes, sir.

Q: Aside from your vagina, what else did he touch?
A: My breast, sir.

Q: Both breast[s]?
A: Yes, sir.

Q: Was he using both hands?
A: Yes, sir.

Q: Now, aside from touching you inappropriately, what else did he do, Ms. Witness?
A: He sucked my breast, sir.

Q: Was it both breast[s]?
A: Yes, sir.

Q: Now, after doing [t]hat to you, what else did he do?
A: He mashed my breast, sir?

Q: Okay, both breast[s]?
A: Yes, sir.

Q: He used both his hands?
A: Yes, sir.

Q: Now, after doing that, what else did he do?
A: He opened the door because somebody saw us. The daughter of Ate Eva saw us, sir.[21]

Galvez, the neighbor, confirmed BBB's testimony. Galvez testified that she saw Estong sitting on a chair while BBB was holding his penis and his other hand was mashing BBB's breast. Galvez confirmed that Bautista was likewise inside the room and was washing and slicing meat. Galvez testified that she did not see any indication that Bautista tried to stop or prevent Estong from sexually abusing BBB. According to Galvez, she heard Bautista utter the words: "*patay nahuli tayo ni Ate Eva*." When the barangay official arrived, Bautista also helped Estong escape which led to the pursuit by BSF Aranda. Eventually, BSF Aranda caught Estong in Maybunga.

This Court agrees with the finding of both the RTC and CA that the testimonies of BBB and Galvez, including their positive identification of the two accused, outweigh the defenses of alibi and denial of Estong and Bautista. In *Garingarao v. People*,[22] this Court held that in cases of acts of lasciviousness

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[21] *Rollo*, pp. 19-21.

[22] *Supra* note 20.

and sexual abuse, the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused.[23] Furthermore, both denial and alibi are inherently weak defenses and constitute self-serving negative evidence which cannot be accorded greater evidentiary weight than the positive declaration of a credible witness.[24] In the present case, Estong and Bautista's defenses of alibi and denial must fail over the positive and straightforward testimonies of BBB and Galvez on the said incident. Both, Estong and Bautista are guilty of sexual abuse under Section 5(b) of RA 7610.

WHEREFORE, the Court **PARTIALLY GRANTS** the appeal. The Decision of the Court of Appeals dated 11 August 2017 finding appellant Anthony Chavez *y* Villareal @ Estong guilty of the crime of rape punishable under Article 266-A, paragraph 1(a) of the Revised Penal Code, as amended by Republic Act No. 8353, is **REVERSED** and **SET ASIDE**. Appellant Anthony Chavez *y* Villareal @ Estong is **ACQUITTED** in so far as his criminal liability for the crime of rape is concerned.

The Court **AFFIRMS** the Decision dated 11 August 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08563, finding appellant Anthony Chavez *y* Villareal @ Estong and Michelle Bautista *y* Dela Cruz guilty beyond reasonable doubt of sexual abuse under Section 5(b), Article III of Republic Act No. 7610. We sustain the award of Fifty Thousand Pesos (₱50,000.00) as moral damages in Criminal Case No. 140190 and the imposition thereon of an interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

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

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[23] *Supra* note 20, at 522.

[24] *Id.*

FIRST DIVISION

[G.R. No. 239823. September 25, 2019]

ANGELICA ANZIA FAJARDO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; MALVERSATION OF PUBLIC FUNDS; ELEMENTS; PRESENT. —** Malversation of Public Funds is defined and penalized under Article 217 of the RPC, as amended x x x. The elements of the crime are as follows: (*a*) the offender is a public officer; (*b*) he has custody or control of funds or property by reason of the duties of his office; (*c*) the funds or property are public funds or public property for which he was accountable; and (*d*) he appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take them. After a judicious perusal of the case, the Court finds the confluence of the foregoing elements to uphold Fajardo's conviction.

2. **ID.; ID.; ID.; THE FAILURE OF THE ACCOUNTABLE PUBLIC OFFICER TO EXPLAIN OR PRODUCE UPON DEMAND PUBLIC FUNDS WHICH WERE IN HER CUSTODY GIVES RISE TO THE PRESUMPTION THAT SHE HAD CONVERTED THE FUNDS TO HER PERSONAL USE. —** As the records show, Fajardo was a public officer, being the Cashier V and OIC, Division Chief III, Prize Payment (Teller) Division of the Treasury Department of PCSO. Her duties as such required her to handle cash, as in fact, at the time material to this case, Fajardo was authorized to draw a cash advance in the amount of ₱3M intended as payments for sweepstakes and lotto low-tier prizes and the PCSO - POSC Scratch IT Project. By reason thereof, Fajardo had in her custody public funds in the total amount of ₱3M for which she was clearly accountable. Unfortunately, part of the said funds went missing while in her custody. After the conduct of two (2) spot audits on her account, a total deficit in the amount of ₱1,877,450.00 was discovered, which she failed to explain or produce upon demand. Her failure to account for the said moneys thereby gave rise to the presumption that she

had converted the funds to her personal use, which presumption she failed to rebut with competent evidence. Accordingly, her conviction for the crime charged stands.

3. POLITICAL LAW; CONSTITUTIONAL LAW; THE CONSTITUTION; BILL OF RIGHTS; RIGHT TO COUNSEL; A PARTY IN AN ADMINISTRATIVE INQUIRY OR INVESTIGATION MAY OR MAY NOT BE ASSISTED BY COUNSEL, IRRESPECTIVE OF THE NATURE OF THE CHARGES AND OF THE PARTY'S CAPACITY TO REPRESENT HERSELF, AND NO DUTY RESTS ON SUCH BODY TO FURNISH THE PERSON BEING INVESTIGATED WITH COUNSEL, AS SUCH INQUIRIES ARE CONDUCTED MERELY TO DETERMINE WHETHER THERE ARE FACTS THAT MERIT THE IMPOSITION OF DISCIPLINARY MEASURES AGAINST ERRING PUBLIC OFFICER AND EMPLOYEE, WITH THE PURPOSE OF MAINTAINING THE DIGNITY OF GOVERNMENT SERVICE. — The right to counsel *vis-à-vis* administrative inquiries or investigations has already been succinctly explained in *Carbonel v. Civil Service Commission*, where the Court declared that "a party in an administrative inquiry may or may not be assisted by counsel": However, it must be remembered that the right to counsel under Section 12 of the Bill of Rights is meant to protect a suspect during custodial investigation. Thus, the exclusionary rule under paragraph (2), Section 12 of the Bill of Rights *applies only to admissions made in a criminal investigation but not to those made in an administrative investigation*. While investigations conducted by an administrative body may at times be akin to a criminal proceeding, the fact remains that, under existing laws, *a party in an administrative inquiry may or may not be assisted by counsel*, irrespective of the nature of the charges and of petitioner's capacity to represent herself, and *no duty rests on such body to furnish the person being investigated with counsel*. The right to counsel is not always imperative in administrative investigations because such inquiries are conducted merely to determine whether there are facts that merit the imposition of disciplinary measures against erring public officers and employees, with the purpose of maintaining the dignity of government service.

4. ID.; ID.; ID.; RIGHT AGAINST SELF-INCRIMINATION; THE RIGHT OF A PERSON NOT TO BE COMPELLED TO

BE A WITNESS AGAINST HIMSELF CAN BE CLAIMED ONLY WHEN THE SPECIFIC QUESTION, INCRIMINATORY IN CHARACTER, IS ACTUALLY PUT TO THE WITNESS, BUT IT DOES NOT GIVE A WITNESS THE RIGHT TO DISREGARD A SUBPOENA, DECLINE TO APPEAR BEFORE THE COURT AT THE TIME APPOINTED, OR TO REFUSE TO TESTIFY ALTOGETHER. — [A] person's right against self-incrimination is enshrined in Section 17, Article III of the Constitution. "The right against self-incrimination is accorded to every person who gives evidence, whether voluntary or under compulsion of subpoena, in any civil, criminal or administrative proceeding. The right is not to be compelled to be a witness against himself. It secures to a witness, whether he be a party or not, the right to refuse to answer any particular incriminatory question, *i.e.*, one the answer to which has a tendency to incriminate him for some crime." The essence of the right against self-incrimination is testimonial compulsion, that is, the giving of evidence against himself through a testimonial act. "However, the right can be claimed only when the specific question, incriminatory in character, is actually put to the witness. It cannot be claimed at any other time. It does not give a witness the right to disregard a *subpoena*, decline to appear before the court at the time appointed, or to refuse to testify altogether. The witness receiving a *subpoena* must obey it, appear as required, take the stand, be sworn and answer questions. It is only when a particular question is addressed to which may incriminate himself for some offense that he may refuse to answer on the strength of the constitutional guaranty." With the foregoing constitutional precepts in mind, the Court finds that Fajardo's contentions that (a) she was denied her right to counsel during the investigation conducted by the PCSO Legal Department and (b) her letters dated January 15 and 27, 2009 were made in violation of her right against self-incrimination are grossly misplaced.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; A RETRACTION IS AN AFTERTHOUGHT WHICH SHOULD NOT BE GIVEN PROBATIVE VALUE; RETRACTIONS CAN BE CONSIDERED AND UPHELD ONLY WHEN THERE EXIST SPECIAL CIRCUMSTANCES IN THE CASE WHICH WHEN COUPLED WITH THE RETRACTION RAISE DOUBTS AS TO THE TRUTH OF THE TESTIMONY OR STATEMENT GIVEN. — That petitioner subsequently retracted the said letters in

her counter-affidavit before the Ombudsman will not exculpate her. Courts look upon retractions with considerable disfavor because they are generally unreliable, as there is always the probability that it will later be repudiated. At most the retraction is an afterthought which should not be given probative value. Only when there exist special circumstances in the case which when coupled with the retraction raise doubts as to the truth of the testimony or statement given, can retractions be considered and upheld, which does not obtain in this case. Viewed in this light, any objections or reservations with regard to the conduct of the spot audits conducted on Fajardo's account should have been reflected on the said letters. As it is, Fajardo did not challenge the conduct of the audit nor did she point out any irregularity therein.

6. CRIMINAL LAW; MALVERSATION OF PUBLIC FUNDS; IT IS INCUMBENT UPON THE ACCOUNTABLE PUBLIC OFFICER TO PRODUCE THE PUBLIC FUNDS IN HER CUSTODY UPON DEMAND OR EXPLAIN ITS WHEREABOUTS, FAILING IN WHICH, THE PRESUMPTION OF MISAPPROPRIATION ARISES. ABSENT COMPETENT EVIDENCE TO REBUT THE SAME, HER CONVICTION FOR THE CRIME OF MALVERSATION OF PUBLIC FUNDS SHALL BE UPHELD. — [F]ajardo's argument that it is the prosecution, not her, who had the burden of proving the loss of the money in the amount of ₱1,621,476.00 and checks worth ₱37,513.00 at the time of the second spot audit on January 8, 2009 deserves little weight. Having established that the total amount of ₱3M was in her custody by reason of her public position, it was incumbent upon her to produce the same upon demand or explain its whereabouts; failing in which, the presumption of misappropriation arises as there is no competent evidence to rebut the same, the presumption stands and her conviction consequently upheld.

APPEARANCES OF COUNSEL

Tagle-Chua Cruz & Aquino for petitioner.

D E C I S I O N

PERLAS-BERNABE,* ***J.*:**

Assailed in this petition[1] for review on *certiorari* are the Decision[2] dated March 5, 2018 and the Resolution[3] dated April 18, 2018 of the Sandiganbayan (SB) in SB-17-A/R-0032, which affirmed with modification the Decision[4] dated February 17, 2017 of the Regional Trial Court of Quezon City, Branch 224 (RTC) in Crim. Case No. Q-11-170801, finding petitioner Angelica Anzia Fajardo (Fajardo) guilty beyond reasonable doubt of the crime of Malversation of Public Funds, defined and penalized under Article 217[5] of the Revised Penal Code (RPC), as amended, and sentencing her to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as maximum, and to pay a fine of ₱1,877,450.00 representing the amount misappropriated.

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* Acting Chairperson, Per Special Order No. 2704 dated September 10, 2019.

[1] *Rollo*, pp. 11-48.

[2] *Id*. at 64-89. Penned by Associate Justice Rafael R. Lagos, with Associate Justices Maria Theresa V. Mendoza-Arcega and Maryann E. Corpus-Mañalac, concurring.

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

[4] *Id*. at 50-62. Penned by Presiding Judge Tita Marilyn Payoyo-Villordon.

[5] Article 217. *Malversation of public funds or property*.— *Presumption of malversation*.— Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property shall suffer:

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.

The Facts

On June 21, 2011, Fajardo was charged with Malversation of Public Funds in an Information[6] which reads:

That on or about November 13, 2008, and sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being the Cashier V and designated OIC, Division Chief III, Prize Payment (Teller) Division, Treasury Department of the Philippines (sic) Charity Sweepstakes Office while in the performance of her official duties, committing the offense in relation thereto and taking advantage of her official position, as an accountable officer of PCSO's funds, did then and there willfully, unlawfully and feloniously appropriate, take and/or misappropriate public funds in the following manner, to wit: accused received Php3,000,000.00 as cash advance for the payment of sweepstakes and lotto low-tier prizes and for the prize seed fund of the Pacific Online System Corporation Scratch IT Project, but upon two spot audits conducted by the Internal Audit Department of the PCSO on November 13, 2008 and on January 8, 2009, the total amount of Php 1,877,450.00 were missing, and when given several opportunities

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2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than two hundred pesos but does not exceed six thousand pesos.

3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than six thousand pesos but is less than twelve thousand pesos.

4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duty forthcoming any public funds or property with which he is chargeable upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal use. (As amended by Republic Act No. 1060)

[6] See *rollo*, p. 65.

to explain the missing funds, she cannot explain nor give proof as to the whereabouts of the funds she is accountable for, to the damage and prejudice of public interest.

CONTRARY TO LAW.

At the time material to this case, Fajardo was the Cashier V and designated Officer-in-Charge (OIC), Division Chief III, Prize Payment (Teller) Division, Treasury Department of the Philippine Charity Sweepstakes Office (PCSO). As such, she exercised direct supervision and control over paying tellers and other employees assigned in the division, instituted procedures in actual payment of prizes, conducted periodic check-up and/or actual count of paid winning tickets, and requisitioned cash from the Assistant Department Manager for distribution to paying tellers.[7]

By virtue of her position, Fajardo was likewise authorized to draw a cash advance in the amount of ₱3,000,000.00 (₱3M), from which ₱2,000,000.00 (₱2M) was intended as payment of sweepstakes and lotto low-tier prizes, while ₱1,000,000.00 (₱1M) was devoted for the PCSO-Pacific Online Systems Corporation (POSC) Scratch IT Project.[8]

On the basis of two (2) letter-complaints from Crispina Doria, Division Chief of the Sales Department and Gina V. Abo-Hamda of the POSC protesting the inability of the Prize Payment Division of the Treasury Department to pay the winning Scratch IT tickets on time, as well as the delay in the replenishment of the Teller and Provincial District Office's prize fund, a spot cash audit on the account of Fajardo was ordered by Betsy B. Paruginog (Paruginog), Assistant General Manager for Finance of PCSO. Thus, on November 13, 2008, the Internal Audit Department (IAD) of the PCSO conducted a cash examination of Fajardo's account and, after a reconciliation of all the documents, checks, winning tickets, issuances, and vouchers against Fajardo's cash on hand, discovered that there was a

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[7] *Id*. at 66.

[8] *Id*.

shortage of ₱218,461.00[9] from the total accountability of ₱3M. Fajardo was furnished a copy of the certified cash count sheet reflecting the said shortage. The result of the spot audit was then forwarded to the Legal Department of the PCSO for a fact-finding investigation.[10]

The following day, or on November 14, 2008, Fajardo did not report for work. Thereafter, or on November 17, 2008, after discovering that someone went to the Treasury Department on November 16, 2008, a Sunday, and occupied Fajardo's workstation with the lights out, Paruginog directed the audit team to seal Fajardo's vault.[11]

Fajardo reported back to work on January 8, 2009. Mr. Mario Coral, head of the Treasury Department, informed her that the audit team will open her vault to conduct a spot cash count in her presence and in the presence of Paruginog, as well as representatives from the Commission on Audit (COA) and the Treasury and Legal Departments of the PCSO. The audit revealed a much bigger shortage in the amount of ₱1,877,450.00.[12] Moreover, the audit team found that the ₱1,621,476.00 worth of cash and ₱37,513.00 worth of checks presented during the first audit on November 13, 2008[13] were all missing. Thereafter, Fajardo turned over the remaining cash in the amount of ₱20,000.00 inside her vault. The IAD then furnished Paruginog a copy of the Certified Cash Count Sheet indicating the increased shortage of ₱1,877,450.00.[14] Thereafter, the findings were referred to the PCSO Legal Department.[15]

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[9] See Cash Examination Count Sheet dated November 13, 2008; *id*. at 176.

[10] See *id*. at 67-68.

[11] See *id*. at 68.

[12] See Cash Examination Count Sheet dated January 8, 2009; *id*. at 181.

[13] See *id*. at 176.

[14] See *id*. at 181.

[15] See *id*. at 68-69.

On January 13, 2009, the audit team issued a demand letter to Fajardo requiring her to return the missing funds and to explain within seventy-two (72) hours from receipt thereof the reasons why the shortage occurred.[16]

On January 15, 2009, Fajardo wrote a reply[17] requesting for more time to explain and expressing her willingness to settle the matter as she had no intentions of evading the same. On January 27, 2009, Fajardo wrote another letter[18] to the PCSO Legal Department *acknowledging her mistake and admitting her liability* for the missing funds and offering to settle her accountability by waiving her monetary benefits. Eventually, the PCSO Legal Department issued a Resolution[19] dated February 17, 2009 finding a *prima facie* case against Fajardo and recommending that she be formally charged with Serious

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[16] See *id*. at 69.

[17] The letter-request states:

> Without prejudice to my rights, and before responding substantially to your letter of demand, may I request for ample time to respond on the alleged missing funds. I am more than willing to cooperate in having this matter settled accordingly in the best interest of PCSO. I have no intentions of evading the issue and would exert all efforts for its settlement. (*Id*. at 185.)

[18] The explanation letter reads:

> This refers to your Memorandum 13 and 21 January 2009 on the purported missing funds or shortage in the amount of ₱1,877,450.00 under my accountability.
>
> With all humility and sincerity, I am now imploring your kind understanding for all the actions that I have taken. It was a mistake which I continue to regret until now. As a separated mother, I did such actions to support the education and other needs of my five children. I know that what I did was wrong and prejudicial to the office but with all humility I sincerely pray for your kind understanding.
>
> As a preliminary settlement of my accountability, I am waiving receipt in favor of PCSO all my rights to all bonuses and monetary benefits that I was supposed to receive during the last quarter of 2008. Also, we have prepared the amount of ₱300,000.00 as cash settlement partially of my accountability. (*Id*. at 70.)

[19] *Id*. at 182-191.

Dishonesty, Grave Misconduct, Gross Neglect of Duty, and Conduct Prejudicial to the Best Interest of the Service,[20] without prejudice to the filing of the present charge against her for Malversation of Public Funds.[21]

In defense,[22] Fajardo claimed that on November 13, 2008, the audit team proceeded to her workstation and announced that they will conduct a spot cash examination. They counted the cash in her possession without giving her the opportunity to balance her accounts and when all the cash items were produced, they did not include the same in the audit. Thereafter, she was forced to sign two (2) Cash Examination Count Sheets[23] indicating two (2) different figures, one stating a shortage in the amount of ₱734,421.00[24] and the other indicating the amount of ₱218,461.00.[25] She did not report for work the following day and extended her leave of absence until January 7, 2009 due to health problems. However, she learned that during her absence, her safe and vault were sealed by the auditors on November 17, 2008 or on the same day that a certain Ms. Josefina Sarabia assumed her duties. Further, she contended that it was one Carlos Lector[26] (Lector), a co-employee, who was seen in her workstation opening the vault with the lights off and was consequently administratively charged. She claimed that the sealing of her vault was directed in order to pass the blame on her despite the shortage having occurred as a result of pilferage, robbery or theft.[27]

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[20] In *Fajardo v. Corral* (813 Phil. 149 [2017]), the Court found Fajardo guilty of Serious Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service and accordingly, meted upon her the supreme penalty of dismissal from the service, with all its accessory penalties.

[21] See *rollo*, pp. 69-70.

[22] See *id*. at 71-75.

[23] See *id*. at 175-176.

[24] *Id*. at 175.

[25] *Id*. at 176.

[26] "Oscar Lector" in some parts of the records.

[27] See *rollo*, pp. 72-73.

As regards her letters dated January 15 and 27, 2009, she claimed that she was merely tricked into writing them, as she was then confused, helpless, and vulnerable after being confronted with the audit results. Finally, she insisted that the spot cash audits were attended with serious irregularities and that the sealing of her vault four (4) days after the first audit did not conform with prescribed COA guidelines. She maintained that the audit was incomplete as the auditors did not include the *vale* sheets, unreplenished winning tickets and other cash items, and she was likewise not given the opportunity to balance and close her books before the cash examination.[28]

The RTC Ruling

In a Decision[29] dated February 17, 2017, the RTC found Fajardo guilty beyond reasonable doubt of the crime of Malversation of Public Funds, and accordingly, sentenced her to suffer the penalty of imprisonment for an indeterminate period of thirteen (13) years and four (4) months, as minimum, to nineteen (19) years and four (4) months, as maximum, of *reclusion temporal*, with perpetual special disqualification and to pay a fine in the sum of ₱1,877,450.00 representing the amount misappropriated.[30]

The RTC found that all the elements of the crime charged have been established, to wit: (*a*) that the offender is a public officer; (*b*) that she had custody or control of the funds or property by reason of the duties of her office; (*c*) that those funds or property were public funds or property for which she was accountable; and, (*d*) that she appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them. Fajardo was a public officer, being the Cashier V and OIC, Division Chief III, Prize Payment (Teller) Division, Treasury Department of the PCSO, and she had custody of the cash advances in the total amount of ₱3M by reason of

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[28] See *id*. at 73-74.

[29] *Id*. at 50-62.

[30] See *id*. at 62.

her position. The cash advances were clearly public funds, and when a deficiency in the said amount was discovered during the audit, which Fajardo failed to explain or account for, the RTC concluded that she misappropriated the said funds.[31]

The RTC also found that the letter dated January 27, 2009 where Fajardo admitted to having taken the missing funds was voluntarily written. As regards the alleged irregularities which attended the conduct of the audit, the RTC posited that it was not the proper forum to resolve the issue; instead, Fajardo should have brought the matter before the appropriate government agency after the conduct of the audit. There being no direct proof that the audit conducted was illegal, the RTC therefore deemed the same valid, proper, and in accordance with proper audit procedure.[32]

Aggrieved, Fajardo appealed[33] to the SB.

The SB Ruling

In a Decision[34] dated March 5, 2018, the SB affirmed Fajardo's conviction, with the modification that the penalty of imprisonment to be imposed should be for an indeterminate period of six (6) years and one (1) day of *prision mayor*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as maximum, in accordance with the provisions of Republic Act No. (RA) 10951,[35] particularly Section 40[36] thereof, and taking into account

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[31] See *id*. at 58-60.

[32] See *id*. at 60-61.

[33] See Notice of Appeal dated March 1, 2017; *id*. at 95-96.

[34] *Id*. at 64-89.

[35] Entitled "AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS 'THE REVISED PENAL CODE,' AS AMENDED," approved on August 29, 2017.

[36] Section 40. Article 217 of the same Act, as amended by Republic Act No. 1060, is hereby further amended to read as follows:

the presence of the mitigating circumstance of voluntary surrender.[37] Affirming the RTC, the SB found that the elements of the crime charged were established and that Fajardo's failure to adequately explain the whereabouts of the missing funds in order to rebut the presumption that she had misappropriated the same was conclusive of her guilt of the crime charged.[38]

"ART. 217. *Malversation of public funds or property. — Presumption of malversation.* — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed Forty thousand pesos (₱40,000).

2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than One million two hundred thousand pesos (₱1,200.000) but does not exceed Two million four hundred thousand pesos (₱2,400,000).

4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than Two million four hundred thousand pesos (₱2,400,000) but does not exceed Four million four hundred thousand pesos (₱4,400,000).

5. The penalty of *reclusion temporal* in its maximum period, if the amount involved is more than Four million four hundred thousand pesos (₱4,400,000) but does not exceed Eight million eight hundred thousand pesos (₱8,800,000). If the amount exceeds the latter, the penalty shall be *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses."

[37] See *rollo*, p. 88.

[38] See *id*. at 81-84.

Likewise, the SB rejected Fajardo's contention that her letter dated January 27, 2009 was involuntarily given and in violation of her rights against self-incrimination and to counsel, as she *voluntarily* submitted the letter during the fact-finding investigation of the PCSO Legal Department; therefore, the said rights do not come into play. With respect to the alleged irregularities in the cash count and/or audit conducted by the IAD, the SB found that Fajardo neither challenged nor questioned the manner through which the audit was conducted; in fact, she appeared to have acknowledged the amount of the missing funds through her letters dated January 15 and 27, 2009, which contained no objection or reservation with respect to the regularity of the spot audits.[39] In any case, the SB found that the IAD was able to sufficiently explain the two (2) different figures appearing on the two (2) Cash Count Examination Sheets both dated November 13, 2008, *i.e.*, ₱734,421.00 and ₱218,461.00. Ma. Theresa Chua, an auditor of the IAD, clarified that the second Cash Examination Count Sheet[40] dated November 13, 2008 was issued after Fajardo recalled that she issued cash to her tellers in the amount of ₱515,960.00, which amount was then deducted from ₱734,421.00. Hence, the reduced amount of ₱218,461.00.[41]

Finally, the SB rejected Fajardo's contention that the loss of the amounts of ₱1,621,476.00 in cash and ₱37,513.00 worth of checks was due to pilferage or theft committed by Lector, a co-employee who was found occupying Fajardo's workstation on November 16, 2008, a Sunday. The SB held that there was no evidence showing that Lector committed the same; besides, Fajardo does not appear to have filed a complaint against him.[42]

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[39] See *id*. at 84-85.

[40] *Id*. at 176.

[41] See *id*. at 82.

[42] See *id*.

Fajardo's motion for reconsideration[43] was denied in a Resolution[44] dated April 18, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld Fajardo's conviction for the crime charged.

The Court's Ruling

The petition is bereft of merit.

Malversation of Public Funds is defined and penalized under Article 217 of the RPC, as amended, as follows:

> Art. 217. *Malversation of public funds or property — Presumption of Malversation. — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or neglect, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of misappropriation or malversation of such funds or property* x x x.
>
> x x x x x x x x x
>
> The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such funds or property to personal uses. (Emphasis supplied)

The elements of the crime are as follows: (*a*) the offender is a public officer; (*b*) he has custody or control of funds or property by reason of the duties of his office; (*c*) the funds or property are public funds or public property for which he was accountable; and (*d*) he appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take them.[45] After a judicious perusal of the

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[43] Dated March 19, 2018. *Id.* at 156-174.

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

[45] *Magnanao v. People*, 538 Phil. 252, 256 (2006).

case, the Court finds the confluence of the foregoing elements to uphold Fajardo's conviction.

As the records show, Fajardo was a public officer, being the Cashier V and OIC, Division Chief III, Prize Payment (Teller) Division of the Treasury Department of PCSO. Her duties as such required her to handle cash,[46] as in fact, at the time material to this case, Fajardo was authorized to draw a cash advance in the amount of ₱3M intended as payments for sweepstakes and lotto low-tier prizes and the PCSO — POSC Scratch IT Project. By reason thereof, Fajardo had in her custody public funds in the total amount of ₱3M for which she was clearly accountable.

Unfortunately, part of the said funds went missing while in her custody. After the conduct of two (2) spot audits on her account, a total deficit in the amount of ₱1,877,450.00 was discovered, which she failed to explain or produce upon demand. Her failure to account for the said moneys thereby gave rise to the presumption that she had converted the funds to her personal use, which presumption she failed to rebut with competent evidence.[47] Accordingly, her conviction for the crime charged stands.

Fajardo insists that the SB should not have taken into consideration her letters dated January 15 and 27, 2009, having been used in violation of her rights to counsel and against self-incrimination. Further, she claimed that not only were the letters involuntarily written, but she had also retracted the same in the proceedings before the Office of the Ombudsman (Ombudsman); hence, the same should not have been used against her.

The Court is not persuaded.

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[46] Her duties included exercising direct supervision and control over tellers and other employees in the division, overseeing actual payments of prizes, conducting periodic check-ups or actual counting of paid winning tickets, and requisitioning cash from the Assistant Department Manager for distribution to paying tellers.

[47] See *Magnanao v. People*, *supra* note 45, at 257.

The right to counsel *vis-à-vis* administrative inquiries or investigations has already been succinctly explained in *Carbonel v. Civil Service Commission*,[48] where the Court declared that "a party in an administrative inquiry may or may not be assisted by counsel":

> However, it must be remembered that the right to counsel under Section 12 of the Bill of Rights is meant to protect a suspect during custodial investigation. Thus, the exclusionary rule under paragraph (2), Section 12 of the Bill of Rights *applies only to admissions made in a criminal investigation but not to those made in an administrative investigation*.
>
> While investigations conducted by an administrative body may at times be akin to a criminal proceeding, the fact remains that, under existing laws, *a party in an administrative inquiry may or may not be assisted by counsel*, irrespective of the nature of the charges and of petitioner's capacity to represent herself, and *no duty rests on such body to furnish the person being investigated with counsel*. The right to counsel is not always imperative in administrative investigations because such inquiries are conducted merely to determine whether there are facts that merit the imposition of disciplinary measures against erring public officers and employees, with the purpose of maintaining the dignity of government service.[49]
>
> (Emphases and underscoring supplied)

Meanwhile, a person's right against self-incrimination is enshrined in Section 17,[50] Article III of the Constitution. "The right against self-incrimination is accorded to every person who gives evidence, whether voluntary or under compulsion of subpoena, in any civil, criminal or administrative proceeding. The right is not to be compelled to be a witness against himself. It secures to a witness, whether he be a party or not, the right to refuse to answer any particular incriminatory question, *i.e.*, one the answer to which has a tendency to incriminate him for

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[48] 644 Phil. 470 (2010).

[49] *Id.* at 477.

[50] Section 17. No person shall be compelled to be a witness against himself.

some crime."[51] The essence of the right against self-incrimination is testimonial compulsion, that is, the giving of evidence against himself through a testimonial act.[52]

"However, the right can be claimed only when the specific question, incriminatory in character, is actually put to the witness. It cannot be claimed at any other time. It does not give a witness the right to disregard a *subpoena*, decline to appear before the court at the time appointed, or to refuse to testify altogether. The witness receiving a *subpoena* must obey it, appear as required, take the stand, be sworn and answer questions. It is only when a particular question is addressed to which may incriminate himself for some offense that he may refuse to answer on the strength of the constitutional guaranty."[53]

With the foregoing constitutional precepts in mind, the Court finds that Fajardo's contentions that (*a*) she was denied her right to counsel during the investigation conducted by the PCSO Legal Department and (*b*) her letters dated January 15 and 27, 2009 were made in violation of her right against self-incrimination are grossly misplaced. To stress, the right to counsel is not imperative in an administrative investigation. Further, and as the SB aptly pointed out, there was no compulsion coming from the PCSO nor any question propounded to Fajardo during the investigation that was incriminatory in character or has a tendency to incriminate her for the crime charged; neither has it been shown that she was in any manner compelled or forced to write the letters dated January 15 and 17, 2009. On the contrary, the letters appear to have been voluntarily and spontaneously written.

That petitioner subsequently retracted the said letters in her counter-affidavit before the Ombudsman will not exculpate her. Courts look upon retractions with considerable disfavor because they are generally unreliable,[54] as there is always the probability

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[51] *Rosete v. Lim*, 523 Phil. 498, 511 (2006).

[52] *Dela Cruz v. People*, 739 Phil. 578, 589 (2014); citations omitted.

[53] *Rosete v. Lim*, *supra* note 51.

[54] *People v. Zafra*, 712 Phil. 559, 575 (2013).

that it will later be repudiated.[55] At most the retraction is an afterthought which should not be given probative value.[56] Only when there exist special circumstances in the case which when coupled with the retraction raise doubts as to the truth of the testimony or statement given, can retractions be considered and upheld,[57] which does not obtain in this case.

Viewed in this light, any objections or reservations with regard to the conduct of the spot audits conducted on Fajardo's account should have been reflected on the said letters. As it is, Fajardo did not challenge the conduct of the audit nor did she point out any irregularity therein. Instead, she requested for more time to respond to the allegations and later, acknowledged her infractions and offered ways to restitute the missing amount. Further, and as aptly pointed out[58] by the respondent People of the Philippines through the Ombudsman, the fact that the spot audits were conducted pursuant to the IAD's authority to do so raises the presumption of regularity in the performance of official duty. Besides, this issue does not detract from or diminish the fact that Fajardo failed to produce the missing funds upon demand.

Finally, Fajardo's argument that it is the prosecution, not her, who had the burden of proving the loss of the money in the amount of ₱1,621,476.00 and checks worth ₱37,513.00 at the time of the second spot audit on January 8, 2009 deserves little weight. Having established that the total amount of ₱3M was in her custody by reason of her public position, it was incumbent upon her to produce the same upon demand or explain its whereabouts; failing in which, the presumption of misappropriation arises as there is no competent evidence to rebut the same, the presumption stands and her conviction consequently upheld.

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[55] See *People v. Lamsen*, 721 Phil. 256, 259 (2013).

[56] *People v. Zafra*, *supra* note 54, at 276; citation omitted.

[57] *People v. Lamsen*, *supra* note 55.

[58] See *rollo*, p. 248.

WHEREFORE, the petition is **DENIED**. The Decision dated March 5, 2018 and the Resolution dated April 18, 2018 of the Sandiganbayan in SB-17-A/R-0032 are hereby **AFFIRMED**.

SO ORDERED.

Jardeleza and *Carandang, JJ.*, concur.

Bersamin, C.J. (Chairperson) and *Gesmundo, J.*, on official business.

SECOND DIVISION

[G.R. No. 241774. September 25, 2019]

FRANCISCO C. DELGADO, represented by JOSE MARI DELGADO, *petitioner, vs.* **GQ REALTY DEVELOPMENT CORP., MA. ROSARIO G. MEYER, KARL KURT EDWARD MEYER, and THE REGISTRY OF DEEDS OF MAKATI CITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; THE WAIVER OF RIGHTS OVER THE SUBJECT PROPERTY WAS SPECIFICALLY RAISED AS A SPECIAL AND AFFIRMATIVE DEFENSE IN THE AMENDED ANSWER. — A simple perusal of the Amended Answer reveals that the respondents were able to raise as a special and affirmative defense that petitioner Francisco had waived his rights over the subject property by his having executed the Ante-Nuptial Agreement. Under the "Special and Affirmative Defenses" of their Amended Answer, the respondents unequivocally asserted that "**[u]nder the Pre-Nuptial Agreement of [petitioner Francisco] and [Victoria], it is stipulated that properties of [Victoria] remain hers and hers alone and that any property which [petitioner Francisco] may give [Victoria]**

shall pertain to her exclusively to the exclusion of [petitioner Francisco] and perforce his children." Moreover, the pertinent portions of the Ante-Nuptial Agreement were likewise stated in the Amended Answer. More importantly, a copy of the said document was appended to the Amended Answer. That the respondents did not use the words "waiver," "abandonment," and "extinguishment" is of no moment, considering that it was specifically raised that, by virtue of the Ante-Nuptial Agreement, petitioner Francisco has no valid claim over the subject property.

2. ID.; ID.; ID.; A FULL-BLOWN TRIAL ON THE MERITS IS NOT NECESSARY TO SETTLE THE ISSUE ON WAIVER OF RIGHTS OVER THE SUBJECT PROPERTY. — Petitioner Francisco argues that "[w]hether or not there was indeed a waiver of rights by petitioner is an issue involving evidentiary matters requiring a full-blown trial on the merits and cannot be determined in a mere motion to dismiss." However, it must be stressed that the RTC's finding that established petitioner Francisco's waiver of his alleged rights over the subject property was based on evidence actually presented. As revealed by the records of the instant case, the RTC set a *preliminary hearing* on the affirmative defenses raised by the respondents. The preliminary hearing was the venue, and afforded both parties, to present their evidence with respect to the affirmative defenses of the respondents. On March 2, 2012, the preliminary hearing was held before the RTC. Nevertheless, during the preliminary hearing, only the respondents appeared. Petitioner Francisco failed to participate in the preliminary hearing despite due notice. Hence, petitioner Francisco cannot now use his own act of not appearing and presenting evidence in the preliminary hearing as a basis to argue that he was deprived the opportunity to produce evidence. He had every opportunity to do so during the preliminary hearing, and it was his own decision not to attend it. x x x Hence, for the following reasons, the Court does not subscribe to petitioner Francisco's view that a full-blown trial on the merits is necessary to settle the question of petitioner Francisco's supposed waiver of rights over the subject property under the Ante-Nuptial Agreement.

3. ID.; ID.; ID.; THE GENUINENESS AND DUE EXECUTION OF THE INSTRUMENT SHALL BE DEEMED ADMITTED UNLESS THE ADVERSE PARTY, UNDER OATH SPECIFICALLY DENIES THEM, AND SETS FORTH WHAT

HE CLAIMS TO BE THE FACTS; GENUINENESS AND DUE EXECUTION OF THE ANTE-NUPTIAL AGREEMENT NOT SPECIFICALLY DENIED UNDER OATH BY THE PETITIONER. — [W]ith respect to the existence, genuineness, and due execution of the Ante-Nuptial Agreement, no further evidence is needed to establish the same. Under Rule 8, Section 7 of the Rules of Court, whenever a defense is based upon a written instrument or document, the substance of such instrument shall be set forth in the pleading and the original or copy thereof shall be attached to the pleading, which shall be deemed part of the pleading. According to the succeeding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath specifically denies them, and sets forth what he claims to be the facts. In the instant case, it is not disputed whatsoever that *petitioner Francisco failed to specifically deny under oath the genuineness and due execution of the Ante-Nuptial Agreement*. In fact, the existence of the Ante-Nuptial Agreement was never questioned nor denied by petitioner Francisco. The latter merely contests the meaning and import of the said document.

4. **ID.; ID.; ID.; DEFENSES; AFFIRMATIVE DEFENSE OF WAIVER, PROVED; PETITIONER WAIVED, ABANDONED, OR OTHERWISE EXTINGUISHED HIS ALLEGED RIGHTS OVER THE SUBJECT PROPERTY BY EXECUTING THE ANTE-NUPTIAL AGREEMENT.** — According to Rule 6, Section 5(b) of the Rules of Court, an affirmative defense is an allegation of a new matter which, while hypothetically admitting the material allegations in the pleading of the claimant, would nevertheless prevent or bar recovery by him. The affirmative defenses include fraud, statute of limitations, release, payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and any other matter by way of confession and avoidance. Under Rule 16, Section 6, if no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed. In the instant case, the respondents did not file any Motion to Dismiss. Instead, they filed a Motion for Preliminary Hearing so that the RTC could receive evidence and thereafter decide whether the affirmative defenses raised by the respondents are meritorious.

According to the RTC, and as affirmed by the CA, after the preliminary hearing, the respondents were able to prove their affirmative defense that, while hypothetically admitting the material allegations in the Complaint, the alleged claim of petitioner Francisco over the subject property has been deemed waived, abandoned, or otherwise extinguished when petitioner Francisco and Victoria executed the Ante-Nuptial Agreement. In this regard, the Court finds that the RTC and CA did not err. Hypothetically admitting the material allegations in the Complaint, the Court holds that petitioner Francisco indeed waived, abandoned, or otherwise extinguished his alleged rights over the subject property.

5. ID.; EVIDENCE; DOCUMENTARY EVIDENCE; IN THE CONSTRUCTION OF THE TERMS OF AN AGREEMENT, WHEN DIFFERENT CONSTRUCTIONS OF A PROVISION ARE OTHERWISE EQUALLY PROPER, THAT IS TO BE TAKEN WHICH IS THE MOST FAVORABLE TO THE PARTY IN WHOSE FAVOR THE PROVISION WAS MADE. — [T]he Rules on Evidence hold that in the construction of the terms of an agreement, when different constructions of a provision are otherwise equally proper, that is to be taken which is the most favorable to the party in whose favor the provision was made. Clearly, the subject provision in the Ante-Nuptial Agreement — which states that any gift which petitioner Francisco bestowed on Victoria shall become her exclusive property, while any gift which Victoria gave to petitioner Francisco shall revert to her after his death — is a provision heavily in favor of Victoria. Hence, construing the Ante-Nuptial Agreement to include properties given to Victoria through her holding company is warranted.

6. ID.; ID.; ID.; ANY AMBIGUITY IN A CONTRACT WHOSE TERMS ARE SUSCEPTIBLE OF DIFFERENT INTERPRETATIONS MUST BE READ AGAINST THE PARTY WHO DRAFTED IT. — [T]his essential fact must not be overlooked — the Ante-Nuptial Agreement was *not* drafted by Victoria and her children. *The said agreement was drafted by petitioner Francisco through his counsel, Romulo Mabanta Law Offices.* Hence, if petitioner Francisco really intended to take out from the coverage of the Ante-Nuptial Agreement properties that were given to Victoria but registered in the name

of her holding company, he could have easily included a provision to that effect in the agreement in order to eradicate any ambiguity and misinterpretation. It is elementary that any ambiguity in a contract whose terms are susceptible of different interpretations must be read against the party who drafted it, who in this case was petitioner Francisco.

7. CIVIL LAW; LAND REGISTRATION; CERTIFICATE OF TITLE; A CERTIFICATE OF TITLE IS THE BEST PROOF OF OWNERSHIP OF THE PROPERTY AND IT REQUIRES MORE THAN A BARE ALLEGATION TO DEFEAT THE FACE VALUE OF THE CERTIFICATE OF TITLE, WHICH ENJOYS A LEGAL PRESUMPTION OF REGULARITY OF ISSUANCE.— [I]t does not escape the attention of the Court that petitioner Francisco was not able to provide any shred of evidence, aside from his mere say-so, that he was the one who actually bought the subject property using his own funds and that the subject property was merely held in trust by Victoria and respondent GQ Realty. Assuming that petitioner Francisco really used his own funds to buy the subject property and that he intended to preserve his interest in the subject property, petitioner Francisco's failure to reduce such intention into writing and place protective measures to secure his alleged interest over the subject property in the Ante-Nuptial Agreement and in any other document is *clearly contrary to human experience*. It must be stressed that the CCT covering the subject property, which is currently under the name of respondent Rosario, is the best proof of ownership of the property and it requires more than the bare allegation of petitioner Francisco to defeat the face value of the certificate of title, which enjoys a legal presumption of regularity of issuance.

APPEARANCES OF COUNSEL

Divina Law for petitioner.

Law Firm of Diaz Del Rosario & Associates for respondents.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an appeal *via* a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioner Francisco C. Delgado (petitioner Francisco), represented by his son, petitioner Jose Mari Delgado (petitioner Jose Mari), assailing the Decision[2] dated March 22, 2018 (assailed Decision) and Resolution[3] dated July 24,2018 (assailed Resolution) of the Court of Appeals (CA) in CA-G.R. CV No. 106413.

The Facts and Antecedent Proceedings

As narrated by the CA in the recital of facts of the assailed Decision, the essential facts and antecedent proceedings of the instant case are as follows:

Petitioner Francisco's Version of the Facts

Petitioner Francisco was married to Carmencita Chuidian-Delgado (Carmencita). During the time of their marriage, the couple produced five children: Ricardo Delgado, Francisco Delgado III, Isabel Delgado, Ana Maria Delgado, and petitioner Jose Mari. On January 15, 1983, Carmencita passed away.

Subsequently, petitioner Francisco met Victoria Quirino Gonzales (Victoria), the daughter of former President Elpidio R. Quirino and Doña Alicia Syquia-Quirino. Despite their advanced age, the two took another shot at love and entered into a special relationship.

In their time together, petitioner Francisco learned that Victoria was formerly married to Luis Gonzales (Luis), who passed away

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[1] *Rollo*, pp. 3-27.

[2] *Id*. at 28-36. Penned by Associate Justice Ronaldo Roberto B. Martin, with Associate Justices Ricardo R. Rosario and Eduardo B. Peralta, Jr. concurring.

[3] *Id*. at 38-40.

in 1984. Luis and Victoria produced four children: respondent Rosario Gonzales-Meyer (respondent Rosario), Ma. Victoria Gonzales, Ma. Luisa Gonzales, and Luis Gonzales. Together with her children with Luis, Victoria started a corporation, *i.e.*, respondent GQ Realty Development Corporation (respondent GQ Realty).

Petitioner Francisco alleged that despite respondent GQ Realty's decent capitalization, the same would not be enough for respondent GQ Realty to successfully engage in the realty business. Hence, petitioner Francisco offered to help Victoria by supposedly buying real properties using his own money, but the naked title would be named after respondent GQ Realty. Petitioner Francisco explained to Victoria that it was for the purpose of showing potential investors that respondent GQ Realty had sufficient assets and capital.

Victoria supposedly agreed and suggested that petitioner Francisco buy a condominium apartment, specifically addressed at Unit 12-C, Urdaneta Apartments Condominium, 6735 Ayala Avenue, Makati City (subject property). Petitioner Francisco heeded Victoria's suggestion and purchased the subject property. Condominium Certificate of Title (CCT) No. 9159[4] was thereafter issued in the name of respondent GQ Realty.

Allegedly, petitioner Francisco lived in the subject property even if the CCT was issued in the name of respondent GQ Realty.

On June 20, 1987, petitioner Francisco (then at the age of 76) and Victoria (then at the age of 56) got married. After almost 20 years of marriage, Victoria passed away on November 29, 2006 in Amsterdam, the Netherlands.[5]

Following Victoria's death, petitioner Francisco learned that Victoria's children with Luis distributed among themselves the properties held in trust by Victoria's corporations, including

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[4] *Id*. at 55-56.

[5] *Id*. at 143.

respondent GQ Realty. Petitioner Francisco discovered that the subject property was transferred from respondent GQ Realty to respondent Rosario.[6]

The Respondents' Version of the Facts

On their part, the respondents alleged that respondent GQ Realty was a family corporation established in 1984 after the death of Victoria's former husband, Luis, for the sole purpose of holding Victoria's properties. As alleged by the respondents, it was not intended to invite or allow investors to become a part of the corporation. Neither did it need additional capital.

Victoria was previously married to Luis, the former Philippine Ambassador to Spain. Luis was the son of the wealthy Don Manuel Gonzales of Pangasinan and Doña Paz Tuason of Marikina. The alleged wealth and landholdings of the Gonzales', Tuasons, and Syquias are known, but not flaunted. Victoria and Luis lived a privileged life among Philippine society's elite. They were among the first families who lived in Forbes Park since 1956.

After the death of Luis in 1984, Victoria left their home in Forbes Park and transferred to Unit 12-B of the Urdaneta Apartments Condominium (Unit 12-B), which is the unit beside the subject property. Since Luis left Victoria financially comfortable, she managed to live from her and her husband's assets without having to engage in any business or profession. She was able to maintain the lifestyle she was accustomed to.[7]

According to the Amended Answer,[8] respondent Rosario, one of the daughters of Victoria and Luis, became a paraplegic due to a vehicular accident. She lived in Baguio and commuted between Baguio and Manila to visit Victoria. Hence, Victoria decided that it was best for respondent Rosario to permanently

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[6] *Id*. at 29.

[7] *Id*. at 138-139.

[8] *Id*. at 129-152.

move back to Manila. For this purpose, using her own funds, Victoria decided to buy for respondent Rosario the apartment beside Unit 12- B, *i.e.*, the subject property. The purchase was made on April 27, 1987. However, after realizing that the subject property was not wheelchair-friendly or convenient for a paraplegic, Victoria swapped apartments and took for herself the subject property, while respondent Rosario became the owner of Unit 12-B.[9]

Meanwhile, Victoria was being courted by petitioner Francisco. Allegedly, it took petitioner Francisco two years to convince Victoria to marry him.[10]

Before Victoria and petitioner Francisco's marriage on June 20, 1987, the two executed an **Ante-Nuptial Agreement**[11] **dated June 15, 1987** (Ante-Nuptial Agreement), which states, among other stipulations, that their properties would be governed by complete separation of properties. The Ante-Nuptial Agreement was allegedly drafted by petitioner Francisco's own counsel, Romulo Mabanta Law Offices.[12]

After Victoria and petitioner Francisco's wedding, the latter moved in with Victoria at the subject property as Victoria felt more comfortable living there than in petitioner Francisco's house.[13]

Respondent Rosario averred that they maintained a close, happy, and harmonious relationship with petitioner Francisco because they accepted him as their step-father. However, when Victoria fell ill, she started to transfer or assign her properties to her children with Luis to ensure that the latter would receive her assets. Victoria allegedly decided to transfer the subject property to respondent Rosario.

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[9] *Id.* at 139.

[10] *Id.* at 139-140.

[11] *Id.* at 90-91.

[12] *Id.* at 140.

[13] *Id.* at 141.

Respondent Rosario contended that since 1998, she had been paying the real estate taxes due on the subject property. She was also able to mortgage the same with the Bank of the Philippine Islands (BPI) in 2000 through respondent GQ Realty. Petitioner Francisco was allegedly aware of these as he was only paying for the monthly dues, assessments, and utilities of the condominium.[14]

After the death of Victoria in 2006, the children of petitioner Francisco and the children of Victoria started falling apart and the former allegedly started filing cases against the latter. It was further alleged by the respondents that since the death of Victoria, respondent Rosario and her siblings were prohibited to enter the subject property.[15]

Complaint for Reconveyance, Declaration of Nullity of Sale, and Damages

Several months after the death of Victoria, on July 12, 2007, petitioner Francisco, through petitioner Jose Mari, filed a Verified Complaint for Reconveyance, Declaration of Nullity of Sale, and Damages[16] (Complaint) against the respondents before the Regional Trial Court of Makati City, Branch 139 (RTC). The case was docketed as Civil Case No. 07-623. In sum, petitioner Francisco asserted his right over the subject property based on *implied trust*. According to petitioner Francisco, the subject property was actually purchased by him using his own funds and the said property was registered in the name of respondent GQ Realty for the sole purpose of aiding Victoria attract potential investors in the company. He alleged that it was the intention of the parties that the subject property was to be held by respondent GQ Realty merely in the concept of an implied trust for the benefit of petitioner Francisco.

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[14] *Id*. at 142.

[15] *Id*. at 143.

[16] *Id*. at 42-52.

On August 8, 2007, petitioner Francisco filed an Amended Complaint.[17] On September 4, 2007, the respondents filed their Answer with Counterclaims.[18] On September 24, 2007, the respondents filed their Amended Answer with Counterclaims.[19]

The respondents then filed a Motion for Preliminary Hearing on Affirmative Defenses[20] dated August 11, 2009, wherein they argued that petitioner Francisco's claim had already been deemed waived, abandoned, or otherwise extinguished by virtue of the Ante-Nuptial Agreement executed by petitioner Francisco and Victoria. It was argued that in the said document, petitioner Francisco acknowledged and declared that all the properties of the parties would be respectively owned by each of them and that neither of them would have an interest over the properties of the other. More so, the respondents argued that the Complaint had already prescribed since 20 years have already passed from the time the subject property was acquired by respondent GQ Realty. Petitioner Francisco opposed the said Motion.[21]

On January 26, 2012, the RTC issued an Order granting the Motion for Preliminary Hearing on Affirmative Defenses.[22]

The RTC's Order dismissing the Complaint based on the respondents' affirmative defenses

After due proceedings, the RTC issued an Order[23] dated January 29, 2014 dismissing the Complaint based on the affirmative defenses raised by the respondents in their Amended Answer, *i.e.*, prescription and waiver, abandonment, and extinguishment.

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[17] *Id*. at 95-109.

[18] *Id*. at 67-88.

[19] *Id*. at 129-152.

[20] *Id*. at 233-246.

[21] *Id*. at 247-26I.

[22] *Id*. at 31.

[23] *Id*. at 262-265. Penned by Presiding Judge Benjamin T. Pozon.

The pertinent portion of the said Order reads:

Delving on the affirmative defense of prescription, it appears that the subject property was acquired by and registered in the name of defendant GQ on April 27, 1987 as evidenced by the Condominium Certificate of Title ("CCT") No. 9159 (Exhibit "B"). The present action for reconveyance based on implied trust, however, was filed only on July 12, 2007, that is, more than twenty (20) years from the registration of the title covering the subject property in the name of defendant GQ. It is, therefore, clear as day that the present action is already time barred.

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Similarly, the Court finds merit on the affirmative defense that the claim or demand of the plaintiff has been waived, abandoned, or otherwise extinguished, as shown by the Ante-Nuptial Agreement dated June 15, 1987 (Exhibit "A"), executed by and between plaintiff FCD and his spouse, Victoria Quirino Delgado ("VQD"), mother of defendant MRQG ("Gonzales"). In the said Ante-Nuptial Agreement, plaintiff expressly agreed, among others, that all the properties, past[,] present and future of VQD, shall remain "her own absolute property subject to her sole disposition, administration and enjoyment," and that plaintiff "FCD shall not acquire any interest directly or indirectly over the properties of VQD". As such, plaintiff's claim or demand under the instant case has already been waived, abandoned, or otherwise extinguished by virtue of the said Ante-Nuptial Agreement.

x x x x x x x x x

WHEREFORE, premises considered, the instant Civil Case is hereby **DISMISSED** based on the affirmative defenses of prescription and that the claim or demand of the plaintiff has been waived[,] abandoned, or otherwise extinguished, which were raised by the defendants in their Amended Answer.

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SO ORDERED.[24]

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[24] *Id*. at 264-265.

On April 4, 2014, petitioner Francisco filed a Motion for Reconsideration,[25] which was denied by the RTC in its Order[26] dated January 20, 2016 for lack of merit.

On February 16, 2016, petitioner Francisco appealed before the CA.[27]

The Ruling of the CA

In the assailed Decision,[28] the CA denied petitioner Francisco's appeal.

The assailed Decision delved into two issues: (1) the RTC's ruling that the Complaint for reconveyance based on implied trust had already prescribed; and (2) the RTC's ruling that petitioner Francisco's claim had already been waived, abandoned, or otherwise extinguished.

On the first issue, the CA held that the RTC was incorrect in holding that the Complaint had already prescribed. Citing *Sps. Yu Hwa Ping and Mary Gaw v. Ayala Land, Inc.*,[29] the CA explained that while an action for reconveyance based on an implied or constructive trust prescribes after 10 years from the date the adverse party repudiates the implied trust, it is imprescriptible if the movant is in the actual, continuous and peaceful possession of the property involved. It is an undisputed fact that the movant, petitioner Francisco, was still in the actual and continuous possession of the subject property prior to his death.

Nevertheless, the CA upheld the RTC's Order dismissing the Complaint because petitioner Francisco's claim had already waived, abandoned, or otherwise extinguished through the execution of the Ante-Nuptial Agreement.

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[25] *Id*. at 266-280.

[26] *Id*. at 347-348.

[27] *Id*. at 349-351.

[28] *Supra* note 2.

[29] 814 Phil. 468 (2017).

The CA found that:

Based from the [Ante-Nuptial Agreement], it is clear and apparent that any property, real or personal, owned by [Victoria] shall remain in her possession subject to her own disposition without need of consent from [petitioner Francisco]. To support [respondents'] averment that the condominium was bought through the use of their own funds, [the respondents] presented CCT No. 9159 bearing [respondent] GQ Realty as the first owner thereof, the Deed of Absolute Sale between GQ Realty and [respondent Rosario], and later on, the next CCT No. 101544 bearing [respondent Rosario's] name as the new owner thereof. *The best proof of the ownership of the land is the certificate of title and it requires more than a bare allegation to defeat the face value of a certificate of title which enjoys a legal presumption of regularity of issuance.* Indeed, the condominium is owned by [Victoria] solely and had every right to dispose of the same.[30]

The dispositive portion of the assailed Decision reads:

WHEREFORE, the aforegoing considered, the present *Appeal* is hereby **DENIED**. The *Orders dated 29 January 2014 and 20 January 2016* issued by the Regional Trial Court (**RTC**), National Capital Judicial Region, Branch 139, Makati City in Civil Case No. 07-623 is hereby **PARTIALLY AFFIRMED**.

Let the records reflect that the present action is dismissed on the ground of **WAIVER ONLY**.

SO ORDERED.[31]

Petitioner Francisco filed a Motion for Reconsideration[32] on May 4, 2018, which was denied by the CA in the assailed Resolution.[33]

Hence, the instant appeal before the Court.

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[30] *Rollo*, p. 35; italics in the original, citations omitted.

[31] *Id.* at 36; emphasis and italics in the original.

[32] *Id.* at 352-366.

[33] *Supra* note 3.

Respondents GQ Realty and Rosario filed their Comment[34] dated February 12, 2019. Petitioner Francisco filed his Reply[35] dated June 26, 2019.

Issue

The central issue in the instant case is whether petitioner Francisco, in executing the Ante-Nuptial Agreement, waived, abandoned, or otherwise extinguished his alleged interest over the subject property.

The Court's Ruling

The instant Petition is unmeritorious.

In asserting that the RTC committed a grave error in holding that petitioner Francisco waived, abandoned, or extinguished his rights over the subject property by executing the Ante-Nuptial Agreement, petitioner Francisco relies on three major arguments: (1) the affirmative defense of waiver was supposedly waived by the respondents as the latter allegedly failed to raise the same in their Amended Answer; (2) assuming *arguendo* that the affirmative defense of waiver may be appreciated, the issue is one involving evidentiary matters requiring a full-blown trial on the merits; and (3) petitioner Francisco did not waive his alleged rights and interests over the subject property.

The Court shall discuss the aforementioned points *ad seriatim*.

The affirmative defense of waiver, abandonment, and extinguishment was sufficiently alleged in the Amended Answer

Petitioner Francisco invokes Rule 9, Section 1 of the Rules of Court, which states that defenses and objections not raised in either a motion to dismiss or in the answer are deemed waived.

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[34] *Rollo*, pp. 458-534.

[35] *Id.* at 704-717.

Since the respondents allegedly failed to raise in their Amended Answer the argument that petitioner Francisco waived his rights over the subject property by executing the Ante-Nuptial Agreement, petitioner Francisco argues that such defense has already been deemed waived.

The argument is not well-taken.

A simple perusal of the Amended Answer reveals that the respondents were able to raise as a special and affirmative defense that petitioner Francisco had waived his rights over the subject property by his having executed the Ante-Nuptial Agreement.

Under the "Special and Affirmative Defenses" of their Amended Answer, the respondents unequivocally asserted that "**[u]nder the Pre-Nuptial Agreement of [petitioner Francisco] and [Victoria], it is stipulated that properties of [Victoria] remain hers and hers alone and that any property which [petitioner Francisco] may give [Victoria] shall pertain to her exclusively to the exclusion of [petitioner Francisco] and perforce his children**."[36]

Moreover, the pertinent portions of the Ante-Nuptial Agreement were likewise stated in the Amended Answer.[37] More importantly, a copy of the said document was appended to the Amended Answer.

That the respondents did not use the words "waiver," "abandonment," and "extinguishment" is of no moment, considering that it was specifically raised that, by virtue of the Ante-Nuptial Agreement, petitioner Francisco has no valid claim over the subject property.

The issue on waiver does not necessitate a full-blown trial on the merits

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[36] *Id*. at 147; emphasis supplied.

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

As to petitioner Francisco's second main argument, the same similarly lacks merit.

Petitioner Francisco argues that "[w]hether or not there was indeed a waiver of rights by petitioner is an issue involving evidentiary matters requiring a full-blown trial on the merits and cannot be determined in a mere motion to dismiss."[38]

However, it must be stressed that the RTC's finding that established petitioner Francisco's waiver of his alleged rights over the subject property was based on evidence actually presented. As revealed by the records of the instant case, the RTC set a *preliminary hearing* on the affirmative defenses raised by the respondents. The preliminary hearing was the venue, and afforded both parties, to present their evidence with respect to the affirmative defenses of the respondents. On March 2, 2012, the preliminary hearing was held before the RTC. Nevertheless, during the preliminary hearing, only the respondents appeared. Petitioner Francisco failed to participate in the preliminary hearing despite due notice.[39]

Hence, petitioner Francisco cannot now use his own act of not appearing and presenting evidence in the preliminary hearing as a basis to argue that he was deprived the opportunity to produce evidence. He had every opportunity to do so during the preliminary hearing, and it was his own decision not to attend it.

Further, with respect to the existence, genuineness, and due execution of the Ante-Nuptial Agreement, no further evidence is needed to establish the same.

Under Rule 8, Section 7 of the Rules of Court, whenever a defense is based upon a written instrument or document, the substance of such instrument shall be set forth in the pleading and the original or copy thereof shall be attached to the pleading, which shall be deemed part of the pleading. According to the

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[38] *Id*. at 15-16; emphasis omitted.

[39] See Order dated March 2, 2012, records, pp. 443-444.

succeeding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath specifically denies them, and sets forth what he claims to be the facts.

In the instant case, it is not disputed whatsoever that *petitioner Francisco failed to specifically deny under oath the genuineness and due execution of the Ante-Nuptial Agreement*. In fact, the existence of the Ante-Nuptial Agreement was never questioned nor denied by petitioner Francisco. The latter merely contests the meaning and import of the said document.[40]

Hence, for the following reasons, the Court does not subscribe to petitioner Francisco's view that a full-blown trial on the merits is necessary to settle the question of petitioner Francisco's supposed waiver of rights over the subject property under the Ante-Nuptial Agreement.

The RTC did not err in holding that petitioner Francisco waived his alleged rights over the subject property by executing the Ante-Nuptial Agreement

The Court shall now discuss the final argument of petitioner Francisco.

According to Rule 6, Section 5(b) of the Rules of Court, an affirmative defense is an allegation of a new matter which, while hypothetically admitting the material allegations in the pleading of the claimant, would nevertheless prevent or bar recovery by him. The affirmative defenses include fraud, statute of limitations, release, payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and any other matter by way of confession and avoidance.

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[40] *Rollo*, p. 17.

Under Rule 16, Section 6, if no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.

In the instant case, the respondents did not file any Motion to Dismiss. Instead, they filed a Motion for Preliminary Hearing so that the RTC could receive evidence and thereafter decide whether the affirmative defenses raised by the respondents are meritorious. According to the RTC, and as affirmed by the CA, after the preliminary hearing, the respondents were able to prove their affirmative defense that, while hypothetically admitting the material allegations in the Complaint, the alleged claim of petitioner Francisco over the subject property has been deemed waived, abandoned, or otherwise extinguished when petitioner Francisco and Victoria executed the Ante-Nuptial Agreement.

In this regard, the Court finds that the RTC and CA did not err. Hypothetically admitting the material allegations in the Complaint, the Court holds that petitioner Francisco indeed waived, abandoned, or otherwise extinguished his alleged rights over the subject property.

The pertinent portions of the Ante-Nuptial Agreement state the following:

> II. They mutually agree that their property relations as future spouses shall be under the regime of COMPLETE SEPARATION OF PROPERTY during the marriage.
>
> x x x x x x x x x
>
> Now, therefore, for and in consideration of the foregoing premises, the parties hereto agree as follows:
>
> (1) All the property, real and personal, now owned or hereafter to be owned by [petitioner Francisco] shall remain his own exclusive and separate property, subject to his sole disposition, administration and enjoyment; **while those of [Victoria] shall likewise remain her own absolute property**, subject to her sole disposition, administration and enjoyment.

x x x x x x x x x

(3) However, during his lifetime, [petitioner Francisco] agrees that the maintenance, support and care of[Victoria] shall be borne solely by him and ***any gift which [petitioner Francisco] may have bestowed or shall bestow on [Victoria] shall become her exclusive property***. Any gift which [Victoria], on the other hand, may have given or may give to [petitioner Francisco] shall revert to her after his death for her to dispose of as she may wish.

x x x x x x x x x

(6) In furtherance, and not in limitation, of this Agreement, **[petitioner Francisco] and [Victoria] hereby agree without any mental reservation that neither of them shall acquire any interest, directly or indirectly, over the properties, real or personal, of each other or the other's late spouse**.[41]

Hence, under the Ante-Nuptial Agreement, petitioner Francisco unequivocally discharged any and all interest over all gifts that he had bestowed upon Victoria.

Thus, even hypothetically admitting as true petitioner Francisco's material allegations in the Complaint that he had used his own money to buy the subject property, then this purchase of the subject property, thereafter registered in the name of respondent GQ Realty, was, for all intents and purposes, a gift bestowed upon Victoria.

As alleged by petitioner Francisco, he purchased the subject property in 1987 so "that he could effectively express his support for the ailing [Victoria]."[42] In the Complaint, petitioner Francisco himself declared that "[t]he best [way to provide for Victoria] that he conceived of was to acquire real properties, although to have them registered in the name of [respondent GQ Realty]."[43]

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[41] *Id.* at 90-91; emphasis and underscoring supplied.

[42] *Id.* at 46.

[43] *Id.*

Moreover, petitioner Francisco himself explained that he had no qualms in registering the subject property in the name of respondent GQ Realty despite having the real intent of providing real property for Victoria because the said corporation "was anyway headed by no less than [Victoria]."[44]

To be sure, the Complaint itself explains that, to begin with, the choice of purchasing the subject property was dictated by no less than Victoria. As alleged by petitioner Francisco in the Complaint, "[Victoria was the one who] suggested the acquisition of the subject property located at Unit 12-B of the same Condominium, right beside the property being occupied by her daughter. He, thus, transacted for the acquisition of the same and provided all the necessary funds x x x."[45] Hence, straight from petitioner Francisco's mouth, and hypothetically admitting this as true, it is clear that petitioner Francisco bought the subject property for the purpose of accommodating Victoria's desire to live beside her daughter, respondent Rosario.

Further, the Complaint itself alleged that petitioner Francisco was moved to purchase the subject property because Victoria was sickly, had no source of income, became financially dependent on her family, and did not actively engage in any business venture or profession.[46] Otherwise stated, Victoria was the very *animus* behind his purchase of the subject property.

In fact, petitioner Francisco himself describes his act of purchasing the subject property and registering the same under the name of respondent GQ Realty as an act "of benevolence and of concern [for Victoria, which] endeared himself even further to [Victoria]. Thus, the subsequent marriage proposal made by [petitioner Francisco] became irresistible."[47]

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[44] *Id*.

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

[46] *Id*. at 45.

[47] *Id*. at 47.

Unequivocally, petitioner Francisco maintained that the purchase of the subject property was a "magnanimous and chivalrous" act that was undertaken not "only to simply win the heart of [Victoria]. [Petitioner Francisco] honestly cared for [Victoria], and continually lavished her with emotional and material nurturing during the marriage."[48] Petitioner Francisco declared in the Complaint that "he was able to provide [Victoria] with everything she would ever want or need x x x by acquiring the subject property and placing it in the meantime in the name of[respondent GQ Realty]."[49]

Therefore, taking into consideration the foregoing material allegations in the Complaint, despite the subject property being registered in the name of respondent GQ Realty, petitioner Francisco's act of purchasing the subject property using his own funds was a genuine act of gratuity in favor of Victoria. Consequently, since petitioner Francisco declared in the Ante-Nuptial Agreement, which was executed after the purchase of the subject property, that he was explicitly discharging any and all interest in all gifts that he had theretofore bestowed upon Victoria, petitioner Francisco's alleged interest in the subject property has been completely waived in favor of Victoria.

While petitioner Francisco does not deny that his purchase of the subject property was borne out of gratuity, he now maintains that the subject property was not bestowed upon Victoria, but was instead given to respondent GQ Realty, a separate juridical entity. Petitioner Francisco now argues that as respondent GQ Realty was the registered owner of the subject property and not Victoria, then the subject property is not within the coverage of the Ante-Nuptial Agreement.

The Court is not persuaded.

As already explained above, the material allegations of the Complaint itself readily reveals that the interest of respondent GQ Realty in the subject property is purely in name. In fact,

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[48] *Id*. at 48.

[49] *Id*.

petitioner Francisco himself readily acknowledged that "[respondent] GQ Realty would [only] appear as the buyer on paper."[50] In actuality, the subject property was given to Victoria as a gift from petitioner Francisco. Hence, the subject property is aptly within the coverage of the Ante-Nuptial Agreement.

But even assuming *arguendo* that petitioner Francisco really intended to bestow the subject property in favor of respondent GQ Realty and not Victoria, the argument still fails to convince.

While ordinarily, respondent GQ Realty and Victoria are deemed to have unique and separable juridical personalities, the factual circumstances of the instant case reveal that, *in so far as the subject property is concerned, respondent GQ Realty and Victoria are one and the same person*. Thus, as petitioner Francisco and Victoria expressly agreed in the Ante-Nuptial Agreement that the latter's properties would be hers exclusively, that any gift bestowed upon Victoria from petitioner Francisco would remain her exclusive property, and that petitioner Francisco waived all direct and indirect interests in Victoria's properties, it is clear to the Court that petitioner Francisco has waived and abandoned any and all interest in the subject property.

It is not disputed whatsoever that respondent GQ Realty is a family corporation. In fact, "GQ" stands for *Gonzales Quirino*, the last names of Luis, Victoria's first deceased husband, and Victoria. As borne by petitioner Francisco's own evidence, *i.e.*, respondent GQ Realty's Articles of Incorporation,[51] Victoria, the incorporator of the company, owns ₱1,135,000.00 out of the ₱1,875,000.00 total capital stock of the corporation. The other incorporators and shareholders of respondent GQ Realty are the daughters and son of Victoria and Luis, who own minimal shareholdings. The principal office of respondent GQ Realty is Unit 12-B — the residence of Victoria as indicated in the Articles of Incorporation.

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[50] *Id*. at 7.

[51] *Id*. at 57-63.

Even more telling is the fact that *respondent GQ Realty never really operated as a legitimate real estate corporation*. It has not been disputed that respondent GQ Realty entered into transactions only with Victoria's daughter respondent Rosario, *i.e.*, when she mortgaged the subject property with BPI in 2000 and when the subject property was eventually transferred in her name.[52] There is no proof whatsoever that respondent GQ Realty legitimately engaged in real estate business and actually sought investments from other investors.

To be sure, the Complaint itself alleges that despite putting up respondent GQ Realty, Victoria did not really operate any business venture and that none of Victoria's children was interested in the real estate business despite being named incorporators and stockholders of the said corporation.[53]

Petitioner Francisco's theory that he bought the subject property using his own funds in order to augment respondent GQ Realty's real estate assets is thus not worthy of belief. As recognized by petitioner Francisco himself, respondent GQ Realty had decent capitalization and the Gonzales family was an affluent and prominent family.[54] Hence, if respondent GQ Realty really intended to engage in the realty business, it had no reason to rely whatsoever on the gratuity of petitioner Francisco.

Hence, based on the records of the instant case, the Court believes that respondent GQ Realty is exactly what it purports to be — a mere holding company of Victoria's properties. Respondent GQ Realty was founded merely to be an instrumentality and conduit utilized by Victoria to hold her properties. To reiterate, during the preliminary hearing, petitioner Francisco had every opportunity to debunk respondent GQ Realty's assertion that it was merely a holding company of Victoria's assets. Yet, petitioner Francisco failed to do so by unjustifiably failing to participate in the preliminary hearing.

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[52] *Id.* at 142.

[53] *Id.* at 45-46.

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

In a last-ditch effort to assail the RTC's and CA's interpretation of the Ante-Nuptial Agreement as including within its contemplation the subject property, petitioner Francisco additionally argues that such interpretation of the agreement is "unconscionable and unreasonable on its face" because there was allegedly "no explanation offered for the alleged waiver made in favor of [Victoria] for the alleged property."[55]

Once more, this argument fails to persuade. As revealed in the Complaint, petitioner Francisco himself amply provides for the explanation of the waiver of his alleged interests over the subject property — to win over the heart of Victoria, as well as to provide her emotional and material nurturing. True love compels people to move heaven and earth just to win the affection of their beloved. Hence, the waiver of petitioner Francisco's alleged interests over the subject property — again only hypothetically admitting this to be true — is completely fathomable and understandable, given his professed true love and affection for Victoria.

Moreover, the Rules on Evidence hold that in the construction of the terms of an agreement, when different constructions of a provision are otherwise equally proper, that is to be taken which is the most favorable to the party in whose favor the provision was made.

Clearly, the subject provision in the Ante-Nuptial Agreement — which states that any gift which petitioner Francisco bestowed on Victoria shall become her exclusive property, while any gift which Victoria gave to petitioner Francisco shall revert to her after his death — is a provision heavily in favor of Victoria. Hence, construing the Ante-Nuptial Agreement to include properties given to Victoria through her holding company is warranted.

Lastly, this essential fact must not be overlooked — the Ante-Nuptial Agreement was *not* drafted by Victoria and her children. *The said agreement was drafted by petitioner Francisco through his counsel, Romulo Mabanta Law Offices*.

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[55] *Id*. at 20.

Hence, if petitioner Francisco really intended to take out from the coverage of the Ante-Nuptial Agreement properties that were given to Victoria but registered in the name of her holding company, he could have easily included a provision to that effect in the agreement in order to eradicate any ambiguity and misinterpretation. It is elementary that any ambiguity in a contract whose terms are susceptible of different interpretations must be read against the party who drafted it,[56] who in this case was petitioner Francisco.

Over and above the foregoing, it does not escape the attention of the Court that petitioner Francisco was not able to provide any shred of evidence, aside from his mere say-so, that he was the one who actually bought the subject property using his own funds and that the subject property was merely held in trust by Victoria and respondent GQ Realty. Assuming that petitioner Francisco really used his own funds to buy the subject property and that he intended to preserve his interest in the subject property, petitioner Francisco's failure to reduce such intention into writing and place protective measures to secure his alleged interest over the subject property in the Ante-Nuptial Agreement and in any other document is *clearly contrary to human experience*. It must be stressed that the CCT covering the subject property, which is currently under the name of respondent Rosario, is the best proof of ownership of the property and it requires more than the bare allegation of petitioner Francisco to defeat the face value of the certificate of title, which enjoys a legal presumption of regularity of issuance.[57]

In sum, as respondent GQ Realty is a mere holding company and alter ego of Victoria, the sheer fact that the subject property was registered in its name does not denigrate the fact that the subject property was really the property of Victoria. Hence, hypothetically admitting the material allegations of petitioner Francisco in his Complaint, when petitioner Francisco executed the Ante-Nuptial Agreement and waived any and all rights and

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[56] *Garcia v. CA*, 327 Phil. 1097, 1111 (1996); citation omitted.

[57] *Heirs of Velasquez v. Court of Appeals*, 382 Phil. 438, 458 (2000).

interests over the properties of Victoria, the subject property was deemed included therein.

WHEREFORE, the instant appeal is **DENIED**. The assailed Decision dated March 22, 2018 and Resolution dated July 24, 2018 of the Court of Appeals in CA-G.R. CV No. 106413 are herby **AFFIRMED**.

SO ORDERED.

Carpio,[*] *Acting C.J.* (*Chairperson*), *Reyes, J. Jr., Lazaro-Javier,* and *Zalameda, JJ.*, concur.

FIRST DIVISION

[G.R. No. 242132. September 25, 2019]

NOR JELAMIN MUSA,[*] **IVAN USOP BITO,**[**] **and MONSOUR ABDULRAKMAN ABDILLA,**[***] *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FINDINGS OF FACT OF THE TRIAL COURT ARE GIVEN GREAT RESPECT EXCEPT WHEN THERE IS A MISAPPRECIATION

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[*] Designated as Acting Chief Justice per Special Order No. 2703 dated September 10, 2019.

[*] Also referred to as "Norjelamin Musa" in some parts of the records.

[**] Also referred to as "Vito" in some parts of the records.

[***] Also referred to as "Abadillo" in some parts of the records.

OF FACTS AS TO COMPEL A CONTRARY CONCLUSION. — [W]ell-settled is the rule that findings of fact of the trial court are given great respect. But when there is a misappreciation of facts as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings of the trial court, as in this case.

2. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL TRANSPORTATION OF DANGEROUS DRUGS; THE ACTUAL MOVEMENT OF THE DANGEROUS DRUG FROM ONE PLACE TO ANOTHER IS AN ESSENTIAL ELEMENT OF THE CRIME OF ILLEGAL TRANSPORTATION OF DANGEROUS DRUGS.** — "Transport" as used under the Dangerous Drugs Act means "to carry or convey from one place to another." The essential element of the charge is the *movement* of the dangerous drug from one place to another. There is no definitive moment when an accused "transports" a prohibited drug. When the circumstances establish the purpose of an accused to transport and the fact of transportation itself, there should be no question as to the perpetration of the criminal act. The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed.

3. **ID.; ID.; ID.; THE FAILURE OF THE PROSECUTION WITNESSES TO ESTABLISH WITH ABSOLUTE CERTAINTY THE IDENTITIES OF THE PETITIONERS AS THE PERSONS WHO WERE DRIVING OR ONBOARD THE VEHICLE PURPORTEDLY USED TO TRANSPORT ILLEGAL DRUGS AT ANY TIME RAISES REASONABLE DOUBT THAT THEY WERE TRANSPORTING ILLEGAL DRUGS.** — [W]hile it may be true that, per the confidential information relayed by PSI Ramos to PCI Juaneza, a white multi-cab vehicle bearing plate number NBD-279 and the name "Jarus Jeth" on its body traversed the highway and approached the police checkpoint at Purok 1, Barangay Tibanban, Governor Generoso, Davao Oriental, none of the prosecution witnesses was able to identify any of the passengers of the said vehicle. Infact, the first time the police officers were able to see the petitioners was after they had given chase and found the multi-cab vehicle parked close to a nearby hut, inside which petitioners were standing. x x x. Considering the x x x testimonies of the prosecution witnesses, it is clear that the identities of the petitioners as

the persons who were driving and/or riding the multi-cab purportedly used to transport illegal drugs have not been established with absolute certainty. This identification is material because failure to establish that petitioners were driving or onboard the multi-cab vehicle at any time raises reasonable doubt that they were transporting illegal drugs as charged. The fact that they were standing in a hut close to where the multi-cab was parked when the police officers caught up with them does not prove that they were, at any time, inside the vehicle; necessarily, it does not automatically suggest that they *transported* illegal drugs.

4. ID.; ID.; ID.; THE PROSECUTION MUST PROVE THAT THE TRANSPORTATION OF DANGEROUS DRUGS HAD TAKEN PLACE, OR THAT THE ACCUSED HAD MOVED THE DRUGS SOME DISTANCE; PETITIONERS' PROXIMITY TO THE VEHICLE WHICH PURPORTEDLY USED TO TRANSPORT ILLEGAL DRUGS WHEN THEY WERE ARRESTED DOES NOT PROVE WITH CERTAINTY THAT THEY WERE THE DRIVER AND PASSENGERS OF THE VEHICLE. — [T]he inconsistent and flip-flopping testimonies of the police officers as to what really transpired at the checkpoint, among others, raise serious doubt on the veracity of the prosecution evidence. x x x. [T]he Court entertains reasonable doubt that petitioners transported illegal drugs as charged. The evidence of the prosecution fell short of proving that petitioners were actually on board the multi-cab which, per confidential information, will be supposedly used to transport illegal drugs or that petitioners travelled from Pagalungan, Maguindanao to Governor Generoso for the said purpose. Indeed, the prosecution failed to show that any distance was travelled by petitioners with the drugs in their possession. That petitioners were standing in a hut located within the vicinity of the multi-cab does not prove with certainty that they were the driver and passengers of the vehicle. Undeniably, the conclusion that they were transporting drugs merely because of their proximity to the multi-cab when they were arrested has no basis and is pure speculative at best. It bears stressing that the guilt of the accused must be proved with moral certainty. It is the responsibility of the prosecution to prove the element of transport of dangerous drugs, namely, that transportation had taken place, or that the accused had moved the drugs some distance, which does not obtain in this case.

5. ID.; ID.; ID.; VARIANCE DOCTRINE; PETITIONERS WHO WERE CHARGED WITH ILLEGAL TRANSPORTATION OF DANGEROUS DRUGS MAY STILL BE HELD LIABLE FOR ILLEGAL POSSESSION OF DANGEROUS DRUGS, IF PROVED, AS THE TRANSPORT OF THE ILLEGAL DRUGS WOULD NECESSARILY ENTAIL THE POSSESSION THEREOF. — [T]he police officers testified that they were able to confiscate a heat-sealed transparent plastic sachet containing 18.4349 grams of white crystalline substance in the possession of Abdilla, which, upon qualitative examination, was determined to contain Methamphetamine hydrochloride, a dangerous drug. In view thereof, petitioners *may*, in theory, still be held liable for Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 by virtue of the *variance doctrine* as enunciated in Section 4, Rule 120 of the Rules of Court. The rule is that when there is a variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged. An offense charged necessarily includes that which is proved, when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. On this score, the *transport* of the illegal drugs would necessarily entail the *possession* thereof.

6. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; THE PROSECUTION MUST ESTABLISH THAT THE IDENTITY AND INTEGRITY OF THE SEIZED DRUG WERE DULY PRESERVED IN ORDER TO SUSTAIN A CONVICTION; OTHERWISE, THERE WOULD BE NO BASIS TO CONVICT FOR ILLEGAL POSSESSION OF DANGEROUS DRUGS BECAUSE THE MERE FACT OF UNAUTHORIZED POSSESSION WILL NOT SUFFICE TO CREATE IN A REASONABLE MIND THE MORAL CERTAINTY REQUIRED TO SUSTAIN A FINDING OF GUILT. — A conviction for Illegal Possession of Dangerous Drugs requires the confluence of the following elements: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs. The dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. **It is thus paramount for the prosecution to establish**

that the identity and integrity of the seized drug were duly preserved in order to sustain a conviction. Otherwise, there would be no basis to convict for Illegal Possession of Dangerous Drugs because the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt.

7. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; LINKS IN THE CHAIN OF CUSTODY; TO ESTABLISH THE IDENTITY OF THE DANGEROUS DRUG WITH MORAL CERTAINTY, THE PROSECUTION MUST BE ABLE TO ACCOUNT FOR EACH LINK OF THE CHAIN OF CUSTODY FROM THE MOMENT THE DRUGS ARE SEIZED UP TO THEIR PRESENTATION IN COURT AS EVIDENCE OF THE CRIME. — To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. "Chain of custody" is the duly recorded authorized movements and custody of the seized drugs at each stage, from the time of seizure/confiscation to receipt in the forensic laboratory, to safekeeping and the presentation in court for identification and destruction. As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law." This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment." In *People v. Nandi,* the Court enumerated the following links that should be established in the chain of custody of the seized items: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. Accordingly, the prosecution

is put to task to account for each link of the chain from the moment the drugs are seized up to their presentation in court as evidence of the crime.

8. ID.; ID.; ID.; ID.; THE FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE CHAIN OF CUSTODY PROCEDURE WOULD NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS AS VOID AND INVALID, PROVIDED THAT THE PROSECUTION SATISFACTORILY PROVES THAT THERE IS A JUSTIFIABLE GROUND FOR NON-COMPLIANCE WHICH MUST BE PROVEN AS A FACT, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED. — [T]he Court has acknowledged that strict compliance with the chain of custody procedure may not always be possible. During such eventualities, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: *(a)* there is a justifiable ground for non-compliance; and (*b)* the integrity and evidentiary value of the seized items are properly preserved. This is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. For the saving clause to apply, however, the prosecution must explain the reasons behind the procedural lapses. Further, 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. A meticulous review of the records in this case shows that there was a glaring gap in the chain of custody of the seized item, thereby affecting its integrity and probative value.

9. ID.; ID.; ID.; ID.; A SIGNIFICANT GAP OR A MISSING LINK IN THE CHAIN OF CUSTODY OF THE SEIZED DRUGS RENDERS THE PROBATIVE WEIGHT THEREOF HIGHLY SUSPECT, AS THERE IS NO CERTAINTY THAT THE SACHET OF DRUGS PRESENTED AS EVIDENCE DURING TRIAL WAS THE SAME DRUGS FOUND IN THE POSSESSION OF THE ACCUSED. — Unfortunately, records do not show what became of the seized item from the time it was in the custody of PO3 Cubillan until it was given to Police

Inspector Ryan Pelayre Bajade (PI Bajade), the forensic chemist, for qualitative examination. There is no document showing that PO3 Cubillan turned it over directly to PI Bajade or if there were other personalities who handled the specimen. Clearly, therefore, there is a significant gap, a missing link in the chain of custody of the seized item. Because of this gap, there is no certainty that the sachet of drugs presented as eviqence during trial was the same drugs found in Abdilla's possession, thereby rendering the probative weight of the seized item highly suspect.

10. ID.; ID.; SECTION 21 OF R.A. 9165; PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE SEIZED DANGEROUS DRUGS; REQUIRED WITNESSES; NOT COMPLIED WITH; THE TESTIMONIES OF THE POLICE OFFICERS THAT PHOTOGRAPHS WERE TAKEN CANNOT BE ACCEPTED WITHOUT THE ACTUAL PHOTOGRAPHS. — [T]he stringent requirements under Section 21, Article II of RA 9165 were not strictly complied with. As part of the chain of custody procedure, the apprehending team is mandated, immediately after seizure and confiscation, to conduct a physical inventory and to photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: *(a)* if *prior* to the amendment of RA 9165 by RA 10640, "a representative from the media *AND* the Department of Justice (DOJ), and any elected public official"; or (*b)* if *after* the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service *OR* the media." The presence of these witnesses safeguards "the establishment of the chain of custody and remove[s] any suspicion of switching, planting, or contamination of evidence." In this case, while the prosecution witnesses alleged that they took photographs of the seized item in the presence of the petitioners as well as of Vice Mayor Orencia, Kagawad Limbadan, and Macado, no such photographs are attached to the records. In fact, no photographs were identified by the prosecution witnesses or offered in evidence by the prosecution, as can be gleaned from its Formal Offer of Exhibits. Without the actual photographs, the Court cannot accept the testimonies of the police officers that photographs were, indeed, taken.

11. ID.; ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE REQUIRED WITNESSES RULE MAY BE PERMITTED ONLY IF THE PROSECUTION PROVES THAT THE APPREHENDING OFFICERS EXERTED GENUINE AND SUFFICIENT EFFORTS TO SECURE THEIR PRESENCE, ALTHOUGH THEY EVENTUALLY FAILED TO APPEAR. — [A]lthough the inventory was witnessed by two (2) barangay officials and a member of the media, there was no representative from the DOJ. It bears to stress that non-compliance with the required witnesses rule may be permitted only if the prosecution proves that the apprehending officers exerted *genuine and sufficient efforts* to secure their presence, although they eventually failed to appear. Although the earnestness of these efforts must be examined on a case-to-case basis, the primary objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. In this case, it would appear that there was no effort at all to secure the presence of a DOJ representative; hence, noncompliance with the rule cannot be excused.

APPEARANCES OF COUNSEL

Benjamin T. Etulle for petitioners.
The Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE,[****] *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated January 30, 2018 and the Resolution[3] dated

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[****] Designated Acting Chairperson per Special Order No. 2704 dated September 10, 2019.

[1] *Rollo*, pp. 36-54.

[2] *Id.* at 6-23. Penned by Associate Justice Tita Marilyn B. Payoyo-Villordon with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring.

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

August 23, 2018 rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 01553-MIN which affirmed the Judgment[4] dated June 22, 2016 of the Regional Trial Court of Lupon, Davao Oriental, Branch 32 (RTC) in Crim. Case No. 1694-14 finding petitioners Nor Jelamin Musa (Musa), Ivan Usop Bito (Bito), and Monsour Abdulrakman Abdilla (Abdilla; collectively, petitioners) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," and sentencing them to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 each.

The Facts

Petitioners were charged with violation of Section 5, Article II of RA 9165 in an Amended Information[6] which reads:

> That on or about July 22, 2014 in the Municipality of Governor Generoso, Province of Davao Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, mutually conspiring and confederating with each other, without authority of law, did then and there willfully, unlawfully and feloniously ***transport*** from Pagalungan, Maguindanao to Barangay Tibanban, Governor Generoso, Davao Oriental Methamphetamine Hydrochloride also locally known as "Shabu" with an estimated weight of 18.4349 grams, a dangerous drug, without proper license or permit from the authorities, to the damage and prejudice of the state.
>
> CONTRARY TO LAW.[7] (Emphasis supplied)

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[4] Records, pp. 143-167. Penned by Presiding Judge Emilio G. Dayanghirang III.

[5] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT No. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[6] Dated August 7, 2014. Records, pp. 28-29.

[7] *Id*. at 28.

When arraigned, petitioners entered a plea of *not guilty* to the offense charged.[8]

The prosecution alleged that on July 22, 2014, Police Chief Inspector Aldrin Quinto Juaneza (PCI Juaneza) of the Governor Generoso Municipal Police Station in Davao Oriental received confidential information from Police Superintendent Intelligence Officer Ruben Ramos (PSI Ramos) of the Davao Oriental Provincial Office about a purported plan to transport illegal drugs to Governor Generoso, Davao Oriental. Specifically, a white multi-cab vehicle with plate number NBD-279 with marking "Jarus Jeth" on its body was expected to transport illegal drugs from Pagalungan, Maguindanao to Governor Generoso. Armed with said information, PCI Juaneza and PSI Ramos arranged the conduct of a checkpoint to intercept the vehicle.[9]

At around 11:00 o'clock in the morning of July 22, 2014, a team composed of eight (8) police officers, including PCI Juaneza, SPO2[10] Joselito Alvarez (SPO2 Alvarez), PO3 Teodoro Blaya (PO3 Blaya), and PO3 Alvin Molejon (PO3 Molejon) established a checkpoint at Purok 1, Barangay Tibanban, Governor Generoso, Davao Oriental. The team members strategically positioned themselves near and around the area.[11]

From a distance of about ten (10) meters, the police officers saw the subject multi-cab heading towards the checkpoint, prompting the police officers to prepare to flag down the vehicle. However, even before reaching the vicinity of the checkpoint, the multi-cab stopped and abruptly changed direction, prompting the police officers to pursue the evading vehicle aboard a *bongo* or pick-up type vehicle.[12]

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[8] *Id.* at 34.

[9] See *rollo,* pp. 7-8.

[10] Also referred to as "SPO3" in some parts of the records.

[11] See *rollo,* p. 8.

[12] See *id.*

After a brief chase, the police officers stopped and came upon the multi-cab, which had halted. PO3 Blaya testified that he saw all three petitioners alight from the multi-cab and walk towards a nearby hut twenty (20) meters away from the vehicle. Thereat, the police officers caught up with the petitioners, introduced themselves, and warned them not to escape. Then, SPO2 Alvarez noticed that Abdilla was clutching his left hand. Upon SPO2 Alvarez's order, Abdilla handed over one (1) transparent heat-sealed plastic sachet containing white crystalline substance, which was later on identified as "*shabu*." Meanwhile, Musa and Bito were also frisked by the rest of the team, although nothing was found in their possession.[13]

Upon receipt of the plastic sachet containing the white substance, SPO2 Alvarez handed the same to PO3 Molejon. At the police station, SPO2 Alvarez and PO3 Blaya both placed their markings[14] on the seized drugs. Thereafter, PCI Juaneza prepared the Receipt/Inventory of Property/ies Seized,[15] which was witnessed and signed by Vice Mayor Katrina Orencia (Vice Mayor Orencia), Kagawad Ermian Limbadan (Kagawad Limbadan) of Brgy. Tibanban, Governor Generoso, and Peter Z. Macado (Macado), a media personality from Mati City. Photographs[16] of the confiscated drugs were also taken in the presence of petitioners.[17]

Meanwhile, PO3 Molejon had custody of the seized substance. The following day or on July 23, 2014, he prepared the Request for Laboratory Examination,[18] which was duly received by one PO2 Billano.[19] Upon qualitative examination, the drug specimen

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[13] See *id*. at 8-9.

[14] Their initials and the date of arrest.

[15] Folder of Exhibits, Exhibit "B".

[16] Records do not contain any photographs offered in evidence. The prosecution's Formal Offer of Exhibits shows that no photographs were offered or identified during trial. (See records, pp. 106-107.)

[17] See *rollo*, pp. 9-10.

[18] Folder of Exhibits, Exhibit "C".

[19] Also referred to as "Millano" in some parts of the records.

tested positive[20] for Methamphetamine Hydrochloride or "*shabu*," a dangerous drug.

In defense, Abdilla claimed that at around 4:00 o'clock in the morning of July 22, 2014, he went to Tibanban, Governor Generoso to observe the fish there. When he arrived at around 8:00 o'clock in the morning, he found no fish. Thus, he went to the waiting shed near the sea and sent a message to his in-law, asking her to have a vehicle brought over to Tibanban. Later on, a multi-cab arrived with Bito behind the wheel accompanied by Musa. The three of them waited for thirty (30) minutes at the waiting shed. Thereafter, three (3) persons, who introduced themselves as police officers, approached them. Poking their guns at the petitioners, the police officers required them to drop to the ground, where they were frisked and tied with a rope. Nothing was taken from them. Subsequently, they were brought to the police station.[21]

For his part, Musa asserted that on the date in question, he drove a multi-cab together with Bito to meet Abdilla and catch some fish. They arrived at around 11:30 in the morning at Sigaboy and met Abdilla in a hut. Five (5) minutes later, six (6) policemen arrived and pointed their guns at them, demanding that they bring out the drugs they were selling. Abdilla denied having drugs in their possession. Thereafter, they were brought to the police station. Musa averred that there was no police checkpoint at that time nor were they flagged down by the police. He denied that they turned right in an intersection going to Tibanban and that he saw any road on the right going in the said direction.[22]

The RTC Ruling

After trial on the merits, the RTC, in a Judgment[23] dated June 22, 2016, found petitioners guilty beyond reasonable doubt

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[20] See Chemistry Report No. D-037-14, Folder of Exhibits, Exhibit "A".

[21] See records, p. 145.

[22] See *id*. at 149-150.

[23] *Id*. at 143-167.

of the offense charged and sentenced them each to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.[24] The RTC found that the purpose of petitioners was to transport "*shabu*," considering that: (*a*) the multi-cab bearing plate number NDB-279 with marking "Jarus Jeth," which was the subject of the confidential information received by the police officers, suspiciously changed its course to avoid the checkpoint set up by the police officers; (*b*) after giving chase, the police officers caught up with the multi-cab which was already at a full stop, and they saw the petitioners alighting therefrom; and (*c*) they were able to recover a plastic sachet containing "*shabu*" from the possession of Abdilla. As petitioners' arrest was the result of a hot pursuit operation, it was immaterial that they were apprehended near a hut and not inside the vehicle.[25] Further, the integrity and probative value of the confiscated substance were properly preserved since the chain of custody was observed in this case.[26]

Aggrieved, petitioners appealed[27] to the CA.

The CA Ruling

In a Decision[28] dated January 30, 2018, the CA affirmed petitioners' conviction, sustaining the RTC's position that the warrantless search and arrest of petitioners in this case was valid, as the search of a moving vehicle is an exception to the rule that no search or seizure shall be made except by virtue of a valid warrant.[29] Moreover, it found that the prosecution was able to establish that the act of *transporting* the prohibited drugs had been committed, as can be gleaned from the testimonies of the police officers.[30] Likewise, it held that the chain of custody

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[24] *Id*. at 166.

[25] See *id*. at 150-152.

[26] See *id*. at 160-161.

[27] See Notice of Appeal dated June 27, 2016; *id*. at 173.

[28] *Rollo*, pp. 6-23.

[29] See *id*. at 13-14.

[30] See *id*. at 18-19.

of the seized substance had been observed, from the time it was confiscated, to the time it was turned over to the investigating officer until it was brought to the forensic chemist for laboratory examination.[31] Finally, it ruled that conspiracy attended the commission of the offense, as the acts of petitioners demonstrated a coordinated plan to transport the illegal drugs.[32]

Petitioners' motion for reconsideration[33] was denied in a Resolution[34] dated August 23, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in upholding the judgment of conviction of petitioners for the offense charged.

The Court's Ruling

The petition is meritorious.

At the outset, well-settled is the rule that findings of fact of the trial court are given great respect. But when there is a misappreciation of facts as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings of the trial court, as in this case.[35]

***"Transport"* as used under the Dangerous Drugs Act**

"Transport" as used under the Dangerous Drugs Act means "to carry or convey from one place to another." The essential element of the charge is the *movement* of the dangerous drug from one place to another.[36]

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[31] See *id*. at 22.

[32] See *id*. at 22-23.

[33] Dated February 22, 2018. *Id*. at 24-28.

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

[35] See *San Juan v. People*, 664 Phil. 547, 560 (2011).

[36] *Id*.

There is no definitive moment when an accused "transports" a prohibited drug. When the circumstances establish the purpose of an accused to transport and the fact of transportation itself, there should be no question as to the perpetration of the criminal act. The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed.[37]

The prosecution failed to prove the fact of "*transport*" of illegal drugs

In this case, it is the prosecution's theory that petitioners *transported* 18.4349 grams of methamphetamine hydrochloride or *shabu* on July 22, 2014 from Pagalungan, Maguindanao to Governor Generoso, Davao Oriental using a white multi-cab vehicle with plate number NBD-279 with the marking "Jarus Jeth" on its body. However, the totality of the evidence offered by the prosecution to prove its theory falls short as to justify the affirmance of petitioners' conviction.

First, while it may be true that, per the confidential information relayed by PSI Ramos to PCI Juaneza, a white multi-cab vehicle bearing plate number NBD-279 and the name "Jarus Jeth" on its body traversed the highway and approached the police checkpoint at Purok 1, Barangay Tibanban, Governor Generoso, Davao Oriental, none of the prosecution witnesses was able to identify any of the passengers of the said vehicle. In fact, the first time the police officers were able to see the petitioners was after they had given chase and found the multi-cab vehicle parked close to a nearby hut, inside which petitioners were standing. During his direct examination, SPO2 Alvarez testified:

Atty. Pudpud – What did you do when they change[d] the route?

SPO2 Alvarez – The team leader advised our troops to chase the vehicle.

Q – What happened when you chased the multicab?

A – When we chased them we were able to catch them and stop them on (sic) the small shanty nipa hut with light materials.

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[37] *People v. Asislo,* 778 Phil. 509, 523 (2016); citations omitted.

Q – What did they do when you were able to catch up with them?

A – They are all there standing at the hut.

Q – They are already alighted from the multicab?

A – Yes, sir.

x x x x x x x x x

Q – When they approached the checkpoint and avoided the checkpoint, did you notice the other 2 passengers?

A – No, your honor, because their multicab has covered (sic) on the back.

Q – You were not able to determine how many are on board?

A – Yes, sir.

Q – How about the driver of this multicab, were you able to see?

A – No, sir.

Q – So, you were only able to see them on the hut?

A – Yes, sir.

x x x x x x x x x[38]

SPO2 Alvarez affirmed this in his cross-examination, to wit:

Atty. Etulle – Now, when you arrived at the hut you saw the multicab park 20 meters away from the hut, am I correct?

A – Yes, sir.

Q – Was the engine still running or the engine was already stopped?

A – Already stopped.

Q – Did you see any passengers in the multicab?

A – No, sir.

Q – Did you see anyone alighted (sic) from the multicab?

A – No, sir.

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[38] TSN, February 18, 2015, pp. 12-15.

Q – What you see are the 3 persons standing in the hut?

A – Yes, sir.[39]

One of the team members, PO3 Blaya, likewise testified that they did not see petitioners aboard the multi-cab when they caught up with it, *viz.*:

Atty. Etulle – Now, upon reaching that point you said, you spotted the vehicle the multicab stopped at the open area where the shanty hut was located?

PO3 Blaya – Yes, sir.

Q – At the time you arrived, was the multicab at (sic) halted or stopped?

A – The multicab has already stopped, sir.

Q – Were there still passengers or people inside the multicab?

A – None, sir.

x x x x x x x x x[40]

Considering the foregoing testimonies of the prosecution witnesses, it is clear that the identities of the petitioners as the persons who were driving and/or riding the multi-cab purportedly used to transport illegal drugs have not been established with absolute certainty. This identification is material because failure to establish that petitioners were driving or onboard the multi-cab vehicle at any time raises reasonable doubt that they were transporting illegal drugs as charged. The fact that they were standing in a hut close to where the multi-cab was parked when the police officers caught up with them does not prove that they were, at any time, inside the vehicle; necessarily, it does not automatically suggest that they *transported* illegal drugs.

Second, the inconsistent and flip-flopping testimonies of the police officers as to what really transpired at the checkpoint, among others, raise serious doubt on the veracity of the

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[39] TSN, February 18, 2015, p. 32.

[40] TSN, June 16, 2015, p. 15.

prosecution evidence. When he testified at the bail hearing, SPO2 Alvarez declared that when they saw the multi-cab approaching the checkpoint, they flagged it down but it merely ran through without stopping.[41] However, at the presentation of the prosecution's evidence in chief during trial, he completely changed his testimony and stated that the subject vehicle changed direction and avoided the checkpoint altogether.[42] When confronted with his contradictory statements by the defense counsel, SPO2 Alvarez merely asserted that his testimony in the direct examination was "what really happened" without, however, offering any explanation for the conflicting statements.[43]

Further, SPO2 Alvarez initially claimed having seen two (2) persons in front and one (1) person at the back of the multi-cab;[44] subsequently, however, he again changed his testimony and stated that he did not see any passengers at all.[45] Again, no explanation had been forthcoming for the wholly contrasting statements given by SPO2 Alvarez.

In view of the foregoing statements, the Court entertains reasonable doubt that petitioners transported illegal drugs as charged. The evidence of the prosecution fell short of proving that petitioners were actually on board the multi-cab which, per confidential information, will be supposedly used to transport illegal drugs or that petitioners travelled from Pagalungan, Maguindanao to Governor Generoso for the said purpose. Indeed, the prosecution failed to show that any distance was travelled by petitioners with the drugs in their possession.[46] That petitioners were standing in a hut located within the vicinity of the multi-cab does not prove with certainty that they were the driver and passengers of the vehicle. Undeniably, the conclusion that

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[41] See TSN on Hearing on the Motion to Bail, October 14, 2014, p. 15.

[42] See TSN, February 18, 2015, p. 12.

[43] See TSN, February 18, 2015, p. 27.

[44] See TSN, October 14, 2014, p. 16.

[45] See TSN, February 18, 2015, pp. 30-31.

[46] See *San Juan v. People*, *supra* note 35.

they were transporting drugs merely because of their proximity to the multi-cab when they were arrested has no basis and is pure speculative at best. It bears stressing that the guilt of the accused must be proved with moral certainty. It is the responsibility of the prosecution to prove the element of transport of dangerous drugs, namely, that transportation had taken place, or that the accused had moved the drugs some distance,[47] which does not obtain in this case.

Illegal Possession of Drugs under the Variance Doctrine

Nevertheless, the police officers testified that they were able to confiscate a heat-sealed transparent plastic sachet containing 18.4349 grams of white crystalline substance in the possession of Abdilla, which, upon qualitative examination, was determined to contain Methamphetamine hydrochloride, a dangerous drug.[48]

In view thereof, petitioners *may,* in theory, still be held liable for Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 by virtue of the *variance doctrine* as enunciated in Section 4,[49] Rule 120 of the Rules of Court. The rule is that when there is a variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged. An offense charged necessarily includes that which is proved, when some of the essential elements or ingredients of the former, as alleged in

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[47] See *id*.

[48] See Chemistry Report No. D-037-14, Folder of Exhibits, Exhibit "A".

[49] Section 4, Rule 120 of the Rules of Court states:

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.

the complaint or information, constitute the latter.[50] On this score, the *transport* of the illegal drugs would necessarily entail the *possession* thereof.

A conviction for Illegal Possession of Dangerous Drugs requires the confluence of the following elements: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs.[51] The dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. **It is thus paramount for the prosecution to establish that the identity and integrity of the seized drug were duly preserved in order to sustain a conviction.** Otherwise, there would be no basis to convict for Illegal Possession of Dangerous Drugs because the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt.[52]

The chain of custody rule was not observed; hence, the integrity and probative value of the *corpus delicti* were not preserved

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[53]

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[50] *People v. Chi Chan Liu,* 751 Phil. 146, 164 (2015).

[51] *Calahi v. People,* G.R. No. 195043, November 20, 2017, 845 SCRA 12, 19-20.

[52] *Id.* at 20.

[53] See *People v. Año,* G.R. No. 230070, March 14, 2018; *People v. Crispo,* G.R. No. 230065, March 14, 2018; *People v. Sanchez,* G.R. No. 231383,

"Chain of custody" is the duly recorded authorized movements and custody of the seized drugs at each stage, from the time of seizure/confiscation to receipt in the forensic laboratory, to safekeeping and the presentation in court for identification and destruction.[54] As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law."[55] This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."[56]

In *People v. Nandi*,[57] the Court enumerated the following links that should be established in the chain of custody of the seized items: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. Accordingly, the prosecution is put to task to account for each link of the chain from the moment the drugs are seized up to their presentation in court as evidence of the crime.

March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018; all cases citing *People v. Sumili*, 753 Phil. 342, 348 (2015) and *People v. Bio*, 753 Phil. 730, 736 (2015).

[54] See *Cunanan v. People*, G.R. No. 237116, November 12, 2018, citing *People v. Sabdula*, 733 Phil. 85, 94 (2014).

[55] See *People v. Miranda, id.* See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

[56] See *People v. Segundo*, 814 Phil. 697, 722 (2017), citing *People v. Umipang, id*.

[57] 639 Phil. 134 (2010), cited in *People v. Que*, G.R. No. 212994, January 31, 2018.

In any case, however, the Court has acknowledged that strict compliance with the chain of custody procedure may not always be possible.[58] During such eventualities, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: *(a)* there is a justifiable ground for non- compliance; and *(b)* the integrity and evidentiary value of the seized items are properly preserved.[59] This is based on the saving clause found in Section 21 (a),[60] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[61] For the saving clause to apply, however, the prosecution must explain the reasons behind the procedural lapses.[62] Further, 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.[63]

A meticulous review of the records in this case shows that there was a glaring gap in the chain of custody of the seized item, thereby affecting its integrity and probative value. In his testimony, SPO2 Alvarez averred that he confiscated the illegal substance from Abdilla, and then turned it over to PO3 Blaya.[64]

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

[59] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[60] Section 21 (a), Article II of the IRR of RA 9165 pertinently states: "*Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items."

[61] Section 1 of RA 10640 pertinently states: "*Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items."

[62] *People v. Almorfe, supra* note 59.

[63] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[64] See TSN, February 18, 2015, p. 14; and TSN, June 16, 2015, p. 5.

Both SPO2 Alvarez and PO3 Blaya put their markings on the plastic sachet.[65] PO3 Blaya had custody of the plastic sachet from the place of arrest up to the time they arrived at the police station, where he turned it over PO3 Molejon,[66] the assistant investigator.[67] At the police station, PO3 Molejon conducted an inventory of the seized items.[68] The Receipt/Inventory of Property/ies Seized was signed by Vice Mayor Orencia, Kagawad Limbadan, and Macado, a member of the media. According to SPO2 Alvarez and PO3 Molejon, the arresting officers also took pictures of the confiscated item in the presence of petitioners.[69]

The following day, or on July 23, 2014, PO3 Molejon delivered the seized item as well as the Request for Laboratory Examination to the crime laboratory.[70] From the time of his receipt of the seized item from PO3 Blaya until it was delivered to the crime laboratory the following day, only PO3 Molejon had custody of and access to the seized item.[71] At the crime laboratory, a certain PO2 Billano, the acting evidence custodian, received the seized item and the laboratory request from PO3 Molejon.[72] On August 4, 2014, PO2 Billano turned over the request and the seized item to PO3 Ermer Cubillan (PO3 Cubillan), the evidence custodian.[73]

Unfortunately, records do not show what became of the seized item from the time it was in the custody of PO3 Cubillan until it was given to Police Inspector Ryan Pelayre Bajade (PI Bajade),

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[65] See TSN, February 18, 2015, p. 16; and TSN, June 16, 2015, p. 6.

[66] See TSN, June 16, 2015, pp. 5-6.

[67] See TSN, May 20, 2015, p. 5.

[68] See TSN, May 20, 2015, p. 6.

[69] See TSN, February 18, 2015, p. 17; and TSN, May 20, 2015, p. 12.

[70] See TSN, February 18, 2015, p. 18; and TSN, May 20, 2015, p. 7.

[71] See TSN, May 20, 2015, p. 7.

[72] See TSN, May 20, 2015, p. 8.

[73] See TSN, February 18, 2015, pp. 5-6.

the forensic chemist, for qualitative examination. There is no document showing that PO3 Cubillan turned it over directly to PI Bajade or if there were other personalities who handled the specimen. Clearly, therefore, there is a significant gap, a missing link in the chain of custody of the seized item. Because of this gap, there is no certainty that the sachet of drugs presented as evidence during trial was the same drugs found in Abdilla's possession, thereby rendering the probative weight of the seized item highly suspect.

Unjustified deviations from the mandate of Section 21, Article II of RA 9165

Furthermore, the stringent requirements under Section 21, Article II of RA 9165 were not strictly complied with. As part of the chain of custody procedure, the apprehending team is mandated, immediately after seizure and confiscation, to conduct a physical inventory and to photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if *prior* to the amendment of RA 9165 by RA 10640,[74] "a representative from the media *AND* the Department of Justice (DOJ), and any elected public official";[75] or (*b*) if *after* the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service *OR* the media."[76] The presence

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[74] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.'" As the Court noted in *People v. Gutierrez* (see G.R. No. 236304, November 5, 2018), RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." RA 10640 was published on July 23, 2014 in The Philippine Star (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and Manila Bulletin (Vol. 499, No. 23; World News section, p. 6). Thus, RA 10640 appears to have become effective on August 7, 2014

[75] Section 21 (1) and (2), Article II of RA 9165 and its IRR.

[76] Section 21, Article II of RA 9165, as amended by RA 10640.

of these witnesses safeguards "the establishment of the chain of custody and remove[s] any suspicion of switching, planting, or contamination of evidence."[77]

In this case, while the prosecution witnesses alleged that they took photographs of the seized item in the presence of the petitioners as well as of Vice Mayor Orencia, Kagawad Limbadan, and Macado, no such photographs are attached to the records. In fact, no photographs were identified by the prosecution witnesses or offered in evidence by the prosecution, as can be gleaned from its Formal Offer of Exhibits.[78] Without the actual photographs, the Court cannot accept the testimonies of the police officers that photographs were, indeed, taken.

Moreover, although the inventory was witnessed by two (2) barangay officials and a member of the media, there was no representative from the DOJ. It bears to stress that non-compliance with the required witnesses rule may be permitted only if the prosecution proves that the apprehending officers exerted *genuine and sufficient efforts* to secure their presence, although they eventually failed to appear. Although the earnestness of these efforts must be examined on a case-to-case basis, the primary objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.[79] In this case, it would appear that there was no effort at all to secure the presence of a DOJ representative; hence, non-compliance with the rule cannot be excused.

WHEREFORE, the petition is **GRANTED.** The Decision dated January 30, 2018 and the Resolution dated August 23, 2018 rendered by the Court of Appeals in CA-G.R. CR-HC No. 01553-MIN are **REVERSED** and **SET ASIDE**. Accordingly, petitioners Nor Jelamin Musa, Ivan Usop Bito, and Monsour Abdulrakman Abdilla are hereby **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered

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[77] See *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[78] Records, pp. 106-107.

[79] See *People v. Manansala, supra* note 53.

to cause their immediate release, unless they are being lawfully held in custody for any other reason.

SO ORDERED.

Jardeleza and *Carandang, JJ.,* concur.

Bersamin, C.J. and *Gesmundo, J.,* on official business.

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ACCESSORIES

Defined — Accessories to the crime are described in Article 19 as: "Those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners: 1. By profiting themselves or assisting the offender to profit by the effects of the crime." (Gurro *y* Maga *vs*. People, G.R. No. 224562, Sept. 18, 2019) p. 512

ACCOMPLICES

Elements — For one to be regarded as an accomplice, it must be shown that: (i) he knew the criminal design of the principal by direct participation, and concurred with the latter in his purpose; (ii) he cooperated in the execution by previous or simultaneous acts, with the intention of supplying material or moral aid in the execution of the crime in an efficacious way; and (iii) his acts bore a direct relation with the acts done by the principal. (Gurro *y* Maga *vs*. People, G.R. No. 224562, Sept. 18, 2019) p. 512

ACTIONS

Cause of action — A complaint that fails to state *or* lacks cause of action is dismissible; the Court, in *Dabuco v. CA,* discussed the difference between the dismissal of the complaint on the ground of "failure to state cause of action" and "lack of cause of action," to wit: As a preliminary matter, we wish to stress the distinction between the two grounds for dismissal of an action: failure to state a cause of action, on the one hand, and lack of cause of action, on the other hand; the former refers to the insufficiency of allegation in the pleading**,** the latter to the insufficiency of factual basis for the action**;** failure to state a cause may be raised in a Motion to Dismiss under Rule 16, while lack of cause may be raised any time; dismissal for failure to state a cause can be made at the earliest stages of an action; dismissal for

lack of cause is usually made after questions of fact have been resolved on the basis of stipulations, admissions or evidence presented. (Phil. Nat'l. Bank *vs*. Abello, G.R. No. 242570, Sept. 18, 2019) p. 694

—– Dismissal on the ground of "failure to state a cause of action" is a procedural remedy to resolve a complaint saving the parties the costs of going into trial; however, when the parties have entered trial, Section 34, Rule 132 of the Rules of Court, requires the parties to formally offer their evidence for the court's consideration; even then, evidence excluded by the court may still be attached to the records of the case by tendering it under Section 40, Rule 132 of the Rules of Court. (*Id*.)

—– The presentation of the contracts evidencing the loan and the mortgage is necessary as the respondents' cause of action is anchored on these documents; as the respondents failed to allege more so, adduce sufficient evidence to establish that prescription has set in, it is clear that the action must be denied and the complaint dismissed for want of cause of action. (*Id*.)

—– Thus, in "failure to state a cause of action," the examination is limited to the complaint in that whether it contains an *averment* of the three (3)essential elements of a cause of action, namely: (a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (b) an obligation on the part of the named defendant to respect or not to violate such right; and (c) an act or omission on the part of the named defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery; the test is whether or not, admitting hypothetically the allegations of fact made in the complaint, a judge may validly grant the relief demanded; in contrast, a complaint "lacks of cause of action" when it presents questions of fact that goes into *proving the existence* of the elements of the plaintiff's cause of action; thus, in dismissing the complaint on this ground, the

court, in effect, declares that the plaintiff is not entitled to a favorable judgment for failure to substantiate his or her cause of action by preponderance of evidence. (*Id*.)

Dismissals of — As stressed by the Court in *Malayan Insurance* and *Soliman*, the power of trial courts to dismiss cases for failure to prosecute is not unlimited; courts should dispose cases on their merits, rather than exercise their discretion to dismiss on the ground of failure to prosecute if there is no pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirements of the rules on the part of the complainant. (Exchange Capital Corp. *vs*. Bank of Commerce, G.R. No. 224511, Sept. 23, 2019) p. 738

—— The Court noted that the Clerk of Court has the duty to have the case set for pre-trial; while it agreed with the appellate court that this duty does not excuse the plaintiff, the petitioner therein, from prosecuting its case diligently, it opined that there is reason to believe that the petitioner therein awaited further orders from the trial court which would explain its failure to have the case set for pre-trial; the Court also noted that the petitioner had been diligent in the prosecution of its case before the order of dismissal. (*Id*.)

Real actions — According to jurisprudence, "in a number of cases, the Court has held that actions for reconveyance of or for cancellation of title to or to quiet title over real property are actions that fall under the classification of cases that involve title to, or possession of, real property, or any interest therein. (Montero *vs*. Montero, Jr., G.R. No. 217755, Sept. 18, 2019) p. 413

—— Jurisprudence has held that an action "involving title to real property" means that the plaintiffs cause of action is based on a claim that he owns such property or that he has the legal rights to have exclusive control, possession, enjoyment, or disposition of the same. (*Id*.)

ADMINISTRATIVE LAW

Government-owned or controlled corporation — A corporation is a government-owned or controlled corporation when the government directly or indirectly owns or controls at least a majority or 51% share of the capital stock; a government-owned or controlled corporation is either a "parent" corporation, *i.e.*, one "created by special law" (Sec. 3 (a), P.D. No. 2029) or a "subsidiary" corporation, *i.e.*, one created pursuant to law where at least a majority of the outstanding voting capital stock is owned by the parent government corporation and/or other government-owned subsidiaries. (Tetangco, Jr. *vs*. Commission on Audit, G.R. No. 244806, Sept. 17, 2019) p. 196

ALIBI

Defense of — The defense of alibi to prosper, the accused must prove not only that he was at some other place at the time the crime was committed, but that it was likewise impossible for him to be at the *locus criminis* at the time of the alleged crime; such physical impossibility was not sufficiently proven by appellants in this case. (People *vs*. Bacyaan *y* Sabaniya, G.R. No. 238457, Sept. 18, 2019) p.

— To be able to validly use the defense of alibi, two requirements must be met: (1) that the accused was not present at the scene of the crime at the time of its commission, and (2) that it was physically impossible for him to be there at the time; therefore, for the defense of alibi to prosper, it is not enough to prove that the accused was somewhere else when the offense was committed; it must likewise be demonstrated that he was so far away that it was not possible for him to have been physically present at the place of the crime or its immediate vicinity at the time of its commission. (People *vs*. Vargas *y* Jaguarin, G.R. No. 230356, Sept. 18, 2019) p. 541

ALIBI AND DENIAL

Defense of — Both denial and alibi are inherently weak defenses and constitute self-serving negative evidence which cannot be accorded greater evidentiary weight than the positive declaration of a credible witness. (People *vs*. Chavez *y* Villareal, G.R. No. 235783, Sept. 25, 2019) p. 994

— Denial and alibi, which are self-serving negative evidence and easily fabricated, cannot be accorded greater evidentiary weight than the positive testimony of a credible witness. (People *vs*. GGG, G.R. No. 224595, Sept. 18, 2019) p. 532

— It is settled that "alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law; they are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted; a denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill-motive to falsely testify against the appellants. (Gurro *y* Maga *vs*. People, G.R. No. 224562, Sept. 18, 2019) p. 512

ANNULMENT OF JUDGMENT

Remedy of — Under Rule 47 of the Rules of Court, the remedy of annulment of decision "is resorted to in cases where the ordinary remedies of new trial, appeal, petition for relief from judgment, or other appropriate remedies are no longer available through no fault of the petitioner, and is based on only two grounds: extrinsic fraud, and lack of jurisdiction or denial of due process"; according to Section 3 of Rule 47, if based on extrinsic fraud, the action must be filed within four (4) years from its discovery; and if based on lack of jurisdiction, before it is barred by laches or estoppel. (Fernando *vs*. Ramos Paguyo, G.R. No. 237871, Sept. 18, 2019) p. 642

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R. A. NO. 3019)

Section 3 (e) — In *Albert v. Sandiganbayan*, this Court defines each mode of commission: There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another; "evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will; "evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes; "gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected. (Reyes *vs*. People, G.R. No. 237172, Sept. 18, 2019) p. 611

— Section 3(e) of R.A. No. 3019, or the Anti-Graft and Corrupt Practices Act, provides: SECTION 3. Corrupt practices of public officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful: … (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. (*Id*.)

— The elements of violation of Section 3(e) on corrupt practices of public officers of R.A. No. 3019 are the following: (a) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (b) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (c) that his action caused any undue injury to any party,

including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions. (Cuerpo *vs*. People, G.R. No. 203382, Sept. 18, 2019) p. 340

—— The law provides three (3) modes of commission of the crime, namely, through "manifest partiality," "evident bad faith," and/or "gross negligence"; there is "*manifest partiality*" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another; on the other hand, "*evident bad faith*" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. (*Id*.)

—— This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions; to prove guilt, the prosecution must establish the following elements: 1) The accused must be a public officer discharging administrative, judicial or official functions; 2) He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and 3) That his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. (Reyes *vs*. People, G.R. No. 237172, Sept. 18, 2019) p. 611

—— To prove a violation of the Anti-Graft and Corrupt Practices Act, however, the prosecution must also establish that his approval of these permits was done through manifest partiality, evident bad faith, or inexcusable negligence; commission of the offense through any of these three (3) modes is sufficient for a conviction; these modes, however, are distinct from one another. (*Id*.)

ANTI-SEXUAL HARASSMENT ACT OF 1995 (R.A. NO. 7877)

Prescriptive period — The issue of when prescription of a special law starts to run and when it is tolled was settled

in the case of *Panaguiton, Jr.* v. *Department of Justice, et al.,* wherein the Court had the occasion to discuss the set-up of our judicial system during the passage of Act 3326 and the prevailing jurisprudence at that time which considered the filing of the complaint before the justice of peace for preliminary investigation as sufficient to toll period of prescription. (People *vs*. Lee, Jr., G.R. No. 234618, Sept. 16, 2019) p. 134

APPEALS

Factual findings of administrative agencies — As a rule, the findings of administrative agencies, such as the Department of Agrarian Reform, are deemed binding and conclusive upon the appellate courts; administrative agencies possess special knowledge and expertise on "matters falling under their specialized jurisdiction"; thus, their findings, when supported by substantial evidence, are accorded great respect and even finality, especially when affirmed by the Court of Appeals. (Fil-Estate Properties, Inc. *vs*. Reyes, G.R. No. 152797, Sept. 18, 2019) p. 221

Factual findings of trial courts –– The trial court, having the opportunity to observe the witnesses and their demeanor during the trial, can best assess the credibility of the witnesses and their testimonies; the trial court's findings are accorded great respect unless the trial court has overlooked or misconstrued some substantial facts, which if considered might affect the result of the case. (People *vs*. GGG, G.R. No. 224595, Sept. 18, 2019) p. 532

Petition for review on certiorari to the Supreme Court under Rule 45 — A petition for review on *certiorari* under Rule 45 is a mode of appeal where the issue is limited only to questions of law; in labor cases, a Rule 45 petition is limited to reviewing whether the CA correctly determined the presence or absence of grave abuse of discretion and deciding other jurisdictional errors of the NLRC, and not on the basis of whether the latter's decision on the merits of the case was strictly correct. (Genuino

Agro-Industrial Dev't. Corp. *vs*. Romano, G.R. No. 204782, Sept. 18, 2019) p. 360

— As a general rule, only questions of law may be brought in a petition for review on *certiorari* under Rule 45 of the Rules of Court; this Court will not disturb the factual findings of the lower courts if they are supported by substantial evidence. (Terp Construction Corp. *vs*. Banco Filipino Savings and Mortgage Bank, G.R. No. 221771, Sept. 18, 2019) p. 478

— 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. (Ongkingco *vs*. Kazuhiro Sugiyama, G.R. No. 217787, Sept. 18, 2019) p. 426

— It bears emphasizing that mere disagreement between the Court of Appeals and the trial court as to the facts of a case does not of itself warrant this Court's review of the same; it has been held that the doctrine that the findings of fact made by the Court of Appeals, being conclusive in nature, are binding on this Court, applies even if the Court of Appeals was in disagreement with the lower court as to the weight of evidence with a consequent reversal of its findings of fact, so long as the findings of the Court of Appeals are borne out by the record or based on substantial evidence. (Terp Construction Corp. *vs*. Banco Filipino Savings and Mortgage Bank, G.R. No. 221771, Sept. 18, 2019) p. 478

— The general rule in a petition for review on *certiorari* under Rule 45, as amended, is that only questions of law should be raised; in *Republic v. Heirs of Santiago*, the Court enumerated that one of the exceptions to the general rule is when the CA's findings are contrary to those of the trial court. (Foodbev Int'l. *vs*. Ferrer, G.R. No. 206795, Sept. 16, 2019) p. 82

— The jurisdiction of this Court in Rule 45 petitions is limited in scope such that only questions of law may be raised; a question of law exists when "doubt or difference arises as to what the law is on a certain state of facts";

on the other hand, a question of fact exists when "doubt or difference arises as to the truth or the falsehood of alleged facts." (Fil-Estate Properties, Inc. *vs*. Reyes, G.R. No. 152797, Sept. 18, 2019) p. 221

— The rule is that factual issues are beyond the province of this Court in a Rule 45 petition; By way of exception, the Court may re-examine the facts based on the evidence presented by the parties when, among others, the factual findings of the government agency and the CA are conflicting, as in the instant case. (Marcelo *vs*. Samahang Magsasaka ng Barangay San Mariano, G.R. No. 205618, Sept. 16, 2019) p. 49

— The Rules of Court requires that only questions of law should be raised in petitions filed under Rule 45; hence, questions "on whether the prosecution's evidence proved the guilt of the accused beyond reasonable doubt; whether the presumption of innocence was properly accorded the accused; whether there was sufficient evidence to support a charge of conspiracy; or whether the defense of good faith was correctly appreciated are all, in varying degrees, questions of fact," should not be raised in appeals from the Sandiganbayan (SB). (Cuerpo *vs*. People, G.R. No. 203382, Sept. 18, 2019) p. 340

— Well-settled is the rule that findings of fact of the trial court are given great respect; but when there is a misappreciation of facts as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings of the trial court, as in this case. (Musa *vs*. People, G.R. No. 242132, Sept. 25, 2019) p. 1057

Rules on — The duty to transmit the records of final and executory cases from this Court to the court of origin belongs to the Clerk of Court. (Exchange Capital Corp. *vs*. Bank of Commerce, G.R. No. 224511, Sept. 23, 2019) p. 738

ATTORNEYS

Duties — A government lawyer is a keeper of public faith and is burdened with a high degree of social responsibility,

higher than his brethren in private practice. (Fermin *vs*. Atty. Bedol, A.C. No. 6560, Sept. 16, 2019) p. 1

— A lawyer's personal deference to the law not only speaks of his character but it also inspires respect and obedience to the law, on the part of the public; as servants of the law and officers of the court, lawyers are required to be at the forefront of observing and maintaining the rule of law; they are expected to make themselves exemplars worthy of emulation. (*Id*.)

— Canon 1 clearly mandates the obedience of every lawyer to laws and legal processes; to the best of his ability, a lawyer is expected to respect and abide by the law and, thus, avoid any act or omission that is contrary thereto. (*Id*.)

— Respondent's act of issuing those notices ahead of the issuance of the COMELEC *en banc* Resolution calling for a special election was not in compliance with the procedures under the law and the COMELEC rules; in so doing, he breached his duty to obey the laws and the legal orders of the duly constituted authorities, thus, violating Canon 1 of the Code of Professional Responsibility. (*Id*.)

BAIL

Right to — In *People v. Caderao:* The right to bail after conviction is not absolute, and while the person convicted may, upon application be bailed at the discretion of the court, that discretion particularly with respect to extending the bail should be exercised, not with laxity, but with caution and only for strong reasons with the end in view of upholding the majesty of the laws and the administration of justice. (Reyes *vs*. People, G.R. No. 237172, Sept. 18, 2019) p. 611

— The 1987 Constitution mandates that bail is a matter of right in bailable offenses *before conviction*; *after conviction* of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, the grant of bail becomes discretionary upon the court, which may either deny or

grant it; in circumstances where the penalty imposed exceeds six (6) years, the court is not precluded from cancelling the bail previously granted upon a showing by the prosecution of the circumstances enumerated in Rule 114, Section 5 of the Rules of Court; the presence of even one (1) of the enumerated circumstances is sufficient cause to deny or cancel bail. (*Id*.)

BILL OF RIGHTS

Freedom of speech and expression — As will be shown, however, the overbreadth doctrine finds special and limited application only to free speech cases; the present petition does not involve a free speech case; it stemmed, rather, from an obscenity prosecution; as both this Court and the US Supreme Court have consistently held, obscenity is not protected speech; no court has recognized a fundamental right to create, sell, or distribute obscene material; thus, a facial overbreadth challenge is improper as against an anti-obscenity statute. (Madrilejos *vs*. Gatdula, G.R. No. 184389, Sept. 24, 2019) p. 754

— In *Soriano v. Laguardia*, the Court reiterated that: it has been established in this jurisdiction that unprotected speech or low-value expression refers to libelous statements, obscenity or pornography**,** false or misleading advertisement, insulting or "fighting words," *i.e.*, those which by their very utterance inflict injury or tend to incite an immediate breach of peace and expression endangering national security. (*Id*.)

— Obscenity is unprotected speech; this rule is doctrinal both here and in the US; it was in 1942 when the US Supreme Court first held in the landmark case of *Chaplinsky v. New Hampshire* that the lewd and the obscene are not protected speech and therefore falls outside the protection of the First Amendment; this Court has long accepted *Chaplinsky's* analysis that obscenity is unprotected speech; In 1985, We held, in the case of *Gonzalez v. Katigbak*, that the law on freedom of expression frowns on obscenity and rightly so. (*Id*.)

Right against self-incrimination — A person's right against self-incrimination is enshrined in Section 17, Article III of the Constitution; the right against self-incrimination is accorded to every person who gives evidence, whether voluntary or under compulsion of subpoena, in any civil, criminal or administrative proceeding; the right is not to be compelled to be a witness against himself. (Fajardo *vs*. People, G.R. No. 239823, Sept. 25, 2019) p. 1012

— It secures to a witness, whether he be a party or not, the right to refuse to answer any particular incriminatory question, *i.e.*, one the answer to which has a tendency to incriminate him for some crime"; the essence of the right against self-incrimination is testimonial compulsion, that is, the giving of evidence against himself through a testimonial act; however, the right can be claimed only when the specific question, incriminatory in character, is actually put to the witness. (*Id*.)

Right to counsel — In *Carbonel v. Civil Service Commission*, where the Court declared that "a party in an administrative inquiry may or may not be assisted by counsel"; however, it must be remembered that the right to counsel under Section 12 of the Bill of Rights is meant to protect a suspect during custodial investigation; thus, the exclusionary rule under paragraph (2), Section 12 of the Bill of Rights *applies only to admissions made in a criminal investigation but not to those made in an administrative investigation*. (Fajardo *vs*. People, G.R. No. 239823, Sept. 25, 2019) p. 1012

— The right to counsel is not always imperative in administrative investigations because such inquiries are conducted merely to determine whether there are facts that merit the imposition of disciplinary measures against erring public officers and employees, with the purpose of maintaining the dignity of government service. (*Id*.)

— While investigations conducted by an administrative body may at times be akin to a criminal proceeding, the fact remains that, under existing laws, *a party in an*

administrative inquiry may or may not be assisted by counsel, irrespective of the nature of the charges and of petitioner's capacity to represent herself, and *no duty rests on such body to furnish the person being investigated with counsel*. (*Id*.)

BOUNCING CHECKS LAW (B. P. 22)

Violation of — As a general rule, when a corporate officer issues a worthless check in the corporate's name, he or she may be held personally liable for violating a penal statute, *i.e*., Section 1 of B.P. 22; however, a corporate officer who issues a bouncing corporate check can only be held civilly liable when he or she is convicted; once acquitted of the offense of violating B.P. 22, a corporate officer is discharged of any civil liability arising from the issuance of the worthless check in the name of the corporation he or she represents. (Ongkingco *vs*. Kazuhiro Sugiyama, G.R. No. 217787, Sept. 18, 2019) p. 426

— Failure of the prosecution to prove that the person who issued the check was given the requisite notice of dishonor is a clear ground for acquittal; it bears emphasis that the giving of the written notice of dishonor does not only supply proof for the element arising from the presumption of knowledge the law puts up, but also affords the offender due process; the law thereby allows the offender to avoid prosecution if she pays the holder of the check the amount due thereon, or makes arrangements for the payment in full of the check by the drawee within five banking days from receipt of the written notice that the check had not been paid. (*Id*.)

— Inasmuch as the second element involves a state of mind of the person making, drawing or issuing the check which is difficult to prove, Section 2 of B.P. 22 creates a *prima facie* presumption of such knowledge; for this presumption to arise, the prosecution must prove the following: (a) the check is presented within ninety (90) days from the date of the check; (b) the drawer or maker of the check receives notice that such check has not been paid by the drawee; and (c) the drawer or maker of the check fails

to pay the holder of the check the amount due thereon, or make arrangements for payment in full within five (5) banking days after receiving notice that such check has not been paid by the drawee. (*Id*.)

— The legislative intent behind the enactment of B.P. 22, as may be gathered from the statement of the bill's sponsor when then Cabinet Bill No. 9 was introduced before the *Batasan Pambansa*, is to discourage the issuance of bouncing checks, to prevent checks from becoming "useless scraps of paper" and to restore respectability to checks, all without distinction as to the purpose of the issuance of the checks. (*Id*.)

— The presumption is brought into existence only after it is proved that the issuer had received a notice of dishonor and that within five (5) days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment; the presumption or *prima facie* evidence, as provided in this Section, cannot arise if such notice of nonpayment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period. (*Id*.)

— To sustain a conviction of violation of B.P. 22, the prosecution must prove beyond reasonable doubt three (3) essential elements, namely: 1. The accused makes, draws or issues any check to apply to account or for value; 2. The accused knows at the time of the issuance that he or she does not have sufficient funds in, or credit with, drawee bank for payment of the check in full upon its presentment; and 3. The check is subsequently dishonored by the drawee bank for insufficiency of funds or credit; or it would have been dishonored for the same reason had not the drawer, without any valid reasons, ordered the bank to stop payment. (*Id*.)

CERTIORARI

Petition for — A special civil action for *certiorari* may only be resorted to in cases where there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. (Sps. Bernardo *vs*. Union Bank of the Phils., G.R. No. 208892, Sept. 18, 2019) p. 387

— Under Rule 65, while the remedy of appeal is indeed available to petitioners, the same is clearly not a plain, speedy, and adequate remedy in light of petitioners' vigorous assertion that the trial court committed grave abuse of discretion when it declared petitioners in default and rendered an adverse judgment against them; petitioners' availment of a Petition for *Certiorari* therefore, is proper and should have been taken cognizance by the Court of Appeals. (NAPOCOR *vs*. Baysic, G.R. No. 213893, Sept. 25, 2019) p. 942

Writ of — A writ of *certiorari* can only correct errors of jurisdiction or those involving the commission of grave abuse of discretion, not those which call for the evaluation of evidence and factual findings; simply put, the petition basically raises issues pertaining to alleged errors of judgment, not errors of jurisdiction, which is tantamount to an appeal, contrary to express injunction of the Constitution, the Rules of Court, and prevailing jurisprudence. (People *vs*. Sandiganbayan (Second Div.), G.R. Nos. 233280-92, Sept. 18, 2019) p. 563

— An order denying a demurrer to evidence is an interlocutory order for it does not completely dispose of a case; as an interlocutory order, the remedy of an appeal is expressly excluded by Rule 41 of the Rules of Court; alternatively, as an exception to the general rule that a writ of *certiorari* is not available to challenge interlocutory orders of the trial court, a party may file a *certiorari* petition under Rule 65 of the Rules of Court, alleging that the denial is tainted with grave abuse of discretion amounting to lack or in excess of jurisdiction. (Sps. Mangaron, Jr. *vs*. Hanna Via Design & Construction, G.R. No. 224186, Sept. 23, 2019) p. 731

CITIZENSHIP

Proof of — "The exercise of the rights and privileges granted only to Filipinos is not conclusive proof of citizenship, because a person may misrepresent himself to be a Filipino and thus enjoy the rights and privileges of citizens of this country." (Rep. of the Phils. *vs*. Manda, G.R No. 200102, Sept. 18, 2019) p. 331

CIVIL SERVICE COMMISSION

Bonus — By definition, "bonus" is a gratuity or act of liberality of the giver; It is something given in addition to what is ordinarily received by or strictly due the recipient; it is granted and paid to an employee for his industry and loyalty which contributed to the success of the employer's business and made possible the realization of profits; it is not a gift, but a sum paid for services, or upon some other consideration, but in addition to or in excess of that which would ordinarily be given. (Tetangco, Jr. *vs*. Commission on Audit, G.R. No. 244806, Sept. 17, 2019) p. 196

Proscription against double compensation — Applying *Singson* here, we rule that like the grant of per diems, the payment of RATA to petitioners Tetangco, Suratos and De Zuñiga does not violate the constitutional proscription against double compensation; in any event, the COA contradicted itself when in one breadth, it acknowledged the application of *Singson* to this case, but in another, it disallowed the grant of RATA to aforenamed petitioners for supposed lack of valid authority. (Tetangco, Jr. *vs*. Commission on Audit, G.R. No. 244806, Sept. 17, 2019) p. 196

COMPREHENSIVE AGRARIAN REFORM LAW (R.A. NO. 6657)

Application of — "Agricultural land" is, in turn, defined under Section 3(c) of R.A. No. 6657 as "land devoted to agricultural activity as defined in this Act and not classified as mineral, forest, residential, commercial or industrial land"; in accordance with its power to issue rules and regulations to carry out the purposes of R.A. No. 6657, DAR issued A.O. No. 01, series of 1990 providing for

the *Revised Rules and Regulations Governing Conversion of Private Agricultural Lands to Non-Agricultural Uses* and elaborating on the definition of agricultural lands. (Marcelo *vs*. Samahang Magsasaka ng Barangay San Mariano, G.R. No. 205618, Sept. 16, 2019) p. 49

— Coverage under the CARP is the general rule, therefore, the applicant bears the burden of proving that the property is exempt. (*Id*.)

— R.A. No. 6657, as amended by R.A. No. 9700, places reasonable limitations on the transferability of awarded lands; an agrarian reform beneficiary is prohibited from alienating awarded lands for a period of 10 years, save in certain cases. (Fil-Estate Properties, Inc. *vs*. Reyes, G.R. No. 152797, Sept. 18, 2019) p. 221

— R.A. No. 6657, as amended, echoes these social justice provisions. Section 2 lists among the objectives of agrarian reform "the just distribution of all agricultural lands" subject to certain conditions; it also recognizes, among others, the participatory role of all stakeholders by allowing farmers, farmworkers, landowners, cooperatives, and other independent farmer's organizations to "participate in the planning, organization, and management" of the Comprehensive Agrarian Reform Program. (*Id*.)

— Section 50 of R.A. No. 6657, as amended, vests the Department of Agrarian Reform with primary jurisdiction over agrarian reform matters and over all matters involving the implementation of agrarian reform; this provision is further reiterated in jurisprudence; in the recent case of *Secretary of Department of Agrarian Reform v. Heirs of Abucay*, for one, this Court held that the "jurisdiction over the administrative implementation of agrarian laws exclusively belongs to the Department of Agrarian Reform Secretary"; thus, in carrying out its mandate of resolving disputes and controversies in the most expeditious manner, the Department of Agrarian Reform is not constrained by the technical rules of procedure and evidence. (*Id*.)

—— Section 54 R.A. No. 6657 in relation to Section 61 provides the mode of appeal from the decisions, orders, awards, or rulings of the Department of Agrarian Reform; this Court in *Valencia v. Court of Appeals* distinguished two (2) modes of appeal that may be taken from the decisions, resolutions, and final orders of the Department of Agrarian Reform depending on the subject matter of the case; for matters falling within the jurisdiction of the Department of Agrarian Reform Adjudication Board, the appeal should be lodged before the Court of Appeals by way of a petition for review on *certiorari* under Rule 43 of the Rules of Court; otherwise, the case may be elevated to the Office of the President depending on whether the rules provide for such mode of appeal. (*Id*.)

—— The Comprehensive Agrarian Reform Law recognizes the need of landless farmers and farmworkers to either own the land they till or receive a just share of the fruits; this government initiative is founded upon the history of agrarian reform in the country, which was exhaustively discussed in *Heirs of Nuñez, Sr. v. Heirs of Villanoza*; R.A. No. 6657 is anchored on the social justice provisions on agrarian reform found in Article XIII of the 1987 Constitution. (*Id*.)

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody —— Although the Court acknowledges that strict compliance with the chain of custody procedure may not always be possible, it must be stressed that for the saving clause to apply, the prosecution must explain the reasons behind the procedural lapses. (People *vs*. Antonio *y* Mabuti, G.R. No. 243936, Sept. 16, 2019) p. 175

—— Although the Implementing Rules and Regulations of R.A. No. 9165 offers a saving clause allowing leniency whenever there are justifiable grounds to deviate from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved, the prosecution offered no such explanation here. (People *vs.* Tulod *y* Cuarte, G.R. No. 227993, Sept. 25, 2019) p. 978

— Anent the witness requirement, noncompliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear; mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance. (People *vs*. Roxas *y* Camarillo, G.R. No. 242817, Sept. 16, 2019) p. 161

— As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law; this is because "the law has been 'crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment." (*Id*.)

— In cases involving dangerous drugs, the State bears not only the burden of proving the elements of the crime charged, but also of proving the *corpus delicti* or the body of the crime; in drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law. (People *vs*. Moreno, G.R. No. 234273, Sept. 18, 2019) p. 594

— In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense; the prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court. (People *vs*. Tulod *y* Cuarte, G.R. No. 227993, Sept. 25, 2019) p. 978

— In *People v. Abelarde*, the accused was acquitted of violation of Section 5, R.A. No. 9165 because there was no evidence that the inventory of the seized dangerous drugs was done in the presence of an elected official, a media representative and a representative from the DOJ. (*Id*.)

— In *People v. Alcuizar*, the Court considered the vague recollection of the arresting officers regarding the transfer

of the custody of seized item whether the investigating officer received it at the place of operation or at the police station, as a ground to acquit the accused. (*Id*.)

—– It bears to stress that non-compliance with the required witnesses rule may be permitted only if the prosecution proves that the apprehending officers exerted *genuine and sufficient efforts* to secure their presence, although they eventually failed to appear; although the earnestness of these efforts must be examined on a case-to-case basis, the primary objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. (Musa *vs*. People, G.R. No. 242132, Sept. 25, 2019) p. 1057

—– It is a mandatory requirement under Section 21 of R.A. No. 9165 that the accused or his/her representative and all of the aforesaid witnesses sign the copies of the inventory and be given a copy thereof. (People *vs*. Rasos, Jr. *y* Padollo, G.R. No. 243639, Sept. 18, 2019) p. 708

—– Non-compliance with the three or two-witness rule may be permitted only if the prosecution proves that the apprehending officers exerted genuine, sufficient, and earnest efforts but failed to secure the presence of said witnesses; mere statements of unavailability, absent actual serious attempts to secure the required witnesses, are unacceptable grounds for non-compliance, since the buy-bust conducted in this case is a planned operation. (People *vs*. Antonio *y* Mabuti, G.R. No. 243936, Sept. 16, 2019) p. 178

—– R.A. No. 9165 provides reasonable safeguards to preserve the identity and integrity of narcotic substances and dangerous drugs seized and/or recovered from drug offenders; Section 21, Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 clearly outlines the post-seizure procedure in taking custody of seized drugs; proper procedures to account for each specimen by tracking its handling and storage from point of seizure to presentation of the evidence in court and its final disposal must be observed. (*Id*.)

—— Section 21, Article II of R.A. No. 9165, the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. (People *vs*. Moreno, G.R. No. 234273, Sept. 18, 2019) p. 594

—— Section 21 of R.A. No. 9165, as amended, provides that "noncompliance of these requirements *under justifiable grounds,* as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items." (People *vs*. Rasos, Jr. *y* Padollo, G.R. No. 243639, Sept. 18, 2019) p. 708

—— Section 21 of R.A. No. 9165 requires that the photographing of the seized drug specimens shall be done during the conduct of the physical inventory of the seized items, which shall be undertaken immediately after seizure and confiscation. (People *vs*. Rasos, Jr. *y* Padollo, G.R. No. 243639, Sept. 18, 2019) p. 708

—— Section 21 of the IRR of R.A. No. 9165 provides 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"; for this provision to be effective, however, the prosecution must (1) first recognize any lapse on the part of the police officers and (2) then be able to justify the same. (People *vs*. Moreno, G.R. No. 234273, Sept. 18, 2019) p. 594

—— The IRR Guidelines state that "the elected public official is any incumbent public official regardless of the place where he/she is elected"; hence, the authorities are not limited to seeking assistance from local barangay officials; therefore, the authorities' allegation in the Joint Affidavit that they failed to secure the assistance of local barangay officials is a lame and unconvincing excuse that deserves

scant consideration. (People *vs*. Rasos, Jr. *y* Padollo, G.R. No. 243639, Sept. 18, 2019) p. 708

—— The law requires that the inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if *prior* to the amendment of R.A. No. 9165 by R.A. No. 10640, a representative from the media *AND* the DOJ, and any elected public official; or (b) if *after* the amendment of R.A. No. 9165 by R.A. No. 10640, an elected public official and a representative of the National Prosecution Service (NPS) *OR* the media; The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence." (People *vs*. Roxas *y* Camarillo, G.R. No. 242817, Sept. 16, 2019) p. 161

—— The stringent requirements under Section 21, Article II of R.A. No. 9165 were not strictly complied with; as part of the chain of custody procedure, the apprehending team is mandated, immediately after seizure and confiscation, to conduct a physical inventory and to photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if *prior* to the amendment of R.A. No. 9165 by R.A. No. 10640, "a representative from the media *AND* the Department of Justice (DOJ), and any elected public official"; or (b) if *after* the amendment of R.A. No. 9165 by R.A. No. 10640, "[a]n elected public official and a representative of the National Prosecution Service *OR* the media." (Musa *vs*. People, G.R. No. 242132, Sept. 25, 2019) p. 1057

—— To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime; "chain of custody" is the duly

recorded authorized movements and custody of the seized drugs at each stage, from the time of seizure/confiscation to receipt in the forensic laboratory, to safekeeping and the presentation in court for identification and destruction. (Musa *vs*. People, G.R. No. 242132, Sept. 25, 2019) p. 1057

(People *vs*. Roxas *y* Camarillo, G.R. No. 242817, Sept. 16, 2019) p. 161

— While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded; in this connection, Section 21, Article II of R.A. No. 9165, which was amended by R.A. No. 10640 in 2014, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. (People *vs*. Rasos, Jr. *y* Padollo, G.R. No. 243639, Sept. 18, 2019) p. 708

Illegal possession of dangerous drugs — Conviction for Illegal Possession of Dangerous Drugs requires the confluence of the following elements: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs. (Musa *vs*. People, G.R. No. 242132, Sept. 25, 2019) p. 1057

Illegal sale and/or illegal possession of dangerous drugs — In cases for illegal sale and/or illegal possession of dangerous drugs under R.A. No. 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime; failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal. (People *vs*. Roxas *y* Camarillo, G.R. No. 242817, Sept. 16, 2019) p. 161

Illegal sale of dangerous drugs — In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the prosecution is required to prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor; in cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime; In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law. (People *vs*. Rasos, Jr. *y* Padollo, G.R. No. 243639, Sept. 18, 2019) p. 708

Illegal transportation of dangerous drugs — It bears stressing that the guilt of the accused must be proved with moral certainty; it is the responsibility of the prosecution to prove the element of transport of dangerous drugs, namely, that transportation had taken place, or that the accused had moved the drugs some distance, which does not obtain in this case. (Musa *vs*. People, G.R. No. 242132, Sept. 25, 2019) p. 1057

— "Transport" as used under the Dangerous Drugs Act means "to carry or convey from one place to another; the essential element of the charge is the *movement* of the dangerous drug from one place to another; there is no definitive moment when an accused "transports" a prohibited drug; when the circumstances establish the purpose of an accused to transport and the fact of transportation itself, there should be no question as to the perpetration of the criminal act; the fact that there is actual conveyance suffices to support a finding that the act of transporting was committed. (*Id*.)

COMPROMISES

Contract of — Article 2028 of the Civil Code defines a compromise as a "contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced"; it can either be judicial or extrajudicial depending on its object or purpose; a judicial

compromise is one that puts an end to a pending lawsuit, while an extrajudicial compromise is one entered into by the parties to avoid litigation. (Fil-Estate Properties, Inc. *vs*. Reyes, G.R. No. 152797, Sept. 18, 2019) p. 221

—— By its very definition, a compromise is a contract between two (2) or more parties; just like any other contract, its validity depends upon compliance with the requisites enumerated in Article 1318 of the Civil Code, namely: (1) consent of the contracting parties; (2) object certain, which is the subject matter of the contract; (3) cause of the obligation; certain matters cannot be the subject of a compromise; courts should carefully look into the terms and conditions stipulated by the parties, as a compromise must not have provisions that are contrary to "law, morals, good customs, public order or public policy"; otherwise, it shall be deemed void, and shall vest no right in and hold no obligation for either of the parties. (*Id*.)

—— In cases where a party is represented by another, a special power of attorney is necessary; Article 1878 of the Civil Code is explicit about this requirement; however, the absence of a special power of attorney does not render the compromise void but merely unenforceable, capable of being ratified by the proper party. (*Id*.)

—— Non-parties to the agreement cannot be bound by its terms and conditions; this is because there is no "vinculum or juridical tie which is the efficient cause for the establishment of an obligation." (*Id*.)

—— The Civil Code defines a compromise as "a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced"; a compromise agreement that is approved by final order of the court has the effect of *res judicata* between the parties, and is deemed a judgment that is subject to execution in accordance with the Rules of Court. (Sps. Bernardo *vs*. Union Bank of the Phils., G.R. No. 208892, Sept. 18, 2019) p. 387

CONSPIRACY

Existence of — As a rule, once conspiracy is shown, the act of one is the act of all the conspirators; as in all crimes, the existence of conspiracy must be proven beyond reasonable doubt; while direct proof is unnecessary, the same degree of proof necessary in establishing the crime, is required to support the attendance thereof, *i.e.*, it must be shown to exist as clearly and convincingly as the commission of the offense itself. (People *vs*. Enero, G.R. No. 242213, Sept. 18, 2019) p. 680

— Conspiracy is present when there is unity in purpose and intention in the commission of a crime; it does not require a previous plan or agreement to commit assault as it is sufficient that at the time of such aggression, all the accused manifested by their acts a common intent or desire to attack. (People *vs*. Vargas *y* Jaguarin, G.R. No. 230356, Sept. 18, 2019) p. 541

— Direct proof is not necessary to establish the fact of conspiracy; rather, conspiracy may be presumed from, and proven by the acts of, the accused pointing to a joint purpose, design, concerted action and community of interests. (Gurro *y* Maga *vs*. People, G.R. No. 224562, Sept. 18, 2019) p. 512

— It cannot be gainsaid that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it; once conspiracy is established, the responsibility of the conspirators is collective, thereby rendering them all equally liable regardless of the extent of their respective participations; this means that each conspirator is responsible for everything done by his/her confederates which follows incidentally in the execution of a common design as one of its probable and natural consequences. (*Id*.)

CONTEMPT

Contempt proceedings — Contempt proceedings are *sui generic*; they "may be resorted to in civil as well as criminal

actions, and independently of any action"; the power of contempt has a two-fold aspect, namely: "(1) the proper punishment of the guilty party for his disrespect to the court or its order; and (2) to compel his performance of some act or duty required of him by the court which he refuses to perform"; due to this two-fold aspect, contempt may be classified as civil or criminal; criminal contempt is a "conduct that is directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect" on the other hand, civil contempt is one's failure to fulfill a court order in a civil action that would benefit the opposing party. (Webb *vs*. NBI Dir. Gatdula, G.R. No. 194469, Sept. 18, 2019) p. 292

Criminal contempt — In criminal contempt, the contemnor is presumed innocent and the burden of proving beyond reasonable doubt that the contemnor is guilty of contempt lies with the petitioner. (Webb *vs*. NBI Dir. Gatdula, G.R. No. 194469, Sept. 18, 2019) p. 292

Indirect contempt — Under Rule 71, Section 3 of the Rules of Court, there is indirect contempt when any of the following acts are committed: (a) Misbehavior of an officer of a court in the performance of his [or her] official duties or in his [or her] official transactions; (b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto; (c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule; (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice; (e) Assuming

to be an attorney or an officer of a court, and acting as such without authority; (f) Failure to obey a subpoena duly served; (g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him or her. (Webb *vs*. NBI Dir. Gatdula, G.R. No. 194469, Sept. 18, 2019) p. 292

Two types of contempt — There are two (2) types of contempt under the Rules of Court, namely: (1) direct contempt; and (2) indirect contempt; there is direct contempt when there is a "misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before it"; it includes disrespect toward the court, offensive personalities toward others, refusal to be sworn in or to answer as a witness, or to subscribe an affidavit or deposition; It may be meted out "summarily without a hearing." (Webb *vs*. NBI Dir. Gatdula, G.R. No. 194469, Sept. 18, 2019) p. 292

CONTRACTS

Interpretation of — It is elementary that any ambiguity in a contract whose terms are susceptible of different interpretations must be read against the party who drafted it. (Delgado *vs*. GQ Realty Dev't. Corp., G.R. No. 241774, Sept. 25, 2019) p. 1031

CORPORATIONS

Corporate powers — A corporation exercises its corporate powers through its board of directors; this power may be validly delegated to its officers, committees, or agencies; "the authority of such individuals to bind the corporation is generally derived from law, corporate by laws or authorization from the board, either expressly or impliedly by habit, custom or acquiescence in the general course of business"; the authority of the board of directors to delegate its corporate powers may either be: (1) actual; or (2) apparent; actual authority may be express or implied; express actual authority refers to the corporate powers expressly delegated by the board of directors; implied

actual authority, on the other hand, "can be measured by his or her prior acts which have been ratified by the corporation or whose benefits have been accepted by the corporation. (Terp Construction Corp. *vs*. Banco Filipino Savings and Mortgage Bank, G.R. No. 221771, Sept. 18, 2019) p. 478

— The rule is of course settled that "although an officer or agent acts without, or in excess of, his actual authority if he acts within the scope of an apparent authority with which the corporation has clothed him by holding him out or permitting him to appear as having such authority, the corporation is bound thereby in favor of a person who deals with him in good faith in reliance on such apparent authority, as where an officer is allowed to exercise a particular authority with respect to the business, or a particular branch of its continuously and publicly, for a considerable time." (*Id*.)

Doctrine of piercing the veil of corporate fiction — Generally, the stockholders and officers are not personally liable for the obligations of the corporation except only when the veil of corporate fiction is being used as a cloak or cover for fraud or illegality, or to work injustice. (Ongkingco *vs*. Kazuhiro Sugiyama, G.R. No. 217787, Sept. 18, 2019) p. 429

— It is an elementary and fundamental principle of corporation law that a corporation is an artificial being invested by law with a personality separate and distinct from its stockholders and from other corporations to which it may be connected; however, the corporate mask may be lifted and the corporate veil may be pierced when a corporation is just but the alter ego of a person or of another corporation. (Genuino Agro-Industrial Dev't. Corp. *vs*. Romano, G.R. No. 204782, Sept. 18, 2019) p. 360

— Piercing the corporate veil may also be resorted to by the courts or quasi-judicial bodies when "the separate personality of a corporation is used as a means to perpetrate fraud or an illegal act, or as a vehicle for the evasion of

an existing obligation, the circumvention of statutes, or to confuse legitimate issues." (*Id*.)

CORRECTION OF ENTRIES IN THE CIVIL REGISTRY

Notices to potential oppositors –– The fact that the notice of hearing was published in a newspaper of general circulation and notice thereof was served upon the State will not change the nature of the proceedings taken; a reading of Sections 4 and 5 of Rule 108 of the Rules of Court shows that the Rules mandate two (2) sets of notices to potential oppositors: one given to persons named in the petition, and another given to other persons who are not named in the petition but nonetheless may be considered interested or affected parties. (Rep. of the Phils. *vs*. Manda, G.R No. 200102, Sept. 18, 2019) p. 331

Requirements — It is true that in some cases, failure to implead and notify the affected or interested parties was cured by the publication of the notice of hearing; in those cases, however, earnest efforts were made by petitioners in bringing to court all possible interested parties; the interested parties themselves initiated the corrections proceedings; when there is no actual or presumptive awareness of the existence of the interested parties; or when a party is inadvertently left out. (Rep. of the Phils. *vs*. Manda, G.R No. 200102, Sept. 18, 2019) p. 331

Substantial errors –– In a long line of cases, starting with *Republic v. Valencia,* the Court has already settled that even substantial errors in a civil registry may be corrected and the true facts established provided the parties aggrieved by the error avail themselves of the appropriate adversary proceeding. (Rep. of the Phils. *vs*. Manda, G.R No. 200102, Sept. 18, 2019) p. 331

–– The petition for a substantial correction of an entry in the civil registry should implead as respondents the civil registrar, as well as all other persons who have or claim to have any interest that would be affected thereby; summons is thus served not for the purpose of vesting

the courts with jurisdiction but to comply with the requirements of fair play and due process to afford the person concerned the opportunity to protect his interest if he so chooses. (*Id*.)

— When a petition for cancellation or correction of an entry in the civil register involves substantial and controversial alterations, including those on citizenship, legitimacy of paternity or filiation, or legitimacy of marriage, a strict compliance with the requirements of Rule 108 of the Rules is mandated; "if the entries in the civil register could be corrected or changed through mere summary proceedings and not through appropriate action wherein all parties who may be affected by the entries are notified or represented, the door to fraud or other mischief would be set open, the consequence of which might be detrimental and far reaching." (*Id*.)

CRIMINAL LIABILITY

Extinction of — Prescription is one of the modes of totally extinguishing criminal liability; prescription of a crime or offense is the loss or waiver by the State of its right to prosecute an act prohibited and punished by law; on the other hand, prescription of the penalty is the loss or waiver by the State of its right to punish the convict; for felonies under the Revised Penal Code, prescription of crimes is governed by Articles 90 and 91. (People *vs*. Lee, Jr., G.R. No. 234618, Sept. 16, 2019) p. 134

CRIMINAL PROCEDURE

Information — If the information is filed by the public prosecutor without the city prosecutor's or his or her deputy's approval both in the information and, the resolution for the filing thereof, then the court should require the public prosecutor to seek the approval of the city prosecutor before arraignment; otherwise, the case may be dismissed on the ground of lack of authority to file the information under Section 3(d), Rule 117; this ground may be raised at any stage of the proceedings, which may cause the dismissal of the case; if, however, the information is

filed by an unauthorized official not a public prosecutor, like a private complainant, or even public officers who are not authorized by law or rule to file the information then the information is invalid from the very beginning, and the court should *motu proprio* dismiss the case even without any motion to dismiss, because such kind of information cannot confer upon the court jurisdiction over the case. (Ongkingco *vs*. Kazuhiro Sugiyama, G.R. No. 217787, Sept. 18, 2019) p. 426

— In instances where the information is filed by an authorized officer, like a public prosecutor, without the approval of the city prosecutor appearing in the information, but the resolution for filing of the information bears the approval of the city prosecutor, or his or her duly authorized deputy, and such lack of approval is timely objected to before arraignment, the court may require the public prosecutor to have the signature of the city prosecutor affixed in the information to avoid undue delay; however, if the objection is raised after arraignment, at any stage of the proceeding or even on appeal, the same should no longer be a ground to declare the information as invalid, because it is no longer a question of jurisdiction over the case. (*Id*.)

— It is significant to note that under the substantive law, a public prosecutor has the authority to file an Information, but before he or she can do so, a prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman, or his or her deputy, is required by a procedural rule, *i.e*., Section 4, Rule 112 of the Revised Rules of Criminal Procedure. (*Id*.)

Variance doctrine — The rule is that when there is a variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged; an offense charged necessarily includes that which is proved, when some of the essential elements or ingredients of

the former, as alleged in the complaint or information, constitute the latter. (Musa *vs*. People, G.R. No. 242132, Sept. 25, 2019) p. 1057

DAMAGES

Attorney's fees — It is settled that the award of attorney's fees is the exception rather than the rule and counsel's fees are not to be awarded every time a party wins suit; the power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification; its basis cannot be left to speculation or conjecture; where granted, the court must explicitly state in the body of the decision, and not only in the dispositive portion thereof, the legal reason for the award of attorney's fees; moreover, a recent case ruled that "in the absence of stipulation, a winning party may be awarded attorney's fees only in case plaintiffs action or defendant's stand is so untenable as to amount to gross and evident bad faith. (Sps. Yu *vs*. Topacio, Jr., G.R. No. 216024, Sept. 18, 2019) p. 397

— The Court finds no ground to disturb the uniform findings of the Labor Arbiter, NLRC, and the CA in awarding attorney's fees pursuant to Article 2208 (8) of the Civil Code, which states that the award of attorney's fees is justified for indemnity under the workmen's compensation and employer's liability laws. (Jebsens Maritime, Inc. *vs*. Pasamba, G.R. No. 220904, Sept. 25, 2019) p. 958

Exemplary damages — Recent jurisprudence provides that when the penalty to be imposed is death, civil indemnity and moral damages shall be awarded at ₱100,000.00 each; apart from civil indemnity and moral damages, the lower courts likewise properly awarded exemplary damages under Article 2230 of the Civil Code because of the presence of an aggravating circumstance and to serve as a deterrent to others similarly inclined. (People *vs*. Bacyaan *y* Sabaniya, G.R. No. 238457, Sept. 18, 2019) p. 656

DEFAULT

Judgment by default — In cases of default judgments, the remedy of the party declared in default is appeal; but when that party charges the trial court with grave abuse of discretion amounting to excess of jurisdiction in declaring this party in default and eventually rendering judgment against it, the extraordinary remedy of *certiorari* under Rule 65 of the Rules of Court may be availed of. (NAPOCOR *vs*. Baysic, G.R. No. 213893, Sept. 25, 2019) p. 942

Remedies of a party declared in default — In *David v. Judge Gutirrez-Fruelda, et al.*, the Court enumerated the remedies of a party declared in default, *viz*: One declared in default has the following remedies: a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion under oath to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable negligence, and that he has a meritorious defense (Sec. 3, Rule 18 [now Sec. 3(b), Rule 9]; b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37; c)If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 [now Section 1] of Rule 38; and d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him (Sec. 2, Rule 41); moreover, a petition for *certiorari* to declare the nullity of a judgment by default is also available if the trial court improperly declared a party in default, or even if the trial court properly declared a party in default, if grave abuse of discretion attended such declaration. (NAPOCOR *vs*. Baysic, G.R. No. 213893, Sept. 25, 2019) p. 942

DENIAL

Defense of — A categorical and consistent positive identification without any showing of ill motive on the part of the eyewitnesses testifying on the matter prevail over a denial. (People *vs*. Bacyaan *y* Sabaniya, G.R. No. 238457, Sept. 18, 2019) p. 656

DOUBLE JEOPARDY

Elements of — The elements of double jeopardy are (1) the complaint or information was sufficient in form and substance to sustain a conviction; (2) the court had jurisdiction; (3) the accused had been arraigned and had pleaded; and (4) the accused was convicted or acquitted or the case was dismissed without his express consent. (People *vs*. Sandiganbayan (Second Div.), G.R. Nos. 233280-92, Sept. 18, 2019) p. 563

Principle of — The only instance when the accused can be barred from invoking his right against double jeopardy is when it can be demonstrated that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, such as where the prosecution was not allowed the opportunity to make its case against the accused or where the trial was sham; grave abuse of discretion has been defined as that capricious or whimsical exercise of judgment which is tantamount to lack of jurisdiction; the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility; the party questioning the acquittal of an accused should be able to clearly establish that the trial court blatantly abused its discretion such that it was deprived of its authority to dispense justice. (People *vs*. Sandiganbayan (Second Div.), G.R. Nos. 233280-92, Sept. 18, 2019) p. 563

— The proscription against placing the accused in double jeopardy is expressly mandated in the 1987 Constitution

which provides that, "No person shall be twice put in jeopardy of punishment for the same offense; if an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." (*Id*.)

EMPLOYMENT, TERMINATION OF

Constructive dismissal –– Here, Eroles is susceptible to being transferred to another branch or company in the guise of training or company practice, or verbal harassment similar to his dismissed co-workers; the insinuations to resign and the successive termination from employment of union members had created a hostile working environment, which convinced him to sacrifice his employment and tantamount to constructive dismissal. (Foodbev Int'l. *vs*. Ferrer, G.R. No. 206795, Sept. 16, 2019) p. 82

Gross and habitual neglect of duties –– Article 297 (formerly Art. 282) of the Labor Code listed gross and habitual neglect of duties by the employee as a ground for termination of his/her services; in *Publico v. Hospital Managers, Inc.*, the Court declared that "gross negligence connotes want of care in the performance of one's duties; habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances." (Foodbev Int'l. *vs*. Ferrer, G.R. No. 206795, Sept. 16, 2019) p. 82

Illegal dismissal –– Article 294 of the Labor Code provides for the reliefs of an illegally dismissed employee; the provision states: ART. 294. Security of Tenure. – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title; an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual

reinstatement. (Genuino Agro-Industrial Dev't. Corp. *vs*. Romano, G.R. No. 204782, Sept. 18, 2019) p. 360

— The basis for computing separation pay is usually the length of the employee's past service, while that for backwages is the actual period when the employee was unlawfully prevented from working; backwages represent compensation that should have been earned but were not collected because of the unjust dismissal; separation pay, on the other hand, is that amount which an employee receives at the time of his severance from employment, designed to provide the employee with the wherewithal during the period that he is looking for another employment, and is a proper substitute for reinstatement. (*Id*.)

— Under Article 279 (now Article 294) of the Labor Code, backwages is computed from the time of dismissal until the employee's reinstatement; however, when separation pay is ordered in lieu of reinstatement, backwages is computed from the time of dismissal until the finality of the decision ordering separation pay; anent the computation of separation pay, the same shall be equivalent to one month salary for every year of service and should not go beyond the date an employee was deemed to have been actually separated from employment, or beyond the date when reinstatement was rendered impossible. (*Id*.)

Retrenchment — Article 298 on Closure of Establishment and Reduction of Personnel of the Labor Code laid down the authorized causes where the employer may validly terminate the employment of its employees. (Genuino Agro-Industrial Dev't. Corp. *vs*. Romano, G.R. No. 204782, Sept. 18, 2019) p. 360

— For retrenchment to be valid, certain requisites must first be satisfied; in *Perez v. Comparts Industries, Inc.* this Court held: The complete designation of this authorized cause is retrenchment to prevent losses precisely to save a financially ailing business establishment from eventually collapsing; without the purpose to prevent

losses, the termination becomes illegal; however, the employer or the company need not be incurring losses already; the requirement is that there may be impending losses hence the resort to retrenchment: The three (3) basic requirements are: (a) proof that the retrenchment is necessary to prevent losses or impending losses; (b) service of written notices to the employees and to the Department of Labor and Employment at least one (1) month prior to the intended date of retrenchment; and (c) payment of separation pay equivalent to one (1) month pay, or at least one-half (1/2) month pay for every year of service, whichever is higher. (*Id*.)

— In addition, jurisprudence has set the standards for losses which may justify retrenchment, thus: (1) the losses incurred are substantial and not *de minimis;* (2) the losses are actual or reasonably imminent; (3) the retrenchment is reasonably necessary and is likely to be effective in preventing the expected losses; and (4) the alleged losses, if already incurred, or the expected imminent losses sought to be forestalled, are proven by sufficient and convincing evidence. (*Id*.)

Substantive and procedural requirements — In *Reyes v. Global Beer Below Zero, Inc*. the Court held that "verbal notice of termination can hardly be considered as valid or legal"; the employer should comply with the substantive and procedural requirements in dismissing employees from the service. (Foodbev Int'l. *vs*. Ferrer, G.R. No. 206795, Sept. 16, 2019) p. 82

— It is settled that a valid dismissal mandates compliance with substantive and procedural requirements; in *Mantle Trading Services, Inc. and/or Del Rosario v. NLRC*, the Court emphasized, "(a) there be just and valid cause as provided under Article 282 (now Art. 297) of the Labor Code; and (b) the employee be afforded an opportunity to be heard and to defend himself." (*Id*.)

— When respondents alleged that they were served with the termination notice shortly after the administrative hearing; these observations lead the Court to ask whether

the termination notices were prepared ahead of the administrative hearing with a decision to terminate respondents' employment, and whether the administrative hearing was a sham and was conducted only for compliance purposes; an administrative hearing involves sorting of facts, evaluation of evidence, and assessment of the arguments presented by both management and employee/s. (*Id*.)

EVIDENCE

Circumstantial evidence — Circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, *to the exclusion of the others*, as the guilty person; culling the records of the case, this Court finds that the tapestry of circumstances does not merit the conviction of accused-appellant. (People *vs*. Enero, G.R. No. 242213, Sept. 18, 2019) p. 680

Documentary evidence — The Rules on Evidence hold that in the construction of the terms of an agreement, when different constructions of a provision are otherwise equally proper, that is to be taken which is the most favorable to the party in whose favor the provision was made. (Delgado *vs*. GQ Realty Dev't. Corp., G.R. No. 241774, Sept. 25, 2019) p. 1031

Res gestae — A declaration is deemed part of the *res gestae* and is admissible as an exception to the hearsay rule when the following requisites are present: (1) the principal act, the *res gestae*, is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) statements must concern the occurrence in question and its immediately attending circumstances. (People *vs*. Vargas *y* Jaguarin, G.R. No. 230356, Sept. 18, 2019) p. 541

— In *People v. Estibal*, the Court held: By *res gestae*, exclamations and statements made by either the participants, victims, or spectators to a crime, immediately before, during or immediately after the commission of the crime, when the circumstances are such that the

statements constitute nothing but spontaneous reaction or utterance inspired by the excitement of the occasion there being no opportunity for the declarant to deliberate and to fabricate a false statement become admissible in evidence against the otherwise hearsay rule of inadmissibility. (*Id*.)

— *Res gestae* comprehends a situation which presents a startling or unusual occurrence sufficient to produce a spontaneous and instinctive reaction, during which interval certain statements are made under such circumstances as to show lack of forethought or deliberate design in the formulation of their content; as long as the statements were made voluntarily and spontaneously so nearly contemporaneous as to be in the presence of the occurrence, although not precisely concurrent in point of time, such must be admissible as part of *res gestae*, if the statements were made under circumstances which exclude the idea of design or deliberation. (*Id*.)

— Section 36 of Rule 130 of the Rules of Court provides that "a witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules;" However, there are exceptions to the hearsay rule, one of which is *res gestae*, found in Section 42 of Rule 130. (*Id*.)

— There are two tests in applying the *res gestae* rule to determine whether or not statements should be admissible as part of *res gestae*: (1) the act, declaration or exclamation is so intimately interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself; and (2) the evidence clearly negates any premeditation or purpose to manufacture testimony; to ascertain whether the evidence negates fabrication, spontaneity of the statements must be determined. (*Id*.)

Weight and sufficiency of — There must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction; it is worth emphasizing

that this burden of proof never shifts; indeed the accused need not present a single piece of evidence in his defense if the State has not discharged its *onus*; the accused can simply rely on his right to be presumed innocent; in this connection, the prosecution therefore, in cases involving dangerous drugs, always has the burden of proving compliance with the procedure outlined in Section 21. (People *vs*. Rasos, Jr. *y* Padollo, G.R. No. 243639, Sept. 18, 2019) p. 708

FORUM SHOPPING

Rule on — The rule on forum shopping is found in Rule 7, Section 5 of the Rules of Court; the provision is intended to cover only initiatory pleadings or incipient applications "asserting a claim for relief"; a claim for relief "that is derived only from, or is necessarily connected with, the main action or complaint" such as an answer with compulsory counterclaim is not covered by the rule requiring a certification against forum shopping; likewise, a comment to a petition filed before an appellate tribunal, not being an initiatory pleading, does not require a certification against forum shopping; a comment to a petition is not an initiatory pleading or an incipient application asserting a claim for relief as contemplated in Rule 7, Section 5 of the Rules of Court. (Fil-Estate Properties, Inc. *vs*. Reyes, G.R. No. 152797, Sept. 18, 2019) p. 221

INDIGENOUS PEOPLES' RIGHTS ACT OF 1997 (IPRA) (R.A. NO. 8371)

Application — R.A. No. 8371 (RA 8371) or the "Indigenous Peoples' Rights Act of 1997" (IPRA) expressly excludes the City of Baguio from the application of the general provision of the IPRA; Section 78 of R.A. No. 8371 provides that "the City of Baguio shall remain to be governed by its Charter and all lands proclaimed as part of its townsite reservation shall remain as such until otherwise reclassified by appropriate legislation. (Rep. of the Phils. *vs*. Nat'l. Commission on Indigenous Peoples, G.R. No. 208480, Sept. 25, 2019) p. 908

—— Section 78 is a special provision in the IPRA which clearly mandates that: (1) the City of Baguio shall not be subject to provisions of the IPRA but shall still be governed by its own charter; (2) all lands previously proclaimed as part of the City of Baguio's Townsite Reservation shall remain as such; (3) the re-classification of properties within the Townsite Reservation of the City of Baguio can only be made through a law passed by Congress; (4) prior land rights and titles recognized and acquired through any judicial, administrative or other process before the effectivity of the IPRA shall remain valid; and (5) territories which became part of the City of Baguio after effectivity of the IPRA are exempted. (*Id*.)

—— Section 78 of the IPRA is clear that the Charter of Baguio City shall govern the determination of land rights within Baguio City and not the IPRA; the said declaration by Congress is conclusive; in fact, a review of the Congressional Deliberations on both the House and Senate bills which gave birth to the IPRA reveal that the clear intent of the framers is to exempt Baguio City's land areas particularly the Baguio City's Townsite Reservation from the coverage of the IPRA. (*Id*.)

—— Thus, R.A. No. 8371 is clear that, for properties part of the townsite reservation of Baguio City before the passage of the IPRA, no new CALT or CADT can be issued by the NCIP; under R.A. No. 8371, the NCIP is devoid of any power to re-classify lands previously included as part of the Townsite Reservation of Baguio City before R.A. No. 8371 was enacted; the said power to re-classify these properties is solely vested in Congress and can only be exercised by Congress through the enactment of a new law; such prohibition to reclassify is reiterated in the Implementing Rules of the IPRA. (*Id*.)

—— While the IPRA does not generally authorize the NCIP to issue ancestral land titles within Baguio City, there are also recognized exceptions under Section 78; these refer to (1) prior land rights and titles recognized and

acquired through any judicial, administrative or other process before the effectivity of the IPRA; and (2) territories which became part of Baguio after the effectivity of the IPRA; for prior land rights, the remedy afforded to indigenous cultural communities is Act No. 926. (*Id*.)

INHIBITION

Voluntary inhibition — The public's faith and confidence in the justice system must always be preserved; thus, in certain instances, judges may be compelled to inhibit themselves from sitting in a case. Rule 137, Section 1 of the Rules of Court outlines these instances; the first paragraph pertains to compulsory disqualification or inhibition where it is conclusively presumed that a judge's partiality and objectivity might be questioned due to his or her relationship or interest; the second paragraph of Rule 137, Section 1 refers to voluntary inhibition; unlike the first paragraph, which enumerates specific cases where a judge should inhibit, the rule on voluntary inhibition gives judges the discretion to determine whether they should sit in a case for "just and valid reasons, with only their conscience as guided." (Fil-Estate Properties, Inc. *vs*. Reyes, G.R. No. 152797, Sept. 18, 2019) p. 221

INTERESTS

Legal interest — Article 2209 of the Civil Code mandates that when a debtor incurs a delay in obligations to pay a sum of money, the indemnity for damages shall be the payment of the interest agreed upon; thus, if the rate of interest is stipulated, such stipulated interest shall apply and not the legal interest, provided the stipulated interest is not excessive and unconscionable; the stipulated interest shall be applied until full payment of the obligation because that is the law between the parties; the legal interest only applies in the absence of stipulated interest. (Mojica *vs*. Generali Pilipinas Life Assurance Co., Inc., G.R. No. 222455, Sept. 18, 2019) p. 492

—— Since there is no stipulated interest on these other payables, such amount due shall earn the prevailing legal interest

at the rate of 12% *per annum* from the date of extrajudicial demand on 6 March 2003 until 30 June 2013, and thereafter at the rate of 6% *per annum* from 1 July 2013 until full payment. (*Id*.)

JUDGES

Duties — Rules 1.02 of Canon 1 and 3.05 of Canon 3 of the Code of Judicial Conduct direct judges to administer justice impartially and without delay and to dispose of the court's business promptly and decide cases within the required periods. (Esturas *vs*. Judge Lu, A.M. No. RTJ-11-2281 [Formerly OCA IPI-10-3372-RTJ], Sept. 16, 2019) p. 9

Gross inefficiency — The judges' "failure to do so decide a case or resolve a motion within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanctions against the erring magistrate"; under Section 9, Rule 140 of the Rules of Court, undue delay in rendering a decision or order is a less serious charge. (Esturas *vs*. Judge Lu, A.M. No. RTJ-11-2281 [Formerly OCA IPI-10-3372-RTJ], Sept. 16, 2019) p. 9

JUDGMENTS

Effect of — It is elementary that a judgment of a court is conclusive and binding only upon the parties and their successors-in-interest after the commencement of the action in court; a decision rendered on a complaint in a civil action or proceeding does not bind or prejudice a person not impleaded therein, for no person shall be adversely affected by the outcome of a civil action or proceeding in which he is not a party; the principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he has not been made a party conforms to the constitutional guarantee of due process of law. (Prescilla *vs*. Lasquite, G.R. No. 205805, Sept. 25, 2019) p. 893

Execution of — Section 4, Rule 52 of the Rules of Court is clear and unequivocal: the pendency of a motion for reconsideration filed on time and by the proper party

shall stay the execution of the judgment or final resolution sought to be reconsidered. (Prescilla *vs*. Lasquite, G.R. No. 205805, Sept. 25, 2019) p. 893

Finality-of-acquittal doctrine — In this jurisdiction, We adhere to the *finality-of-acquittal* doctrine, that is, a judgment of acquittal is final and unappealable; the reason for the *finality-of-acquittal* doctrine was explained by this Court in *People v. CA*, thus: In our jurisdiction, the finality-of-acquittal doctrine as a safeguard against double jeopardy faithfully adheres to the principle first enunciated in *Kepner v. United States*. (People *vs*. Sandiganbayan (Second Div.), G.R. Nos. 233280-92, Sept. 18, 2019) p. 563

Writ of execution — The writ of execution was deemed to have been effective even as to the person not impleaded because such party ignored the trial court's order to file a complaint in intervention; simply stated, such party had every chance to intervene, yet negligently failed to do so. (Prescilla *vs*. Lasquite, G.R. No. 205805, Sept. 25, 2019) p. 893

JUDICIAL DEPARTMENT

Judicial power — Judicial power, in other words, must be based on an *actual justiciable controversy* at whose core is the existence of a case involving rights which are legally demandable and enforceable; without this feature, courts have no jurisdiction to act; true, exceptions to the general principle on moot and academic have been developed and recognized through the years. (Madrilejos *vs*. Gatdula, G.R. No. 184389, Sept. 24, 2019) p. 754

Moot and academic cases — A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value; generally, courts decline jurisdiction over such case or dismiss it on ground of mootness; this pronouncement traces its current roots from the express constitutional rule under paragraph 2 of Section 1, Article VIII of the 1987 Constitution that "judicial power includes the duty of the courts of justice

to settle *actual controversies* involving rights which are legally demandable and enforceable." (Madrilejos *vs*. Gatdula, G.R. No. 184389, Sept. 24, 2019) p. 754

—— A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value; as a rule, courts decline jurisdiction over such a case, or dismiss it on ground of mootness; otherwise, the court would engage in rendering an advisory opinion on what the law would be upon a hypothetical state of facts; a case becomes moot and academic when the conflicting issue that may be resolved by the court ceases to exist as a result of supervening events. (Oclarino *vs*. Navarro, G. R. No. 220514, Sept. 25, 2019) p. 949

—— At present, courts will decide cases, otherwise moot and academic, if it feels that: (a) there is a grave violation of the Constitution; (b) the situation is of exceptional character and paramount public interest is involved; (c) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (d) the case is capable of repetition yet evading review. (Madrilejos *vs*. Gatdula, G.R. No. 184389, Sept. 24, 2019) p. 754

—— In *Manalad v. Trajano* which concerns the election of union officers, the Court declared: After a careful consideration of the facts of this case, We are of the considered view that the expiration of the terms of office of the union officers and the election of officers on November 28, 1988 have rendered the issues raised by petitioners in this case moot and academic; it is pointless and unrealistic to insist on annulling an election of officers whose terms had already expired; indeed, an academic discussion of a case presenting a moot question is not necessary, because a judgment on the case cannot have any practical legal effect or, in the nature of things, cannot be enforced; stated otherwise, the Court will not determine a moot question in a case in which no practical

relief can be granted. (Oclarino *vs*. Navarro, G.R. No. 220514, Sept. 25, 2019) p. 949

— There are two factors to be considered before a case is deemed one capable of repetition yet evading review: (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. (*Id*.)

— What may most probably come to mind is the "capable of repetition yet evading review" exception; however, the said exception applies only where the following two circumstances concur: (1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration and (2) there is a reasonable expectation that the same complaining party would be subjected to the same action again. (Madrilejos *vs*. Gatdula, G.R. No. 184389, Sept. 24, 2019) p. 754

— While it is true that this Court may assume jurisdiction over a case that has been rendered moot and academic by supervening events, the following instances must be present: (1) Grave constitutional violations; (2) Exceptional character of the case; (3) Paramount public interest; (4) The case presents an opportunity to guide the bench, the bar, and the public; or (5) The case is capable of repetition yet evading review; None of these circumstances are present in this case. (Oclarino *vs*. Navarro, G. R. No. 220514, Sept. 25, 2019) p. 949

Periods for decisions — The Constitution "fixes a reglementary period of 90 days within which judges must resolve motions or incidents pending before them." (Esturas *vs*. Judge Lu, A.M. No. RTJ-11-2281 [Formerly OCA IPI-10-3372-RTJ], Sept. 16, 2019) p. 9

Power of judicial review — The existence of an actual case or controversy is a condition precedent for the court's exercise of its power of adjudication; an actual case or controversy exists when there is a conflict of legal rights

or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution. (Oclarino *vs*. Navarro, G.R. No. 220514, Sept. 25, 2019) p. 949

JURISDICTION

Jurisdiction over the subject matter — According to B.P. Blg. 129, as amended by R.A. No. 7691, the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts have *exclusive original jurisdiction* in all civil actions which *involve title to, or possession of, real property, or any interest therein* where the assessed value of the property or interest therein does not exceed 20,000.00 or, in civil actions in Metro Manila, where such assessed value does not exceed 50,000.00. (Montero *vs*. Montero, Jr., G.R. No. 217755, Sept. 18, 2019) p. 413

— It is a hornbook doctrine that a court's jurisdiction over the subject matter of a particular action is determined by the plaintiff's allegations in the complaint and the principal relief he seeks in the light of the law that apportions the jurisdiction of courts; hence, the Court has held that even if the action is supposedly one for annulment of a deed, the nature of an action is not determined by what is stated in the caption of the complaint but by the allegations of the complaint and the reliefs prayed for. (*Id*.)

— It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; *it is conferred by law* and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. (*Id*.)

— Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case; in order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. (*Id*.)

KIDNAPPING FOR RANSOM WITH HOMICIDE

Commission of — In the cases of *People v. Dionaldo, et al.* and *People v. Elizalde, et al.*, the Court explained that if the victim was detained for the purpose of extorting ransom and the victim dies during detention, then the crime committed shall be the special complex crime of Kidnapping for Ransom with Homicide; this holds true in the case at bar, considering that all the elements for the said crime were sufficiently alleged in the Information, in that: (i) the victim was detained against her will; (ii) the accused demanded ransom from the victim's family; and (iii) the victim was killed during detention. (Gurro *y* Maga *vs*. People, G.R. No. 224562, Sept. 18, 2019) p. 512

LABOR STANDARDS

Employer-employee relationship — Under the four-fold test in determining the existence of an employer-employee relationship which considers the following elements: (1) the power to hire; (2) the payment of wages; (3) the power to dismiss; and (4) the power to control, the last is the most important factor. (Mojica *vs*. Generali Pilipinas Life Assurance Co., Inc., G.R. No. 222455, Sept. 18, 2019) p. 492

LACHES

Principle of — Defined as the failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier, *laches* is negligence or omission to assert a right within a reasonable length of time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it; *laches* can be imputed against petitioners, because a considerable length of time had elapsed before they raised the said procedural issue, and reasonable diligence should have prompted them to file a motion to dismiss or to quash the Information before the trial court. (Ongkingco *vs*. Kazuhiro Sugiyama, G.R. No. 217787, Sept. 18, 2019) p. 426

LAND REGISTRATION

Certificate of title — It must be stressed that the CCT covering the subject property, which is currently under the name of respondent Rosario, is the best proof of ownership of the property and it requires more than the bare allegation of petitioner Francisco to defeat the face value of the certificate of title, which enjoys a legal presumption of regularity of issuance. (Delgado *vs*. GQ Realty Dev't. Corp., G.R. No. 241774, Sept. 25, 2019) p. 1031

Torrens title — A Torrens title is generally conclusive evidence of ownership of the land referred to therein and a strong presumption exists that a Torrens title was regularly issued and valid; such that, imputations of fraud must be proved by clear and convincing evidence; a person who possesses a title issued under the Torrens system is entitled to all the attributes of ownership including possession. (Sps. Yu *vs*. Topacio, Jr., G.R. No. 216024, Sept. 18, 2019) p. 397

MALVERSATION

Commission of — Her failure to account for the said moneys thereby gave rise to the presumption that she had converted the funds to her personal use, which presumption she failed to rebut with competent evidence; accordingly, her conviction for the crime charged stands. (Fajardo *vs*. People, G.R. No. 239823, Sept. 25, 2019) p. 1012

— Malversation of Public Funds is defined and penalized under Article 217 of the RPC, as amended; the elements of the crime are as follows: (a) the offender is a public officer; (b) he has custody or control of funds or property by reason of the duties of his office; (c) the funds or property are public funds or public property for which he was accountable; and (d) he appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take them. (*Id*.)

MORTGAGE

Contract of — The Court ruled in the recent of case of *Mercene v. Government Service Insurance System*, that the commencement of the prescriptive period for REMs is crucial in determining the existence of cause of action; prescription, in turn, runs in a mortgage contract not from the time of its execution, but rather a) when the loan became due and demandable, for instances covered under the exceptions set forth under Article 1169 of the New Civil Code, or b) from the date of demand. (Phil. Nat'l. Bank *vs*. Abello, G.R. No. 242570, Sept. 18, 2019) p. 694

Foreclosure of — The Court affirms the annulment of the extrajudicial proceedings, without prejudice to PNB's availment of the proper remedies, should Felina fail to settle her loan obligation despite being given the opportunity to do so. (Phil. Nat'l. Bank *vs*. Giron-Roque, G.R. No. 240311, Sept. 18, 2019) p. 673

Real estate mortgage — A REM is an accessory contract constituted to protect the creditor's interest to ensure the fulfillment of the principal contract of loan; by its nature, therefore, the enforcement of a mortgage contract is dependent on whether or not there has been a violation of the principal obligation; simply, it is the debtor's failure to pay that sets the mortgage contract into operation; prior to that, the creditor-mortgagee has no right to speak of under the REM as it remains contingent upon the debtor's failure to pay his or her loan obligation. (Phil. Nat'l. Bank *vs*. Abello, G.R. No. 242570, Sept. 18, 2019) p. 694

–– The mortgagor would be unable to establish his or her right to pray for the cancellation of the encumbrances without first establishing that the debt has already become due, as it is only at that time that the creditor's right to foreclose the property arise and the prescriptive period begins to run. (*Id*.)

MOTION

For reconsideration — There is nothing in the Rules of Court that mandates, or even allows, the appellate courts to suspend the resolution of a party's motion for reconsideration on account of a co-party's appeal before the Court; otherwise stated, when the trial court or appellate court issues a judgment or final resolution in a case involving several parties, the right of one party to file a motion for reconsideration or appeal is not hinged on the motion for reconsideration or appeal of the other party. (Prescilla *vs*. Lasquite, G.R. No. 205805, Sept. 25, 2019) p. 893

Motion to quash — Section 4, Rule 117 of the Revised Rules of Criminal Procedure mandates that if the motion to quash is based on the alleged defect of the complaint or Information which can be cured by an amendment, the court shall order that an amendment be made; either of these two could have been done to address the issue of lack of written authority or approval of the officer who filed the Information. (Ongkingco *vs*. Kazuhiro Sugiyama, G.R. No. 217787, Sept. 18, 2019) p. 426

–– The three other non-waivable grounds for a motion to quash the information are: (1) the facts charged do not constitute an offense; (2) the criminal action or liability has been extinguished; and (3) the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent. (*Id*.)

MURDER

Commission of — For a successful prosecution of Murder under Article 248 of the RPC, the following elements must be proven: (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 neither parricide nor infanticide. (People *vs*. Enero, G.R. No. 242213, Sept. 18, 2019) p. 680

(People *vs*. Vargas *y* Jaguarin, G.R. No. 230356, Sept. 18, 2019) p. 541

NOTARY PUBLIC

Notarization –– By notarizing a document without the appearance of the affiant, respondent failed to ascertain not only the genuineness of his signature but also the due execution of the document; in the case *of Dela Cruz-Silano v. Pangan*, we had the occasion to explain the indispensable character of personal appearance so as to guard the public against fraud. (Velarde *vs*. Atty. Ilagan, A.C. No. 12154, Sept. 17, 2019) p. 187

–– It is not a meaningless ministerial act of acknowledging documents executed by parties who are willing to pay the fees for the same; for notarization converts a private document into a public document, making the same admissible in evidence without further proof of authenticity; thus, a notarial document is, by law, entitled to full faith and credit upon its face. (*Id*.)

PARTIES

Indispensable parties — A petition for annulment grounded on lack of jurisdiction, owing to the failure to implead the indispensable parties, "is ample basis for annulment of judgment; we have long held that the joinder of all indispensable parties is a condition *sine qua non* of the exercise of judicial power; the absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present." (Fernando *vs*. Ramos Paguyo, G.R. No. 237871, Sept. 18, 2019) p. 642

Rule on communality of interest — The rule on indispensable parties only applies to original actions, not to appeals; the reversal of the judgment on appeal would only bind the parties in the appealed case but not those who were not made parties; as an exception, however, this Court cited communality of interest among the parties, where a reversal of the judgment on appeal operates as a reversal

to all the parties, even to those who did not appeal, if it is shown that their rights and interests are inseparable or so "interwoven and dependent on each other; the rule has also been held to apply in instances when an "injustice might result from a reversal as to less than all the parties." (Fil-Estate Properties, Inc. *vs*. Reyes, G.R. No. 152797, Sept. 18, 2019) p. 221

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION - STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Disability benefits –– In *Crystal Shipping*, it was ruled that the seafarer's inability to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body, entitles him to permanent and total disability benefits; in *Vergara*, the Court clarified that the doctrine expressed in *Crystal Shipping* cannot be applied in all situations; the apparent conflict between the two pronouncements based on the provisions of 120-day period under the Labor Code and the POEA-SEC on one hand, and the 240-day period under the IRR on the other - has long been harmonized in subsequent cases. (Jebsens Maritime, Inc. *vs*. Pasamba, G.R. No. 220904, Sept. 25, 2019) p. 958

–– It took respondent two years and another re-employment before he consulted an independent doctor to question the company-designated doctors' declaration of his fitness to work; such belated assessment issued by the independent doctor cannot prevail over the final assessment made by the company-designated doctors who observed and treated respondent since his repatriation up to his recovery. (*Id*.)

–– Respondent's failure to comply with the procedure under Section 20(B)(3) of the POEA-SEC in disputing the company-doctors' final assessment justifies the disregard of the independent doctor's assessment and reliance upon that of the company-designated doctors; the referral to a third doctor is a mandatory procedure which necessitates from the provision that it is the company-designated doctor whose assessment should prevail; simply stated,

if the company-designated doctor declares the seafarer fit to work within the 120 or 240-day periods, such declaration should be respected unless the doctor chosen by the seafarer and the doctor selected by both the seafarer and the employer declare otherwise. (*Id*.)

— The entitlement of an overseas seafarer to disability benefits is governed by the law, the employment contract, and the medical findings; *By law*, the seafarer's disability benefits claim is governed by Articles 191 to 193, Chapter VI of the Labor Code, in relation to Rule X, Section 2 of the Implementing Rules and Regulations (IRR) of the Labor Code; *by contract*, it is governed by the employment contract which the seafarer and his employer/local manning agency execute prior to employment, and the applicable POEA-SEC that is deemed incorporated in the employment contract. (*Id*.)

— The provision under Section 20(B)(3) of the POEA-SEC, which provides that upon sign off, 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 120 days, should be harmonized with the provisions of the Labor Code and its IRR which allows the 240-day extension period under certain circumstances. (*Id*.)

PLEADINGS

Answer — According to Rule 6, Section 5(b) of the Rules of Court, an affirmative defense is an allegation of a new matter which, while hypothetically admitting the material allegations in the pleading of the claimant, would nevertheless prevent or bar recovery by him; the affirmative defenses include fraud, statute of limitations, release, payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and any other matter by way of confession and avoidance. (Delgado *vs*. GQ Realty Dev't. Corp., G.R. No. 241774, Sept. 25, 2019) p. 1031

— Under Rule 8, Section 7 of the Rules of Court, whenever a defense is based upon a written instrument or document, the substance of such instrument shall be set forth in the pleading and the original or copy thereof shall be attached to the pleading, which shall be deemed part of the pleading; according to the succeeding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath specifically denies them, and sets forth what he claims to be the facts. (*Id*.)

POSSESSION

Possessor in good faith — The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim and absence of intention to overreach another; applied to possession, one is considered in good faith if he is not aware that there exists in his title or mode of acquisition any flaw which invalidates it. (Sps. Yu *vs*. Topacio, Jr., G.R. No. 216024, Sept. 18, 2019) p. 397

PRESUMPTIONS

Presumption of innocence of the accused — It is a basic principle of constitutional law that the accused shall be presumed innocent until the contrary is proved; thus, when the prosecution failed to overturn this presumption, this Court is bound by its constitutional duty to render a judgment of acquittal; while this Court abhors the dreadful fate which had cast upon the victims, to sustain conviction sans proof beyond reasonable doubt is to permit an innocent man's ontological demise. (People *vs*. Enero, G.R. No. 242213, Sept. 18, 2019) p. 680

PRINCIPAL AND ACCOMPLICES

Distinguished — Principals are those who either (i) "take a direct part in the execution of the act;" (ii) "directly force or induce others to commit it;" (iii) "or cooperate in the commission of the offense by another act without which it would not have been accomplished"; while accomplices are those persons who, not having acted as

principals, cooperate in the execution of the offense by previous or simultaneous acts. (Gurro *y* Maga *vs*. People, G.R. No. 224562, Sept. 18, 2019) p. 512

QUALIFYING CIRCUMSTANCES

Evident premeditation –– Similar to treachery, evident premeditation must be clearly proven, established beyond reasonable doubt and based on external acts that are evident, not merely suspected, and which indicate deliberate planning; the prosecution must prove, beyond reasonable doubt, each element of evident premeditation as follows: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused has clung to his determination; and (3) sufficient time between such determination and execution to allow him to reflect upon the consequences of his act. (People *vs*. Vargas *y* Jaguarin, G.R. No. 230356, Sept. 18, 2019) p. 541

–– The essence of the circumstance of evident premeditation is that the execution of the criminal act be preceded by calm thought and reflection upon the resolve to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment; to warrant a finding of evident premeditation, it must appear not only that the accused decided to commit the crime prior to the moment of its execution but also that this decision was the result of meditation, calculation, reflection, or persistent attempt. (*Id*.)

Treachery –– Under Article 14, paragraph 16 of the RPC, two conditions must necessarily occur before treachery or *alevosia* may be properly appreciated, namely: (1) the employment of means, methods, or manner of execution that would insure the offender's safety from any retaliatory act on the part of the offended party, who has, thus, no opportunity for self-defense or retaliation; and (2) deliberate or conscious choice of means, methods, or manner of execution. (People *vs*. Vargas *y* Jaguarin, G.R. No. 230356, Sept. 18, 2019) p. 541

QUIETING OF TITLE

Action for — In an action for quieting of title, the competent court is tasked to determine the respective rights of the complainant and other claimants, not only to place things in their proper place, to make the one who has no rights to said immovable respect and not disturb the other, but also for the benefit of both, so that he who has the right would see every cloud of doubt over the property dissipated, and he could afterwards without fear introduce the improvements he may desire, to use, and even to abuse the property as he deems best. (Sps. Yu *vs*. Topacio, Jr., G.R. No. 216024, Sept. 18, 2019) p. 397

—— In order that an action for quieting of title may prosper, two requisites must concur: (1) the plaintiff or complainant has a legal or equitable title or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy. (*Id*.)

RAPE

Commission of — For the charge of rape under Article 266-A, paragraph 1(a) of the Revised Penal Code, as amended by R.A. No. 8353, to prosper, the prosecution must prove that: (1) the male offender had carnal knowledge of a woman; and (2) he accomplished the said act through force, threat or intimidation; In rape cases, if the woman is under twelve (12) years of age, proof of force or intimidation is not required to establish statutory rape; however, if the woman is twelve (12) years of age or over at the time she was violated, sexual intercourse through force, violence, intimidation or threat must be proven by the prosecution. (People *vs*. Chavez *y* Villareal, G.R. No. 235783, Sept. 25, 2019) p. 994

Qualified rape — Appellant should be convicted of qualified rape pursuant to Article 266-B, paragraph 10 of the RPC since the Information alleged, and it was proven,

that appellant knew at the time of the commission of the crime that the victim AAA is mentally retarded. (People *vs*. GGG, G.R. No. 224595, Sept. 18, 2019) p. 532

RECONVEYANCE

Action for — An action for reconveyance is a legal and equitable remedy granted to the rightful landowner, whose land was wrongfully or erroneously registered in the name of another, to compel the registered owner to transfer or reconvey the land to him. (Sps. Yu *vs*. Topacio, Jr., G.R. No. 216024, Sept. 18, 2019) p. 397

— As to the action for recovery of possession, the rule is settled that in order for it to prosper, it is indispensable that he who brings the action fully proves not only his ownership but also the identity of the property claimed, by describing the location, area and boundaries thereof; indeed, he who claims to have a better right to the property must clearly show that the land possessed by the other party is the very land that belongs to him. (*Id*.)

— The plaintiff must allege and prove his ownership of the land in dispute and the defendant's erroneous, fraudulent or wrongful registration of the property; as can be seen, reconveyance is the remedy of the rightful owner only. (*Id*.)

REGIONAL TRIAL COURTS

Jurisdiction — In all civil actions in which the subject of the litigation is incapable of pecuniary estimation, the Regional Trial Courts shall have exclusive original jurisdiction. (Montero *vs*. Montero, Jr., G.R. No. 217755, Sept. 18, 2019) p. 413

RES JUDICATA

Principle of — Res judicata literally means "a matter adjudged"; it is an oft-repeated doctrine which bars the re-litigation of the same claim between the parties or the same issue on a different claim between the same parties; *res judicata* is founded on the principle of estoppel, and is based on the public policy against unnecessary multiplicity

of suits. (Webb *vs*. NBI Dir. Gatdula, G.R. No. 194469, Sept. 18, 2019) p. 292

— The principle of *res judicata* seeks to conserve scarce judicial resources and to promote efficiency; it precludes the risk of inconsistent results and prevents the embarrassing problem of two (2) conflicting judicial decisions when there is re-litigation; *res judicata* "encourages reliance on judicial decision, bars vexatious litigation, and frees the courts to resolve other disputes." (*Id*.)

Two concepts — *Res judicata* embraces two (2) concepts: (1) bar by prior judgment; and (2) conclusiveness of judgment; *res judicata* by bar by prior judgment, enunciated in Rule 39, Section 47(b) of the Rules of Court, is in effect when, "between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action"; thus, the judgment in the first case constitutes an absolute bar to the second action; the second concept, pertaining to conclusiveness of judgment, is found in Rule 39, Section 47(c) of the Rules of Court; there is conclusiveness of judgment when "there is identity of parties in the first and second cases, but no identity of causes of action." (Webb *vs*. NBI Dir. Gatdula, G.R. No. 194469, Sept. 18, 2019) p. 292

— The principle of *res judicata*, a civil law principle, is not applicable in criminal cases, as explained in *Trinidad v. Office of the Ombudsman*; as further held in *People v. Escobar*, while certain provisions of the Rules of Civil Procedure may be applied in criminal cases, Rule 39 of the Rules of Civil Procedure is excluded from the enumeration under Rule 124 of the Rules of Criminal Procedure. (*Id*.)

ROBBERY WITH HOMICIDE

Commission of — A conviction requires certitude that the robbery is the main purpose and objective of the malefactor, and the killing is merely incidental to the robbery; thus,

it follows that the intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery. (People *vs*. Bacyaan *y* Sabaniya, G.R. No. 238457, Sept. 18, 2019) p. 656

—— The special complex crime of robbery with homicide under Article 294, paragraph 1 of the RPC is penalized with *reclusion perpetua* to death; under the circumstances, the element of band, appreciated as a generic aggravating circumstance, would have merited the imposition of the death penalty; in view of R.A. No. 9346, however, "the imposition of the penalty of death has been prohibited and in lieu thereof, the penalty of *reclusion perpetua* is to be imposed." (*Id*.)

—— There is robbery with homicide under Article 294, paragraph 1 of the RPC when a homicide is committed by reason of or on occasion of a robbery; in order to sustain a conviction for robbery with homicide, the following elements must be proven by the prosecution: (1) the taking of personal property belonging to another; (2) with intent to gain or *animus lucrandi*; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. (*Id*.)

SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. NO. 7610)

Lascivious conduct **——** The penalty to be imposed upon XXX should, however, be modified in accordance with the Court *en banc*'s Decision in the case of *People v. Tulagan*, which held that: 3. If the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as "Lascivious Conduct under Section 5(b) of R.A. No. 7610," and the imposable penalty is *reclusion*

temporal in its medium period to *reclusion perpetua*. (XXX *vs*. People, G.R. No. 242101, Sept. 16, 2019) p. 146

Sexual abuse — The elements of sexual abuse are the following, to wit: (l) 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 eighteen (18) years old. (People *vs*. Chavez *y* Villareal, G.R. No. 235783, Sept. 25, 2019) p. 994

–– Under Section 32, Article XIII of the Implementing Rules and Regulations of R.A. No. 7610, lascivious conduct is defined as follows: *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 the 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. (*Id*.)

STATUTES

Rules of procedure –– "Procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice"; however, it is likewise true that strict imposition of technical rules can result to miscarriage of substantial justice. (Foodbev Int'l. *vs*. Ferrer, G.R. No. 206795, Sept. 16, 2019) p. 82

–– Suffice it to state that technical rules of procedure do not strictly apply to administrative cases; the parties therein should be given the amplest opportunity to fully ventilate their claims and defenses, brushing aside technicalities in order to truly ascertain the relevant facts and justly resolve the case on the merits; after all, procedural rules are intended to secure, not override, substantial justice. (Tetangco, Jr. *vs*. Commission on Audit, G.R. No. 244806, Sept. 17, 2019) p. 196

— There is a need to relax the requirements imposed by the Rule on certification against forum shopping and verification in the present Petition; the substantive issue in this case far more outweighs whatever defect in the certification against forum shopping and in the verification; procedural rules must be faithfully followed and dutifully enforced; still, their application should not amount to "placing the administration of justice in a straight jacket"; an inordinate fixation on technicalities cannot defeat the need for a full, just, and equitable litigation of claims; after all, the rules of procedure were designed to promote and facilitate the orderly administration of justice; it was never meant to subvert the ends of justice. (People *vs*. Lee, Jr., G.R. No. 234618, Sept. 16, 2019) p. 134

SURETYSHIP

Contract of — Article 2080 applies only with respect to the liability of a guarantor; verily, a surety's liability stands without regard to the debtor's ability to perform his obligations under the contract subject of the suretyship. (The Mercantile Insurance Co., Inc. *vs*. DMCI-Laing Construction, Inc., G.R. No. 205007, Sept. 16, 2019) p. 20

— Through a contract of suretyship, one party called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of another party, called the oblige; as a result, the surety is considered in law as being the same party as the debtor in relation to whatever is adjudged touching upon the obligation of the latter, and their liabilities are interwoven as to be inseparable; while the contract of surety stands secondary to the principal obligation, the surety's liability is direct, primary and absolute, albeit limited to the amount for which the contract of surety is issued. (*Id*.)

— To limit the scope of the Performance Bond only to costs incurred *before* termination of the Sub--Contract would be to create an additional condition for recovery which does not appear on the face of the Performance Bond. (*Id*.)

TRANSPORTATION LAWS

Registered owner rule — As between the registered owner and the driver, the former is considered as the employer of the latter, and is made primarily liable for the tort under Article 2176 in relation with Article 2180 of the Civil Code; however, the application of the registered owner rule does not serve as a shield of the offending vehicle's *real* owner from any liability; the law is not inequitable; under the principle of unjust enrichment, the registered owner who shouldered such liability has a right to be indemnified by means of a cross-claim as against the actual employer of the negligent driver. (Sps. Mangaron, Jr. *vs*. Hanna Via Design & Construction, G.R. No. 224186, Sept. 23, 2019) p. 731

–– In accordance with the law on compulsory motor vehicle registration, this Court has consistently ruled that, with respect to the public and third persons, the registered owner of a motor vehicle is directly and primarily responsible for the consequences of its operation regardless of who the actual vehicle owner might be. (*Id*.)

–– The registration of the vehicle's ownership is indispensable in determining imputation of liability; thus, whoever has his/her name on the Certificate of Registration of the offending vehicle becomes liable in case of any damage or injury in connection with the operation of such vehicle inasmuch as the public is concerned. (*Id*.)

–– Truly, what the law seeks to prevent is the avoidance of liability in case of accidents to the detriment of the public; in case an accident occurs, the liability becomes definite and fixed as against a specific person, so that the victim may be properly indemnified without having to go through the rigorous and tedious task of trying to identify the owner or driver of the concerned vehicle. (*Id*.)

URBAN DEVELOPMENT AND HOUSING ACT (R.A. NO. 7279)

Application of — In accordance with this policy, Section 28, Article VII of The Urban Development and Housing Act

(R.A. No. 7279) states that eviction or demolition as a practice is discouraged; it, however, provides situations where eviction or demolition is allowed but prescribes requirements that must be satisfied before an eviction or demolitions involving underprivileged and homeless citizens are considered valid; summary eviction and demolition are also allowed; however, they are permitted only in cases pertaining to identified professional squatters, squatting syndicates and new squatter families. (Cuerpo *vs*. People, G.R. No. 203382, Sept. 18, 2019) p. 340

WITNESSES

Credibility of — Courts look upon retractions with considerable disfavor because they are generally unreliable, as there is always the probability that it will later be repudiated; at most the retraction is an afterthought which should not be given probative value; only when there exist special circumstances in the case which when coupled with the retraction raise doubts as to the truth of the testimony or statement given, can retractions be considered and upheld, which does not obtain in this case. (Fajardo *vs*. People, G.R. No. 239823, Sept. 25, 2019) p. 1012

—— It is settled that "when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality," unless it appears that the lower courts had overlooked, misunderstood or misappreciated some fact or circumstance of weight, which, if properly considered, would alter the result of the case; thus, we ruled in *People v. Dela Cruz*, that: By and large, the instant case basically revolves around the question of credibility of witnesses. (People *vs*. Bacyaan *y* Sabaniya, G.R. No. 238457, Sept. 18, 2019) p. 656

—— Jurisprudence has steadily held that "no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong

done to her being; moreover, while a medical certificate attesting to the victim's physical trauma from the rape has corroborative purposes, it is wholly unnecessary for conviction, if not a mere superfluity. (People *vs*. Cabales, G.R. No. 213831, Sept. 25, 2019) p. 932

—— The inconsistencies alleged are deemed minor details that can be overlooked; We accord due respect to the factual findings and appreciation thereof by the trial court as it had the opportunity to observe the witnesses' demeanor and hear their testimonies at the first instance, much more as the CA affirmed the trial court's judgment of conviction in all its substantial respects. (*Id*.)

—— The well-entrenched rule in this jurisdiction, of course, is that the matter of assigning values to the testimonies of witnesses is best discharged by the trial court, and appellate courts will not *generally* disturb the findings of the trial court in this respect. (People *vs*. Bacyaan *y* Sabaniya, G.R. No. 238457, Sept. 18, 2019) p. 656

—— There is no standard behavior expected by law from a rape victim; she may attempt to resist her attacker, scream for help, make a run for it, or even freeze up, and allow herself to be violated; by whatever manner she reacts, the same is immaterial because it is not an element of rape; neither should a rape victim's reflex be interpreted on its lonesome; absent any other adequate proof that the victim clearly assented to the sexual act perpetrated by the accused, a victim shall not be condemned solely on the basis of her reactions against the same. (People *vs*. Cabales, G.R. No. 213831, Sept. 25, 2019) p. 932

Testimony of —— The Court holds that AAA's testimony on the material aspects of the crime are believable, credible, and worthy of full faith and credence; no matter what she did subsequent to the events narrated above is immaterial to the fact that the crime was already committed; in addition, it is worth emphasizing that sexual abuse is a painful experience which is oftentimes not remembered in detail; such an offense is not analogous to a person's achievement or accomplishment as to be

worth recalling or reliving; rather, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget; thus, a victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone; thus, the inconsistencies, if any, pointed out by XXX would not exculpate him from the crime. (XXX *vs*. People, G.R. No. 242101, Sept. 16, 2019) p. 146

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